KINGDOM OF SIAM.

DRAFT

CIVIL AND COMMERCIAL CODE.

BOOK

ON

OBLIGATIONS.

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[1]

BOOK

ON

OBLIGATIONS.

PRELIMINARY.

TITLE I.
TITLE, COMMENCEMENT AND REPEAL.

1. — This law shall be called the Civil and Commercial Code, Book on Obligations.

2. — It shall come into force on the …… day of …… 246 …

3. — On and from the day of operation of this Code, all other laws[, bye-laws] and regulations in so far as they deal with matters governed by this Code or are inconsistent with its provisions, shall be repealed.

TITLE II.
DEFINITIONS.

[2]

4. — Law denotes exclusively any Code, Act, Law. Decree or other rule enacted by His Majesty the King and promulgated.

5. — Injury denotes any harm to the body, mind, liberty, honour, reputation or property of a person.

6. — Security denotes any guarantee which may be given for the performance of an obligation.

7. — A person who is subrogated to the rights of a creditor can exercise all the rights which the creditor had in respect of the effects of the obligation or of any security for it.

8. — Intention or consent may be inferred from words spoken or written, or from conduct, or from any other circumstances.

9. — An obligation is said to be due from the time when the creditor is entitled to performance of it.

10. — *Force majeure* denotes any circumstance not under the control of a person and which that person could not have avoided even by using such care as may be expected from a person of ordinary prudence.

TITLE III.
GENERAL PROVISIONS.

[3]

11. — An obligation is a legal relation whereby one or more persons, called debtors, are bound to one or more other persons, called creditors, to deliver property, or to do or to abstain from doing an act.

The delivery of property or the doing or not doing of the act is called prestation.

ILLUSTRATION. — I. — A borrows money from B. A, the debtor, is under an obligation to repay the money to B, the creditor.

II. — A sells a house to B for 10,000 baht. A is under an obligation to deliver the house to B. Bis under an obligation to pay the price to A. With regard to the obligation to deliver the house A is the debtor and B is the creditor. With regard to the obligation to pay the price Bis the debtor and A is the creditor.

III. — A, a transport company on the river Menam, agrees with B, another transport company, that A's boats shall ply only from Bangkok down the river and B's boats shall ply only from Bangkok up the river. A is under an obligation not to run boats up the river and B is under an obligation not to run boats down the river. In the first obligation A is the debtor and B is the creditor. In the second obligation B is the debtor and A is the creditor.

12. — Obligations may be created, modified or determined by mutual consent of the parties, as they may think fit. [4]

See Illustration under Section 13.

~~13. — A private agreement or a clause in a private agreement which exclude or modify the provisions of law in which public policy or the safety of persons or property are involved, is void.~~

[13. — An agreement or a clause in an agreement which excludes or modifies the provisions of law in which public policy or the safety of persons or property are involved, is void.]

ILLUSTRATION (Sections 12 & 13). — Section 392 provides that the costs of a contract of sale must be borne by both parties equally. The payment of the costs of a contract of sale is a question in which public policy and good morals are not involved. The parties to a contract of sale can therefore agree that the costs of the contract shall be borne by one of them.

Section 654 provides that interest shall not exceed 15% per year. The limitation of the rate of interest is a question in which public policy is involved. The parties to a contract of loan of money cannot therefore agree that the loan shall bear more than 15% interest per year.

14. — If there is no law applicable to a case, custom shall apply.

15. — If there is neither law nor custom applicable to a case, the case shall be decided by analogy with the nearest provision or the general [5]

principles of law.

16. — Whenever a writing is required by law, it is not necessary that it be written by the person or persons from whom it is required, or by the parties to it, but it must bear their signature.

17. — In so far as circumstances admit, the provisions of this Code concerning the validity of contracts apply to anything which may create, modify or extinguish an obligation.

ILLUSTRATION. — Although not included in this Code, wills may create, modify or extinguish an obligation. In so far as circum[s]tances admit, the provisions of this Code concerning the validity of contracts apply to wills.

I. — A makes a will in favour of B, stating in it that he makes it only because B is a near relation to A's dead wife. After the death of A it turns out that B is no relation to A's dead wife. A's will was made under a mistake as to an essential element. A's will is voidable.

II. — A makes a will in favour of B because B fraudulently made A believe that C, a nearer relation to A, was already dead. It turns out after A's death that C is still living. A's will is vitiated by B's fraud and is voidable.

III. — A makes a will in favour of B under B's duress. A's will is vitiated by B's duress and is voidable.

IV. — A makes a will bequeathing his property to an association not authorized by law. The object of the will is unlawful : the will is void.

~~18. — Every person is bound to act in good faith in exercising his rights and in performing his obligations.~~ [6]

[18. — Creation, extinction or modification of rights, and fulfil[l]ment of obligations must be made in good faith.]

19. — Every person is presumed to be acting in good faith.

20. — Good faith is no defence if not coupled with such care as may be expected from a person of ordinary prudence.

21. — An agreement that a person shall not be liable for the consequences of his own bad faith is void.

22. — In case of doubt an obligation shall be construed in favour of the debtor.

ILLUSTRATION. I. — A dies after having bequeathed by will a part of his land to B. The heirs are under an obligation to deliver that part to the legatee. They are the debtors and B is the creditor of that obligation. Then it is found that it is doubtful whether the part of the land described in the will extends to a certain Klong only or further on. The obligation must be

construed in favour of the heirs, that is to say their obligation to deliver land shall be limited to the part of the land which extends to the klong.

II. — The Government has conceded to a company a line of tramway running from the town A to the town B. In this case the Government is under an obligation to allow the company to lay the track and to run cars on the line conceded. The Government is the debtor and the company is the creditor. Then a dispute arises between the Government and the company as to extent of the line conceded. The company contends that the concession extends to the centre of the town B. The Government contends that it extends only to the limits of the town B. If the question is doubtful, that is to say if there is no evidence to show whether the concession extends to the centre or to the limits of the town B, the doubt must be construed in favour of the debtor, viz. in favour of the Government. [7]

23. — Whenever interest is to be paid, and the rate is not fixed by the contract or by law, it shall be 7½% per year.

TITLE IV.
RULES FOR THE CONSTRUCTION OF DOCUMENTS.

24. — Whenever the meaning of a document is doubtful the Court shall look at the real intention rather than at the literal meaning of the words or expressions.

25. — Whenever two or more provisions of a document are inconsistent or repugnant and the Court cannot ascertain the real intention, the last provision shall govern.

26. — Whenever it is proved that part of a document has been forged, the Court shall restore such document to its original condition. [8]

If the Court cannot ascertain what the original condition was, no regard shall be had to the part which has been forged.

27. — That construction shall be preferred by which effect may be given to a provision or document.

28. — Whenever a sum or quantity is expressed in letters and in figures, and the two expressions do not agree, and the Court cannot ascertain the real intention. the expression in letters shall be held good.

29. — Whenever a sum or quantity is expressed several times in letters or several times in figures and the several expressions do not agree, and the Court cannot ascertain the real intention, the lowest expression shall be held good.

30. — Whenever a document is executed in two versions, one in the Siamese language, the other in another language, and there are discrepancies between the two versions, and the Court cannot ascertain which version was [intended to govern] ~~considered to be the original~~, the document executed in the Siamese language shall govern.

TITLE V.
PERIODS OF TIME.

[9]

31. — The rules contained in this Title apply to the calculation of all periods of time.

32. — Periods of time are calculated by the day and not by the hour.

ILLUSTRATION. — On the 20th. of May, at 10 a. m., A, the holder of an unpaid bill of exchange, sends a protest to B the drawee.

According to Section 1061, the bill of exchange shall be dishonoured by non-payment if B does not pay it within three days from the date of protest, that is to say on or before the 23rd. of May. The period however is calculated by the day, not by the hour. If B pays on the 23rd. of May after 10 a. m. but before the end of the day, the bitt shall not be dishonoured.

[ILLUSTRATION. — On the 1st. of July 2463 at 10 a.m. A lends to B 100 baht to be returned on the 1st. of September 2463. B is not obliged to return the money on this day at 10 a.m., but only before the end of the day.]

33. — When a period of time begins to run from a certain day, that day is not included within the period. When a period begins to run from an event or a point of time, the day in which the event or the point of time occurs is not included.

ILLUSTRATION. — I. — On the 1st. of April A borrows from B 100 Baht, to be repaid within twenty days. A must return the money on or before the 21st. of April, that is to say the 1st: of April is not included in the twenty days period.

[10]

II. — A borrows from B 100 baht to be repaid three days after A's return from a voyage to Chantaboon. A comes back on the 10th of April. A must return the money on the 13th of April, that is to say the 10th, of April is not included in the three days period.

34. — A period measured by weeks ends in the last week on the expiration of the same day as that on which it began to run.

ILLUSTRATION. — I. — On Monday the 4th. of January, A agrees to sell a pony to B and deliver it in three weeks. The pony must be delivered on or before Monday the 25th. of January.

II. — A agrees to sell 100 bags of rice to B and to deliver them two weeks after the arrival of the cargo boat Patani. The cargo boat arrives on Wednesday the 15th. of March. The 100 bags of rice must be delivered on Wednesday the 29th. of March.

35. — A period measured by months or years ends in the last month or year on the expiration of the day which corresponds to the date on which the period began to run.

If there is no corresponding date or if the date on which the period began to run is the last day of a month, the period ends on the expiration of the last day of the last month.

[11]

ILLUSTRATION. — On the 10th of January A agrees to sell a pony to B and deliver it in one month. The pony must be delivered on or before the 10th. of February.

If the sale is made on January 31st. 2455, the pony must be delivered on or before the 28th. day of February 2455.

36. — Month and year are those of the official calendar.

The beginning of a month means the first day of such month.

The middle of a month means the fifteenth day of such month.

The end of a month means the last day of such month.

37. — If a period of time is extended, the first day of the extension is the day following the last day of the original period.

38. — If the last day of a period is a holiday on which it is customary not to do business, the period includes the next working day.

39. — In matters of justice, administration and commerce, day means the usual hours of office or business.

DIVISION I. — HOW OBLIGATIONS ARISE. [12]

TITLE I.
CONTRACTS.

CHAPTER I.
DEFINITION.

40. — A contract is an agreement between two or more persons which creates one or more obligations.

CHAPTER II.
CONDITIONS FOR THE VALIDITY OF CONTRACTS.

41. — A contract which does not comply with the conditions concerning capacity or consent is voidable.

42. — A contract which does not comply with the conditions concerning object is void.

43. — A contract is also void if it does not comply with any other condition required by law for its completion.

44. — A voidable contract may be cancelled on the application of, or ratified by, such persons only as are specified by law, and within the time provided by law. [13]

ILLUSTRATION. — Five thousand tons of ice are made annually at A's ice factory. A falsely represents to B that the annual output of the factory is ten thousand tons, and thereby induces B to buy the factory. B would not have bought the factory if he had known that the output was five thousand tons only. B's consent to the contract of sale is defective and the contract is voidable. It may be ratified by B or B's heirs. Its cancellation may be claimed by B or B's heirs as long as prescription (under Sections 76 to 78) is not completed.

45. — Whenever a voidable contract is ratified, or the time allowed by law for claiming its cancellation has expired, it becomes valid as from the date of its making.

46. — A void contract may be cancelled at any time on the application of any interested person.

47. — A void contract cannot be ratified. If the parties purport to ratify it with knowledge of its invalidity, they are deemed to have made a new

contract.

48. — In the event of the cancellation of a contract, the parties must be replaced in the same position as they were at the time when the contract was made or became void.

Each party is bound to restore to the other party the prestation which he received [as a performance] ~~in execution~~ of the contract. or to make compensation for it, according to the provisions of this Code concerning restitution for undue enrichment. [14]

ILLUSTRATION.—A sells to B for 1,000 baht an ingot which both parties thought to be of pure gold. Later on B discovers that the ingot contained lead inside. The sale is voidable on account of mistake. B is entitled to claim for the return of the 1,000 baht paid to A. A is entitled to claim for the return of the ingot.

If the ingot has been lost or stolen, restitution becomes impossible. But B has no compensation to pay since he is liable only for such part of his enrichment as still exists (see Section 112): when the ingot was lost or stolen, the enrichment totally disappeared. Nevertheless, B is still entitled to claim for the return of the 1,000 baht paid to A.

If B sold the ingot, he is only bound to restore to A the price which he received from the purchaser, because such price represents B's actual enrichment (see section 112). But he is still entitled to claim for the return of the 1,000 baht paid to A.

[PART] I. — CAPACITY OF PARTIES.

49. — Every person who is not declared by law or custom to be incapacitated can enter into a contract.

[PART] II. — CONSENT. [15]

50. — There is no contract except by the mutual consent of the parties, that is to say unless the parties have agreed upon the terms of the contract.

51. — Consent may be expressed or implied.

1. — OFFER AND ACCEPTANCE.

52. — If an offer to make a contract is made, the contract is complete only when acceptance reaches the offerer.

[See Illustration under Section 54]

~~*ILLUSTRATION. — B has borrowed money from A, a banker in Bangkok, at 7½% interest. On the 1st. of August A writes to C, in Chantaboon, offering to transfer to C the rights of A against B A specifies in his letter that the offer must be accepted before the 1st. of September. Acceptance reaches A on the 25th. of August. The contract is formed on the 25th. of August and C is entitled to receive interest from the 25th. of August only.*~~

53. — Acceptance has no re~~s~~trospective effect, that is to say it does not

relate back to the time when the offer was made.

See Illustration under Section 54.

54. — If it is agreed that acceptance shall have a retrospective effect, such effect cannot affect the rights acquired by third persons acting in good faith. [16]

ILLUSTRATION (Sections 53 & 54). — On the 1st. of May A writes to B offering him a carriage for sale and asking that B should give an answer not later than the 10th. of May. On the 8th. of May A receives an answer from B that B is willing to take the carriage. The contract is formed on the 8th. of May.

If A had stipulated that B's acceptance should relate back to the time when the offer was made the contract of sale would be deemed to have been made on the 1st. of May. But should on the 3rd. of May A have sold the carriage to a third person C., who bought it in good faith, the ~~retrospective effect~~ [stipulation] could not affect C's right, that is to say C would remain the lawful owner of the carriage.

55. — An offer made *inter praesentes* is binding only if accepted at once.

An offer made by telephone is deemed to be made *inter praesentes*.

ILLUSTRATION. — A meets B and offers to sell him his motor — car. B does not accept immediately. A is not bound to B and is free to sell his motor — car to C.

The same rule applies if A telephones to B and B does not accept at once.

56. — An offer made *inter absentes* in which no time for acceptance is specified is binding only if acceptance reaches the offerer within a reasonable time. [17]

A reasonable time is the time in which acceptance may be reasonably expected to arrive, due regard being paid to distance and means of communication, and to the nature and object of the proposed contract.

The offer cannot be withdrawn during such period.

57. — An offer in which a time for acceptance is specified cannot be withdrawn, but it is binding only if acceptance reaches the offerer within such time.

58. — If the acceptance arrives after the time specified, but it is apparent that it was sent so that in the ordinary course of things it ought to have arrived within the time specified, the offerer must forth with give notice to the offeree of such late arrival unless he has already informed the offeree that no acceptance has arrived within the time specified.

If the offerer fails to give such notice, the acceptance is deemed to have

reached him in due time.

ILLUSTRATION. — A, a trader in Chiengmai, writes on the 1st. of August to B, a trader in Bangkok, offering him timber for sale. A specifies in his letter that the offer must be accepted on or before the 1st. of November. On the 10th. of October B writes to A accepting the offer. Owing to unusual floods, the letter is only delivered in Chiengmai on the 5th. of November ; but in the ordinary course of things it ought to have been delivered before the 1st. of November. Th, acceptance is deemed to have reached A in time, unless A immediately on receiving B's letter gives notice to B that the letter arrived to late, or unless on the second, third or fourth of November before receiving B's letter, A had already notified B that no acceptance had arrived within the time specified.

[18]

59. — Silence on the part of the offeree is not an acceptance, unless it be considered so by custom or by the practice of the parties.

60. — Part performance by the offeree of the proposed contract is presumed to be an acceptance. The contract is complete when the part performance begins.

~~*ILLUSTRATION. — On the 1st. of April A sends to B, a brick-maker, an order for ten boat loads of bricks, to be delivered boat by boat within one month from the date of order. B does not answer the order, but he sends one boat load of bricks to A on the 5th. of April. A has made to B an offer for a contract of sale of bricks. B has not sent an acceptance, but he has partly performed the proposed contract. He is presumed to have accepted the offer. The contract was complete on the 5th. of April.*~~

[ILLUSTRATION. — On the 1st. of April A sends to B, a brick — maker, an order for ten boat loads of bricks, to be delivered boat by boat within one month from the date of order. B does not answer the order, but ho sends one boat load of bricks to A on the 5th. of April. B has partly performed the proposed contract, and is presumed to have accepted the offer. The contract was complete on the 5th. of April.]

61. — An acceptance which reaches the offerer too late is deemed to be an offer made by the offeree to the offerer.

ILLUSTRATION. — On the 1st. of April, A writes to B offering him a piano for sale and asking that an answer be given on or before the 10th of April. On the 15th. of April, B writes that he is willing to buy the piano. There is no contract of sale, since B's acceptance is late. But B's answer is an offer from B to buy A's piano. If A accepts such offer within a reasonable time, the contract of sale is formed. If he does not [accept] ~~send an acceptance~~ within a reasonable time, B is not bound by his answer.

[19]

62. — An acceptance must be unqualified, that is to say the offer must be accepted without modification.

An acceptance by which the terms of the offer are modified is deemed to be a refusal coupled with a new offer.

ILLUSTRATION. — A writes to B offering him a piano for sale for 500 baht. B answers that

he willing to buy the piano for ~~500~~ [400] baht. B having modified the terms of the offer, his answer is a refusal. But B's refusal is at the same time an offer to buy the piano for 400 baht. If A accepts such offer within a reasonable time the contract of sale is formed. If he does not [accept] ~~send an acceptance~~ within a reasonable time, B is not bound by his answer.

63. — An offer is not binding if the offerer dies or becomes incapacitated before the acceptance reaches him.

ILLUSTRATION. — A, a merchant in Chiengmai, writes to B, a merchant in Bangkok, offering goods for sale. B answers by letter that he accepts the goods. While the letter is on the way. A dies. The offer is not binding on A's heirs. [20]

64. — An offer is not binding if notice of its withdrawal reaches the offeree before or at the same time as the offer.

ILLUSTRATION. — On the 4th. of April A, a merchant in Bangkok, orders by letter goods from B, a merchant in Pre. On the 6th. of April, he sends a telegram to B cancelling his order[s]. The telegram reaches B before the letter. A is not bound by his order.

65. — A person who advertises that he will give a reward to whosoever shall do a certain act is bound to give such reward to any person who does the act.

66. — The advertiser can, at any time before the act has been done, withdraw his offer by the same means which he used for making it, except if he has declared in the advertisement that he would not withdraw it, or if he has fixed a period of time within which the act must be done.

67. — If it is impossible to find out from the wording of the advertisement or from the circumstances of the case how the reward shall be paid, the following rules shall apply.

If several persons do the act specified in the advertisement, the person who does it first is entitled to receive the reward. [21]

If several persons do the act at the same time, each of them is entitled to receive an equal share in the reward. But if the reward cannot by its nature be divided, or if according to the advertisement one person only is to receive it, the person to receive it must be designated by lot.

2. — DEFECTIVE CONSENT.

68. — Consent is defective if given under a mistake as to an essential element of the contract.

ILLUSTRATION. — A, a merchant in Bangkok, has two launches, an old one named N and a new one named X. At the time when he is out of Bangkok B sends a telegram offering to buy the launch X for 10,000 baht. In consequence of a clerical error committed at the telegraph office,

the telegram delivered to A bears N instead of X. A answers by telegram : "offer accepted". A's consent is defective.

69. — Consent given under a mistake as to an essential element of the contract is not defective if the party whose consent was so given could have avoided the mistake by exercising such care as may be expected from a person of ordinary prudence.

A mere clerical error shall be corrected.

70. — Consent of one of the parties is defective if obtained by a fraud committed by the other party, provided that the fraud be such that without it the first party would not have given his consent. [22]

ILLUSTRATION.— Five thousand tons of ice are made annually at A's ice factory. A falsely represents to B that the annual output of the factory is ten thousand tons, and thereby induces B to buy the factory. B would not have bought the factory if he had known that the output was five thousand tons only. B's consent to the contract of sale is defective.

71. — Section 70 applies if the consent of one of the parties is obtained by a fraud committed by a person not a party to the contract, provided that the other party to the contract knew of the fraud at the time when the contract was made, or would have known of it if he had exercised such care as may be expected from a person of ordinary prudence.

ILLUSTRATION. — Five thousand tons of ice are made annually at A's ice factory. C falsely represents to B that the annual output is ten thousand tons, and thereby induces B to buy the factory. B would not have bought the factory if he had known that the output was five thousand tons only. A knew of the fraud committed by C. B's consent to the contract of sale is defective.

72. — Consent of one of the parties is defective if obtained by the duress of the other party or of any other person.

73. — When a party was induced to give his consent by such violence or threat as would lead him reasonably to believe that his life, body, liberty, reputation or property or the life, body, liberty, reputation or property of any other person was endangered, his consent is said to have been obtained by duress. [23]

74. — Legal action does not constitute duress.

75. — In deciding whether a case of mistake, fraud or duress exists, the Court shall have due regard to the age, sex and position of the parties, and other circumstances of the case.

76. — The party whose consent to a contract was vitiated by mistake, fraud or duress can claim cancellation of such contract by the Court

within one year from the day when the mistake or fraud became known to him, or when the duress ceased.

77. — The heirs of the party whose consent to a contract was vitiated by mistake, fraud or duress can claim cancellation of such contract by the Court within one year after death of such party.

If such party died after the mistake or fraud became known to him or after the duress ceased, his heirs cannot claim cancellation of the contract later than one year after such knowledge or after such cessation.

ILLUSTRATION. — A has been induced by B's fraudulent representations to buy B's factory. [24]
The contract of sale has been entered into on the 1st. of April 2455. A dies on the 1st of June 2455 before having discovered the fraud. The right of A's heirs to claim cancellation of the contract is extinguished by prescription the 1st. of June 2456 (one year after A's death). If the heirs discover the fraud after the 1st. of June 2456 they have no action and the contract is valid.

If A discovers the fraud on the 1st. of May 2455 and dies on the 1st, of October next following without having entered an action for cancellation, the right of his heirs to enter such an action is extinguished by prescription the 1st. of May 2456 (one year after discovery of fraud).

78. — In no case can an action for cancellation of a contract on the ground of mistake, fraud or duress be entered later than ten years after the date of the contract.

79. The party whose consent was vitiated by mistake, fraud or duress can ratify the contract after he knew of such mistake [or fraud] after the duress ceased.

3. — RATIFICATION.

80. — Ratification may be expressed or implied.

81. — Implied ratification may result from the circumstances of the [25]
case such as when the person entitled to ratify, without expressing any reservation, performs the contract wholly or in part, or

claims its performance, or

gives a security for its performance, or

asks for an extension of time from the creditor, or

notifies the creditor that any right or liability arising out of the contract is extinguished by set off, or

transfers any of the rights or liabilities arising out of the contract, or

does not raise the objection that the contract is voidable when sued in Court for its performance.

82. — Ratification does not require acceptance, but it is subject to the

rules concerning consent.

ILLUSTRATION. — A had entered into a contract of hire of services with B, who represented himself as a qualified architect. It turns out afterwards that B has no such qualification. A may ratify the contract, and ratification does not require to be accepted by B. But ratification is not valid if it was given under B's duress.

83. — Ratification has a retrospective effect.

84. — The retrospective effect of a ratification cannot affect the rights acquired by third persons acting in good faith.

ILLUSTRATION. — A, a merchant in Bangkok, has two launches, an old one named N and a new one named X. B, who is living in Patriu, writes to A asking whether he can sell him one of his launches. A sends a telegram offering the launch N for 10,000 baht. In consequence of a clerical error committed at the telegraph office, the telegram delivered to B bears X instead of N. B answers by telegram: "Offer accepted." B's consent is defective. [26]

B can ratify the contract that is to say he can notify A that he agrees to buy the launch N for 10,000 baht and such ratification shall have a retrospective effect. But it before the ratification A has sold the launch N to C who bought it in good faith, the ratification of the contract between A and B cannot affect the rights of C, that is to say C shall remain the lawful owner of the launch N.

[PART] III. — OBJECT.

85. — A contract is void if its object is :

1) Impossible, or

2) Unlawful, or

3) Contrary to public policy or to the safety of persons or property.

ILLUSTRATION. — I.— Impossible. — On the 15th. of April in the morning, A, the manager of a Navigation Co., agrees to hire to B the lighter N which is supposed to be then engaged in unloading a steamer in Koh Si Chang. It turns out afterwards that during the night of the 14th. ~~to the 15th.~~ of April the lighter was sunk. The object of the contract is impossible. The contract is void.

[27]

II. — Unlawful, ~~etc.~~ — A enters into a partnership with B for the purpose of smuggling opium into Siam. The object of the contract is unlawful. The contract is void.

86. — A contract which is void on account of its object does not become valid if the cause of invalidity ceases after the contract was made.

ILLUSTRATION. — A, a rice-miller in Bangkok, contracts to send every month a cargo of rice to B, a merchant in Hongkong, although the export of rice has been prohibited in Siam. The contract is void on account of its object being unlawful. Subsequently the export of rice is allowed. The contract does not become valid.

87. — A valid contract becomes void if, after it was made, its object becomes unlawful or contrary to public policy or to the safety of persons or

property.

ILLUSTRATION. — A, a rice-miller in Bangkok, contracts to sell every month a cargo of rice to B, a merchant in Hongkong. After the contract has been carried out for several months the export of rice is prohibited in Siam. The export becoming unlawful, the contract between A and B becomes void.

TITLE II.
MANAGEMENT OF AFFAIRS WITHOUT A MANDATE.

[28]

88. — Management of affairs without a mandate occurs when a person acts for another without his request or without being bound by law to do so.

89. — The manager must immediately notify the principal that he is acting for him.

No notification is necessary if the principal knows of it.

90. — The manager is bound to act for the principal with such care as may be expected from a person of ordinary prudence.

91. — The manager is bound to continue to act until the principal or his heirs can act.

92. — If the manager has undertaken to act although he knew or ought to have known that such undertaking was contrary to the will of the principal, the following rules apply:

1) The principal is not bound to third persons, by the acts done by the manager.

2) The manager is liable to the principal for all the consequences of his intervention, even consequences due to *force majeure*. [29]

3) The principal is not bound to reimburse the manager for the advances made or expenses incurred except in so far as he has been enriched thereby.

93. — The fact that the manager has undertaken to act contrary to the will of the principal shall not be taken into consideration in any case in which a duty imposed on the principal in the public interest would not be fulfilled in due time except for such intervention.

94. — If an act of management has for its object the averting of an imminent danger which threatens the principal, the manager is liable to the principal for the consequences of his act in so far only as they are due to his fault.

95. — If the manager has ~~not~~ undertaken to act [not] contrary to the will of the principal, but has failed to act with proper care, the following rules apply:

1) The principal is bound to third persons by the acts done by the

manager.

2) The manager is liable to the principal for the consequences of his misconduct.

3) If advances have been made or expenses incurred by the manager, the principal is bound to reimburse them only in so far as he has been enriched thereby.

96. — If the manager has ~~not~~ undertaken to act [not] contrary to the will of the principal and has acted with proper care, the principal is bound to third persons by the acts done by the manager. [30]

He is also bound to reimburse the manager for any advances made or expenses incurred by him.

97. — The manager is not entitled to remuneration.

98. — After the management has ceased, the manager must as soon as possible report to the principal how the matters have been executed.

99. — The manager must transfer to the principal the rights which he has acquired in his own name but on behalf of the principal.

100.—The manager must hand over to the principal all the monies and other properties which he receives in the execution of the management.

101. — If the manager has used for his own benefit money which he ought to have handed over to the principal or to have used for the principal, he must pay interest thereon from the day when be used it for his own benefit.

102. — A person who acts for another, believing that he is acting for himself, has only an action for undue enrichment against the principal. [31]

103. — If the manager acts for one person, believing that he is acting for another person, the first named person only has the rights and duties arising out of the management.

104. — If the principal expressly or impliedly ratifies it the management is transformed into a contract of agency.

The principal who knew of the management and did not object to it within a reasonable time is deemed to have ratified it.

TITLE III.
UNDUE ENRICHMENT.

CHAPTER I.
LIABILITY FOR UNDUE ENRICHMENT.

~~105. — A person who has made a prestation which was not due, or was no longer due, believing that such prestation was due, is entitled to restitution from the person who has been unduly enriched by such prestation.~~

[105. — A person who has made a prestation which was not due, or was no longer due, believing that such prestation was due, is entitled to restitution from the person who has been unduly enriched by such prestation.]

ILLUSTRATION. — A, the heir of C, pays to B the amount of a bill which A thinks not to have been paid by C. A afterwards finds a receipt showing that Chad paid the said bill. A is entitled to restitution from B. [32]

106. — Incapacitated persons, when unduly enriched. are bound to make restitution in the same way as capable persons.

107. — A person who has made a prestation as if in performance of an obligation, knowing that such obligation did not exist, is not entitled to restitution.

ILLUSTRATION. — A knows that he is not indebted in any way to B. A hands over 1000 baht to B by pretending that he is indebted to B in such amount. A is not entitled to restitution from B.

108. — The following persons are not entitled to restitution:

1) A person who performs an obligation subject to a time clause before the time has arrived.

2) A person who performs an obligation which has been extinguished by prescription.

ILLUSTRATION. — I. — A has borrowed from B 1,000 baht to be [repaid]~~returned~~ on the 1st. of March 2455. A ~~returnes~~[repays] the money on the 1st. of December 2455, that is to say before the time has arrived. ~~Although the money was not het due,~~ A cannot claim its restitution.

II. — A has borrowed 1000 baht from B in the year 2442, to be repaid in the year 2444. A has not repaid the money and B has not claimed repayment. In the year 2456, at the time when A's obligation is extinguished by prescription, A repays the 1000 baht. A cannot claim restitution of the money. [33]

CHAPTER II.
RESTITUTION FOR UNDUE ENRICHMENT.

109. — A person who unduly received a prestation is bound to make restitution as provided by the following sections.

[See Illustration under Section 111]

~~ILLUSTRATION. — A delivers to B an elephant, market value 2000 baht, believing that such prestation was due. In fact, the prestation was not due. According to Section 109, A is entitled to restitution from B.~~

110. — If the subject of the prestation is property which may be returned, and the person who received it was in good faith, such person is only bound to return it in such condition as it is.

See Illustration under Section 111.

111. — If the subject of the prestation is property which may be returned, and the person who received it was in bad faith, such person is liable for any damage caused to it. [34]

~~ILLUSTRATION (Sections 110 & 111). — If the elephant is still in B's possession, B must return it to A; but if the elephant is not in good condition, a distinction is to be made:~~

~~1) If B was in good faith, that is to say if he believed in good faith that the prestation was due to him, he is only bound to return the elephant in such condition as it is.~~

~~2) If B was in bad faith, that is to say if he knew that the prestation was not due to him, he is liable for damage and he must pay compensation to A for such damage.~~

[ILLUSTRATION (Sections 109, 110 & 111). — A delivers to B an elephant, market value 2000 bant, believing that such prestation was due. In fact, the prestation was not due, A is entitled to restitution from B.

If the elephant is still in B's possession, B must return it to A; but if the elephant is not in good condition, a distinction is to be made:

1) If B was in good faith, that is to say if he believed in good faith that the prestation was due to him, he is only bound to return the elephant in such condition as it is.

2) If B was in bad faith, that is to say if he knew that the prestation was not due to him, he is liable for damage and he must pay compensation to A for such damage.]

112. — If the subject of the prestation is such as cannot be returned, or if restitution is otherwise impossible, and the person who received the prestation was in good faith, such person is bound to return such part of his enrichment as still exists at the time when return is demanded.

See illustration under Section 113.

113. — If the subject of the prestation is such as cannot be returned, or if restitution is otherwise impossible, and the person who received the prestation was in bad faith, such person is bound to pay the highest value which the subject of the prestation may have reached between the time when prestation was made and the date of final judgment. [35]

ILLUSTRATION (Sections 112 & 113). — If B no longer has the elephant (dealt with in illustration for Section ~~109~~ [111]), restitution is impossible and compensation is due under Sections 112 and 113, according to the following distinctions :

I) If B was in good faith :

B is bound to restore such part of his enrichment as still exists at the time when compensation is demanded, that is to say:

a) If the elephant has died or was lost before such time, B's enrichment has totally disappeared and B has nothing to restore.

b) If B has sold the elephant to a third person, he must deliver to A the price which he received, whether such price be 2000 baht, or more or less, because the price represents B's enrichment.

c) If B has exchanged the elephant, say for twenty buffaloes, he must deliver to A those 20 buffaloes ; but if five of those buffaloes have died before the compensation was demanded, B is only bound to deliver that part of the enrichment as still exists at that time, that is to say the remaining 15 buffaloes,

II. — If B was in bad faith :

B is bound to restore the highest value of the elephant, whether the elephant has died, or whether B has sold, lost or exchanged it. Therefore :

a) It the market price of elephants remains unchanged, B must pay 2000 baht. [36]

b) If at any time between the time when B received the elephant and the date of final judgment the market price of elephants has risen, say to 2500 baht, B must pay 2500 baht.

c) If the market price has fallen say from 2000 baht to 1500, A is still entitled to claim the full value of the prestation at the time when it was made, that is to say 2000 baht.

114. — The person who received the prestation in good faith is bound to return interest and profits from the date of demand only.

See Illustration under Section 115.

115. — The person who received the prestation in bad faith is bound to return interest and profits from the date of prestation.

ILLUSTRATION (Sections 114 & 115). — On the 1st, of October, A delivers to B a house which is let to a tenant for 100 baht per month. A has collected the rent for September. B collects the rent for October and for the following months. On the 1st of January, A claims restitution of the house on the ground of undue delivery as provided by Section 105. The Court orders B to restore the property.

If B received the house believing in good faith that he was entitled to it, B is only bound to account to A for the rent of January and following months up to the restitution. [37]

If B received the house in bad faith, that is to say knowing that he was not entitled to it, he is

bound to account to A for the rent of October and following months up to restitution.

116. — If the person who returns the property has incurred expenses on account of it, he is entitled to reimbursement from the person to whom the property is returned, as provided in the following sections.

117. — Expenses which were necessary for the preservation of the property or for its maintenance or repair, or ~~for~~ charges incumbent upon it must be reimbursed in full.

If the person who returns the property has collected the profits, the expenses for maintenance, repairs or charges must be borne by him to the extent of the value of such profits.

~~*ILLUSTRATION.- A is ordered under Section 105 to restore to B a house which had been unduly delivered to him by B. M as incurred 200 baht expenses in repairing the roof of the house and he has paid 50 baht house tax on it. B must reimburse these 250 baht to A.*~~

~~*If A had leased the house and collected 150 baht rent, he would be bound to bear his expenses up to the amount of the profits collected by him, that is to say he would keep the 150 baht rent and be entitled to the 100 baht balance from B.*~~

[ILLUSTRATION. — A is ordered under Section 105 to restore to B a house which had been unduly delivered to him by B.

a) A has incurred 200 baht expenses in repairing the roof of the house and he has paid 50 baht house tax on it. B must reimburse these 250 baht to A. If A has leased the house and collected 150 baht rent, he is entitled to keep such rent if ho was in good faith (Section 114). But then these 150 baht profits must be deducted from the 250 baht to be reimbursed to him, that is to say that B would have finally to reimburse 100 baht balance;

b) if A. has ascertained at a certain time that the house was on the verge of falling in owing to floods, and has had to make 5000 baht for the ground works, this is an expense for preservation. Then B must reimburse to A 5000 baht; and no deduction shall be made of any rent collected by A and which he is entitled to keep on account of his being in good faith.]

118. — If the person who has in good faith unduly received a property has made alterations in, or additions to it, he must return the property in such condition as it is; he is entitled to compensation for any increase of value accruing to the property from such alterations or additions, and he is not liable for any decrease of value resulting from the same. [38]

~~119. — If the person who has in bad faith unduly received a property has made alterations in, or additions to it, he must return the property after having put it in its former condition at his own expense. If it is impossible to put it in its former condition or the property would be damaged thereby, he is entitled to no compensation for any increase of value accruing to the property from such alterations or additions, and he is liable to pay compensation for any decrease of value resulting from the same.~~

[119. — If the person who has in bad faith unduly received a property has made alterations in, or additions to it, he must return the property after having put it in its former condition at his own expense. If it is impossible to put it in its former condition or the property would be damaged thereby, he must return it in such condition as it is and he is entitled to no compensation for any increase of value accruing to the property from such alterations or additions, and he is liable to pay compensation for any decrease of value resulting from the same.]

TITLE IV.
WRONGFUL ACTS.

CHAPTER I.
LIABILITY FOR WRONGFUL ACTS.

~~120. — Whoever intentionally or negligently causes injury to another person under any of the following circumstances, that is to say:~~

~~1) By omission of such care as may be expected from a person of ordinary prudence, op~~

~~2) By omission of such skill and care in a profession as may be expected from a person exercising such profession, or~~

~~3) In disobedience to any law, bye-law or lawful order,~~

~~is said to commit a wrongful act and is bound to make compensation to the injured person.~~

[120. — Whoever intentionally causes injury to another person, or whoever causes such injury negligently, that is to say, under any of the following circumstances: [39]

1) By omission of such care as may be expected from a person of ordinary prudence, or

2) By omission of such skill and care in a profession as may be expected from a person exercising such profession, or

3) In disobedience to any law, bye-law or lawful order,

is said to commit a wrongful act and is bound to make compensation to the injured person.]

121. — Every person, even though he be incapacitated, is liable for the consequences of his wrongful acts.

122. — An employer is jointly liable with his employee for the consequences of a wrongful act committed by such employee in the course of his employment.

123. — The employer who has made compensation to a third person for a wrongful act committed by his employee is entitled to reimbursement from such employee.

~~*ILLUSTRATION. — A, a clerk in B's shipping firm, when conveying goods by boat in the course of his employment, through his negligence causes the boat to collide with another boat belonging to C, whereby C's goods are damaged. C enters an action for damages against B. The Court orders B to pay 100 baht compensation. After B has paid such 100 baht to C, he is entitled*~~ [40]

~~*to recover them from A.*~~

~~124. — If a wrongful act has been committed by several persons, the Court shall decide the proportion in which the compensation must be borne by each wrongdoer.~~

~~125. — Unless otherwise decided by the Court. the several wrongdoers are jointly liable for the payment of the whole of the compensation to the injured person.~~

[124. — If a wrongful act has been committed by several persons, the several wrongdoers are jointly liable for the payment of the whole of the compensation to the injured person unless otherwise decided by the Court.

125. — As between the several wrongdoers themselves, the Court may decide the proportion in which the compensation must be borne by each of them.]

126. — Civil liability is independent of criminal liability, as provided by ~~Section 91 of~~ the Penal Code.

CHAPTER II.
SELF-HELP.

127. — A creditor is entitled, for the purpose of securing performance of an obligation, to take possession of property, or to compel a debtor to suffer an act which he is bound to suffer, provided that under the circumstances of the case it was not possible for the creditor to wait for an order of a Court or of the proper authority without running a risk that the enforcement of the obligation would be seriously impeded or endangered.

128. — Self-help must be strictly limited to that which is necessary for averting the risk. [41]

129. — A creditor who uses self-help contrary to the provisions of Sections 127 and 128 commits a wrongful act and is liable for any injury caused. ~~It is no defence that he was ignorant that his act was wrongful or that his ignorance was not due to his own fault.~~

CHAPTER III.
LAWFUL DEFENCE, LAWFUL COMMAND, NECESSITY.

130. — A person who, acting in lawful defence or under a lawful command, has caused injury to any other person does not commit a wrongful act and is not liable for compensation.

The injured person can claim compensation from the person against whom the lawful defence was directed, or from the person who wrongfully gave the lawful command, as the case may be.

ILLUSTRATION. — I. — A is assaulted by a gang of robbers. A fires at the robbers and wounds B, a passer-by. If A did not act in excess of what is permitted or necessary for lawful defence, A has not committed a wrongful act and B can only claim compensation from the robbers. [42]

II. — A is arrested by B, a policeman acting under an unlawful order of C, his superior officer. If B is considered as having carried out a lawful command (as defined by Penal Code Section 52), B has not committed a wrongful act and A can only claim compensation from C.

131. — A person who damages or destroys a thing belonging to another person in order to protect himself or any other person against immediate danger does not commit a wrongful act, but is liable for compensation.

If the danger was caused by the thing itself, no compensation is due, provided that no more was done than reasonably required under the circumstances.

ILLUSTRATION. — I. — A is going down the river Menam in a sampan loaded with fruit, betel, etc. for sale. B, who has fallen in the river by accident and is very nearly drowned, gets hold of the edge of the boat and, unfortunately, the boat capsizes. B has not committed a wrongful act, but he must make compensation to A for the lost fruit, betel, etc. as well as for damage to the boat, if any.

II. — A's elephant being mad is running towards B. B wounds the elephant and thereby escapes danger. No compensation is due by B for the injury caused to A's elephant.

CHAPTER IV.
COMPENSATION FOR WRONGFUL ACTS.

[43]

132. — Compensation shall include:

1) Restitution of the property of which the injured person has been wrongfully deprived, if any, or its value, and

2) Compensation for any injury caused to the injured person.

133. — The restitution provided by the foregoing section is governed by such provisions of this Code concerning restitution for undue enrichment ~~as refer to restitutions made~~ by persons in bad faith.

134. — If the injury was partly caused by the fault of the injured person, the Court may reduce the amount of compensation, or even grant no compensation at all.

135.— In case of bodily harm, compensation shall be at least for expenses incurred [for medical treatment] ~~during illness~~, for injury resulting to the injured person from having been unable to follow his ordinary pursuits, and for bodily pain.

136. — If the injured person has died from the wrongful act, and no action for compensation was entered by him or finally decided, the parents, husband. wife, children ~~and~~ [or] grand-children of the deceased can claim compensation for expenses incurred by the deceased and by them [for medical treatment] ~~during his illness~~, for the costs of his funeral, and for any other injury resulting to them from his death.

[44]

137. — The obligations arising out of a wrongful act are extinguished by prescription six months after the day when the wrongful act and the person who is liable for it became known to the injured person. But in no case the action for compensation can be entered later than ten years after the day when the wrongful act was committed.

However if the wrongful act constitutes an offence the prescription of the civil action is governed by section 96 of the Penal Code.

~~DIVISION II. — OF SOME PARTICULAR KINDS OF OBLIGATIONS.~~ [45]

[DIVISION II. — OF VARIOUS KINDS OF OBLIGATIONS.]

TITLE I.
CONDITIONAL OBLIGATIONS.

138. — Whenever the performance or the extinction of an obligation depends either on the occurrence or on the non-occurrence of an uncertain event, the obligation is said to be conditional.

An event is said to be uncertain when there is a possibility of its not occurring.

~~*ILLUSTRATION. — I. — A agrees to give B a house if B marries. The performance of A's obligation depends on the occurrence of B's marriage. A's obligation is conditional.*~~

~~*II. — A agrees to give B a house if C does not marry before the 1st. of April 2455. The performance of A's obligation depends on the non-occurrence of C's marriage. A's obligation is conditional.*~~

~~*III. — A agrees to give B 2000 baht a year until B marries. The extinction of A's obligation depends on the occurrence of B's marriage. A's obligation is conditional.*~~

[ILLUSTRATION. — I. — A agrees to give B a house if B marries. The performance of A's obligation depends on the occurrence of B's marriage. A's obligation is conditional.

II. — A agrees to give B a house if C does not marry before the 1st. of April 2455. The performance of A's obligation depends on the non-occurrence of C's marriage. A's obligation is conditional.

III. — A agrees to give B 2000 baht a year until B marries. The extinction of A's obligation depends on the occurrence of B's marriage. A's obligation is conditional.]

139. — An obligation subject to an unlawful condition, or to a condition contrary to public policy or to the safety of persons or property is void.

140. — If the condition afterwards becomes lawful or not contrary to public policy or to the safety of persons or property, the obligation does not become valid. [46]

141. — If no time is fixed for the fulfil[l]ment of the condition, and it becomes certain that the condition cannot be fulfilled, the condition is deemed to be unfulfilled.

ILLUSTRATION. — A agrees to give B a house if B marries C. C dies without being married

to B. It becomes certain that the condition cannot be fulfilled. The condition is deemed to be unfulfilled. A's obligation is extinguished.

142. — If the property which is the subject of the conditional obligation is lost or damaged before the condition is fulfilled, the provisions of this Code concerning non-performance shall apply.

ILLUSTRATION. — A buys B's house subject to the condition that the sale shall be valid only if A marries. A marries, but before he marries the house is damaged by fire. A has the remedy described in Sections 257 to 272 concerning non-performance, that is to say he can claim cancellation of the contract (section 262) or he can accept the house as it is, subject to a reduction of price (section 264). He is also entitled to compensation for non-performance, provided that the fire be not due to force majeure.

TITLE II.
OBLIGATIONS SUBJECT TO A TIME CLAUSE.

[47]

143. — If a time is fixed for the performance or for the extinction of an obligation, such obligation is said to be subject to a time clause.

ILLUSTRATION. — I. — On the 1st. April, A agrees to deliver to B a pony on the 10th September next. The obligation of A is subject to a time clause.

II. — A agrees to lend to B a certain property until C shall die. The obligation of A is subject to a time clause.

144. — If the property which is the subject of an obligation with a time clause is lost or damaged before the time has arrived, the provisions of this Code concerning non-performance shall apply.

145. — A time clause is presumed to be for the benefit of the debtor, that is to say the debtor can perform the obligation before the time has arrived, unless it appears that the time clause was also stipulated for the benefit of the creditor.

ILLUSTRATION. — On the 1st of January, A borrows from B 1000 baht to be repaid on the 1st. of May next following. It is presumed that A can repay the money before the 1st. of May.

146. — The debtor loses the benefit of the time clause if he has fraudulently concealed that securities given by him were subject to charges or to preferential rights. [48]

ILLUSTRATION. — On the 1st of January 2454, A agrees to lend 10,000 baht to B to be repaid on the 1st. of January 2455. The debt is secured by a mortgage on B's house. If B has fraudulently concealed from A that the house was already mortgaged to C, B loses the benefit of the time clause, that is to say A is entitled to claim immediate ~~re~~payment of the money lent.

TITLE III.
ALTERNATIVE OBLIGATIONS.

147. — If the prestation is to be selected from among several prestations, the obligation is said to be alternative.

148. — The right of selection is presumed to belong to the debtor.

149. — If the selection is to be made within a period of time, and the party who has the right of selection does not exercise it within such period, the right of selection passes to the other party.

150. — If no period of time was fixed, the party who has not the right of selection can notify the other party to exercise his right of selection within a reasonable time, to be fixed in such notice. [49]

If the other party does not exercise his right of selection during such time[,] the right passes to the former party.

151. — If the selection is to be made by a third person, and such person does not make it, the right of selection passes to the debtor.

In such case the provisions of Sections 146[9] and 150 apply *mutatis mutandis*.

152. — After selection is made, it cannot be changed except by mutual consent.

153. — If among the prestations one is or several are impossible, the obligation is valid as to the other prestations.

TITLE IV.
PLURALITY OF CREDITORS OR DEBTORS.

CHAPTER I.
GENERAL PROVISIONS.

154. — If there are several creditors or several debtors, the obligation is presumed to be divided, that is to say, each creditor or debtor is presumed to have a separate share in the rights or liabilities arising out of the obligation. [50]

155. — The shares of each creditor or debtor are presumed to be equal.

156. — A creditor is not entitled to claim performance for more than his share.

A debtor is not bound to perform more than his share.

157. — Facts which apply to one of the creditors or debtors personally do not affect the other creditors or debtors.

158. — Joint obligations and indivisible obligations constitute an exception to the rules provided in this Chapter.

CHAPTER II.
JOINT OBLIGATIONS.

[PART] I. — GENERAL PROVISIONS.

159. — An obligation is said to be a joint obligation if there are several creditors or debtors and each of them is either entitled to receive or bound to make performance of the whole of the obligation.

160. — There is no joint obligation unless there be an express agreement or an express provision of law to that effect. [51]

161. — If several persons are entitled to receive or bound to make performance of an obligation under one contract, they are presumed to be joint creditors or joint debtors.

ILLUSTRATION. — I. — A has borrowed money from B, C and D under one contract. B, C and D are presumed to be joint creditors of A.

II. — A, B and C have borrowed money from D under one contract. A, B and C are presumed to be joint debtors of D.

162. — The fact that an obligation is voidable as to one of the joint parties does not affect its validity as to the other parties.

ILLUSTRATION. — A, B and C contract jointly to lease a house from D. B is under age and has acted beyond the scope of his capacity. If the obligation of B is cancelled A and C remain liable for the whole of the tenancy.

[PART] II. — JOINT CREDITORS.

[52]

163. — If there are several joint creditors, each creditor can demand performance of the joint obligation, but the prestation made as performance must be divided among the several joint creditors.

ILLUSTRATION. — A, B and C are joint creditors of D for a sum of 1500 baht. A acting alone can demand from D payment of the 1500 baht, but A must divide the said sum with B and C.

164. — As between the joint creditors, a joint obligation is presumed to be divided into equal shares.

ILLUSTRATION. — A has borrowed 1500 baht from B, C and D. As between B, C and D, they are each presumed to have a share of 500 baht in the debt.

165. — If the debtor is served with a writ at the suit of one of the joint creditors, he cannot perform the joint obligation to another joint creditor.

~~Up to the time of such service, he is entitled to perform the joint obligation to any of the joint creditors.~~

[166. — Up to the time of such service, the debtor may perform the joint obligation to any of the joint creditors.]

ILLUSTRATION. — A has borrowed 1000 baht from B, C and D. C enters an action for repayment against A. Up to the time of service of the writ A was entitled to make payment to B, C or D. From the moment when he is served with the writ he can make payment to C only.

[53]

~~166~~[167]. — If one of the joint creditors demands performance, the debtor can set up against such creditor :

1) Defences which are personal to such joint creditor, and

2) Defences resulting from the provisions of this Part II.

ILLUSTRATION. — A, B and C are joint creditors of D ~~of~~[for] a sum of 1500 baht. A demands payment from D. D can set up against A :

1) Defences personal to A : for instance if A owes 1000 baht to D, D can set off that debt against his own debt, which will then be reduced to 500 baht.

2) Defences resulting from the provisions of this Part II: for instance if D had already made to B a part payment of 500 baht, he can set up that payment against A in the same way as if it had been made to A (See Sect. 167).

~~167~~[168]. — Performance made to one of the joint creditors is equivalent to performance made to all the joint creditors.

ILLUSTRATION.—I. — A, B and C are joint creditors of D for a sum of 1500 baht. D pays that sum to A. B and C cannot afterwards claim payment from D because the payment made by him to A is equivalent to a payment made to A, B and C.

[54]

II. — A, B and C are joint creditors of D for a sum of 1500 baht. D makes to A a part payment of 1000 baht. B and C cannot afterwards claim from D more than 500 baht, because the payment of 1000 baht made to A is equivalent to a payment made to A, B and C.

~~168~~[169]. — A deposit made for the benefit of, or a tender made to, one of the joint creditors is equivalent to a deposit made for the benefit of, or to a tender made to. all the joint creditors.

ILLUSTRATION. — A, B and C are joint creditors of D for a sum of money. On the debt becoming due, D tenders the money to A. Although the tender was made to A alone, it is equivalent to a tender made to A, B and C.

~~169~~[170]. — If the debtor can set off an obligation against one of the joint creditors, he can set it off against all the joint creditors.

ILLUSTRATION. — A, B and C are joint creditors of D for a sum of 1500 baht. A owes 1000 baht to D. C demands payment from D. D can set off against C the debt owed by A. He has to pay the balance only, viz. 500 baht.

~~170~~[171]. — When an interruption of prescription is made by one of the joint creditors the prescription is interrupted in favour of all the joint creditors.

[55]

ILLUSTRATION. — In the year 2440 A, B and C sell jointly a house to D and deliver it. D fails to pay the price. According to law, an action for payment of the price cannot be entered later than 10 years after the date of the sale. In the year 2445 A enters an action for payment against D. Judgment is given for A and A obtains in execution part payment of the price. In the year 2452 B claims for the balance of the price. D cannot object that the rights of B are extinguished by the 10 years prescription, because the interruption of prescription resulting from the entry of an action by A in the year 2445 avails in favour of all the joint creditors.

~~171. — An admission under oath or a refusal to take an oath made on the demand of the debtor or of one of the joint creditors takes effect in favour of, or against, all joint creditors.~~

~~*ILLUSTRATION. — A, B ant G pretend to be joint creditors of D for money borrowed. A enters an action for payment against D. No clear evidence of the debt is produced. A declares that he will be satisfied if a swears that he does noi owe the money claimed. D swears. IF B subsequently demands payment of the money from D, D can avail himself of the oath taken by him in the action entered by A, even should B produce clear evidence of the debt.*~~

~~*If D had refused to swear, and if the Court had considered the refusal sufficient evidence that he was indebted to A, the refusal would also be evidence in favour of R and C.*~~

[56]

172. — When one of the joint creditors is in default. all the joint creditors are in default.

ILLUSTRATION. — A, B and C are joint creditors of D for a sum of money. On the debt becoming due, D tenders payment to A. A refuses to accept payment. A B and C are in default as creditors.

173. — When the debtor is in default as against one of the joint creditors, he is in default as against all the joint creditors.

ILLUSTRATION. — A, B and C have jointly lent money to D. The money is to be repaid on demand made by any one of the creditors. A comes and demands the money from D. D does not repay it. Although A alone came and demanded the money D is in default as against A, B and C.

174. — An extension of time granted by one of the joint creditors is presumed to be an extension of time granted by all the joint creditors.

ILLUSTRATION. — A, B and C are joint creditors of D for a sum of money to be repaid on the 1st. of July 2455. A allows D to postpone repayment till the 1st. of April 2456. The extension of time is presumed to have been granted to D by A, B and C, that is to say B or C cannot claim payment before the 1st. of April 2456 unless they can prove that they did not agree to the extension. [57]

175. — A release granted by one of the joint creditors is presumed to be a release granted by all the joint creditors.

ILLUSTRATION. — A, B and C are joint creditors of D for a sum of 1500 baht. A agrees to reduce the debt to 1000 baht. B and C are presumed to have agreed to the reduction.

176. — Securities given by the debtor to one of the joint creditors are presumed to be securities given to all the joint creditors.

ILLUSTRATION. — I. — A, B and C are joint creditors of D for a sum of money. D has given to A a pledge to guarantee his debt. It is presumed that if D does not pay the debt, the pledge may be enforced by B or C as well as by A.

II. — A, B and C are joint creditors of D for a sum of money. E has agreed with A to be surety for D. It is presumed that if D does not pay the debt, payment may be claimed from E by B and C as well as by A.

177. — With the exception of the facts mentioned in Sections ~~167~~[168] to 176, facts which apply to one of the joint creditors do not affect the other joint creditors. [58]

[PART] III. — JOINT DEBTORS.

1. — RELATIONS BETWEEN JOINT DEBTORS AND THE CREDITOR.

178. — If there are several joint debtors, the creditor can demand performance from all or any one of them.

ILLUSTRATION. — A, B and C jointly borrowed money from D. When the debt becomes due, D can claim payment from A, B and C together, or from A, or B, or C separately, or from A and B, or from B and C, or from A and C, as he likes.

179. — As long as the joint obligation has not been wholly performed, the joint debtors remain jointly liable for the performance.

ILLUSTRATION. — A, B and C owe jointly 1500 baht to D. A makes to D a part payment of 1200 baht. A balance of 300 baht remains due. A, B and C remain jointly liable for such balance, that is to say D can claim payment of 300 baht from A, B and C together, or from A, or B, or C separately, or from A and B, or from B and C, or from A and C, as he likes. [59]

180. — If the creditor demands performance from one of the joint debtors, such joint debtor can set up against him :

1) Defences which are personal to such joint debtor, and

2) Defences resulting from the provisions of this Part III.

ILLUSTRATION. — A, B and C are joint debtors of D for a sum of 1500 baht. D demands payment from A. A can set up against D:

1) Defences personal to A: for instance if D owes 1000 baht to A, A can set off that debt against his own debt, which will be reduced to 500 baht.

2) Defences resulting from the provisions of this Part III: for instance if C had already made to D a part payment of 500 baht, A can set up that payment against D in the same way as if it was a payment made by A (see Section 181).

181. — Performance made by one of the joint debtors is equivalent to performance made by all the joint debtors.

ILLUSTRATION. — I. — A, B and C are joint debtors of D for a sum of money. A pays that sum to D. D cannot afterwards claim payment from B or C because 7 payment made to him by A is equivalent to a payment made by A, B and C. [60]

II. — A, B and C are joint debtors of D for 1500 baht. A makes to D a part payment of 1000 baht. D cannot afterwards claim from A, B and C more than 500 baht because the payment of 1000 baht made by A is equivalent to a payment made by A, B and C.

182. — A tender or deposit made by one of the joint debtors is equivalent to a tender or deposit made by all the joint debtors.

ILLUSTRATION. — I. — A, B and C are joint debtors of D for a sum of 1500 baht. On the debt becoming due, A tenders the money to D. Although the tender is made by A alone, it is

equivalent to a tender made by A, B and C.

II. — A, B and C are under a joint obligation to deliver a piece of jewelry to D. On the obligation becoming due, A tenders the jewelry to D. D refuses to accept it. A deposits the jewelry as provided by Section 295 to 305. Although the deposit is made by A alone, it is equivalent to a deposit made by A, B and C.

183. — When an interruption of prescription is made against one of the joint debtors, prescription is interrupted all the joint debtors.

ILLUSTRATION. — In the year 2440 A, B and C buy jointly a house from D. The house is delivered, but A, B and C fail to pay the price. The action for payment cannot be entered later than ten years after the date of the sale. In the year 2445 D enters an action against A. Judgment in given for D and D obtains in execution part payment of the price. In the year 2452 D claims the balance from B and C. B and C cannot object that the rights of D are extinguished by the ten years prescription because the interruption of prescription resulting from the entry of an action by D against A in the year 2445 operates against all the joint debtors. [61]

184. — When prescription is completed in favour of one [of the] joint debtors, it is completed in favour of all the joint debtors.

ILLUSTRATION. — A, B and C are joint debtors of D for a sum of money which falls due on the 1st. of January 2455 and the payment of which is subject to the one year prescription. On the 1st. of January 2455, D grants to A a three months extension of time. Therefore the one year prescription would run for B and C from the 1st. of January 2455 and for A from the 1st. of April 2456. The money is not repaid. On the 15th. of January 2456, D enters an action for payment against A, B and C. The rights of D against B and Care extinguished by prescription. The prescription is deemed therefore to be also completed in favour of A. The whole claim of D against A, B and C must fail.

~~185. — An admission under oath or a refusal to take an oath made on the demand of the creditor or of one of the joint debtors takes effect in favour of, or against, all the joint debtors.~~ [62]

~~*ILLUSTRATION. — D pretends that A, B and C are i joint debtors for 1000 baht. D enters an action for payment against A. No clear evidence of the debt is produced. D declares that he will be satisfied if A swears that he does not owe the money claimed. A swears. If D subsequently demands payment from B, or C each of them can avail himself of the oath taken by A in the action between D and A, even should clear evidence of the debt produced against them.*~~

~~*If A had refused to swear and the Court had considered the refusal sufficient evidence that he is indebted to D, the refusal would also be evidence against B and C.*~~

~~186~~[185]. — When one of the joint debtors is in default the other joint debtors are also in default.

ILLUSTRATION. — A, B and C are joint debtors of D for a sum of money. On the debt becoming due, D demands payment from A. If A does not pay, A, B and C are in default as debtors.

~~187~~[186]. — When the creditor is in default as regards one of the joint

debtors he is in default as regards all the joint debtors.

ILLUSTRATION. — A. B and C have jointly sold a pony to D. The pony is to be delivered on the 1st, of May at D's residence. On the 1st. of May A brings the pony to D's house, but D refuses to take delivery of it. Although A alone brought the pony, D is in default as regards A, B and C. [63]

~~188~~[187]. — An extension of time granted to one of the joint debtors is presumed to be an extension of time granted to all the joint debtors.

ILLUSTRATION. — A, B and C are joint debtors of D for a sum of money to be repaid on the 1st. of October 2455. D allows B to postpone payment till the 1st. of April 2456. The extension of time is presumed to have been granted to A, B and C, that is to say D cannot claim payment from A or C before the 1st. of April 2456, unless he can prove that the extension of time was granted to B alone.

~~189~~[188]. — A release granted to one of the joint debtors is presumed to be a release granted to all the joint debtors.

~~If it is granted to a debtor personally, his share only in the obligation is extinguished to the extent of the release.~~

[189. — If the release is granted to a debtor personally, his share only in the obligation is extinguished to the extent of the release.]

ILLUSTRATION. — A, B and C are joint debtors of D for a sum of 1500 baht, their share in the debt being 500 baht each. D grants to A a release of 1000 baht. The release is presumed to have been granted to all the debtors, that is to say D is presumed to have reduced the debt to 500 baht. [64]

If D can prove that the release was granted to A alone, the obligation is extinguished up to the amount of A's share only, that is to say up to 500 baht. D can claim from B and C 1000 baht, and B and C have no recourse against A.

190. — If performance of the obligation becomes impossible through the fault of one of the joint debtors, the creditor can claim the whole of the compensation from any one of the joint debtors.

ILLUSTRATION. — A and B are under a joint obligation to deliver to D a vase of China. The vase is broken through the fault of A. D can claim from A or from B the whole of the compensation due for non-performance.

191. — With the exception of the facts mentioned in Sections 181 to 190, facts which apply to one of the joint debtors do not affect the other joint debtors.

2. — RELATIONS BETWEEN JOINT DEBTORS.

192. — As between the joint debtors, a joint debt is presumed to be divided into equal shares.

ILLUSTRATION. — A, B and C are joint debtors of D for a sum of 1500 baht. As between themselves A, B and C are presumed to be debtors of 500 baht each. [65]

193. — The joint debtor who has wholly or partly satisfied the creditor, either by performing the obligation or otherwise, is entitled to recover from every other joint debtor the proportionate share of such debtor.

ILLUSTRATION. — I. — A, B and C are joint debtors of D for a sum of 1500 baht. As between themselves, their shares are equal, viz. 500 baht each.

a) A pays to D 1500 baht. He is entitled to recover 500 baht from B and 500 baht from C.

b) A was a creditor of D for 1500 baht, and there has been a set off between A and D. Set off operates as payment. A is entitled to recover 500 baht from B and 500 baht from C.

c) A pays to D 1200 baht. A has paid his share of 500 baht. He is i[e]ntitled to recover the surplus of 700 baht from B and C, provided that he does not claim more than 500 baht from B or C.

d) A pays to D 600 baht. A has paid his share of 500 baht. He is entitled to recover the surplus of 100 baht from B or from C or from both B and C.

II. — A, B and C are joint debtors of D for a sum of 3000 baht. As between themselves their shares are : A 500 baht ; B 1000 baht ; C 1500 baht.

a) B pays to D 3000 baht. He is entitled to recover 500 baht from A and 1500 baht from C.

b) C pays to D 2700 baht. He has paid his share of 1500 baht and 1200 baht more. He is entitled to recover 1200 baht from A and B provided that he does not claim more than 500 baht from A or more than 1000 baht from B. [66]

c) A pays to D 1200 baht. He has paid his share of 500 baht and 700 baht more. He is entitled to recover these 700 baht from B or from C or from both B and C.

194. — If a joint debtor is unable to contribute his share to a joint debtor who has wholly or partly satisfied the creditor, the deficiency must be borne by all the other joint debtors in proportion to their shares in the obligation.

ILLUSTRATION. — A, B, C and D are joint debtors of E for 11.000 baht in which the respective shares are: A 1000 baht, B 2000 baht, C 3000 baht, D 5000 baht. E claims the whole sum from A who pays it. A having paid 11.000 baht is entitled to recover 2000 baht from B, 3000 baht from C and 5000 baht from D. B and C pay to A the sums which are due by them. D pays only 2000 baht, leaving a deficiency of 3000 baht. A, B and C must bear the deficiency in proportion to their respective shares, that is to say A must bear 500 baht, B 1000 baht and C 1500 baht. A has therefore the right to claim 1000 baht more from B and 1500 baht more from C.

~~195. — The joint debtor who has satisfied the creditors is subrogated to the rights of creditor against the other joint debtors up to the amount due to him by the other debtors.~~

[195. — The joint debtor who has satisfied the creditor is subrogated to the rights of the creditor against the other joint debtors up to the amount satisfied by him on behalf of such other joint debtors.]

But he cannot exercise such rights to the injury of the creditor. [67]

ILLUSTRATION. — A and B are joint debtors of C for 10.000 baht, the share of each debtor being 5000 baht.

A pays 7000 baht to C. A has paid his share of 5000 baht and has also paid B's share up to 2000 baht. B is adjudged bankrupt. C claims from B payment of the balance of 3000 baht which is still due to him. A being subrogated to C's right claims also from B payment of the 2000 baht which A has paid on behalf of B. B's assets are 4000 baht only. A can prove against B, but only after C has been satisfied for the 3000 baht still due to him. The result is that A can get only 1000 baht from B.

196. — If a joint debtor has not set up against the creditor defences of which he was aware and which arose out of the provisions of this Part III, the other joint debtors can set up such defences against him when he demands their shares.

ILLUSTRATION. — A, B and C are joint debtors of D for a sum of 1500 baht. D claims the whole sum from A who pays it. A knew that prescription was completed in favour of B, but has not set up against D the defence resulting from Section 180. If A demands from B and C their proportionate shares of 500 baht each, B and C are entitled to set up that defence against A and are not liable to pay him anything.

197. — The joint debtor who is sued for the performance of the whole of the obligation can summon the other joint debtors to appear in the action, in order that judgment may decide his liability to the creditor and the liability of the other joint debtors to himself. [68]

CHAPTER III.
INDIVISIBLE OBLIGATIONS.

198. — If a prestation is by nature such that it cannot be divided, that is to say, if it cannot be partly performed to one creditor or by one debtor, the obligation is said to be indivisible.

ILLUSTRATION. — A sells a pony to B and C who buy it jointly. A cannot deliver the pony partly to B and partly to C. A's obligation of delivery is indivisible.

199. — As far as circumstances admit, the provisions concerning joint obligations apply *mutatis mutandis* to indivisible obligations.

DIVISION III. – TRANSFER OF OBLIGATIONS.

[69]

TITLE I.
GENERAL PROVISIONS.

200. — The rights and liabilities arising out of an obligation may be transferred unless their nature does not admit of it, or unless their transfer be forbidden by law.

ILLUSTRATION. — I. — A is a creditor of B for a sum of 10.000 baht. A can sell to C his right to recover 10.000 baht from B.

II. — A, a painter, has agreed to make a picture for B. A is not entitled to transfer to another painter C the obligation to make the picture, because the nature of the agreed work does not admit of its transfer.

III. — An official cannot transfer to another person his right to receive his monthly salary, because such a transfer is forbidden by law (See Section 203).

201. — An agreement that an obligation shall not be transferred can only be set up against such third persons as had knowledge of it.

ILLUSTRATION. — A is creditor of B for 1500 baht. A and B have agreed that the obligation shall not be transferred, A however transfers to C his right to receive 1500 baht from B. If C knew of the agreement between A and B, B is entitled to refuse to make payment to co his new creditor. If C had no knowledge of the said agreement. he is entitled to claim payment from R notwithstanding the agreement entered into between A and B.

[70]

202. — An obligation attached or seized by an order of a Court[, before or after judgment,] cannot be transferred by the creditor.

ILLUSTRATION. — A is the creditor of B for a sum of 1500 baht. C, who is a creditor of A, obtains from the ¢[C]ourt an order of attachment of the monies due by B to A From the moment when B is served with the order of attachment, the debt due by B to A cannot be transferred by A.

203. — Salaries and pensions of Government officials cannot be transferred.

204. — A transfer not notified or agreed to, as provided by Sections 205 or 214, is valid as between the transferor and the transferee.

TITLE II.
TRANSFER OF RIGHTS.

205. — The transfer of a right cannot be set up against the debtor or against any third person until the transferor has given written notice thereof to the debtor, or the debtor has agreed to the transfer. [71]

The debtor is duly discharged if be satisfies the transferor by way of payment or otherwise before he has received notice of, or has agreed to, the transfer.

ILLUSTRATION. — A is the creditor of B for a sum of 1500 baht. A transfers his right to C. A has not given written notice of the transfer to B and B has not agreed to the transfer. C demands payment from B. B is entitled to refuse to make payment to C. If B makes payment to A before he has received notice of, or agreed to the transfer, his payment is valid and he is thereby discharged from his debt.

206. — If a right is claimed under different transfers, the first transfer notified or agreed to shall be preferred.

207. — The debtor can set up against the transferee any defence which he had against the transferor at the time when he received notice of the transfer or agreed to it.

ILLUSTRATION. — A is a creditor of B for a sum of 1500 baht. A transfers his obligation to C on the 1st. of April 2456 and B receives notice of the transfer or agrees to it on the same day. But it appears that the obligation was extinguished by prescription since the 1st. of January 2455. B is entitled to set up against C the defence resulting from the prescription of the obligation.

208. — The transferee of a right is subrogated to the rights of the transferor in any accessories such as securities or preferential rights to which the transferor was entitled. [72]

Interest due is presumed to be included in the transfer of the capital.

ILLUSTRATION. — I. — A is a creditor of B for 1000 baht, money borrowed ; D has agreed with A to be surety for the payment. A transfers the debt to C. The suretyship is included in the transfer, that is to say if B does not pay the money to C, C is subrogated to the rights of A and can recover the money from D.

II. — A is the employee of B. B dies owing to A 100 baht for one month salary. A has a general preferential right over the estate for the payment of that sum. A transfers to C his right to receive the 100 baht due to him. The transfer includes the general preferential right, that is to say C is subrogated to the right of A and entitled to have the 100 baht paid out of the estate in preference to other debtors, as provided by Section[s] 306 to 337.

III. — B owes 10.000 baht to A. The debt is due and bears interest from the 1st of January 2454 at 12% per a[m,][n]num. Neither capital nor interest has been paid. On the 1st. of January 2455 A sells his right to C. It is presumed that A has sold to C his right to recover from B 10,000 baht capital plus interest at 12% per annum from the 1st of January 2454.

209. — The transfer of a right includes the transfer of any charges or liabilities affecting such right.

ILLUSTRATION. — A bequeaths 20,000 baht to B on condition that B shall give 25 baht a month to C, an old servant of A, during C's lifetime. B tranfers to D his right to the legacy. The transfer includes the liability to pay the 25 baht a month to C. [73]

210. — If required by the transferee, the transferor of a right must deliver to the transferee a document of transfer, together with the documents acknowledging the existence of the right, if any.

He must also give the transferee any other documentary evidence or information in his possession which is necessary to claim the performance of the right transferred.

ILLUSTRATION. — A lends money to B. B signs a bond to A for the sum lent. Some correspondence is exchanged on the matter. Later on, A transfers to C his right over the money due by B. On demand made by C, A is bound to give to C:

1) A document acknowledging the transfer.

2) The bond signed by B.

3) The letters sent by B to A in so far as they might be used if B were to deny his indebtedness.

211. — The transferor of a right is liable for the consequences of the non-existence of such right at the time of the transfer.

But he is not liable for the consequences of the insolvency of the debtor.

ILLUSTRATION. — I. — A dies. His heir B finds in the estate a bond for 1000 baht signed by C. B sells the bond to D. D claims payment from C. C produces a receipt showing that the sum had been repaid to A. B has sold , right which did not exist at the time of the sale. B is liable to C for the consequences of the non-existence of the right, that is to say he must return to D the price of the sale with costs of action, interest, and compensation if any other injury was caused to D. [74]

II. — A has lent money to B and has received a bond for it. A sells the bond to C. C claims the money from B. B turns out to be insolvent. A is not liable to C for the consequences of the insolvency of B.

212. — When the transferor agrees to be liable for the consequences of the insolvency of the debtor his liability is extinguished by prescription one year after the transfer.

If the right transferred was not due at the time of the transfer, prescription runs from the day when such right became due.

ILLUSTRATION. — I. — A has lent money to B and has received a bond for it. The money is due. A sells the bond to C on the 15th of January 2454 and agrees to be liable for the consequences of B's insolvency. C claims payment from B. B turns out to be insolvent. C's right to claim compensation from A is extinguished by prescription on the 15th of January 2455 (one year

after the transfer).

If C waits till February 2455 before claiming payment from B, and B turns out to be insolvent, C has no action for compensation against A.

II. — A has lent money to B, and has received a bond for it. The money must be repaid not later than the 15th of January 2454. In November 2454 A sells the bond to C, and agrees to be liable for the consequences of B's insolvency. On the 15th of January B does not pay and it turns out afterwards that B is insolvent. C's right to claim compensation from A is extinguished by prescription on the 15th of January 2455 (one year after the time when the right became due). [75]

~~213. — If a right is transferred for a reciprocal prestation whilst subject to litigation, the debtor can satisfy the transferee by reimbursing to such transferee the value of such prestation, together with interest and costs of action, if any.~~

[213. — Any transfer of right for a reciprocal prestation, whilst subject to litigation, is void.]

~~*ILLUSTRATION. — A has brought an action against B for the recovery of 5010 baht. Before judgment A transfers his rights to C for 200 baht. C continues the proceedings against B. B can have the action of 6 dismissed by repaying to C 200 baht plus interest from the date of transfer and the costs of action incurred by C, if any.*~~

TITLE III.
TRANSFER OF LIABILITIES.

214. — The transfer of a liability cannot be set up against a creditor or against any third person until the creditor has agreed to the transfer.

See Illustration under Section 215. [76]

215. — The transferee can notify the creditor in writing to state within a reasonable time, to be fixed in such notice, whether he agrees to the transfer or not.

If the creditor fails to comply with the notice, he is presumed not to have agreed to the transfer.

ILLUSTRATION (Sections 214 and 215). — A is the creditor of B for a sum of 1500 baht. On the 1st. of April 2454 B transfers to C his liability, that is to say C agrees that he will be the debtor of A in place of B. Unless A agrees to the transfer, it is of no effect as against him, and he can claim payment from B.

But C can, say on the 10th of April 2454, notify A in writing to state within say one month from date whether he agrees to the transfer or not. If A answers within that time that he agrees to the transfer, then C is substituted for B as the debtor of A. If A answers that he does not agree to the transfer, or if he does not make any answer within the time fixed in the notice, B remains liable to A as a debtor.

216. — The transferee can set up against the creditor any defences which the transferor had against such creditor at the time when the creditor agreed to the transfer, except in the case provided by section 355 concerning set off.

ILLUSTRATION. — A is creditor of B for a sum of 1500 baht. B transfers his liability to C on the 1st. of April 2456. A agrees to the transfer on the same day. Subsequently it appears that the obligation was extinguished by prescription on the 1st. of January 2454. If A claims payment from C, C can object that the obligation is extinguished by prescription. [77]

217. — When a liability has been transferred, the benefit of the securities or preferential rights given by the original debtor does not pass as security for the performance of the obligation by the new debtor.

Interest due is presumed to be included in the transfer of a debt.

ILLUSTRATION. — I. — A is a creditor of B for 10,000 baht, money borrowed. D has agreed with A to be a surety for B. B transfers his liability to C and A agrees to the transfer. Dis discharged.

II. — A builds a house [for B] for 20.000 baht. The price is not paid. A has the right to be paid out of the proceeds of the sale of the house in preference to other creditors. B transfers his liability to C. A agrees to the transfer. A has no longer a preferential right over the house.

III. — A owes 10,000 baht to B. The debt bears interest. Neither capital nor interest has been paid. A transfers the debt of 10,000 baht to C. It is presumed that C is liable for the capital and for the interest.

DIVISION IV. — EFFECTS OF OBLIGATIONS. [78]

TITLE I.
GENERAL PROVISIONS.

218. — An obligation is binding upon the parties to it.

It is also binding upon the heirs of the parties to the extent provided by the laws on Inheritance.

It cannot affect the rights of third persons.

219. — A party to a contract who promises that a third person shall make a prestation is bound to make compensation if such prestation is not made.

ILLUSTRATION. — A sells to Ba carriage, and promises that C shall sell to B a pony that has been used for the carriage. If C refuses to sell the pony to B, B is entitled to compensation from A.

220. — If a party to a contract agrees to make a prestation to a third person the other party is entitled to claim that the prestation be made to such third person.

The third person also can claim directly performance from the debtor.

See Illustration under Section 221. [79]

221. — If it is agreed in a contract that a party shall make a prestation to a third person, the parties to such a contract cannot modify it after the third person has notified in writing to the debtor his intention to take the benefit of the contract.

ILLUSTRATION (Sections 220 and 221). — In the year 2453 A has made a gift to B of a house on the condition that C shall be allowed to live in it during the year 2455. A is entitled to claim from B that the house be put at the disposal of C during the agreed time. C is also entitled to require B to put the house at his disposal. As long as C has not notified B that he intends to take advantage of the clause which concerns him, A and B can by mutual consent modify or revoke such clause. After C has notified B in writing that he intends to take advantage of the clause, A and B cannot modify or revoke it without C's consent.

TITLE II.
RIGHTS OF THE CREDITOR.

222. — The creditor of an obligation is entitled to have it performed in the way provided by the obligation or by law.

He is entitled to receive compensation from the debtor for any injury [80] resulting from non-performance except when the law otherwise provides.

CHAPTER I.
PERFORMANCE.

[Part] I. — WHO MAY PERFORM.

223. — The obligation must be performed by the debtor, but a third person also can perform it if its nature admits of such performance, provided that a person who has no interest in the performance cannot make performance against the will of the debtor.

ILLUSTRATION. — I. — A has sold a cargo of rice to B for 10,000 baht. C is not a party to the contract and has no interest in the payment of the price. C may pay the price to A provided it be not against the will of B.

II. — A agrees to paint a picture for B. The nature of the obligation does not admit of such painting being made by C.

III. — A has contracted to build a house for B. A buys timber from C for building the house, but he has no money to pay it and cannot therefore obtain delivery of it. B has an interest in the payment of the price of the timber, because the payment will enable A to take delivery of the timber and to build the house. B can pay the price even against the will of A.

224. — A third person who has performed an obligation otherwise [81] than as a gift to the debtor is entitled to compensation from the debtor according to the provisions of this Code concerning undue enrichment.

The debtor can set up against such third person any defences which he would have had against the original creditor.

ILLUSTRATION. — A has sold a cargo of rice to B for 10,000 baht. Ca third person, pays the price to A. C is entitled to receive from B 10,000 baht. But if it appears that C intended to make a gift to B, C is not entitled to reimbursement.

If at the time when C made the payment the right of A to claim the price of 10,000 baht was extinguished by prescription and C claims reimbursement from B, B can refuse reimbursement on the ground that the right of A was extinguished by prescription.

[Part] II. — WHO IS ENTITLED TO RECEIVE PERFORMANCE.

225. — The right of receiving performance of an obligation belongs to the creditor.

226. — Performance made to a person not entitled to receive it is valid :

1) If the creditor ratifies such performance, or

2) If the creditor is enriched by such performance.

In the case provided under subsection 2, performance is valid only to the extent to which the creditor is enriched thereby. [82]

ILLUSTRATION. — A is the debtor of B for 1000 baht. A pays the 1000 baht to C who is not entitled to receive performance. C delivers the money to B. The whole performance is valid because B was enriched by it up to the amount of the whole obligation.

If C delivers only 800 baht to B, the performance is valid only to the extent to which B was enriched by it. that is to say up to an amount of 800 baht.

227. — Performance made in good faith to the person who produces the document embodying the obligation or a receipt for performance is valid unless the person making performance knew that such person was not entitled to receive performance, or would have known of it if he had exercised such care as may be expected from a person of ordinary, prudence.

ILLUSTRATION. — I. — A has subscribed a promissory note to bearer. On the note falling due, it is presented to A by B, a merchant. A makes payment to B. The payment is valid.

II. — A has bought goods from the firm B. C, a bill collector of the firm B, comes to A and asks for payment of the goods by producing a receipt signed by the firm B. A pays. The payment is valid.

III. — A has borrowed money from B and made a bond for it. Later on, B informs A that the bond has been stolen and warns A not to pay it if presented by a person other than B. C presents the bond and A pays it. The payment is not valid because A knew that the person producing the document of the obligation was not entitled to receive performance. [83]

IV. — A has bought a large quantity of goods from the firm B. A has previously bought goods from that firm and had always paid the bills to persons whom he knew to be bill collectors of the firm B. C who is well known as a bad character, who has no connection whatever with the firm B, comes and presents to A the bill for the goods sold and a receipt signed by the firm B. A pays. It turns out afterwards that the bill and the receipt were stolen by C. The payment is not valid, because if A had acted with such care as may be expected from a person of ordinary prudence he would have easily known that C was not entitled to receive performance.

228. — Performance made to an incapacitated creditor is void, unless the creditor was enriched by it.

In such case, the performance is valid only to the extent to which the creditor has been enriched thereby.

ILLUSTRATION. — A owes 1000 baht to B who is a person of unsound mind placed under the custody of a guardian. A pays the 1000 baht to B himself.

If B gives the whole money to his guardian the whole payment is valid, because B was enriched thereby.

If B wastes or loses 300 baht and gives the rest to his guardian. B is enriched only to the extent of 2002 The payment is valid for 700 baht only and A is bound make to the guardian of B a fresh payment of 300 baht [84]

If B used 200 baht to pay a debt incurred for his maintenance and gave the rest to his guardian, he has been enriched to the u hole extent of the 1000 baht paid by A The whole payment made by A is valid.

229. — If the debtor performs the obligation notwithstanding an order for ~~attachment or seizure~~ [seizure, before or after judgment], the person in whose favour the order has been given can still demand performance from the debtor.

The debtor who has been obliged to make a fresh performance is entitled to compensation from his creditor according to the provisions of this Code concerning undue enrichment.

ILLUSTRATION. — A owes 5000 baht to B. C is a judgment creditor of B for 2000 baht. C obtains from the Court a decree ordering A to pay 2000 baht to C in satisfaction of the judgment. A pays the 5000 baht to B notwithstanding the order. C is still entitled to claim from A payment of 2000 baht.

A having been obliged to make a fresh payment of 2000 baht to C can claim compensation from B as provided by the rules concerning undue enrichment.

[Part] III. — WHAT MAY PERFORMANCE CONSIST OF.

230. — The creditor cannot be compelled to accept another prestation than the prestation due.

ILLUSTRATION. — A sells to B an Australian horse. He cannot compel B to accept two ponies instead of the horse, even should the value of the two ponies be greater that the value of the horse. [85]

231. — If the creditor accepts another prestation than the prestation due, the debtor is discharged in the same way as if he had made the prestation due.

ILLUSTRATION. — A sells to B an Australian horse. If B agrees to accept two ponies instead of the horse, A is discharged from his obligation in the same way as if he had delivered the horse to B.

232. — Performance made by making, transferring or indorsing a bill or warrant is valid only if such bill or warrant is paid.

ILLUSTRATION. — A owes 1000 baht to B and gives in payment a cheque on the N bank. The cheque is not paid. The payment made by the cheque is not valid. A remains the debtor of B for 1000 baht.

233. — The creditor cannot be compelled to receive part performance.

ILLUSTRATION. — A has lent B 1000 baht. A claims repayment. B offers to make a part payment of 500 baht only. B cannot compel A to accept these 500 baht and A has the right to enter an action in Court for the whole sum of 1000 baht. [86]

234. — If part of a divisible obligation is subject to litigation, the creditor is entitled to claim performance of the undisputed part.

ILLUSTRATION. — A demands from B the payment of 1000 baht, money borrowed. B admits that he has borrowed 700 baht and denies the indebtedness for the surplus. A has the right to claim that he should pay him forthwith the undisputed part of the obligation, viz. 700 baht.

235. — If the obligation is for the delivery of a property *in genere*, the debtor is discharged by delivering a property of average quality.

ILLUSTRATION. — A sells to B 1000 kwiens of Na Suan paddy. A is discharged from his obligation by delivering to B 1000 kwiens of the average quality of Na Suan paddy.

236. — If the obligation is to pay a sum of money, payment must be made in such Siamese currency as is legal tender even should the sum be expressed in foreign currency.

237. — If the sum payable is expressed in foreign currency, payment in Siamese currency can be made at the rate of exchange prevailing at the time when and at the place where performance is due. [87]

238. — The person making performance is entitled to a receipt from the person who receives performance.

239. — When the obligation is entirely performed, the person making performance is entitled, in addition to the receipt, to the surrender of the document embodying the obligation, if any.

ILLUSTRATION. — A has lent 1000 baht to B. B has given A a bond for that sum. The bond is the document embodying the obligation. B repays the 1000 baht to A. B is entitled to claim from A a receipt for 1000 baht and the bond.

240. — If the document is declared to be lost, the person making performance is entitled to have such loss mentioned in the receipt or in a separate document by the person who receives performance.

241. — The person making part performance is entitled, in addition to the receipt, to have the part performance mentioned on the document embodying the obligation by the person who receives performance.

242. — If the document embodying the obligation has been surrendered, it is presumed that the obligation has been performed. [88]

243. — If a receipt for an instalment or for payment of interest is produced, it is presumed that prior instalments or interest have been paid.

ILLUSTRATION. — I. — In 2450 A borrowed from B 10,000 baht to be repaid in ten yearly instalments from January 1st. 2451. A produces a receipt for an instalment paid on January 1st. 2454. instalments of January 2451, January 2452, and January 2453 are presumed to have been paid.

II. — In 2453 A borrowed from B 10,000 baht at 6% interest, to be paid quarterly. A produces a receipt for interest for the quarter ending March 31st. 2455. Interest for the previous quarters is presumed to have been paid.

244. — If a receipt for the capital is produced, it is presumed that the interest due has been paid.

245. — Costs of performance must be borne by the debtor.

[Part] IV. — PLACE OF PERFORMANCE.

246. — Performance must be made at such place as is provided by the obligation or by law.

ILLUSTRATION. — I. — A borrows money from B in Bangkok. It is agreed that the money [89]
shall be repaid at B's rice mill at Petriu. The performance of A's obligation[,] that is to say the repayment of the money shall be made at the place provided by the contract, that is to say at the said rice mill.

II. — It is provided by the Excise Law that payment of certain import duties shall be made at Custom House at Bangkok. If A imports goods subject to such 'duties he is under an obligation to pay such duties and he must perform his obligation at the place provided by law, viz. at the Bangkok Custom House.

247. — In the absence of any provision in the obligation and in the law, the place of performance shall be governed by custom.

If there is no custom, the following rules apply:

1) Delivery of a specific property must be made at the place where such property was when the obligation arose.

2) In any other case, performance must be made at the residence of the debtor.

ILLUSTRATION. — I. — A, a merchant in Bangkok, imports goods from Europe by sea, freight to be paid on arrival of the goods. If there is no provision in the contract and no provision of law as to where the freight due is to be paid, but there is a custom in Bangkok that freight due is payable at the office of the agents of the Navigation Company, A must make payment at such office.

II. — A buys a pony from B. A and B are living at Samsen. The pony is in a stable at Hua [90]
Lampong. Nothing is provided by the contract of sale or by law as to where the pony must be delivered. There is no custom in Bangkok as to the place of delivery of ponies sold. A is bound to

take delivery and B is bound to make delivery of the pony at the place where the pony was when the contract was made, that is to say at the stable at Hua Lampong.

If nothing is provided by the contract of sale or by law as to where the price must be paid, and there is no custom on the matter, the payment must be made at A's residence.

[Part] V. — TIME OF PERFORMANCE.

248. — Performance must be made at such time as is provided by the obligation or by law.

249. — In the absence of any provision in the obligation and in the law, the time of performance shall be governed by custom.

If there is no custom, performance must be made without delay.

250. — Reciprocal prestations must be made in such order as is provided by the obligation or by law.

In the absence of any provision in the obligation and in the law, the order shall be governed by custom.

If there is no custom, the prestations must be made in such order as is required by the nature of the obligation. [91]

ILLUSTRATION. — I. — A sends goods to B through C, a carrier. The freight and accessories are to be paid by B. Under this Code C is entitled to retain the goods as long as the freight and accessories are not paid. The reciprocal obligation (payment of freight and delivery of goods) must be performed in the order provided by law, that is to say C is not bound to deliver the goods until B has paid the freight.

II. — B, a banker, agrees to advance md[o]ney to A on condition that A gives a security for it. The banker is not bound to advance money until security is given, for the nature of the contract requires that the banker should have security before he advances money.

[Part] VI. — APPROPRIATION.

251. — When a debtor is bound by several obligations to one creditor, and a prestation made as performance is not sufficient to satisfy all these obligations, such prestation must be appropriated.

252. — The person performing can, at the time of performance, designate the obligation to which the prestation shall be appropriated.

ILLUSTRATION. — A owes B 200 baht for house rent and 200 baht the price of a pony. A sends by letter o cheque of 200 baht to B. A may in his letter notify B that the cheque is payment for the house rent, or for the pony, as A may think fit. [92]

253. — If the person performing does not make such designation, the person receiving the prestation can make it, at the time of reception, unless the person performing at once refuses to agree to such

appropriation.

ILLUSTRATION. — If A does not notify B to which item the cheque applies (see the foregoing illustration). B, on receiving the cheque, may notify A that he considers it to be payment for the house rent or for the pony, as B may think fit.

254. — If no appropriation is made by the parties, or if the person performing at once refuses to agree to the appropriation made by the person receiving performance, the prestation must be appropriated according to the following rules :

1) Judgment debts must be paid in preference to other debts.

2) If there are several judgment debts, the debt bearing the highest interest must be paid in preference.

3) If there are several debts other than judgment debts, the debt bearing the highest interest must be paid in preference.

4) If there are several debts bearing the same interest, the prestation must be divided between them in proportion to their respective amounts. [93]

ILLUSTRATION. — A is the creditor of B for the following sums :

No. 1.	*Judgment debt of*	*1000*	*baht*	*bearing interest at*	*10 %*
No. 2.	*id.*	*400*	*,,*	*id.*	*8 %*
No. 3.	*id.*	*800*	*,,*	*id.*	*8 %*
No. 4.	*Ordinary debt of*	*3000*	*,,*	*id.*	*12 %*
No. 5.	*id.*	*200*	*,,*	*id.*	*6 %*
No. 6.	*id.*	*100*	*,,*	*id.*	*6 %*

I. — On the 1st. of April 2455 B makes a payment of 1300 baht. This payment shall be appropriated as follows:

a) Judgment debt of 1000 baht to be entirely extinguished (rules Nos. 1 and 2.)

b) Balance of 300 baht to be divided between the 2nd. and the 3rd. judgment debts, viz. 100 baht to debt No. 2 and 200 baht to debt No. 3 (rule No. 4).

Then a balance of 300 baht remains unpaid on judgment debt No. 2 and a balance of 600 baht on judgment debt No. 3.

II. — On the 1st. of May 2455 B makes a further payment of 1200 baht. This payment shall be appropriated as follows :

a) Judgment debts No[s]. 2 and 3 to be entirely extinguished (rule No. 1).

b) Ordinary debt No. 4 to be extinguished up to the amount of 300 baht, 2700 baht remaining unpaid (rule No. 3).

III. — On the 1st. of June 2455 B makes a further payment of 2850 baht. This payment shall be appropriated as follows: [94]

a) Ordinary debt No. 4 to be entirely extinguished (rule No. 3).

b) The balance of 150 baht to be divided between ordinary debts Nos. 5. and 6, viz. 100 baht to the ordinary debt No. 5 and 50 baht to the ordinary debt No. 6 (rule No. 4), 150 baht remaining unpaid.

255. — If the creditor has received security, part performance shall be appropriated first to the unsecured portion of the obligation.

ILLUSTRATION. — A lends to B 800 baht, C being security for 600 baht. B makes to A payment of 300 baht. B cannot appropriate such payment to that part of the debt which is guaranteed by C in preference to the other part, that is to say he cannot declare that C's liability is reduced from 600 to 300 baht. The payment must be appropriated first to the part (200 baht) which is not guaranteed, and the surplus to the part which is guaranteed. C's liability as security is therefore reduced only to to 500 baht.

256. — If costs and interest are due, the prestation must be appropriated in the following order :

1) Costs.

2) Interest.

3) Capital.

CHAPTER II. [95]
NON PERFORMANCE.

[Part] I. — DEFAULT OF THE DEBTOR.

257. — If the obligation is not performed the debtor is said to be in default.

258. — If the obligation is to be performed at a definite time, that is to say on a date which was known beforehand, the debtor is in default from such date.

If the obligation is to be performed at a time which is not definite, the debtor is in default from the moment when he knows that such time has arrived, or when he would have known of it if he had exercised such care as may be expected from a person of ordinary prudence.

If the performance of the obligation by the debtor depends on an act to be done by the creditor or by another person, the debtor is not in default until such act is done.

ILLUSTRATION. — 1. — A borrows money from B. A agrees to repay the money at B's residence on the 1st. of April 2456. If A does not bring the money to B's residence on the 1st. of April, he is in default from such date.

II. — A borrows money from B, who is going out for a trip. It is agreed that the money shall be repaid at B's residence on his return. If A does not bring the money to B, he is in default from the moment when he knows that B has returned. [96]

III. — In the case described in illustration No. I, if it is agreed that the money borrowed by A shall be repaid on the 1st. of April 2456 on demand by B, A is not in default until B has demanded the money.

IV. — In the case described in illustration No. II. if it is agreed that B shall demand the money on his return. A is not in default until B has demanded the money.

259. — If no time, definite or otherwise, has been fixed for the performance of the obligation, the debtor is in default ~~from the moment when~~ [after] a demand for performance is made to him.

260. — If the debtor cannot be found, he is in default without previous demand being necessary.

261. — A person whose obligation arose out of a wrongful act is in default from the time when such wrongful act was committed without previous demand being necessary.

ILLUSTRATION. — A by driving carelessly his motor car runs over B and injures him. A is in default as regards the compensation due by him to B from the time of the accident. It is not necessary for B to make a previous demand before he enters an action for compensation.

[Part] II. — REMEDIES OF THE CREDITOR.

[97]

262. — From the time when the debtor is in default, the creditor may claim specific performance of the obligation.

If the obligation arose out of a contract, the creditor may claim cancellation of the contract, except when the law provides that his remedy is to determine the contract.

The creditor is also entitled to compensation for any injury caused to him by the non-performance, except in the cases provided by Part IV of this Chapter.

ILLUSTRATION. — 1. — A sells to B a pony to be delivered to B on April 1st. A does not deliver the pony to B on that date. A is in default since April 1st. On the 2nd. of April, the pony is accidentally killed. A is liable to B for the com[n]sequences of the non-performance of the contract.

II. — A, living in Korat, sells a pony to B, living in Bangkok. It is agreed that A shall send the pony to B by rail on the 1st. of April. On the 31st. of March an accident happens on the line by which the traffic is interrupted for eight days. On the 3rd. of April, the pony is killed accidentally. A was in default since April 1st, but the fact that he was in default was not due to his fault. A is not liable to B for the consequences of the non-performance of the contract. A is entitled to the price of the pony.

See also Illustration under Section 270.

263. — In case of cancellation the parties must be replaced in th~~e~~[e] same position as they were ~~before~~[at the time when] the contract was made.

[98]

See Illustration under Section 270.

264. — If the creditor accepts part performance of the obligation, the reciprocal prestation, if any, must be reduced in proportion.

The creditor can also claim compensation, except in the cases provided by Part IV of this Chapter.

ILLUSTRATION. — A contracts to supply B with 200 boat loads of bricks, to be delivered within one month, for. 1000 baht. A delivers only 10 boat loads. The contract is not performed. B can claim cancellation of it, that is to say he can refuse to keep the 10 boat loads delivered to him and to pay the agreed price. But he can also keep the 10 boat loads of bricks and reduce in proportion the reciprocal prestation, that is to say he can pay only a proportionate part of the price.

If the non-performance of the contract has caused injury to B and was not due to force majeure, B can claim compensation.

[Part] III. — SPECIFIC PERFORMANCE.

265. — The Court may in its discretion order specific performance of an obligation whenever such performance is possible and desirable.

ILLUSTRATION. — A sells to B one rare China vase and refuses to deliver it. B enters an action against A and claims for specific performance or compensation. The vase is still in possession of A and specific performance is therefore possible. If the Court thinks that it is desirable that the contract be specifically enforced, the Court can order A to deliver the vase to B. [99]

See also Illustration under Section 270.

266. — If the obligation is to do an act, the Court may order that the act shall be done by a third person at the expense of the debtor.

267. — If the obligation is for the execution of a document, or for the giving of a consent, the Court may appoint a third person to execute the document in place of the debtor, or order that the judgment shall stand in the place of the consent to be given by the debtor.

268. — If the obligation is to abstain from doing an act, the Court may order that the acts done shall be undone, if possible ; the Court may also order proper measures to be taken for the future.

269. — In any case, the Court may grant to the debtor a reasonable extension of time for performing the obligation.

[Part] IV. — COMPENSATION. [100]

270. — If performance has been delayed or made possible by force majeure, the creditor is not entitled compensation for the consequences of such delay or in possibility.

ILLUSTRATION. — I. — A, a merchant in Bangkok, sells goods to B, a merchant in Chiengmoi. It is agreed that the goods shall be delivered in Chiengmai on a certain day. A sends the goods in due time, but owing to unusual floods the goods arrive after the agreed time. B is not entitled to compensation for the injury resulting from the delay.

~~II. — A sells his pony to B. It is agreed that the pony shall be delivered to B one week after the sale. Before the time for delivery has come, the pony is killed by accident. B has the right to claim cancellation of the contract Section 262 § 2and to recover the price, if he has paid it Section 263), but he is not entitled to compensation for non-performance.~~

[II. — A sells his pony to B. It is agreed that the pony shall be delivered to B one week only after the sale. A is not in default unless one week has elapsed from the day of this agreement (Section 262 2). During the week, that is to say before the time for delivery. has come, the pony is killed by accident. B has no right to claim cancellation of the contract or to recover the price, il he has paid it, and he has no right to claim compensation for non-performance.]

III. — In May 2445 A orders a "Meteor" motor car from B who is the agent of the firm "Meteor" in Bangkok. The car is to be delivered in October. B sends the order to the "Meteor" Company and the car is shipped in due time. During voyage the ship is wrecked and the car is lost. B cannot deliver the car in due time. A has the right to claim cancellation of the contract (Section 262 § 2) and to recover such part of the price as he may have paid in advance (Section 263), but he is not entitled to compensation for the injury which he may have suffered in consequence of the delay.

If A claims for specific performance, B must order a new car from the "Meteor" Company and deliver it to A. But A is not entitled to compensation for the delay. **[101]**

ILLUSTRATION (Sections 262, 263, 265 and 270).

I. — Non-performance of an obligation.

A makes a will bequeathing all his property to B on condition that B shall deliver a house to C. Afterwards A dies.

a) If B refuses to deliver the house to C, C may claim for specific performance, that is to say for an order of the Court enjoining B to deliver the house. (Sections 262, 265). If the delay in delivery has caused injury to C, B will also be ordered to pay compensation to C for such injury.

b) If the house has been destroyed by floods before A dies, C is not entitled to claim compensation because performance has become impossible by force majeure. (Section 270).

c) If the house is destroyed before delivery by a fire caused by the negligence of B, C is entitled to claim compensation from B because the non-performance is due to the fault of B. (Section 270).

II. — Non-performance of a contract.

On the 1st. of April 2455 B agrees to lease a house from A at a monthly rent of 100 baht : the said lease to come into force and the premises to be entered on the 1st. of June 2455. On signing the contract B pays in advance the rent for June.

1) On the 1st. of June, A refuses to deliver to B the keys of the house and to let him enter the premises. B then has an option between the following remedies : **[102]**

a) B may claim specific performance, that is to say an order of the Court enjoining A to deliver the house to him or a decree authorizing B to forcibly enter the premises. B may also claim from A compensation for any injury caused by the delay in delivery.

b) Instead of claiming for specific performance, B may allow the contract to remain unperformed and claim only compensation for non-performance, that is to say for any injury

caused to B by A's refusal to perform the obligation arising out of the lease.

c) B may also claim cancellation of the lease, with restitution of the 100 baht paid in advance (Section 263), together with compensation for any injury caused to B by the cancellation and the delay.

2) Some time in May, the house is destroyed by floods. B can only claim cancellation of the lease and restitution of the 100 baht paid in advance. He cannot claim specific performance, because specific performance is impossible. Neither can he claim compensation of any kind, because the impossibility of performance is due to force majeure.

3) Some time in May the house is destroyed by a fire due to the negligence of A. B cannot claim specific performance because the performance is impossible. But since the impossibility is due to the fault of A, B is entitled to claim either:

a) Compensation only, that is to say compensation for any injury caused to him by the non performance, or

b) Cancellation of the lease, with restitution of the 100 baht paid in advance together with compensation for any injury caused to him by the cancellation. [103]

III. — Determination of a contract. — A, the employee of B, has been engaged by B as a cashier ; it turns out that A is unable to keep the necessary accounts; B is entitled to determine the contract (Section 551).

271. — If after the debtor is in default performance of the obligation becomes impossible owing to *force majeure*, the debtor is bound to make compensation to the creditor, unless he proves that his default was not caused by his fault.

272. — As between the creditor and the debtor, non-performance caused by persons for whom the debtor or the creditor are not responsible is deemed to be caused by *force majeure*.

ILLUSTRATION. — I. — A sells to B some jewelry. It is agreed that A shall deliver the jewelry at B's residence. A sends it by one of his servants, but the man is attacked by robbers and the jewelry is stolen. . Non-performance is deemed to be caused by force majeure. B can claim cancellation of the contract, but he is not entitled to compensation.

If the servant had run away with the jewelry, B would be entitled to compensation, because A, the master, would be responsible for the consequences of the wrongful acts committed by his employee in the course of the employment (Section 122). [104]

II. — On the 1st. of April A leases from B a house. the premises to be entered on the 1st, of June.

During the month of May, an offender breaks into the house and sets fire to it. The house is destroyed. Performance of B's obligation to deliver the premises to A becomes impossible. But since] is not responsible for the acts of the offender, the case, as between A and B, is deemed to be a case of force majeure.

[Part] V. — ASSESSMENT OF COMPENSATION FOR NON-PERFORMANCE.

273. — Compensation shall be for the injury actually suffered by the

plaintiff and for the loss of the benefits which the parties, at the time when the obligation arose, foresaw or could have foreseen would result from performance of the obligation.

ILLUSTRATION. — On the 1st. of January 2450 A buys for 10,000 baht 100 teak logs lying in the Me Pin forest.

On the 20th of January, C buys these 100 logs from A for 13,000 baht on condition that the logs shall be dragged to the Me Pin river before the 1st. of October 2451. It is stipulated that if all the logs are not dragged to the river on the 1st. of October 2451, the contract shall be determined and A shall pay to C 1000 baht compensation (penalty clause).

On the 1st, of February A makes an agreement with D, a contractor, to drag the logs to the river Me Pin for 1000 baht not later than the 1st. of September. No penalty is provided in the contract, but before signing it A has shown to D the clauses of the agreement entered into between himself and C. D is therefore aware of the consequences of failure of A to deliver the logs to the Me Pin river in due time. [105]

D and D's employees manage their business so badly that 10 of the logs are lost and the remaining 90 logs reach the river after the 1st. of October. As a consequence A cannot perform his contract with C. C determines the contract and A must pay him 1000 baht for the breach.

A is entitled to claim from D:

1) The value of the 10 logs which were lost.

2) 1,000 baht paid to C for breach of contract.

3) 2,000 baht being the benefit which A would have made if his contract with C had been executed (13,000 baht sale price of the logs to C, less 10,000 baht original price paid by A and 1,000 baht cost of dragging the logs).

274. — If non-performance is partly due to the fault of the party entitled to compensation, the Court may reduce the amount of compensation or even grant no compensation at all.

ILLUSTRATION. — A agrees with B that A shall drag a certain number of teak logs to the river Me Pin before the 1st. of August and B agrees that he shall provide A with 10 elephants for dragging. B delivers only 5 elephants. On the 1st. of August part only of the logs were dragged to the river. A has not performed the contract, but, since non-performance is partly due to the fault of B, the Court may reduce the amount of compensation due by A to B or even grant no compensation at all. [106]

275. — If the obligation was to pay a sum of money. the Court shall, as a rule, grant interest as compensation.

Should the injury and loss of benefit exceed the sum allowed as interest, the Court shall grant compensation for the surplus.

ILLUSTRATION. — I. — A sells to B a house for 20,000 baht, delivery of the house to be made on the 1st. of May 2455, price to be paid one half on delivery and one half one month after delivery. On the 1st. of May the house is delivered and 10,000 baht are paid. But the remaining 10,000 baht are not paid at the agreed time. A enters an action against B for payment of price and compensation. The Court may give judgment ordering B to pay to A 10,000 baht plus interest at 7½% per annum (Section 23) from the 1st. of June 2455 up to date of payment.

II. — A enters into a timber contract with B and has to pay a sum of 10,000 baht to B on the

1st. of June 2455 in execution of this contract. In order to procure the money A, in the month of April, mortgages a piece of land to C for 10,000 baht. It is agreed that the money shall be paid direct by C to B on behalf of A on the 1st. of June and C is aware of the nature of the contract entered into between A and B. C fails to pay the money on the 1st. of June, whereupon A has to pay heavy damages to B and loses the benefit which he could expect from the timber contract. A enters an action for compensation against C. Under the first paragraph of Section 275 A would be entitled as compensation to 7½% interest on 10,000 baht from the 1st. of June until execution of judgment. But if the injury and loss of benefit suffered by him exceed such interest, the Court may grant him com[m]pensation for the surplus.

[107]

276. — In each particular case, the Court shall decide whether the compensation granted by its judgment shall bear interest and, if so, from what date.

ILLUSTRATION. — I — A contracts to supply B with rice mill machinery. A does not deliver the machinery, B suffers injury thereby and enters an action for compensation in Court. The Court grants to B 5,000 baht damages. The Court shall decide whether A shall also pay interest on these 5,000 baht up to date of payment of the capital. If the Court decides that A shall pay interest, the Court shall also decide from what date interest is to be reckoned, that is to say whether interest on the 5,000 baht shall be reckoned from date of judgment, or from date of entry of action, or from date of non-performance of the contract or from any other date as the Court may think fit.

II. — A is run over by B's motor car and injured. The Court grants him 2,000 baht damages. The Court shall decide whether B shall pay interest or not on that sum up to execution of judgment. If interest is allowed, the rate shall be 7½% per annum (Section 23) and the Court shall decide whether it shall be paid from the date of judgment, or from date of entry of the action, or from date of accident or from any other date as the Court may think fit.

277. — If the judgment is that the debtor shall door abstain from doing an act the Court may (in addition to any compensation awarded or measures taken) order in its judgment that the debtor shall do or abstain from doing such act under a penalty, to be paid to the creditor of a fixed s[u]m of money for each day of delay.

[108]

278. — The debtor shall be relieved from such penalty if he proves that the delay is not due to his fault.

[Part] VI. — PENALTY CLAUSE AND EARNEST MONEY.

279. — The parties to an obligation can fix beforehand the amount of compensation for non-performance of the obligation.

Such agreement is called a penalty clause.

ILLUSTRATION. — A contracts to build for B a house to be delivered at a fixed date. It is provided in the contract that if the house is not delivered in due time, A shall pay 10 baht to B for each day of delay. This is a penalty clause.

280. — If the obligation is void or voidable, the penalty clause is void or voidable.

ILLUSTRATION. — A, a rice miller in Bangkok, contracts to send every month a cargo of rice to B in Hongkong. The contract provides that if A fails to send a cargo he shall pay to B 5000 baht damages. If the export of rice is prohibited by the Siamese Government, the contract becomes void. The penalty clause cannot be enforced.

[109]

281. — In case of non-performance of an obligation subject to a penalty clause the creditor can claim either specific performance or enforcement of the penalty clause.

ILLUSTRATION. — A sells his land to B, the land to be delivered one month after the sale. It is agreed that if A does not deliver the land, he shall pay 100 baht to B. If A does not deliver the land, B may claim specific performance, that is to say delivery against payment of price, or he can claim the compensation provided by the penalty clause, that is to say 100 baht.

282. — A penalty clause shall not be enforced if non. performance is due to *force majeure*.

ILLUSTRATION. — A contracts to build for B a house to be delivered at a fixed date. It is provided in the contract that if the house is not delivered in due time A shall pay 10. baht to B for each day of delay. Before delivery part of the house is damaged by a fire due to force majeure, and delivery is delayed 10 days thereby. The penal[t]y clause shall not be enforced.

283. — A penalty clause shall be enforced even if the creditor has suffered no injury.

284. — If the Court is of opinion that the amount fixed in a penalty clause is excessive, the Court may reduce such amount.

[110]

285. — No compensation shall be granted in addition to the amount fixed in a penalty clause.

286. — If a joint obligation is subject to a penalty clause, the creditor can claim from any one of the debtors the total amount fixed in the penalty clause.

ILLUSTRATION. — A, B and C contract to build a house for D and deliver it to D at a fixed time under penalty of 50 baht for each day of delay. If the house is not delivered in time, D may claim the whole of the penalty from A or from B or from C.

287. — Earnest money is a sum of money which is delivered by one of the parties to an obligation to the other party, before or at the time when the contract is entered into and which is fixed by the parties as the amount of compensation in case of non-performance of the obligation.

The party who is not in default is entitled either to specific performance or to compensation up to the amount of the earnest money, that is to say :

~~1) if he has received the earnest money he is entitled to keep it;~~

[1) if he has received the earnest money he is entitled to forfeit it;]

~~2) if he has delivered the earnest money, he can claim its return together with an equal sum of money.~~ [111]

[2) if he has delivered the earnest money. he can claim double amount of earnest money.]

In any other respect the provisions concerning penalty clause apply to earnest money.

TITLE III.
RIGHTS OF THE DEBTOR.

CHAPTER I.
DEFAULT OF THE CREDITOR.

288. — The creditor is bound to receive performance of the obligation if the performance tendered is such as provided by the obligation or by law.

289. — The creditor is in default ~~from the time when~~ [after] a tender of performance is made to him.

290. — No tender of performance is necessary in the following cases :

1) If the creditor has expressly declared that he will refuse to receive performance.

2) If the performance of the obligation by the debtor depends on an act to be done by the creditor, and the creditor does not do such act.

In such cases the creditor is in default from the time when the debtor notifies him to receive performance or to do the act. [112]

ILLUSTRATION. — I. — A has sold his launch to B. B afterwards expressly informs A that he does not want the launch. B is in default without A having to tender him delivery of the launch.

II. — A has sold his launch to B. It was agreed that B should send a steersman to take delivery of the launch. If B does not send a steersman, B is in default from the time when A notifies him to send the steersman.

291. — No tender of performance or notification is necessary if the act of the creditor mentioned in Section 290 is to be done within a definite period of time.

If the creditor does not do the act within the period, he is in default from the end of it.

292. — No tender of performance or notification is necessary if the debtor cannot ascertain who or where the creditor is. In such cases the creditor is in default from the time when the debtor has the right to perform his obligation.

293. — A tender of performance must be in conformity with the obligation.

ILLUSTRATION. — I. — A sells to B a picture. On the day appointed for delivery A brings the picture to B's residence. This is a tender in conformity with the obligation. [113]

II. — A orders from B a motor car to be delivered at A's residence. B informs A that the car is at A's disposal in the godown of a Navigation Company. This is not a tender in conformity with the obligation.

III. — A contracts to send men to repair the roof of B's house. On the appointed day A send the men to B's house with the necessary tools and apparatus. This is a tender in conformity with the obligation.

If A comes alone and merely states that he is willing to begin work, this is not a tender in conformity with the obligation.

IV. — A contracts to supply a rice mill with so many boat loads of paddy every week, delivery to be made at the mill's wharf. On the last day of the first week, during business hours, A brings to the wharf the agreed number of boats loaded with paddy of the agreed quality. This is a tender in conformity with the obligation.

If A only informs the rice miller that the boats are at his disposal somewhere in the river, or if he brings the boats to the mill's wharf after business hours, this is not a tender in conformity with the obligation.

294. — From the time when the creditor is in default, the following rules apply ;

1) If performance of the obligation becomes impossible owing to *force majeure*, the creditor is not discharged from his reciprocal prestation, if any.

2) If the obligation is to pay a sum of money, such sum ceases to bear interest.

ILLUSTRATION. — I. — A sells a pony to B. The pony is to be delivered to B on the 1st. of May, at C's residence. On the 1st. of May A brings the pony to the residence of C. B does not come to take delivery of it. On the 2nd. of May, A takes back the pony. On the same day the pony is accidentally killed. B is still bound to pay to A the agreed price. [114]

II. — In the year 2454 A borrows from B 10,000 baht at 12%, interest, to be repaid on the 1st. of May 2455. It is agreed that B shall come and take the money at the residence of A. On the 1st. of May 2455 B does not come to A's residence to take the money. No interest is due to B from that date.

CHAPTER II.
DEPOSIT IN LIEU OF PERFORMANCE.

295. — From the time when the creditor is in default, the debtor can deposit the property due instead of delivering it.

296.—The deposit must be made at the deposit office of the place where the obligation must be perfo[r]med.

If there is no deposit office, the Court shall, on the application of the debtor, appoint a depositary.

297. — The debtor must, if possible, forth with notify the deposit to the creditor.

298. — The creditor is entitled to obtain delivery of the property deposited within ten years from the date of deposit. [115]

299. — The debtor can withdraw the deposit. But if the creditor has notified his acceptance of it, or the deposit has been ordered or confirmed by the Court, he can withdraw it only after ten years have elapsed from the date of deposit.

300. — If the deposit is withdrawn by the debtor, it is deemed to have never been made, and the original obligation stands good with its accessories.

ILLUSTRATION. — Under a contract with B, A must deliver to B on the 10th of May 2460 one hundred bags of rice. On the date appointed B has gone abroad and nobody can say where B is. A deposits the bags of rice on the 25th. of May 2460. Then A withdraws the deposit. The deposit is deemed to have never been made. A's obligation stands good, that is to say stands as it would have stood if no deposit had been made.

If B returns from his journey before the obligation be extinguished by prescription, B can claim performance. But if B returns more than ten years after the day when B was in default, say on the 16th. of May 2470, A's obligation is extinguished by prescription, notwithstanding the fact that a deposit had been made on the 25th. of May 2460.

301. — If the property deposited is not withdrawn by the creditor within ten years or by the debtor within ten years and six months after deposit, it becomes the property of the State. [116]

302. — In the cases when :

1) The property is not suitable for deposit, or

2) The property is perishable, or

3) The keeping of the property would be unreasonably expensive,

the debtor can, instead of depositing the property, sell it by public auction and deposit the nett proceeds.

303. — The depositary can sell the property by public auction as soon as it appears that the costs of keeping it would exceed the proceeds of the auction.

The nett proceeds, after deducting the costs of keeping, must be deposited in lieu of the property itself.

304. — The debtor who makes a deposit in accordance with this Chapter and does not withdraw it, is discharged from his obligation in the same way as if he had performed it.

305. — Costs of deposit must be borne by the creditor, unless the

deposit be withdrawn by the debtor. In the latter case, costs must be borne by the debtor.

DIVISION V. — RIGHTS OF THE CREDITOR OVER THE PROPERTY OF THE DEBTOR. [117]

TITLE I.
RESPECTIVE RIGHTS OF THE ORDINARY AND PREFERRED CREDITORS.

CHAPTER I.
GENERAL PROVISIONS.

306. — There are two kinds of creditors, that is to say :

1) Ordinary creditors.

2) Preferred creditors.

307. — Any creditor is entitled to have his obligation performed out of the whole of the property of his debtor, such property including any monies or other properties due to the debtor by third persons.

308. — If there are several creditors and the property of the debtor is not sufficient to satisfy them all, they are entitled to receive performance in proportion to the amounts of their respective obligations.

309. — In addition to the remedy provided in Sections 307 and 308, the preferred creditor is entitled to have his obligation performed in preference to the other creditors either out of particular properties of the debtor, or out of the whole property of the debtor. [118]

310. — If the property of a debtor has been seized [by order of the Court] in execution of a judgment, every judgment creditor or preferred creditor who files a motion in Court before the property be sold is entitled to share in the proceeds provided that the costs incurred by the original judgment creditor be paid by preference.

ILLUSTRATION. — A, a judgment creditor of B for 200 baht, has seized the house furniture of B. Before such furniture be sold, C', another judgment creditor for 100 baht, and D, the landlord of B's house and a preferred creditor for 150 baht rent due (Section 3 14), can file a motion in Court and shall thereupon be entitled to share in the proceeds of the sale, provided that the costs incurred by A shall be paid by preference.

If the costs incurred by A amount to 30 baht and the proceeds of the sale amount to 300 baht, the money shall be distributed in the following manner :

A shall first receive reimbursement of costs ..... Baht 30

D, preferred creditor, shall be paid his whole debt ..... ,, 150

The remainder shall be distributed between A and C in proportion to the amount of their obligations, that is to say A shall receive	,,	*80*
C shall receive	,,	*40*
Total	*Baht*	*300*

311. — Whenever a person is entitled by law to withhold or retain money or property not belonging to him, the creditors of the owner of such money or property can exercise no rights over it until such person has given up possession or has been satisfied. [119]

312. — A creditor who satisfies another creditor of the same debtor is subrogated to the rights of that other creditor against the debtor up to the amount of the sum paid by him.

But he cannot exercise such rights to the injury of the creditor.

313. — No preferential rights or rights to retain a property may be created in favour of creditors other than those mentioned in, or exceeding the limits laid down by, law.

CHAPTER II.
SPECIAL PREFERENTIAL RIGHTS.

314. — A creditor in whose favour an obligation exists based upon one of the following grounds has a special preferential right over particular properties of the debtor :

1) Sale of movable property, deposit, carriage, lodging in an inn, agency, pledge, endorsement of a warrant, ware-housing.

2) Preservation of property. [120]

3) Hire of work.

4) Hire of immovable property.

5) Sale of immovable property or mortgage.

315. — The preferential rights mentioned in Section ~~294~~[314] No. 1 are described in the parts of this Code dealing with the sale, deposit, carriage, inn-keepers, agency. pledge and ware-housing.

316. — The preferential right arising out of the obligation based upon preservation of property (S. 314 No. 2) is for the cost of preservation and is over such property.

317. — The preferential right arising out of the obligation based upon hire of work (S. 314 No.3) is :

1) If the hire of work is in relation to movable property, for the sums due to a contractor by the hirer of work, and over the movable property which is the result of the work ;

2) If the hire of work is in relation to immovable property, for the sums due to a contractor by the hirer of work up to the increase of value resulting from such work, and over the immovable property upon which the work has been done.

318. — The preferential right arising out of the obligation based upon hire of immovable propó[e]rty (314 No. 4) accrues to the lessor of immovable property or of a floating house or of a house boat, who has a preferential right over the movables which are on, or in the property leased. This right does not extend to movables which have been found or which are the proceeds of any offence; or which the lessor knew or ought to have known were not the property of the lessee. [121]

The preferential right of the lessor is for the payment of the rent and of any other monies which may be due by the lessee to the lessor in connection with the lease.

319. — In case of lease of agricultural land, the preferential right of the lessor extends to such fruits of the land as are in the possession of the lessee.

320. — If the lease is transferred or there is a sublease, the preferential right of the lessor extends :

1) To the movéables brought by the transferee or sublessee.

2) To the monies which may be due by the transferee or sublessee to the original lessee by reason of the lease.

A payment of rent made in advance by the sublessee cannot be set up against the original lessor.

321. — The preferential right arising out of the obligation based upon sale of immovable property (S 314 No. 5) is for the price and accessories and is over such property. [122]

322. — The preferential right arising out of the mortgage (S. 314 No. 5) is described in the part of this Code relating to Mortgage.

323. — The preferential rights arising out of sale of movable property, deposit, carriage, lodging in an inn. agency, pledge, endorsement of warrants, warehousing (S. 314 No. 1) are extinguished if the creditor gives up possession of the movable property which is subject to his preferential right.

324. — The preferential rights arising out of preservation of property or out of hire of work (S. 314 No. 2 or 3) can be exercised :

1) over a property which is movable, as long as the ownership of such property remains in his debtor.

2) over a property which is immovable, even though the ownership of such property has been transferred to a third person, provided that the creditor has had his preferential right registered before the transfer, not later than one month from the act of preservation or from the termination of the work, as the case may be.

325. — The preferential right arising out of the hire of immovable property (S. 314 No. 4) can be exercised on movables so long as they are still on, or in, the immovable property.

The less~~e~~[o]r can object to such movables being removed until he has been satisfied, and ~~attach~~[seize] them if necessary to prevent their removal. [123]

326. — The preferential rights arising out of the sale of immovable or mortgage (S. 314 No. 5) can be exercised over the property, even though the ownership of such property has been transferred to a third person, provided that they have been register~~r~~ed before the transfer.

327. — The person who applies for registration of a preferential right on an immovable other than mortgage must produce to the Registrar a statement showing the names of the creditor and the debtor, the description of the property, the nature and amount of the claim, and the date of application.

328. — The preferential right arising out of Section 314 No. 1 can be exercised [by the creditor] on the monies or other properties due to the debtor by third persons for the loss of, or damage caused to, the property which is subject to his preferential right, if such loss or damage happened while he was in possession of it.

The preferential right arising out of Section 314 No. 2, 3, 4 or 5 can be exercised on the monies or other properties due to the debtor by third persons for the hire, transfer or loss of, or for the damage caused to, the property which is subject to such right.

~~Provided that such monies or properties be attached or seized before they are paid or delivered to the debtor.~~

[Provided that such monies or properties be seized by order of the Court, either before or after judgment before they are paid or delivered to the debtor.]

ILLUSTRATION. — I. — A contracts to build a motor boat for B, the price to be paid on delivery of the motor boat. B takes possession of the motor boat, gives it on hire to C for 100 baht a month and does not pay the price. A has a preferential right over the motor boat for the payment of the price due to him. This right extends to the rent for the hire of the motor boot that is to say A is entitled to be paid in preference to other creditors out of the monies due by C to B for rent provided that A has an order of attachment of B's monies served on C. The preferential right extends then to the rent which remained due from C to B when the order of attachment was served on C and to the rent which may become due afterwards. [124]

If B has sold the motor boat to C, A is entitled to be paid in preference to other creditors out of the price due by C to B, provided that C has not paid the price before he receives the order of attachment.

If B has insured the motor boat and the motor boat is burnt by fire, A is entitled to be paid in preference to other creditors out of the compensation due by the underwriter, provided that the underwriter has not paid the compensation to B before he receives the order of attachment.

II. — A has deposited to B a cycle, and B has spent 20 baht for the maintenance in good condition of the cycle. A has insured his cycle. The cycle is destroyed by accident while in the posses[s]ion of B. B is entitled to be paid in preference to other creditors out of the compensation due by the underwriter to A, provided that the underwriter has not paid the compensation to A before he receives the order of attachment.

329. — Any question, relating to special preferential rights on immovables, which is not covered by this Chapter II, shall be decided in accordance with the provisions concerning mortgage in so far as they are not contrary to or inconsistent with it. [125]

CHAPTER III.
GENERAL PREFERENTIAL RIGHTS.

330. — A creditor in whose favour an obligation exists based upon any of the following grounds has a general preferential right over the whole of the property of the debtor :

1) Payment of funeral expenses.

2) Monies due to the State.

3) Hire of services.

331. — The preferential right arising out of the obligation based upon the payment of funeral expenses is for such reasonable expenses as have been incurred considering the station in life of the deceased, and is over the estate of the deceased.

332. — The preferential right arising out of the obligation based upon hire of services is for salary due by the employer to his employees for services performed during the current month and the two next preceding months; the amount is limited to three hundred ~~ticals~~[baht] for each employee.

CHAPTER IV.

[126]

RANK AND EFFECT OF PREFERENTIAL RIGHTS.

333. — The respective rank of preferential rights is as follows:

1) Special preferential rights according to the order of enumeration in Section 314.

2) General preferential rights according to the order of enumeration in Section 330.

ILLUSTRATION. — A dies 1st. of April. The Liabilities of A's estate are as follows :

Baht.	*50*	*due to B who has lent that sum to A and is pledgee of A's golden watch.*
,,	*40*	*due to C who has taken care of A's poney when it had run away (preservation of movable property).*
,,	*150*	*due to D for expenses in extinguishing a fire which occurred in A's house on the 15th. March 2459 (preservation of immovable property, registered on the 28th. March 2459).*
,,	*200*	*due to E, who has repaired A's carriage (hire of work).*
,,	*1,000*	*balance due to F who has finished to build A's house on the 3rd. March 2458 (hire of work; registered on the 1st. April 2459).*
Baht.	*150*	*due to G for rent of a floating house (hire of immovable).* [127]
,,	*50*	*due to the Treasury for taxes (monies due to the State).*
,,	*80*	*due to H for A's funeral expenses.*
,,	*60*	*due to I for salary (hire of services).*
,,	*5,000*	*due to J for mortgage on A's house (registered on the 5th of May 2458).*
,,	*2,000*	*balance due to K on the price of the land on which A's house is built (registered on the 10th. of June 2458).*
,,	*300*	*due to several ordinary creditors.*
,,	*9,080*	*Total of liabilities.*

The assets of the estate are :

Cash	*Baht*	*20*
Gold watch sold for	*,,*	*100*
Poney sold for	*,,*	*100*
Carriage sold for	*,,*	*150*
Furniture of floating house sold for	*,,*	*150*
Land and house sold for	*,,*	*7,000*

Nett proceeds of other properties	,,	*50*
Total	,,	*7,570*

The assets are not sufficient to satisfy all the creditors in full. The distribution shall be made in the following order :

I. — Special preferential creditors : [128]

	Sum paid.	*Balance due.*	*Balance available for other creditors.*
B receives out of the proceeds of the gold watch	*50*	...	*50*
C receives out of the proceeds of the poney	*40*	...	*60*
E receives out of the proceeds of the carriage	*150*	*50*	...
G receives out of the proceeds of the furnitures of the floating house	*150*	...	...
D receives out of the proceeds of the house	*150*	...	...
F receives out of the proceeds of the house	*1,000*	...	...
J receives out of the proceeds of the house	*5,000*	...	...
K receives out of the proceeds of the house	*850*	*1,150*	...
	7,390		*110*

II. — General preferential creditors :

H receives in preference out of remaining assets	*80*
The Treasury receives in preference out of remaining assets	*50*
	7,520

The surplus is only 50 baht which shall be given to I who is a General preferential creditor for 60 baht. [129]

E and K, who are ordinary creditors for the balance due to them (Baht 50 and 1150 respectively) and all the other ordinary creditors shall receive nothing.

334. — If there are several persons entitled to a preferential right for the preservation of property (S. 314 No. 2) a later preserver ranks before an earlier one.

335. — If there are several persons entitled to a preferential right for hire of work (S. 314 No. 3) an earlier contractor ranks before a later one.

336. — If there are several persons entitled to a preferential right for

sale of an immovable property or on account of mortgage (S. 314 No. 5), an earlier creditor according to the respective dates of registration ranks before a later one.

337. — When there are several preferential rights of the same rank, each creditor is entitled to receive performance in proportion to the amount of his obligation.

TITLE II.
RIGHTS OF THE CREDITOR TO EXERCISE THE DEBTOR'S RIGHTS OF ACTION.

338. — If a debtor refuses or neglects to exercise a right of action belonging to him, and his refusal or neglect is likely to prejudice a judgment creditor, such judgment creditor can exercise such right of action in [his own]~~the~~ name [on behalf] of the debtor. [130]

~~*ILLUSTRATION. — A is a judgment creditor of B tor 20,000 baht, B is creditor of C for 10,000 baht; B neglects to claim from C the payment of these 10,000 baht and his negligence is likely to prevent A from being paid. A has the right to exercise B's claim against C, that is to say to sue C in Court and to obtain judgment ordering C to pay 10,000 baht.*~~

339. — The judgment creditor who exercises a right of action belonging to his debtor must summon the debtor to appear in the action.

~~340. — The judgment creditor can exercise a right of action belonging to the debtor for its whole amount, irrespective of the amount of his own claim. But the defendant can have such action dismissed on satisfying the claim of the judgment creditor provided that, if the original debtor joined as a plaintiff, he may proceed to judgment for the balance.~~

[340. — The judgment creditor can exercise a right of action belonging to the debtor for the whole amount due to the debtor, irrespective of the amount due to the creditor. But the defendant can satisfy the creditor by paying the amount due to him, provided that, if the original debtor joined as a plaintiff, he may proceed to judgment for the balance.]

ILLUSTRATION. — A is a judgment creditor of B for 10,000 baht. A exercises against C a right of action for the recovery of sums due by C to B. If C owes to B more than 10,000 baht, say 20,000 baht, A may nevertheless enter an action for the full amount of 20,000 baht. C may have the action dismissed by paying 10,000 baht to A ; but, if B was a co-plaintiff with A, he may proceed to judgment for the balance of 10,000 baht. [131]

341. — Prestations made by the defendant in order to satisfy the judgment creditor are equivalent to prestations made to the debtor.

ILLUSTRATION. — A is a creditor of B for 5,000 baht. B is the creditor of C for 2000 baht. A enters an action against C under Section 338. C pays 2000 baht to A. Such payment is equivalent to a payment made to B, · that is to say C is discharged from his debt in the same way as if he had made payment to B.

342. — The defendant can set up against the judgment creditor all defences which he has against the debtor, excluding those which arose after the entry of the action.

ILLUSTRATION. — A is a judgment creditor of B for 5000 baht. B is a creditor of C for 2000 baht. C is a creditor of B for 3000 baht. A enters an action against C under section 338. C has notified B that his debt is extinguished by set off ; C can plead set off in answer to the claim of A.

If C has become creditor of B after the entry of the action by A, he cannot plead set off in answer to A's claim.

TITLE III.
RIGHT OF THE CREDITOR TO CANCELLATION OF THE ACTS MADE IN FRAUD OF HIS OWN RIGHTS.

[132]

343. — A judgment creditor is entitled to claim cancellation by the Court of transfers or renunciations which a debtor may have made to the prejudice of such creditor provided that:

1) Such transfers or renunciations were made after the original obligation arose, and

2) The debtor knew that such transfers or renunciations would prejudice the ~~judgment~~ creditor, and

3) The person in whose favour such transfers or renunciations were made knew that such transfers or renunciations would prejudice the ~~judgment~~ creditor.

ILLUSTRATION. — I. — In 2451 A lends money to B, to be repaid at the end of the year 2453. B does not repay the money. In the year 2455 A obtains a judgment and a writ of execution against B. On having the writ executed A finds out that the present property of B is insufficient to satisfy him and that in the year 2454 B made a gift of a valuable piece of land to his son C. If A can prove that B and C knew that the gift would prejudice A, A is entitled to claim cancellation of the gift by the Court.

II. — If the gift was made in the year 2452, A would not be entitled to have it cancelled, because the obligation of repayment arose only at the end of the year 2453, that is to say after the gift.

III. — If B instead of giving his land to C has sold it to D for a price much below its value and A can prove that B and D knew that such sale would prejudice A, A is entitled to claim cancellation of the sale by the Court. On cancellation of the sale that land reverts to B's estate and D becomes entitled as an ordinary creditor to restitution of the price paid by him.

[133]

~~344. — The defendant in such action is entitled to have it dismissed on satisfying the judgment creditor.~~

[344. — In such action, the Court shall hold the plaintiff as duly satisfied if the defendant pays off the judgment creditor's claim.]

345. — Prestations made by the defendant in order to satisfy the judgment creditor are equivalent to prestations made by the debtor.

346. — If a transfer or renunciation has been cancelled by the Court, restitution by the transferee or by the person in whose favour the renunciation was made is governed by such provisions of this Code concerning restitution for undue enrichment as refer to restitution made by persons in bad faith.

ILLUSTRATION. — In 2451 A lends money to B, to be repaid in 2453. B does not repay the money. In the year 2455 A obtains a judgment and a writ of execution against B. On having the

[134]

writ executed, A finds out that the present property of B is not sufficient to satisfy him and that in the year 2454 B has sold a valuable house to C for a price much below its value. If A can prove that B and C knew that the sale would prejudice A, A is entitled to have the sale cancelled by the Court. C must restore the house: if C has made to the house alterations or additions which he cannot take away without damaging the house, he must restore the house with the additions and alterations and is not entitled to compensation for the increase in the value resulting therefrom.

347. — Cancellation operates in favour of all the creditors.

ILLUSTRATION. — A, B and Care creditors of D. A obtains under S. 343 the cancellation of a contract by which D has sold a house to E to the prejudice of A. The house reverts to D's estate and is sold in execution. B and C, although they entered no claim for cancellation of the sale of the house, are entitled to share in the proceeds of such house as provided by law.

348. — The right to claim cancellation is extinguished by prescription one year after the day when the judgment creditor knew of the transfer or renunciation.

ILLUSTRATION. — A owes money to B, to be repaid on the 1st. of May 2455. A does not repay the money. In July 2455 A sells land of his for an inadequate price to C. B knows of the sale on the 15th. of August 2455. The right of B to claim cancellation of the sale under Section : 343 is extinguished by prescription on the 15th. of August 2456.

349. — In no case can an action for cancellation of a transfer or renunciation made in fraud of the rights of a creditor be entered later than ten years after the transfer or renunciation.

DIVISION VI.–EXTINCTION OF OBLIGATIONS. [135]

TITLE I.
PERFORMANCE.

350. — The provisions concerning performance are to be found in Division IV of this Code.

TITLE II.
RELEASE.

351. — When the creditor grants a release to the debtor, the obligation is extinguished to the extent of the release.

ILLUSTRATION. — A owes 1000 baht to B. B grants to A a release of 300 baht. The obligation of A is extinguished up to the amount of 300 baht, that is to say it is reduced to 700 baht.

TITLE III.
SET OFF.

352. — When two persons are respectively creditor and debtor and debtor and creditor of obligations to pay money and these obligations are due, the obligations may be extinguished by set off up to the amount of the smaller sum, in the same way as if they had been performed up to that amount. [136]

See Illustration under Section 353.

353. — Set off is made by a notification made by one party to the other.

ILLUSTRATION (Sections 352 and 353). — A has lent 200 baht to B. A is creditor of B and B is debtor of A for 200 baht. Afterwards, B sells a pony to A for 150 baht and delivers it before the price be paid. B is creditor of A and A is debtor of B for 150 baht.

A and B are respectively creditor and debtor and debtor and creditor. Their obligations may be extinguished by set off up to the amount of the smaller obligation, that is to say up to 150 baht, in the same way as if B had paid 150 baht to A and A had paid 150 baht to B.

It A notifies set off to B, A's debt is wholly extinguished. B's debt is extinguished up to 150 baht only. B remains the debtor of A for the balance, viz. 50 baht.

354. — Set off takes effect from the time when the notification reaches the other party.

355. — If an obligation has been transferred, the debtor who is notified of, or has agreed to, the transfer cannot set off against the transferee [137]

obligations which he could set off against the transferor.

~~356. — A debtor cannot notify set off after attachment or seizure of the obligation.~~

[356. — A debtor cannot notify set off after the obligation has been seized by order of the Court either before or after judgment.]

ILLUSTRATION. — A owes 10,000 baht to B. B owes 4000 baht to A. Both debts are due. A can at any time notify B that he sets off B's debt against A's own debt and that A's own debt to B is reduced to 6000 baht.

D being a judgment creditor of B for 15,000 baht obtains from the Court a decree ordering A to pay to D any monies due by A to B. If such decree is served after A has notified the set off to B, A is bound to pay 6000 baht only to D. But if A has not yet notified the set off to B when he is served with the decree, he cannot afterwards notify it and he is bound to pay 10,000 baht to D.

357. — Set off can be made even if the places of performance of the two obligations are different; but the party who makes the set off must make compensation to the other party for any injury resulting therefrom.

ILLUSTRATION. — A owes 5,000 baht to B, to be paid in Bangkok. B owes 7,000 baht to A to be paid in Chiengmai. B can set off the debt of A against his own debt to A, that is to say he can pay only 2,000 baht to A in Chiengmai, the surplus of his debt having been extinguished by way of set off. But if A suffers injury from the fact that he only gets in Chiengmai where bullion is scarce 2,000 baht instead of 7,000 baht, B must make compensation ~~of~~ [for] such injury.

358. — Appropriation in case of set off is governed by the provisions of Sections 251 to 256 concerning performance. [138]

TITLE IV.
MERGER.

359. — An obligation is extinguished by merger when the same person at ~~once~~ [the same time] becomes the creditor and the debtor of it.

ILLUSTRATION. — A owes money to B. B dies bequeathing his estate to A. A as heir of B becomes the creditor of his own debt. His obligation is extinguished by merger.

TITLE V.
PRESCRIPTION.

CHAPTER I.
GENERAL PROVISIONS.

360. — A right is extinguished by prescription if the creditor does not exercise it during the time provided by law.

361. — The benefit of prescription cannot be waived before prescription is completed, but it may be renounced afterwards. [139]

ILLUSTRATION. — A has engaged B's services at 100 baht per month ; on the 1st. of March 2456 A dispenses with B's services without paying three months salary due to B.

A however agrees that he shall pay B's salary later on and further agrees that he shall not take advantage of prescription if B claims his salary more than two years hereafter. This latter clause is void ; A cannot waive prescription before it is completed.

Now on the 3rd. of March 2458 B claims his salary from A. B's right is extinguished by prescription (Section 383 3°). A may nevertheless renounce the benefit of prescription and pay B his salary.

362. — The periods of prescription fixed by law cannot be extended or reduced.

~~363. — When a claim is for a right extinguished by prescription and prescription has not been set up as a defence, the Court may nevertheless dismiss the claim on the ground of prescription, provided that the defendant has not ronounced the benefit of prescription.~~

[363. — When prescription has not been set up as a defence, the Court cannot dismiss the claim on the ground of prescription.]

~~364. — Prescription can be set up as a defence at any stage of the proceedings and in any Court.~~

~~365~~[364]. — Prescription runs from the time when the right can first be exercised. [140]

ILLUSTRATION. — On the 13th of March A agrees to pay 1000 baht to B when B marries. On the 15th. of April next B marries. B cannot claim 1000 baht from A before the 15th. of April. Prescription runs against B from the 15th. of April.

~~366~~[365]. — If the creditor cannot demand performance until he has given notice to the debtor, prescription runs from the time when notice can first be given.

366. — If the debtor is not bound to perform until a period of time has elapsed after notice, prescription runs from the expiration of that period.

If the debtor is to abstain from doing an act, prescription runs from the time when the act is done.

ILLUSTRATION. — I. — Under a contract with B, A is bound to pay B 100 baht after B shall have notified A of his arrival in Bangkok. B arrives in Bangkok but does not notify A of the fact. Prescription runs from the day of B's arrival in Bangkok.

II. — A is bound to pay 100 baht to B within 8 days after B has given notice to A. On the 10th. of May 2456 B gives notice to A. Prescription runs from the 18th. of May 2456.

III. — Under a contract with B, entered on the 1st, of April 2456, A is under an obligation not to run boats up the river. On the 15th. of June 2456 A runs a boat up the river. Prescription runs from the 15th. of June 2456.

367. — When prescription is completed, the right is extinguished as from the time when prescription began to run. [141]

368. — When the principal of an obligation is extinguished by prescription, interest, profits and accessories are also extinguished.

369. — The extinction of an obligation by prescription does not prevent the mortgagee or the creditor who has a preferential right on a property retained by him, to satisfy himself out of the mortgaged or retained property.

However, this provision does not extend for more than five years to the arrears of interest claimed by the mortgagee or creditor.

370. — As to rights existing in favour of an incapacitated person who is without a lawful representative, prescription is not completed until one year after such person has acquired or resumed capacity, or a lawful representative has been appointed.

As to rights existing in favour of an incapacitated person against his lawful representative, prescription is not completed until five years after such person has acquired or resumed capacity.

ILLUSTRATION. — On the 1st. of April 2454 A becomes insane and thereby incapacitated. Prior to his becoming incapacitated A had entered into contracts. A remains without lawful representative until the 1st. of May 2455 when a guardian is appointed for him. [142]

1) Obligations in favour of A for which the period of prescription otherwise provided by law expires more than one year after the date of appointment of guardian, that is to say after the 1st. of May 2456, are not affected by Section 370. The lawful representative of A can claim performance of these obligations from the creditors as long as prescription is not completed.

2) Obligations in favour of A for which the period of prescription otherwise provided by law would have expired either during the time when A being insane had no lawful representative or within one year after the appointment of the lawful representative are affected by Section 370. The period of prescription is extended to the 1st. of May 2456, the lawful representative being

given a full year to claim performance from the debtors.

3) Obligations against A are not affected by Section 370. They are extinguished after expiration of the period of prescription otherwise provided by law.

371. — As to rights existing in favour of a husband against his wife or in favour of a wife against her husband, prescription is not completed until one year after dissolution of marriage.

ILLUSTRATION. — A and B are husband and wife. They enter into contracts with each other. On the 15th of March 2455 the marriage is dissolved by divorce or by the death of one of the spouses.

1) Obligations existing in favour of A against B or in favour of B against A for which the period of prescription otherwise provided by law would have expired either during the time of marriage or within one year after dissolution of marriage are affected by Section 371. The period of prescription is extended to the 15th. of March 2456. [143]

2) Obligations for which the period of prescription otherwise provided by law expires after the 15th. of March 2456 are not affected by Section 371. The creditor can claim performance as long as prescription is not completed.

372. — When the prescription of an obligation existing in favour of a person or against him at the time of his death would have expired within one year after the date of the death, the period of prescription shall be extended to one year after the death.

ILLUSTRATION. — A dies on the 1st. of April 2455, leaving assets and liabilities.

1) Obligations against A for which the period of prescription otherwise provided by law expires more than one year after the date of death, that is to say after the 1st. of April 2456, are not affected by Section 372. The creditors of such obligations may claim performance from the estate as long as prescription is not completed.

2) Obligations against A for which the period of prescription otherwise provided by law would expire within one year after the date of death, that is to say between the 1st. of April 2455 and the 1st. of April 2456, are affected by Section 372. The period of prescription is extended to the 1st. of April 2456, the creditors being given a full year to claim performance from the estate. [144]

3) Obligations in favour of A for which the period of prescription otherwise provided by law expires more than one year after the date of death, that is to say, the 1st. of April 2456, are not affected by Section 372 The heirs can claim performance of such obligations from the debtors as long as prescription is not completed.

4) Obligations in favour of A for which the period of prescription otherwise provided by law would expire within one year after the date of death, that is to say between the 1st. of April 2455 and the 1st. of April 2456. are affected by Section 372. The period of prescription is extended to the 1st. of April 2456, the heirs being given a full year to claim performance from the debtors.

5) As to obligations against A or in favour of A for which the period of prescription provided by law was completed before the date of death, they were extinguished before death and are not part of the estate.

373. — Prescription is interrupted :

1) By the entry of an action in Court, provided that the action be not discontinued or dismissed; the date when the petition of the claimant is

filed in Court is the date of the entry of the action.

2) By an application to prove in bankrup[t]cy, provided that the creditor does not withdraw his proof or that his proof be not disallowed.

3) By submission to arbitration.

4) By ack[n]owledgement of the obligation.

374. — When an action is entered in Court, prescription remains interrupted until final judgment. [145]

375. — If the action is dismissed on the ground of want of jurisdiction and the period of prescription has expired pending proceedings or would have expired within six months after final judgment, it shall be extended to six months after such judgment.

376. — In case of proof of bankrup[t]cy, prescription remains interrupted until annulment of bankrup[t]cy, or until final distribution of assets, as the case may be.

377. — In case of submission to arbitration, prescription remains interrupted until final decis*s*ion.

378. — Acknowledgement of the obligation must be :

1) By a writing, or

2) By payment of an instalment or of interest, or

3) By any other part performance, or

4) By the giving of a security.

379. — Deposit in lieu of performance does not interrupt p~~er~~[re]scription.

380. — The creditor of an obligation the subject of which is the payment of money periodically is entitled to require from the debtor at any time before the completion of the period of prescription a written acknowledgement of the obligation, in order to obtain evidence of the interruption of prescription. [146]

ILLUSTRATION. — On the 1st. of January 2455 A has sold his house to B with a clause stating that B would pay 500 baht per year to A during A's life, the payment to be made on every 1st. of April from the 1st. of April 2456 inclusive. The obligation of B can be extinguished by prescription, the period being 10 years (Section 387) from the 1st. of April 2456. B performs his obligation by paying 500 baht per year, and A gives B the receipts thereof. Under Section 378 No. 2, each payment of an instalment is on acknowledgement of debt which interrupts prescription. But A gets no written evidence of such payments. On the 1st. of May 2466 B falsely pretends that he has never paid instalments to A and consequently that his obligation is extinguished by

prescription. A has no written evidence to set up against this false statement, unless he has received from B before the 1st. of April 2466, say on the 10th. of November 2465 a written acknowledgement of B's obligation. Section 380 gives A the right to require from B such an acknowledgement.

381. — When prescription is interrupted, the period of time which has elapsed before interruption does not count for prescription.

382. — From the time when the interruption ceases, a fresh period of prescription runs.

ILLUSTRATION. — I. — On the 1st. of December 2454, A becomes creditor of B for 300 baht for hire of work. The period of prescription is two years under Section 383 6°, that is to say will be completed on the 1st. of December 2456. On the 30th. of November 2455. A files a petition in Court against B, thus interrupting prescription. On the 15th of December 2455 A withdraws his claim on receiving from B a written acknowledgement of B's obligation. [147]

Prescription has been interrupted from the 30th of November to the 15th of December 2455. A fresh period of prescription runs from the 15th of December 2455. Prescription shall be completed on the 15th. of December 2457.

II. — *On the 1st. of September 2452, A becomes creditor of B for 500 baht for the hire of immovable property. The period of prescription is five year's under Section 384 3°, that is to say will be completed on the 1st. of September 2457. On the 15th of April 2457, B is declared bankrupt. On the 30th. of April 2457, A files an application to prove for 500 baht in B's bankruptcy. His proof is allowed and he receives a dividend of 20%, viz. 100 baht, at the final distribution of assets on the 22nd. of December 2457. B has not been discharged so that A is still creditor of B for the 400 baht unpaid. As regards these 400 baht, prescription has been interrupted from the 15th of April to the 22nd. of December 2457 and shall be completed on the 22nd. of December 2462.*

CHAPTER II.
PERIODS OF PRESCRIPTION.

383. — The period of prescription is two years for :

1) The payment of the price due to a retail trader. [148]

2) The payment of money due for board or lodging to the proprietor of an inn, hotel or other such place.

3) The payment of salary due by employers to employees.

4) The payment of freight and accessories due to carriers.

5) The payment of the rent due for the hire of movable property.

6) The payment of the price due for the hire of work, including the payment of fees due to medical practitioners, lawyers, witnesses and experts.

384. — The period of prescription is five years for :

1) The payment of the price due to wholesale dealers.

2) The payment of interest or dividends.

3) The payment of the rent due for the hire of immovable property.

4) All prestations to be performed periodically.

385. — The period of prescription for all obligations existing in favour of the Government is ten years.

386. — The period of prescription for obligations resulting from a final judgment or from an award of an arbitrator is ten years~~, whatever the original cause of action may have been.~~

ILLUSTRATION. — On the 3rd of June 2455 A, a contractor, becomes creditor of B for 500 baht on the ground of hire of work. The period of prescription is 2 years (under Section 383 6°) and would be completed on the 3rd. of June 2457. [149]

B having failed to perform his obligation, A enters an action in Court against B. Judgment is given in favour of A with costs, and becomes final on the 10th. of April 2457. B's obligations, as embodied in the judgment, shall not be extinguished by prescription until the 10th of April 2467.

387. — The period of prescription for obligations for which no other period of time is provided by law is ten years.

DIVISION VII. — SPECIFIC CONTRACTS. [150]

TITLE I.
SALE.

CHAPTER I.
NATURE AND ESSENTIALS OF THE CONTRACT OF SALE.

[Part] I. — GENERAL PROVISIONS.

388. — Sale is a contract whereby a person[,] called the seller[,] agrees to tran[s]fer to another person[,] called the buyer[,] the ownership of property, and the buyer agrees to pay to the seller a price for it.

389. — The property sold may be:

1) A specific property ~~such as a house, or an elephant, or a boat~~, or

2) A divided or undivided part of a specific property, or

3) A property *in genere*, ~~such as paddy, coal, kerosine,~~ or

4) A right.

ILLUSTRATION. — I. — A sells to B the piece of land which A has in Samsen. A sells a specific property. [151]

II. — A sells to B a part of A's piece of land, such part being measured and its limits described. A sells a divided part of a specific property.

III. — A being entitled by inheritance to one half of a piece of land sells such half to B before such half be measured and its limits described. A sells an undivided part of a specific property.

IV. — A sells to B ten kwiens of paddy to be taken out of A's stock of paddy. A sells a property determined only as to its kind or property in genere. If the ten kwiens are measured and placed apart in a boat or in any other place, they become a specific property.

V. — A owes 1,000 baht to B, balance due for goods sold on credit. A being momentarily unable to pay, B who is in want of money agrees with C that C shall pay to B at once 750 baht and shall recover later on at his own risk and benefit the 1,000 baht due by A to B. B sells to C a right against A.

390. — The time of the completion of the contract of sale is referred hereafter as the time of the sale.

391. — A sale of immovable property is void unless made in accordance with the laws and regulations relating thereto.

The same rule applies to 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.

392. — Costs of a contract of sale must be borne by both parties equally. [152]

[Part] II. — TRANSFER OF OWNERSHIP.

393. — The ownership of the property sold is transferred from the seller to the buyer when the contract of sale is complete.

ILLUSTRATION. — I.— On the 6th. of May A agrees to sell his carriage to B and B agrees to pay 500 baht for it. The ownership of the carriage is transferred from A to B on the 6th. of May.

II .— A enters the shop of B and selects some goods in it. B agrees to send the goods to A and A agrees to pay the price later on. From the moment when A and B have agreed on the goods to be sold and on the price to be paid, the ownership of the goods is transferred from B to A.

III. — On the 10th of April A agrees to sell his paddy land to B and B agrees to pay 10,000 baht for it. The parties have their contract made in writing before the Amphure on the 15th. of April. The ownership of the paddy land is transferred from A to B on the 15th. of April.

394. — If a contract of sale is subject to a condition or to a time clause, the ownership of the property is not transferred until the condition is fulfilled or the time has arrived.

ILLUSTRATION. — I. — A. an official living in Korat and expecting to be appointed in Bangkok, agrees to buy the house which B owns in Bangkok, subject to the condition that A shall be appointed in Bangkok. The ownership of the house is transferred from the moment when A is appointed in Bangkok. [153]

II. — A agrees to buy from B a motor car which B has ordered from Europe. It is agreed that the sale shall be valid only on the motor car being landed in Bangkok. The ownership of the car is transferred from B to A from the moment when the car is landed.

395. — In case of sale of a property *in genere*, the ownership is not transferred until the property has been numbered, counted, weighed, measured, or selected or its identity has been otherwise rendered certain.

ILLUSTRATION. — 1. — A sells to B ten kwiens of paddy to be taken out of a cargo lying on the river. The ownership of the paddy is not transferred to B until the ten kwiens of paddy have been measured and put apart.

II. — A sells to B ten kwiens of paddy being the cargo of the paddy boat No. 150 lying on the river. The ownership of the paddy is transferred to B on the contract being made.

[Part] III. — PROMISE OF SALE.

396. — A promise of sale is a contract whereby one party agrees to sell or to buy a property, and the other party agrees that he will at his discretion either complete or not complete the sale. [154]

See Illustration under Section 398

397. — If the other party notifies his intention to complete the sale, the promise of sale has the effect of a contract of sale as soon as the notification reaches the first party.

See Illustration under Section 398.

398. — If no time is fixed for the notification, the party who made the promise can fix a reasonable time and call upon the other party to answer within that time whether he will complete the sale or not.

If he does not answer within that time, the contract is extinguished.

ILLUSTRATION (Sections 396, 397 and 398). — A Rubber Company wants to buy the rubber plantation of A. Before submitting the scheme to the shareholders, the directors would like to know for certain which price A would ask for his plantation. They approach A. On the 1st. of May 2456 they make a contract whereby A gives the Company the option to buy A's plantation for 20,000 baht, provided that the Company shall notify A on or before the 31st. of August 2456, whether they buy the plantation or not. This is a promise of sale.

The shareholders having approved the scheme, the directors notify A on the 16th. of August 2456 that they will complete the sale and they execute a contract of sale in writing before the proper official on the same day. The sale is complete from the 16th. of August. [155]

If the shareholders do not approve the scheme and no notification is made to A within the specified period, A's promise of sale falls to the ground and A is no more bound by it.

If no time was fixed for the notification, A may, say in July 2456, call upon the directors to let him know on or before the 30th. of September whether the Company will complete the sale or not. If the directors do not answer on or before the 30th. of September, the promise of sale falls to the ground and A is no more bound by it.

CHAPTER II.
DUTIES AND LIABILITIES OF THE SELLER.

[Part] I. — DELIVERY.

399. — The seller is bound to deliver to the buyer the property sold.

400. — Delivery may be made by doing anything which has the effect of putting the property at the disposal of the buyer.

ILLUSTRATION. — I. — A sells to B certain specific goods which are in the godown of C. A gives B the godown receipt which enables B to get the goods. This is a delivery. [156]

II. — A sells to B an empty house. A gives B the keys of the house. This is a delivery.

III. — A sells to B a house which is occupied by A's children. A gives B the keys of the house, but does not cause his children to leave the house. This is not a delivery.

401. — If the contract provides that the property sold shall be forwarded from one place to another, delivery takes place at the moment when the property is delivered to the carrier.

ILLUSTRATION. — B, at Ayuthia, orders from A, a merchant in Bangkok, two bales of piece goods to be sent to him by railway. Delivery to B takes place when A delivers the bales to the Bangkok railway station.

402. — The property sold must be delivered in such condition as it was at the time of the sale.

ILLUSTRATION. — On the 10th. of May 2455 A buys B's ship which is provided with all the necessary sails. B must deliver the ship as it was at the time of the sale ; for instance, B would not remove the sails before delivery.

But as the ownership is transferred to A from the time when the contract of sale is complete [157]
(Section 393), B is not responsible for any damage caused by force majeure; for instance B would not be responsible if the sails were torn away by a gale before delivery takes place.

403. — When there is no time clause for payment of the price, the seller is entitled to retain the property sold until the price is paid.

404. — Even when there is a time clause for the payment, the seller is entitled to retain the property if the buyer either becomes bankrupt before delivery, or was bankrupt at the time of the sale without the seller knowing thereof, or impairs or reduces the securities given for payment.

405. — When the property is retained, the buyer may at any time apply to the Court for an order to deliver the property, on the buyer giving security for the payment of the price.

406. — When the buyer is in default, the seller who retains the property under the foregoing sections can, instead of using the ordinary remedies for non-performance, notify the buyer by registered letter to pay the price and accessories, if any, within a reasonable time to be fixed in the notice.

If the buyer fails to comply with the notice, the seller can sell the property by public auction.

407. — The seller must forth with deduct from the nett proceeds of the [158]
public auction the price and accessories due to himself and deliver the surplus, if any, to the buyer.

[Part] II. — LIABILITY FOR DEFECTS.

408. — In case of defect existing in the property sold and impairing either its value or its fitness for ordinary purposes or for the purposes

appearing from the contract, the buyer has the remedies described in this Code concerning non-performance.

The foregoing provision applies whether the seller knew or did not know of the existence of the defect.

409. — The seller is not liable in the following cases:

1) Whenever the buyer knew of the defect at the time of the sale, or would have known of it if he had exercised such care as may be expected from a person of ordinary prudence.

2) If the defect was apparent at the time of the delivery, and the buyer accepted the property without reservation.

3) If the property was sold by public auction.

ILLUSTRATION. — I. — A is leasing a house from B and is living in it. A knows that the roof of the house is leaking, B wants to sell the house. A buys it. B is not liable for the defective condition of the roof, because A knew of the defect at the time of the sale.

II. — A advertises in the papers that he has a carriage for sale for 500 baht. B writes to A that he buys the carriage. On delivery B finds that the hood is in bad condition. A is not liable because if B had exercised such care as may be expected from a person of ordinary prudence he would have examined the carriage before buying it. [159]

III. — A sells a pony to B. The pony is brought to B for delivery. It then appears that the pony is lame. B accepts the pony and takes delivery without making any reservation. A is not liable because the defect was apparent at the time of delivery and no reservation was made.

410. — The liability for a defect is extinguished by prescription one year after the discovery of the defect.

411. — When the seller is liable for defects in the property sold, the buyer is entitled to withhold such part of the price as has not yet been paid to the seller provided that the seller may at any time apply to the Court for an order either:

1) Restricting the exercise of this right to such part of the price as the Court may deem sufficient to cover any restitution or compensation which may become due from the seller to the buyer, or

2) Ordering the buyer to pay the price on the seller giving security for ultimate restitution or compensation.

[Part] III. — LIABILITY FOR EVICTION.

412. — The seller is liable for the consequences of any disturbance caused to the peaceful possession of the buyer by any person having over the property sold a right existing at the time of the sale or derived from the seller after that time. [160]

ILLUSTRATION. — A sells a house to B on the 1st, of August 2455. B takes possession of the house. On the 1st. of October 2455, C comes in and produces a lease executed before the proper official on the 1st of June 2455 by which A leases the house to C for the period extending from the 1st. of October 2455 to the 30th. of September 2456. C accordingly takes possession of the house for one year. A is liable to B for the consequences of such disturbance.

413. — The seller is not liable for a disturbance caused by a person whose rights were known to the buyer at the time of the sale.

ILLUSTRATION. — A sells a house to B on the 1st. of August 2455. B is aware that the house has been let by A to C for the period extending from October 2455 to September 2456. If C comes and takes possession of the house, B has no remedy against A because the rights of C were known to B at the time of the sale.

414. — In any cases of disturbance where an action arises between the buyer and a third person, the buyer is entitled to summon the seller to appear in the action to be joint defendant or joint plaintiff with the buyer.

415. — The seller is also entitled, if he thinks proper, to intervene in the action in order to deny the claim of the third person. [161]

416. — Whenever the seller is a party to the action the Court shall give judgment deciding on the merits of the case between the buyer and the third person and on the liability of the seller to the buyer.

417. — If in consequence of a claim of a third person the buyer is deprived of the whole of the property sold, he is said to suffer total eviction.

If the buyer is deprived of part of the property sold, or if the property is declared to be subject to a right, the existence of which impairs its value or fitness, the buyer is said to suffer partial eviction.

ILLUSTRATION. — I. — A sells his house to B. Before B takes possession of the house, A sells it to C. C takes possession. B comes in and ejects C from the house. C suffers total eviction.

II. — A leaves his house to B for one year and afterwards sells it to C, concealing to C that the house was let. When C comes to take possession of the house, he finds that B is living in it and will not leave it before several months. C suffers partial eviction.

418. — Whenever the seller is liable for total or partial eviction the buyer has the remedies described in this Code concerning non-performance.

419. — If immovable property is declared to be subject to a servitude established by law, the seller is not liable unless he has expressly guaranteed that the property was free from servitudes or from that particular servitude. [162]

ILLUSTRATION. — 1. — A and B have two adjoining pieces of land. There is no way out of B's land except through the land of A. A sells his land to C. who is unaware of the right of way of B. No clause for guarantee is inserted in the contract of sale. B claims his right of way and gets an order of the Court granting his claim. C has no remedy against A because the right of way is inherent in the position of the land.

II. — If A had guaranteed that the land was free from servitudes or free from rights of way, A should be liable to C for partial eviction.

420. — If an action in connection with a claim of a third person is entered, the buyer is entitled to withhold the price as provided by Section 411.

421. — If the seller was not a party to the original action, or if the buyer has made a compromise with the third person, or has yielded to his claim, the liability of the seller is extinguished by prescription three months after final judgment in the original action, or after the date of the compromise, or of the yielding to the third person.

ILLUSTRATION. — A sells his house to B in April 2455 but B does not occupy it. In May 2455 A sells the same house to C and delivers it to C on the 15th. of June 2455, B comes to C, produces his deed of sale and asks for delivery of the house. Three cases may happen: [163]

a) C refuses to deliver the house, B enters a case against C, A does not join in the action. B gets a judgment in his favour. The judgment becomes final on the 15th. of January 2455. The right of C to claim compensation for eviction from A is extinguished by prescription on the 15th. of April 2456.

b) On the case being entered against him C comes to an understanding with B. C agrees to deliver the house to B on payment of a compensation. The compromises is made on the 1st. of July 2455. The right of C to claim compensation for eviction from A is extinguished by prescription on the 1st. of October 2455.

c) On B coming and producing his deed of sale, C finds that it is useless to deny B's claim and at once delivers the house to B. The right of C to claim compensation for eviction from A is extinguished by prescription on the 15ih. of September 2455.

422. — The seller is not liable for eviction in the following cases:

1) If no action was entered and the seller proves that the rights of the buyer were lost on account of the fault of the buyer, or

2) If the buyer did not summon the seller to appear in the action, and the seller proves that he would have succeeded in the action if summoned to appear, or

3) If the seller appeared in the action, but the claim of the buyer was dismissed on account of the fault of the buyer. [164]

In any case the seller is liable whenever he is summoned to appear in the action and refuses to take the part of the buyer as joint defendant or joint plaintiff.

ILLUSTRATION. — A buys from B a house. C claims the house by virtue of a titledeed. It appears that originally C was the lawful owner of the house and B had no right over it: but C abandoned the house and B became owner by way of usucapion. Three cases may happen:

I. — A restores the house to C before any action for ejectment be entered by C and claims compensation from B. B proves that C's rights were really extinguished because B has become owner and that A lost his rights by omitting to make such objection to C. B is not liable to A.

II. — Centers an action against A. A does not summon B to appear in the action and omits to argue that B's rights are acquired by usucapion. Judgment is given against A, who is ejected from the house. A claims compensation from B. B proves that C's rights were really extinguished and that A omitted to object it to C. B is not liable to A.

III. — C enters an action against A. A summons B to appear in the action as joint defendant. A and B agree that A shall give evidence to the Court that B's right is acquired by usucapion. A, by his own negligence, omits to give such evidence. Judgment is given in favour of C and A is ejected from the house. A claims compensation from B. B proves the facts stated above. B is not liable to A.

[Part] IV. — CLAUSE FOR NON-LIABILITY. [165]

423. — The parties to a contract of sale can agree that the seller shall not incur any liability on account of the sale.

424. — If the consequences of a non-liability clause are not specified, such clause does not exempt the seller from reimbursing the price.

ILLUSTRATION. — A sells to B a house for 10,000 baht with a non-liability clause. Subsequently, C claims the house by virtue of a right which existed at the time of the sale. B is ejected from the house. B can claim the return of the 10,000 baht, but he is not entitled to compensation for any other injury resulting from the eviction.

If the parties have agreed that the non-liability clause should exempt A from refunding the price, B would not get back his 10,000 baht.

425. — A non-liability clause cannot exempt the seller from the consequences of:

1) Facts which he knew at the time of the sale and concealed.

2) Rights which he created in favour of, or transferred to, third persons subsequently to the sale.

CHAPTER III. [166]

DUTIES OF THE BUYER.

426. — The buyer is bound to take delivery of the property sold and to pay the price according to the provisions of this Code concerning performance.

427. — The price of the property sold may be either fixed by the contract or inferred from the clauses of the contract or from the

circumstances of the case.

428. — Tender of security is not equivalent to payment of price.

CHAPTER IV.
OF SOME PARTICULAR KINDS OF SALES.

[Part] 1. — SALE WITH RIGHT OF REDEMPTION.

429. — Sale with right of redemption is a contract of sale whereby the ownership of the property sold passes to the buyer subject to a special agreement that the seller can redeem that property.

430. — If the property is not redeemed within the period fixed by the contract or by law, its ownership is deemed to have been vested in the buyer from the time of sale. [167]

431. — The parties may agree that the buyer shall not dispose of the property sold. If he disposes of it contrary to his obligation, he shall be liable to the seller for any injury resulting thereby.

~~339~~[432] — If a sale with right of redemption refers to immovable property it is void unless made in writing in the presence of and registered by the proper official.

The same rule applies to 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.

433. — The right of redemption cannot be exercised later than:

1) Ten years after the time of the sale in case of immovable property or of movable structures sold with the land on which they are erected.

2) One year after the time of the sale in case of movable property.

434. — If a longer period is provided in the contract, it shall be reduced to ten years and one year respectively.

435. — If a shorter period than ten years or one year is provided in the contract, the time cannot be afterward extended. [168]

436. — The right of redemption may be exercised only by:

1) The original seller or his heirs, or

2) The transferee of the right, or

3) Any person expressly allowed to redeem by the contract.

437. — The right of redemption may be exercised only against:

1) The original buyer or his heirs, or

2) The transferee of the property or of a right on the property, provided that, in case of movable property, he knew at the time of transfer that such property was subject to a right of redemption.

438. — If no price of redemption is fixed, the property may be redeemed by reimbursing the price of the sale.

439. — Costs of the sale borne by the buyer must be reimbursed together with the price.

Costs of redemption must be borne by the person who redeems.

440. — The property must be returned in the condition in which it is at the time of redemption. [169]

441. — The person who redeems the property recovers it free from any rights created by the original buyer or his heirs or transferees before redemption, provided that any lease made by them in writing shall remain valid for not more than one year after the redemption.

[Part] II. — SALE BY SAMPLE. — SALE ON APPROVAL.

442. — In a sale by sample, the seller is bound to deliver property or properties corresponding to the sample.

If the sample is lost or damaged, the burden of proof that the property delivered does not correspond to the sample lies on the buyer.

443. — The liability on account of non-correspondence to the sample is extinguished by prescription one year after delivery.

444. — A sale on approval is a sale made on condition that the buyer shall have the opportunity to examine the property before acceptance.

445. — If no time is fixed for the examination of the property, the seller can fix a reasonable time and notify the buyer to answer within that time whether he accepts the property or not. [170]

446. — If the property is to be examined by the buyer before delivery and the buyer does not accept it within the time fixed by the contract or by

the notification, the contract is extinguished.

447. — When the property has been delivered to the buyer in order that he may examine it, the sale is complete in the following cases:

1) If the buyer does not notify his refusal within the time fixed by the contract or by the notification, or

2) If the buyer does not return the property within that time, or

3) If the buyer after delivery pays the price or part of it, or

4) If the buyer disposes of the property or uses it otherwise than for the purpose of examining it.

[Part] III. — SALE BY NUMBER, QUANTITY, WEIGHT OR MEASURE.

448. — A sale by number, quantity, weight or measure is a sale where no total price is fixed, but the property is sold at so much per unit.

449. — If a property is sold at so much per unit and the total amount of such property is specified in the contract, the following rules shall apply in case of deficiency or excess. [171]

450. — Sale of immovable property.

In case of deficiency or excess not exceeding five per cent of the total area specified in the contract, the buyer is bound to accept the property and pay the proportionate price at so much per unit.

In case of deficiency or excess exceeding five per cent, the buyer has the option either to accept the property and pay the proportionate price, or to claim cancellation of the contract.

451. — Sale of movable property:

In case of deficiency the buyer is bound to accept the property and pay the proportionate price, provided that the buyer can claim cancellation of the sale if the deficiency is such as would have prevented him from entering the contract.

In case of excess the buyer is entitled to refuse the surplus, but if he accepts it, he is bound to pay the proportionate price for it.

452. — The liability on account of deficiency or excess is extinguished by prescription one year after delivery.

[Part] IV. — SALE BY AUCTION. [172]

453. — A sale by auction is complete when the auctioneer announces its completion by the fall of the hammer or in any other customary manner.

454. — A buyer at a sale by auction is bound by the clauses of the notice advertising the sale and by any other statements made by the auctioneer before opening the bidding for each particular lot.

455. — The auctioneer cannot bid at an auction conducted by himself.

456. — The seller cannot bid or employ any person to bid, unless it be expressly stated in the advertisement of the auction that he has such right.

The seller within the meaning of this section is the person whose property is sold.

457. — The auctioneer can withdraw property from the auction whenever he thinks that the highest bid is insufficient.

458. — A bidder ceases to be bound by his bid as soon as a higher bid is made, whatever be the validity of such higher bid, or as soon as the lot is withdrawn from the auction.

459. — The highest bidder must pay the price in ready money on the completion of the sale, or at the time fixed by the notice advertising the sale. [173]

460. — If the highest bidder fails to pay the price, the auctioneer shall resell the property. If the nett proceeds of such sale do not cover the price and costs of the original auction, the original bi~~d~~[d]der is liable for the difference.

461. — The auctioneer is liable for any part of the proceeds of an auction which remains unpaid owing to his failure to enforce the provisions of Section~~s~~ 459 or 460.

TITLE II.
EXCHANGE.

462. — Exchange is a contract whereby each party agrees to transfer to the other party the ownership of properties other than money.

463. — The provisions of Title I concerning sale apply to exchange, each party to a contract of exchange being considered as a seller with regard to the property delivered in exchange, and as a buyer with regard to the property received in exchange.

464. — If one party to a contract of exchange agrees to transfer to the other party money in addition to other property, the provisions of Title I concerning price shall apply to such money. [174]

TITLE III.
GIFT.

465. — A contract of gift is a contract whereby a person, called the donor, agrees to transfer gratuitously a property of his own to another person, called the donee, and the donee agrees to accept such property.

466. — A gift may be made by granting to the donee a release of an obligation or by performing an obligation due by the donee.

467, — A renunciation by an heir to an inheritance or to a share in an inheritance is not a gift made to the other heirs.

468. — A gift of property the sale of which is subject to the execution of an official document is void unless made in writing before the proper official.

469. — If a gift has been made in writing before the proper official and the donor does not deliver to the donee the property given, the donee is entitled to claim the delivery of it or its value, but he is not entitled to any additional compensation. [175]

470. — A gift of property the sale of which is not subject to the execution of an official document is complete only on delivery of the property given.

471. — If it is agreed that the delivery of the property given shall be made by instalments, the donor can at any time determine the gift as to any future instalment.

Such gift is also extinguished as to any further instalment on the death of the donor.

ILLUSTRATION. — A has agreed to made to B a gift of 30 shares in the "Siam so and so Co." It has been provided that he shall deliver 10 shares on the 1st. of April of each year during three successive years. A delivers 10 shares on the 1st. of April 2454. He then makes up his mind to determine the gift for the future. B has no claim to the undelivered shares. B has likewise no claim to the undelivered shares if A dies.

472. —The donor is not liable for injury caused to the donee by defects existing in the property given, unless at the time of the contract he knew and concealed from the donee that such property was likely to cause injury.

473. — The donor is not liable for injury caused to the donee by [176]

eviction as described in Section 417 concerning sale, unless, at the time of the contract, he knew and concealed from the donee the reason for such eviction.

474. — Whenever the donor is liable for injury caused to the donee by defects existing in the property given or by eviction, the provisions of Section[s] 410, 414, 415 416 and 419 concerning sale apply *mutatis mutandis*.

475. — If the gift is made on condition that the donee shall make a prestation to the donor or to a third person the gift is said to be subject to a charge.

476. — If the donee fails to perform the charge the donor is entitled to claim cancellation of the gift.

477. — If the charge is to be performed to a third person, and the donee fails to perform it, the third person is entitled to claim performance.

478. — If the charge is for the benefit of the public, the Government is entitled to claim its performance.

479. — If the property given is not sufficient to perform the charge, the donee is bound to perform it only as far as the value of the property allows.

ILLUSTRATION. — A has given a house to B on condition that B shall pay 10,000 baht to C. After the gift is completed, B refuses to pay on the ground that the house is not worth 10,000 baht. A valuation takes place; the house is valued at 7,000 baht. B is not liable to pay more than 7,000 baht. **[177]**

480. — If the gift is subject to a charge, the liability of the donor for defects or eviction is the same as that of a seller, up to the amount of the charge only.

481. — If the donee is convicted by a final judgment of having intentionally and unlawfully caused the death of the donor, the heirs of the donor are entitled to claim cancellation of the gift by the Court.

482. — The right of the heirs to claim cancellation is extinguished by prescription six months after final judgment.

483. — If the donee intentionally and unlawfully attempts to cause the

death of the donor, the donor is entitled to claim cancellation of the gift by the Court.

484. — The heirs of the donor can exercise the action described in Section 483 unless the donor has forgiven the offence.

485. — The right of the heirs to claim cancellation is extinguished by prescription six months after the date of the death of the donor. [178]

No action can be entered later than ten years after the attempt.

486. — A gift to take effect at the death of the donor is governed by the provisions of law concerning inheritance and wills.

TITLE IV.
HIRE OF PROPERTY.

CHAPTER 1.
GENERAL PROVISIONS.

487. — A contract of hire of property or a lease is a contract whereby a person, called the lessor, agrees to let another person, called the lessee, have the use or profits of the property for a limited period of time, and the lessee agrees to pay therefor a remuneration called rent.

488. — A lease of immovable property is void unless made in writing.

If the lease is for more than three years, it is void unless also registered by the proper official.

489. — Costs of a contract of hire must be borne by both parties equally. [179]

490. — The rent may consist of money or other properties, or of a share in the fruits and profits of the property hired.

491.— No lease may be made for a period exceeding twenty years, provided that an existing lease may be renewed for a period not exceeding twenty years after the date of renewal.

ILLUSTRATION. — In the year 2430 A leases a house to B for a period of 20 years extending from the 1st. of April 2431 to the 31st. of March 2450. On the 1st. of January 2448 A and B make a renewal of the lease for another period of 20 years. The second period shall not extend from the 1st. of April 2451 (date of expiration of the original lease) to the 31st. of March 2470. It shall extend from the 1st of January 2448 (date of renewal) to the 31st. of December 2468.

492. — Leases made or renewed for more than twenty years are valid for twenty years only.

493. — A lease may be made for the duration of the life of the lessor or of the lessee.

494. — When several persons claim the same movable property under different leases, the lessee who has first taken possession of the property by virtue of his 1ease shall be preferred. [180]

495. — When several persons claim the same immovable property under different leases:

1) if none of the leases is required by law to be registered, the lessee who has first taken possession of the property by virtue of his lease shall be preferred:

2) if all the leases are required by law to be registered the lessee whose lease was first registered shall be preferred;

3) if there is a conflict between a lease which is required by law, and a lease which is not required by law, to be registered, the lessee whose lease has been registered[,] shall be preferred unless the other lessee has taken possession of the property by virtue of his lease before the date of registration.

CHAPTER II.
DUTIES AND LIABILITIES OF THE LESSOR.

[Part] 1. — DELIVERY AND REPAIR.

496. — Delivery of the property hired is governed by the provisions of this Code concerning sale.

497. — The lessor is bound to deliver the property hired in such a condition as renders it fit for ordinary purposes or for the purposes appearing from the contract. [181]

ILLUSTRATION. — I. — A hires a motor car from B for daily use in Bangkok. The car is brought every morning from B's garage to A's house and driven back to the garage every night. A can require that the tyres of the car be every morning in such a condition as renders them fit for the ordinary daily use.

II. — A hires a motor car from B in order to drive by road from Alor Star to Singora and back. A can require that when the car is delivered to him the tyres be in such condition as renders them fit for the whole journey.

498. — The lessor is bound to keep the property hired in good order and repair during the continuance of the contract.

In case of houses or other buildings, this includes at least the repairing of the roofs, timber, walls and floors, and the repainting of the inside and outside at reasonable intervals.

499. — The lessor is bound to reimburse to the lessee any necessary expenses incurred by him for the preservation of the property hired, except expenses for ordinary maintenance and petty repairs.

ILLUSTRATION. — A leases a house from B. During the rainy season A finds that the roof is leaking and that leakage may spoil the house. B is absent. A has the roof repaired. B is bound to reimburse to A the expenses which he has incurred in repairing the roof. [182]

500. — In case of delivery in unsuitable condition, the lessee may determine the contract.

[Part] II. — LIABILITY FOR DEFECTS.

501. — In case of a defect existing in the property hired and impairing its fitness for ordinary purposes or for the purposes appearing from the lease, the lessee may determine the contract.

The foregoing provision applies whether the lessor knew or did not know of the existence of the defect.

A property hired which is not kept in good order and repair is a defective property within the meaning of this section.

502. — The lessor is not liable in the following cases:

1) Whenever the lessee knew of the defect at the time of the lease or would have known of it if he had exercised such care as may be expected from a person of ordinary prudence.

2) Whenever the defect was apparent at the time of the delivery, and the lessee has taken delivery of the property without reservation.

ILLUSTRATION. — I. — A is leasing a house from B. C is living in the house with A. C knows that the ground floor of the house is damp and that it cannot be used. A leaves the house and C leases it from B. B is not liable for the defective condition of the ground floor, because C knew of the defect at the time of the hire. [183]

II. — A advertises in the papers that he has a carriage for hire at so much per month. B writes to A that he hires the carriage. On delivery B finds that the hood is in bad condition. A is not liable because if B had exercised such care as may be expected from a person of ordinary prudence, he would have examined the carriage before hiring it.

III. — B hires a pony from A. The pony is brought to B for delivery. It then appears that the pony is lame. B accepts the pony and takes delivery without making any reservation. A is not liable because the defect was apparent at the time of delivery and no reservation was made.

503. — If the defect is not such as would deprive the lessee of the use and profits of the property hired, and can be remedied by the lessor, the lessee must first notify. the lessor to make it good. If the defect is not made good within a reasonable time, the lessee may determine the contract.

504. — If there is a deficiency in the area stipulated for in a lease of

garden land or of a paddy field, the following rules shall apply:

In case of deficiency not exceeding twenty five per cent, the lessee is only entitled to a proportionate reduction of rent.

In case of deficiency exceeding twenty five percent, the lessee has the option either to have the rent reduced proportionately, or to determine the contract. [184]

505. — The liability for a defect is extinguished by prescription two years after the discovery of the defect provided that it shall always be extinguished six months after the extinction of the lease.

[Part] III. — LIABILITY FOR EVICTION.

506. — The lessor is liable for the consequences of any disturbance caused to the peaceful possession of the lessee by any person having a right over the property hired.

507. — The lessor is not liable for a disturbance caused by a person whose rights were known to the lessee at the time when the lease was made.

508. — In any case of disturbance where an action arises between the lessee and a third person, the lessee is entitled to summon the lessor to appear in the action to be joint defendant or joint plaintiff with the lessee.

509. — The lessor is also entitled, if he thinks proper, to intervene in the action in order to deny the claim of the third person.

510. — Whenever the lessor is a party to the action, the Court shall give judgment deciding on the merits of the case between the lessee and the third person, and on the liability of the lessor to the lessee. [185]

511. — If, in consequence of a claim of a third person, the lessee is deprived of the whole of the property hired, he is said to suffer total eviction.

If the lessee is deprived of part of the property hired, or if the property is declared to be subject to a right the existence of which impairs its fitness, the lessee is said to suffer partial eviction.

512. — Whenever the lessor is liable for total or partial eviction, the lessee may determine the contract.

513. — If immovable property is declared to be subject to a servitude

established by law the lessor is not liable unless he has expressly guaranteed that the property was free from servitudes or from that particular servitude.

514. — If the lessor was not a party to the original action, or if the lessee has made a compromise with the third person, or has yielded to his claim, the liability of the lessor is extinguished by prescription three months after final judgment in the original action, or after the date of the compromise, or of the yielding to the claim of the third person.

515. — The lessor is not liable for eviction in the following cases: [186]

1) If no action was entered and the lessor proves that the rights of the lessee were lost on account of the fault of the lessee.

2) If the lessee did not summon the lessor to appear in the action, and the lessor proves that he would have succeeded in the action if summoned to appear.

3) If the lessor appeared in the action, but the claim of the lessee was dismissed on account of the fault of the lessee.

In any case the lessor is liable whenever he is summoned to appear in the action and refuses to take the part of the lessee as joint defendant or joint plaintiff.

ILLUSTRATION. — A hires from B a house. C claims the house by virtue of a title deed. It appears that originally C was the lawful owner of the house and B had no right over it, but C abandoned the house and B has acquired it by way of usucapion. Three cases may happen:

I. — A restores the house to C before any action for ejectment be entered by C and claims compensation from B. B proves that C's rights were really extinguished and that A lost his rights by omitting to make such objection to C. B is not liable to A.

II. — C enters an action against A. A does not summon B to appear in the action and omits to argue that C's . rights are extinguished. Judgment is given against A, who is ejected from the house. A claims compensation from B. B proves that C's rights were extinguished and that A omitted to object it to C. B is not liable to A.

III. — C enters an action against A. A summons B to appear in the action as joint defendant. A and B agree that A shall produce to the Court evidence which can prove that C's rights are extinguished. A, by his own negligence, omits to bring such evidence. Judgment is given in favour of C and A is ejected from the house. A claims compensation from B. B proves the fact stated above. B is not liable to A. [187]

[Part] IV. — CLAUSE FOR NON-LIABILITY.

516. — Non-liability in matter of hire of properties is governed by the provisions of this Code concerning sale.

CHAPTER III.
DUTIES AND LIABILITIES OF THE LESSEE.

517. — The lessee cannot use the property hired for purposes other than ordinary purposes or purposes appearing from the contract.

518. — The lessee is bound to take as much care of the property hired as a person of ordinary prudence would take of his own property.

519. — Ordinary maintenance and petty repairs shall be borne by the lessee.

520. — If the lessee uses the property hired contra to the provisions of Sections 517, 518 or 519, or contra to the terms of the contract, the lessor may notify the lessee to comply with such provisions or terms, and if the lessee fails to comply with such notice, the lesson may determine the contract. [188]

521. — The lessee of a paddy field who has not paid the rent in advance must begin work on that field at such time as is customary.

522. — The lessee is bound to allow the lessor or his agents to inspect the property hired at reasonable times and intervals.

523. — The lessee is bound to allow the lessor to do whatever is necessary for keeping the property in good order and repair and for its preservation, provided that if the lessee is deprived thereby of the use or profits of the property hired he is entitled either to determination of the lease or to a decrease of rent proportionate to the period of deprivation.

524. — In any of the following cases:

1) If the property hired is in need of repairs by the lessor, or

2) If a preventive measure is required for avoiding a danger, or

3) If a third person encroaches on the property hired or claims a right over it,

the lessee shall forth with inform the lessor of the occurrence, unless the lessor already has knowledge of it.

If the lessee fails to inform the lessor, the lessee is liable to the lessor for any injury resulting from the delay. [189]

525. — The lessee may not make any alteration in, or addition to, the property hired without the permission of the lessor.

See Illustration under Section 527.

526. — If the lessor has granted permission to the lessee to make alterations or additions, the lessee is entitled, at the extinction of the lease, to reimbursement of his expenses up to the amount of the increase in value which the property is still deriving from the additions or alterations.

See Illustration under Section 527.

527. — If the lessee makes additions or alterations without the permission of the lessor, he is not entitled to reimbursement, but he is allowed, at the extinction of the lease, to take away whatever he added to the property, provided that he puts [the] property in its former condition.

If it is impossible to put the property in its former condition or the property would be damaged thereby, the property must be restored with the alterations or additions, and no compensation therefor shall be due to the lessee. [190]

ILLUSTRATION (Sections 525, 526 and 527). — A has hired a house and its appurtenances from B. A may not change the partitions in the house or build a motor garage in the compound without B's permission.

I. — If B has granted permission to build a motor garage in the compound, A is entitled, at the extinction of the lease, to reimbursement of his expenses up to the amount of the increase of value which the property is still deriving from the new building, that is to say:

a) If 300 baht have been expended and the increase of value is 300 baht or more, A is entitled to reimbursement of 300 baht.

b) If 300 baht have been expended and the increase of value is 200 baht only, A is entitled to reimbursement of 200 baht.

II. — If B has not granted permission to build a motor garage in the compound, but A has nevertheless built such motor garage, A is entitled to no reimbursement, but he is allowed, at the extinction of the lease, to take away the motor garage, provided that he puts the compound in its former condition.

If A had painted the house without B's permission A would likewise be entitled to no reimbursement, but he could not take away the painting because the house would be damaged thereby.

528. — If no time for payment of rent is fixed by the contract or by custom, the rent must be paid at the end of each period for which it is stipulated, that is to say: if a property is leased at so much per year, the rent is payable at the end of each year; if a property is leased at so much per month, the rent is payable at the end of each month. [191]

529. — In case of non-payment of rent, the lessor may determine the contract.

But, if the rent be payable monthly or at longer intervals, the lessor must first notify the lessee to pay it within a period of not less than fifteen days.

530. — At the determination or extinction of the lease, the lessee is bound to restore the property hired.

He is liable for any loss or damage caused during the continuance of the lease by his own fault or by the fault of the persons who are living with him.

He is not liable for loss or damage resulting from the agreed or lawful use of the property hired.

531. — If no written description of the condition of the property hired has been made and signed by both parties, the lessee is presumed to have received the property hired in good order and repair.

532. — The obligations incurred by the lessee towards the lessor in connection with the lease are extinguished by prescription six months after the restoration of the property hired.

533. — The outgoing lessee of agricultural land bound, in so far as he does not suffer any injury thereby to allow the incoming lessee to prepare the land for planting. [192]

CHAPTER IV.
EXTINCTION OF THE LEASE.

534. — A lease is extinguished at the end of the agreed period without notice.

535. — A lease of garden land is presumed to be made for one year.

A lease of paddy land is presumed to be made for the agricultural year.

536. — If no period is agreed upon or presumed, either party can determine the lease at the end of each period of payment of rent, provided that such party gives notice to the other of at least one rent period.

In no such case need more than two months notice be given.

537. — If the whole of the property hired is lost, the lease is extinguished.

538. — If part only of the property hired is lost, the Court may, according to the circumstances of the case, either determine the lease or reduce the rent proportionately. [193]

539. — A lease is not extinguished by the transfer of the ownership of the property hired.

The transferee is entitled to the rights and is subject to the duties of the transferor towards the lessee.

540. — A lease is not extinguished by the death of the lessor.

541. — A lease may be determined at the death of the lessee by the lessor or the heirs of the lessee giving notice as provided in Section 536[,] provided that such notice be not given later than two months after the death of the lessee.

542. — If after the lease is determined or extinguished the lessee remains in possession, and the lessor knowing thereof does not object, the lease is deemed to have been renewed upon the conditions described in Section 536.

543. — If a lease of paddy land is extinguished, determined or cancelled after the lessee has planted the paddy, the lessee is entitled to remain in possession till the harvest is finished, on paying the rent.

CHAPTER V. [194]

TRANSFER OF LEASE AND SUBLEASE.

544. — Unless otherwise provided by the lease, a lessee can [not] sublet or transfer his rights in the whole or part of the property hired to a third person.

545. — If a lessee sublets or transfers his rights in the whole or part of the property hired contrary to the provisions of the lease, the lessor may determine the contract.

546. — In case of transfer or sublease, the original lessee remains liable to the lessor for any obligations arising out of the original lease.

TITLE V.
HIRE OF SERVICES.

547. — A contract of hire of services is a contract whereby a person called the employee agrees to render services to another person, called the employer, and the employer agrees to pay therefor a remuneration, called salary, proportionate to the duration of the services.

548. — The promise to pay a salary is implied if the services cannot, under the circumstances of the case, be expected to be rendered gratuitously. [195]

549. — The employer cannot transfer his right to a third person, except with the consent of the employee.

ILLUSTRATION. — A has engaged the services of B as a clerk in his firm. A sells the firm to C. A cannot transfer to the rights derived from his contract with B, unless B consents.

550. — The employee cannot render the services by a third person, except with the consent of the employer.

ILLUSTRATION. — A has engaged the services of B as a clerk in his firm. B cannot send C to do work in his place without A's consent.

551. — If the employee either expressly or impliedly warrants special skill on his part, the absence of such skill entitles the employer to determine the contract.

552. — Absence of the employee from service for a reasonable cause and during a reasonably short period does not entitle the employer to determine the contract.

553. — If no time for payment of salary is fixed by the contract or by custom the salary is payable after services have been rendered ; if fixed by periods salary is payable at the end of each period. [196]

554. — If after the end of the agreed period the employee continues to render services and the employer knowing thereof does not object, the parties are presumed to have made a new contract of hire on the same terms, but either party can determine the contract by giving notice in accordance with the following section.

555. — If the parties have not fixed the duration of the contract, either

party can determine it by giving notice at or before any time of payment to take effect at the following time of payment.

The employer can, on giving such notice, immediately dispense with the services of the employee by paying to the employee his salary up to the expiration of the notice.

556. — In case of workmen paid by the day and of domestic servants the employee can determine the contract at any time without previous notice. The workman or domestic servant has the same right subject to the provision of Section 334 No. 20 of the Penal Code.

557. — If a contract of hire of services is one in which the personality of the employer forms an essential part such contract is extinguished by the death of the employer. [197]

ILLUSTRATION. — A, an architect, has engaged the services of B as a draughtsman to work out his sketches into definite drawings and plans. A dies. There are no more sketches to work out. The contract between A and B is extinguished.

558. — On determination or extinction of the contract, the employee is entitled to a certificate as to the length and nature of his services.

559. — If the employee has been brought from elsewhere at the expense of the employer, the employer is bound, on determination or extinction of the contract, to pay the cost of the return journey, provided that:

1) The contrae[c]t has not been determined or extinguished by reason of the act or fault of the employee, and

2) The employee returns within a reasonable time to the place from which he has been brought.

TITLE VI.
HIRE OF WORK.

560. — A contract of hire of work is a contract whereby a person, called the contractor, agrees to do a definite work for another person, called hirer of work, and the hirer of work agrees to pay him for the result of the work a remuneration, called the price. [198]

561. — Tools or instruments which are necessary for the execution of the work shall be supplied by the contractor.

562. — If the materials for the work are to be supplied by the contractor, the contractor shall supply materials of good quality.

563. — If the materials are to be supplied by the hirer of work, the contractor shall use them carefully and without waste. He shall return the surplus, if any, after the work is completed.

564. — If during the execution of the work it becomes apparent that the ground selected by the hirer of work or the materials supplied by him are defective or unsuited to the work, the contractor must notify the hirer of work at once, failing which he shall be liable for the defects or delay caused by the unsuitableness or defects of such ground or materials.

565. — The contractor is bound to allow the hirer of work or his agents to inspect the work during its execution.

566. — If the hirer of work has reasonable ground to think that for any reason whatsoever except his own act or fault, the work will not be finished within the time fixed in the contract (or within a reasonable time if no time is fixed in the contract), he may notify the contractor to proceed with the work within a reasonable time to be fixed in the notice. [199]

567. — If for any reason whatsoever except the act or fault of the hirer of work, the work is being badly executed or is being executed contrary to the terms of the contract, the hirer of work may notify the contractor to make the defects good or to comply with the terms of the contract within a reasonable time to be fixed in the notice.

568. — If the work delivered is defective, the hirer of work must, immediately after the discovery of the defect, notify the contractor to make the defect good within a reasonable time to be fixed in the notice, failing which he is deemed to have accepted the defective work.

569. — If the contractor does not comply with the notice, the hirer of work has the remedies described in this Code concerning non-performance, except that the Court cannot order the work to be done by a third person at the expense of the contractor.

570. — If the materials have been supplied by the contractor, his liability for defects is governed by the provisions of this Code concerning sale.

571. — If the work is delivered after the time fixed in the contract, or, if no time was fixed, after an unreasonable delay, the hirer of work is entitled, as the Court may think fit, either to a reduction of price on cancellation of the contract, with compensation if any be due. [200]

572. — If the hirer of work has accepted the work without reservation either expressly or impliedly the contractor is no longer liable for delay in delivery or for defects, unless the defects were such as could not be discovered when the work was accepted, or they had been concealed by the contractor.

573. — If the work was done on land and its removal would be unreasonably expensive, the contract shall not be cancelled but the hirer of work shall be entitled to such reduction of price as the Court may think fit.

574. — The contractor is not liable for defects or delay caused by the hirer of work.

575. — In case of delay in delivery or of delivery of a defective work, the hirer of work is entitled to withhold the price as provided by Section 411 concerning sale.

576. — The liability of the contractor for defects is limited to the defects appearing within one year after delivery of the work.

If the work is for a structure on land other than a wooden building, the contractor is liable for the defects which may appear within five years after delivery of the work. [201]

577. — The liability of the contractor is extinguished by prescription one year after the defect appeared.

578. — If the work is to be done by instalments and the price is fixed

at so much per instalment, the agreed part of the price must be paid on delivery of each instalment.

579. — The contractor cannot claim more, nor the hirer of work pay less, than the price agreed, no matter what the actual labour was.

580. — If an estimate only was made for the work, and the price is not more than five per cent over the estimate, the hirer of work is bound to accept the work and pay the price.

If the price is more than five per cent over the estimate, the hirer of work can claim cancellation of contract.

581. — The hirer of work is bound to pay any excess of price caused by him.

582. — If the work is destroyed before delivery by *force majeure*, neither party is entitled to compensation. [202]

583. — If the work is destroyed before delivery because the materials supplied by the hirer of work a defective or unsuitable, or through the act or fault of the hirer of work, the contractor is entitled to compensation for labour done and expenses incurred by him.

584. — As long as the work is not finished, the hirer of work can determine the contract on making compensation to the contractor for any injury resulting from the determination of the contract.

585. — A contract of hire of work may be determined at the death of the contractor by the heirs of the contractor giving notice to the hirer of work within two months after such death.

The hirer of work is bound to accept such part of the work as is already done, and to pay a reasonable price for it, provided that it be of some use to him.

586. — The contractor can sublet the whole or part of the contract to subcontractors unless the contract is one in which the personality of the contractor forms an essential part, but he remains liable for any act or fault of such subcontractors.

TITLE VII.
CARRIAGE.

[203]

587. —A carrier is a person whose business is to transport goods or passengers for a remuneration.

~~588. — The carriage of goods or passengers by State Railways is governed by the regulations and by laws of the Royal Railways Department.~~

[588. — The carriage of goods or passengers by the State Railways Department and of postal articles by the Department of Post and Telegraph are governed by the laws or regulations concerning such Departments.]

The carriage of goods by sea is governed by the laws and regulations relating thereto.

CHAPTER I.
CARRIAGE OF GOODS.

[Part] I. — GENERAL.

589. — The person making an agreement with a carrier for the transportation of goods is called the sender or consignor.

The person to whom the goods are forwarded is called the consignee.

The remuneration to be paid for the transportation of the goods is called the freight.

590. — The accessories of the freight include any customary expenses duly incurred by the carrier in course of transportation. [204]

591. — If required by the carrier, the sender must supply him with a way-bill. The way-bill must show the following particulars:

1) The nature of the goods sent, their weight or bulk and the nature, number and marking of the packages.

2) The place of destination.

3) The name or trade name and address of the consignee.

4) The place where and the time when the way. bill is made out.

The way-bill must be signed by the sender.

592. — If required by the sender, the carrier must supply him with a consignment note.

The consignment note must show the following particulars:

1) The matters contained in Section 591, 1, 2 & 3.

2) The name or trade name of the sender.

3) The amount of freight.

4) The place where and the time when the consignment note is made out.

The consignment note must be signed by the carrier.

593. — A consignment note may be made to a named person, or to order, or to bearer. [205]

[Part] II. — DUTIES AND LIABILITIES OF THE CARRIER.

594. — In the absence of any specific agreement or custom as to the time of delivery, the goods must be forwarded and delivered within a reasonable time.

595. — If a consignment note has been made, delivery can be obtained only on its surrender.

596. — The carrier is liable for any loss, damage or delay in delivery of the goods entrusted to him unless he proves that the loss, damage or delay is caused by *force majeure* or by the nature of the goods.

597. — The carrier is liable for loss, damage or delay caused by apparent defects in the packing of the goods, if he accepted the goods without reservation.

598. — The carrier is not liable for loss, damage or delay caused by non-apparent defects in the packing of the goods.

599. — The carrier is liable for loss, damage or delay caused by the fault of the other carriers or persons to whom he entrusted the goods.

600. — The carrier is liable for loss, damage or delay caused by the fault of passengers. [206]

601. — If the goods are of a dangerous nature or are likely to cause injury to persons or property, the sender must declare their nature before making the contract of carriage, failing which he shall be liable for any injury caused by them.

602. — The carrier is not liable for specie, currency notes, bank notes, bills, bonds, shares, debentures, warrants, jewels and other valuables, unless he is given notice of the value or nature of such goods when they are delivered to him.

If their value is declared, the liability of the carrier is limited to such declared value.

603. — Compensation in case of delay in delivery cannot exceed the amount which could be awarded in case of total loss of the same goods.

604. — The arrival of the goods must be notified to the consignee in the manner provided by custom.

605. — No compensation is due for loss or damage discoverable from the external condition of the goods or for delay, if the goods were accepted without reservation on delivery.

606. — In case of loss or damage not discoverable from the external condition of the goods, no compensation is due unless notice of loss or damage has been given to the carrier within eight days after delivery of the goods. [207]

607. — The liability of the carrier for loss, damage or delay is extinguished by prescription one year after delivery or, if the goods were not delivered, one year after the date when delivery ought to have been made.

608. — A provision in a receipt, consignment note or other such document delivered by the carrier to the sender, excluding or limiting the liability of the carrier, is void unless the sender expressly agreed to such exclusion or limitation of liability.

[Part] III. — RIGHTS AND DUTIES OF THE SENDER AND THE CONSIGNEE.

609. — As long as the goods are in the carrier's hands, the sender or the holder of the consignment note can exercise the right of stoppage in transit, that is to say he can require the carrier to stop the transportation or to return the goods.

In such case, the carrier is entitled to the freight in proportion to the transportation performed and to all other expenses occasioned by the stoppage or the return of the goods.

610. — If the consignment note has been made to order or to bearer, the right of stoppage in transit can be exercised only on surrendering the note to the carrier. [208]

611. — The right of stoppage in transit ceases:

1) When the carrier gives notice of the arrival of the goods to the consignee.

2) When the goods have arrived at the place of destination and the consignee demands delivery.

612. — After the goods have arrived at the place of destination and the consignee has demanded delivery, or after the carrier has given notice of the arrival of the goods to the consignee, the consignee is entitled to the rights of the sender arising out of the contract of carriage.

613. — The freight and accessories are payable either by the sender or by the consignee, as provided by the contract or by custom.

614. — If goods are lost by *force majeure*, the carrier is not entitled to the freight. Whatever has been received on that account must be returned.

615. — If the carrier delivers the goods before payment of the freight and accessories, he remains liable to preceding carriers for such part of the freight and accessories as may still be due to them. [209]

ILLUSTRATION. — Goods forwarded by D from Bangkok to Chiengmai have been carried successively by A, a raid[l]way Co., B, a shipping Co., and C, a contractor for carriage on elephant's back.

Freight	*due*	*to*	*A*	*amounts*	*to*	*30*	*baht*	*including*	*accessories*
„	„	„	*B*	„	„	*20*	„	„	„
„	„	„	*C*	„	„	*50*	„	„	„

If C delivers the goods to D at Chiengmai, without being paid the whole freight, i. e. 100 baht, C is responsible to A for 30 baht and to B for 20 baht.

616. — The carrier is entitled to retain the goods as long as the freight and accessories are not paid, provided that the party liable for them may at any time apply to the Court for an order, either:

1) Restricting the exercise of this right to such part of the goods as the Court may deem sufficient to cover the freight and accessories, or

2) Ordering the carrier to deliver the goods on security being given for payment of freight and accessories.

617. — If the consignee cannot be found, the carrier must notify the sender by registered letter to give his orders as to the disposal of the goods and to provide for the payment of the freight and accessories within a reasonable time to be fixed in the notice.

If the sender fails to comply with the notice the carrier can sell the goods by public auction. [210]

618. — If the consignee does not take delivery of the goods, or does not pay the freight and accessories due by him, the carrier can notify the consignee by registered letter to pay the freight and accessories and take delivery within a reasonable time to be fixed in the notice.

The carrier must at the same time notify the sender by registered letter.

If the consignee or the sender do not comply with the notice, the carrier can sell the goods by public auction.

619. — In the cases provided by Sections 617 and 618, if the goods are of a perishable nature, the carrier can sell them by public auction without notice.

620. — The carrier shall forthwith deduct from the nett proceeds of the public auction the freight, accessories and other monies due in connection with the contract of carriage and must deliver the surplus to the person entitled to it.

621. — If the goods were transported by several carriers, the last of them can exercise the rights described in Sections 616 to 620, for the amounts due to them all for freight and accessories.

622. — If the goods were transported by several carriers, all the rights arising out of the contract of carriage may, at the discretion of the party exercising them, be exercised against the last carrier alone. [211]

ILLUSTRATION. — A has sent goods to B. The goods have been carried successively by C, a railway Co., and D, a shipping Co.

While in C's care the goods have suffered damage, non-discoverable from their external condition. Under Section 606 B can claim compensation for such damage within 8 days after delivery of the goods. B can, at his discretion, claim such compensation from D or from C. If he claims it from D, D shall have an action against C for reimbursement.

CHAPTER II.
CARRIAGE OF PASSENGERS.

623. — The carrier of passengers is liable for delay or for any other injury suffered by any passenger by reason of the transportation, unless the delay or injury is caused by *force majeure* or by the fault of that passenger.

624. — Luggage entrusted to the carrier in time must be delivered on the arrival of the passenger.

625. — If the passenger does not take delivery of the luggage within one month after its arrival, the carrier can sell it by public auction. [212]

If the luggage is of a perishable nature, the carrier can sell it by public auction twenty-four hours after it arrival.

The provisions of Section 620 apply *mutatis mutandis*.

626. — The rights and liabilities of the carrier for the luggage which has been entrusted to him are governed by Chapter I, even though the carrier did not make a separate charge for it.

627. — No liability is incurred by the carrier for luggage which has not been entrusted to him, unless such luggage be lost or damaged by the fault of the carrier or of his employees.

628. — A provision in a ticket, receipt or such other document delivered by the carrier to the passenger excluding or limiting the liability of the carrier is void, unless the passenger expressly agreed to such exclusion or limitation of liability.

TITLE VIII.
LOAN.

[213]

CHAPTER I.
LOAN FOR USE.

629. — A contract of loan for use is a contract whereby a person, called the lender, agrees to let another person, called the borrower, have the use of a property without paying remuneration and the borrower agrees to return the property after having had the use of it.

630. — A contract of loan for use is complete only on delivery of the property lent.

631. — Costs of the contract, costs of delivery of the property lent and costs of return must be borne by the borrower.

632. — Delivery of the property lent is governed by the provisions of this Code concerning sale.

633. — The borrower cannot use the property lent for [purposes] other than ordinary purposes or purposes appearing from the contract itself.

ILLUSTRATION. — I. — A borrows a rot koop (victoria phaeton). No agreement is made as to how A can use it. A can use the rot koop only for the ordinary purposes of a rot koop, viz. for conveying persons. He cannot use it for carrying goods. [214]

II. — A borrows a steam launch from B. It is agreed by A and B that the launch is lent for the purpose of going up and down the river Menam. A cannot use the launch for going in the Gulf.

634 — The borrower cannot let a third person have the use of the property lent.

635. — If the borrower acts contrary to any of the provisions of Section*s* 633 or 634, he becomes liable for any loss or damage even caused by *force majeure* to the property lent, unless he proves that the property would have been lost or damaged in the same way even if he had not acted contrary to such provisions.

636. — The borrower is bound to take as much care of the property lent as a person of ordinary prudence would take of his own property.

637. — If the borrower acts contrary to any of the provisions of

Sections 633, 634 or 636, the lender can determine the contract.

638. — If a third person who claims a right over the property lent enters an action against the borrower or attaches the property, the borrower must forth with give notice thereof to the lender. [215]

After the borrower has been served with a writ at the suit of the claimant or after attachment, the borrower cannot return the property, except on an order of the Court or with the consent of the parties to the case.

639. — If the parties have fixed no time for the return, the borrower must return the property after he has had the use of it for the purposes appearing from the contract, provided that the lender can claim the return as soon as a time reasonably sufficient for such use has elapsed.

ILLUSTRATION. —A has sent his launch to B who has to use it for a trip from Bangkok to Ayuthia and back.

If no time has been fixed for the return of the launch, B must return the launch to A when the trip is finished. A can claim the return of the launch when a time reasonably sufficient for the trip contemplated (say three days) has elapsed.

640. — If the parties have fixed no time for the return and the purposes of the loan do not appear from the contract, the lender can claim return at any time.

ILLUSTRATION. — If, in the foregoing illustration, A has lent his launch to B without fixing any time, and it was not agreed for what purpose the launch was lent. A can claim the return of his launch at any time. [216]

641. — Expenses for ordinary maintenance of the property lent must be borne by the borrower.

Any other charges upon the property lent must be borne by the lender.

642. — The borrower may not make any alteration in, or addition to the property lent without the permission of the lender.

643. — If the lender has granted permission to the borrower to make alterations or additions, the borrower is entitled, at the extinction of the loan, to reimbursement of his expenses up to the amount of the increase in value which the property is still deriving from the additions or alterations.

The borrower is entitled to withhold the property until such reimbursement.

See Illustrations under Sections 525, 526 and 527 mutatis mutandis.

644. — If the borrower makes additions or alterations without the permission of the lender, he is not entitled to reimbursement, but he is allowed, at the extinction of the loan, to take away whatever he added to the property, provided that he puts the property in its former condition.

If it is impossible to put the property in its former condition or the property would be damaged thereby, the property must be restored with the alterations or additions and no compensation therefor shall be due to the borrower. [217]

See Illustrations under Sections 525, 526 and 527 mutatis mutandis.

645. — In case of loss of the property lent, the value to be taken into account for the assessment of compensation is the value which such property would have had at the time when and at the place where it ought to have been returned.

646. — A contract of loan for use is extinguished by the death of the borrower.

647. — The liability for compensation or reimbursement of expenses in connection with a contract of loan for use is extinguished by prescription six months after the extinction of such contract.

CHAPTER II.
LOAN FOR CONSUMPTION.

[Part] I. — GENERAL PROVISIONS.

648. — A contract of loan for consumption is a contract whereby a person called the lender, agrees to transfer the ownership and possession of property to another person, called the borrower, with or without remuneration, and the borrower agrees to return property of the same kind, quality and quantity. [218]

649. — A contract of loan for consumption is complete only on delivery of the property lent.

650. — Costs of the contract, costs of delivery of the property lent and costs of return must be borne by the borrower.

651. — Delivery of the property lent is governed by the provisions of this Code concerning sale.

652. — If no time for return of the property lent has been fixed, the lender may give notice to the borrower to return the property within a reasonable time to be fixed in the notice.

[Part] II. — SPECIAL RULES FOR LOAN OF MONEY.

653. — No loan of money for a sum exceeding two hundred baht in capital may be proved unless there be some written evidence signed by the borrower.

654. — Interest shall not exceed 15% per year; when a higher rate of interest is fixed by the contract, it shall be reduced to 15% per year. [219]

655. — Interest shall not bear interest. But the parties to a loan of money may, at the end of each succeeding year, agree that the interest due shall be added to the capital, and that the whole shall bear interest, provided that any such agreement be made in writing.

656. — If a contract of loan of money is made and the borrower, instead of money, accepts goods or negotiable instruments, the amount of the loan shall be taken as the actual value of the goods or negotiable instruments at the time of delivery.

TITLE IX.
DEPOSIT.

CHAPTER I.
GENERAL PROVISIONS.

657. — A contract of deposit is a contract whereby a person, called the depositor, agrees to deliver a movable property to another person, called the depositary, and the depositary agrees to keep such property in safe custody, with or without remuneration, and to return it to the depositor or to a third person. [220]

658. — A contract of deposit is complete only on delivery of the property deposited.

659. — The depositary is bound to take as much care of the property deposited as a person of ordinary prudence would take of his own property.

660. — The depositary is not allowed, without the permission of the depositor, to use the property deposited or to let a third person have the use or custody of it.

661. — The depositary who acts contrary to any of the provisions of Section 660 becomes liable for any loss or damage caused even by *force majeure* to the property deposited, unless he proves that the property would have been lost or damaged even if he had not acted contrary to such provision[s].

662. — If a property is the subject of litigation, the parties to the case can agree, or the Court may order, that such property shall be deposited with one of the parties or with a third person.

The depositary of such property can only return it to a person appointed for that purpose by the parties or by the Court. [221]

663. — If a third person claims a right over the property deposited and enters an action against the depositary, or attaches the property, the depositary must forth with give notice thereof to the depositor.

After the depositary has been served with a writ at the suit of the claimant or after attachment, the depositary can only return the property on an order of the Court, or with the consent of the parties to the case.

664. — If a time for the return of the property deposited has been ~~flxed~~[fixed], the depositary cannot return the property before such time, except in case of unavoidable necessity.

See Illustration under Section 665.

665. — Although the parties have fixed a time for the return of the property deposited, the depositary must return it at any time on demand made by the depositor.

ILLUSTRATION (Sections 664 and 665). — A has handed to his friend B a box of jewels to be deposited in B's safe during six months.

B cannot oblige A to take the box back before the end of six months, except in case of unavoidable necessity, e. g. if B is suddenly obliged to leave Siam for good.

But A can at any time claim the return of the box from B. [222]

666. — If the parties have fixed no time for the return of the property deposited, the depositary can return it at any time.

667. — If the property is deposited in the name of a third person, the depositary can only return it to that third person.

668. — The depositary is bound to deliver with the property any interest and profits which may have accrued from it.

669. — Costs of returning the property deposited must be borne by the depositor.

670. — In case of loss of the property deposited, the value to be taken into account for the assessment of compensation is the value which the property would have had at the time when and at the place where it ought to have been returned.

671. — The depositor is bound to reimburse the depositary for any expenses which were necessary for the preservation or maintenance of the property deposited unless such expenses were incumbent upon the depositary under the contract of deposit. [223]

672. — If no time for payment of remuneration is fixed by the contract or ~~the~~[by] custom, the remuneration is payable when the property deposited is returned. If fixed by periods, the remuneration is payable at the end of each period.

673. — When the remuneration or expenses are not paid, the depositary is entitled to retain the property deposited, provided that the depositor may at any time apply to the Court for an order, either:

1) Restricting the exercise of this right to such part of the property deposited as the Court may deem sufficient to cover the remuneration or expenses, or

2) Ordering the depositary to return the property deposited on the depositor giving security for remuneration or expenses.

674. — If the depositary retains the property deposited as provided in Section 673, he may notify the depositor by registered letter to pay the remuneration or expenses within a reasonable time, to be fixed in the notice.

If the depositor fails to comply with the notice the depositary can sell by public auction the property deposited.

675. — The depositary must forth with deduct from the nett proceeds of the public auction the remuneration and expenses due to himself and deliver the surplus to the person entitled to the return of the deposit. [224]

676. — No deposit of property exceeding two hundred baht in value may be proved, unless there be sore written evidence signed by the depositary.

677. — If a property has been deposited under such circumstances of *force majeure* that no written contract could reasonably be made, written evidence of the deposit is not required.

678. — The liability for remuneration, reimbursement of expenses or compensation in connection with a deposit is extinguished by prescription six months after the extinction of such contract.

CHAPTER II.
SPECIAL RULES FOR DEPOSIT OF MONEY.

679. — If the deposit is one of money, it is presumed that the depositary shall not return the same specie, but the same amount.

The depositary can use the money deposited and is only bound to return an equivalent amount. He is bound to return such amount even should the money deposited have been lost by *force majeure*. [225]

680. — If the depositary is only bound to return the same amount of money, the depositor cannot demand the return of the money before the agreed time, nor can the depositary return it before such time.

ILLUSTRATION. — A has deposited 1,000 baht with B for six months, without specifying that the same specie should be returned.

A cannot claim from B the return of the 1,000 baht before six months have elapsed.

CHAPTER III.
SPECIAL RULES FOR INNKEEPERS.

681. — The proprietor of an inn, or hotel or of any other place where travellers or guests receive sleeping accommodation for remuneration is considered as a depositary of the luggage or other property brought by such travellers or guests.

He is liable for any loss or damage caused to such luggage or property unless he proves that such loss or damage was not caused by his act or fault, or by the act or fault of persons for whom he was responsible.

682. — The liability for specie, currency notes, bank notes, bills, bonds, shares, debentures, warrants, jewels or other valuables belonging to the traveller or guest is limited to two hundred baht, unless such valuables have been deposited with the proprietor with an indication of their nature and value. [226]

683. — If valuables have been deposited with the proprietor, he is liable for them up to the value declared.

684. — A notice posted in the inn, hotel or other such place excluding or limiting the liability of the proprietor is void unless the traveller or guest expressly agreed to such exclusion or limitation of liability.

685. — The liability for compensation for loss or damage caused to the luggage or other property of the traveller or guest is extinguished by prescription six months after the departure of the traveller or guest.

686. — If the remuneration is not paid, the proprietor can exercise over the luggage or other property of the traveller or guest which is in the inn, hotel or other such place the rights described in Sections 673, 674 and 675.

TITLE X.
SURETYSHIP.

[227]

CHAPTER I.
GENERAL PROVISIONS.

687. — A contract of suretyship is a contract whereby a person, called surety[,] agrees to perform an obligation in case the debtor does not perform it.

688. — A contract of suretyship may guarantee any obligation even unconditional or future.

ILLUSTRATION. — A sells a house to B. Under Section 412 and foll. A is liable for the consequences of an eviction suffered by B in the cases provided by law; C may agree to be a surety for the obligation of A in case of B's eviction.

689. — A contract of suretyship is void or voidable according as to whether the obligation secured is void or voidable.

690. — An obligation which is voidable owing to one of the parties being incapacitated may be guaranteed by suretyship if it appears from the contract or from the circumstances of the case that the surety agreed to guarantee the creditor against the consequences of the want of capacity.

[228]

691. — Suretyship may be given for a limited period of time or for a series of transactions.

692. — A person can agree to be surety for another surety.

693. — The suretyship covers interest and compensation due by the debtor on account of the obligation and all charges accessory to it.

694. — The surety is liable for the costs of action to be paid by the debtor to the creditor, but he is not liable for such costs if the action was entered without first demanding performance from him.

695. — If, on enforcement of the contract of suretyship, the surety does not perform the whole of the obligation of the debtor, together with interest, compensation and accessories, the debtor remains liable to the creditor for the surplus.

[229]

ILLUSTRATION. — On April 1st. 2452 A borrows 5,000 baht from B at 10% interest, the

capital to be returned on the 1st. of April 2454. C is surety for A. A does not pay interest and does not return the capital. B enters an action against C. Judgment is given against C for 5,000 baht plus interest up to the date of payment. C's properties are seized in execution. The sale takes place on the 1st of April 2455. The nett proceeds of the sale are 4500 baht which are appropriated as follows: 1500 baht as payment of interest during the years 2452, 2453 and 2454 ; 3,000 baht as part payment of capital. A remains liable to B for 2,000 baht capital and for interest on 2,000 baht from April 1st. 2455.

CHAPTER II.
EFFECTS BEFORE PERFORMANCE.

696. — As soon as the debtor is in default the creditor is entitled to demand performance of the obligation from the surety.

697. — The surety is not bound to perform the obligation before the time fixed for performance, although the debtor may have lost the benefit of the time clause.

698. — The surety is entitled to summon the debtor to appear in the action in order that the judgment may decide on his liability to the creditor and on the liability of the debtor to him.

699. — When the debtor is summoned and the surety proves: [230]

1) That the debtor has the means to perform the whole or part of the obligation, and

2) That enforcement against the debtor would not be difficult,

the Court may, in its discretion, order that the obligation shall be enforced first against the debtor.

700. — If the obligation is secured by a pledge or mortgage, the surety is entitled to have the obligation performed first out of the property pledged or mortgaged.

701. — If the surety has agreed to be bound jointly with the debtor, the surety becomes a joint debtor.

702. — If there are several sureties for the same obligation, they are jointly liable to the creditor within the limits specified in their respective contracts of suretyship.

As between themselves, their shares in any deficiency are in proportion to the amount for which each surety is liable.

If no amount was specified each surety shall bear an equal share in

the deficiency.

703. — An interruption of prescription against the debtor is also an interruption against the surety.

CHAPTER III. [231]

EFFECTS AFTER PERFORMANCE.

704. — The surety who has performed the obligation is entitled to reimbursement from the debtor and is subrogated to the rights of the creditor against the debtor.

But he cannot exercise such rights to the injury of the creditor.

705. —In addition to the defences which the surety has against the creditor, he can also set up defences which the debtor has against the creditor.

706. — The surety who neglects to set up against the creditor defences of the debtor forfeits his right to reimbursement by the debtor to the extent of these defences, unless he proves that he did not know of such defences and that his ignorance was not due to his fault.

707. — If the surety does not inform the debtor that he has performed the obligation and the debtor, in ignorance, performs it, the surety is not entitled to reimbursement by the debtor.

The surety has only an action for undue enrichment against the creditor.

708. — If the creditor impairs or reduces the securities given for the performance of the obligation, the surety is discharged to the extent of the injury suffered by him thereby. [232]

ILLUSTRATION. — A is creditor of B for 1,000 baht. C has agreed to be surety for B's obligation, which is also secured by a pledge. A returns the property pledged to B and afterwards demands performance from C.

Under Section 700 C was entitled to have the obligation performed first out of the property pledged ; C suffers injury by the fact that such property has been returned to B. C is discharged to the extent of such injury, that is to say if the property pledged was worth 600 baht C's liability is limited to 400 baht only.

CHAPTER IV.
EXTINCTION OF SURETYSHIP.

709. — When the obligation of the debtor is extinguished, the surety is discharged.

710. — If suretyship has been given for a series of transactions, the surety can at any time determine the suretyship for the future by giving notice to the creditor to that effect.

In such case, the surety is not liable for transactions one by the debtor after the notice has reached the creditor. [233]

711. — Suretyship given for the tran[s]action of a registered partnership or limited partnership is extinguished for the future if the partnership changes its firm name.

It is not extinguished by a change in the members or object of the partnership.

712. — If suretyship has been given for an obligation which is to be performed at a definite time, and the creditor grants to the debtor an extension of time, the surety is discharged.

The surety is not discharged if he agreed to the extension of time or if the extension is granted by the Court.

713. — The surety is entitled to tender performance of the obligation to the creditor from the time when performance is due.

If the creditor refuses to accept performance, the surety is discharged.

TITLE XI.
MORTGAGE.

[234]

CHAPTER I.
GENERAL PROVISIONS.

714. — A contract of mortgage is a contract whereby a person, called the mortgagor, agrees to assign a property to another person, called the mortgagee, as security for the performance of an obligation, without delivering the property to the mortgagee.

The mortgagee is entitled to be paid out of the mortgaged property in preference to ordinary creditors and even though the ownership of the property has been transferred to a third person.

ILLUSTRATION. — I. — A has made a contract with B according to which it is agreed that A's house is sold to B with right of redemption for 3,000 baht but that will remain in possession of the house and will pay an interest of 1% per month on the 3,000 baht until he has reimbursed that price to B. It is obvious that this so-called sale with right of redemption is made by way of security for reimbursement of the price which is only lent to A. The contract entered into between A and B cannot therefore be considered as a contract of sale with right of redemption but, in case of discussion, it shall be considered as a contract of mortgage : that is to say A remains the owner, and is at the same time the mortgagor, of his house, B has over the house a right of mortgage and he cannot dispose of the house otherwise than provided by the chapter of this Code concerning enforcement of mortgage.

II. — A has made a contract with B according to which it is agreed that A's house is sold to B with right of redemption for 3,000 baht, but that A will pay an interest of 1% per month on the 3,000 baht until he has reimbursed that price to B. It is obvious that this so-called sale with right of redemption is made by way of security for reimbursement of the price which is only lent to A. The contract entered into between A and B cannot therefore be considered as a contract of sale with right of redemption. But it cannot any more be considered as a contract of mortgage, as A is not remained in possession of the house. A and B have made a kind of contract which is not provided by law. In case of discussion, the Court shall ascertain whether the intention of the parties was to make a contract of loan with security or a contract of sale with right of redemption (see Section 24) and they shall accordingly issue such orders as may be necessary to set contract right or bring the parties within the scope of the law, e. g. if the parties intended to make a contract of loan with security, the Court shall order B to return to A the possession of the house, or if the parties intended to make a contract of sale with right of redemption, the Court shall cancel the clause of the contract providing for the payment of interest.

[235]

715. — Immovables of any kind can be mortgaged.

The following movables can also be mortgaged, provided they are registered according to law:

1) Ships or vessels having displacement of and over six tons, steam-launches or motor-boats having displacement of and over five tons.

2) Floating houses.

[236]

3) Beasts of burden.

4) Any other movables for which the law shall provide registration to that effect.

716. — A property which is not transferable cannot be mortgaged.

717. — A contract of mortgage must specify the property mortgaged.

718. — No property can be mortgaged except by its present owner.

ILLUSTRATION. — I. — A is the present owner of a house in Bangkok. B is the only heir apparent of A and may, sooner or later, become the owner of that house. B cannot mortgage that house until, by the death of A, he has become the present owner of it.

II. — A is the present owner of a house in Bangkok. B is the guardian of A, and therefore the administrator of A's properties. B cannot mortgage that house on his own account. He can mortgage it on A's account subject to the provisions of the Book on Capacity of Persons (i. e. with the consent of the Court).

III. — On the 1st. of May 2456 A has made a contract with B whereby A gives to B the option to buy A's rubber plantation for 20,000 baht provided that B shall notify A on or before the 31st. of August 2456 whether he buys the plantation or not. [237]

Notwithstanding that contract A remains the present owner of the plantation ; he can therefore still mortgage it while B could not yet do the same. If a contract of sale is executed before the proper official say on the 16th. August 2456 B can, from that date, mortgage the plantation while, from the same date, A can no more mortgage it.

719. — A person whose right of ownership over a property is subject to a condition, can mortgage the property only subject to the same condition.

ILLUSTRATION. — I. — A has given to B a rice—mill on the condition that B will have been able to enter the Government services within six months. B may, in the meanwhile, mortgage the rice—mill to C, but such mortgage is subject to the same condition : that is to say if B does not enter the Government services within the fixed delay the rice—mill does not become the property of B, and C has no right of mortgage over it; if B enters the Government services within the fixed delay the rice—mill becomes the property of B, and the mortgage is good.

II. — A has given his house to B on the condition that the ownership of the house will reverse to A if B has not a child within five years. B may, in the meanwhile, mortgage the house to C, but such mortgage is subject to the same condition : that is to say, if B has a child within five years, the mortgage is good ; but if B has no child within five years, the house is retransferred to A and C has no right of mortgage over it.

720. — A contract of mortgage may secure any obligation, even conditional or future. [238]

ILLUSTRATION. — I. — A sells a house to B. Under Section 412 and foll. A is liable for the consequences of an eviction suffered by B in the cases provided by law ; A may mortgage his rice —mill to B as security for the consequences of a possible eviction (restoration of price and payment of damages).

II. — A owes 10,000 baht to B, and C is surety for the obligation. Under Section 704 and foll. if C pays any sum on behalf of A, the latter is liable to reimbursement of such sum to C. A

may mortgage his house to C as a security for this future obligation.

721. — A contract of mortgage is void or voidable according as to whether the obligation secured is void or voidable.

722. — A contract of mortgage must ~~certify~~[specify] the obligation for the performance of which the mortgaged property is assigned as security, and its amount in Siamese currency.

If the obligation is unlimited, the parties shall fix the highest amount for which the mortgaged property is assigned as security.

ILLUSTRATION. — A mortgages his house in Bangkok to B, a Banking Co., as security for overdrafts on his current account. The contract must specify the highest mount. say 10,000 baht for which the house is mortgaged. TH A draws 13,000 baht overdraft, B is a preferred creditor i mortgagee) up to the sum specified, 10,000 baht. For the 3,000 baht balance B comes only as an ordinary creditor.

[239]

723. — A person may mortgage a property as security for the performance of an obligation by another person.

ILLUSTRATION. — A owes 10,000 baht to B. C agrees to assign one of his properties as mortgage security for the obligation of A. When the obligation becomes due, C pays 10,000 baht to B. C is entitled to claim 10,000 baht from A.

724. — The performance of one and the same obligation may be secured by the mortgage of several properties belonging to either one or several owners.

The parties may agree :

1) that the mortgagee shall enforce his right against the mortgaged properties in a specified order.

2) that each property is security only for a specified part of the obligation.

725. — As long as the obligation is not due, the mortgagor cannot agree that the mortgagee shall, in case of non-performance, become the owner of the mortgaged property or dispose of it otherwise than in conformity with the provisions concerning enforcement of mortgage (Chapter IV).

[240]

726. — Notwithstanding any clause in the contract to the contrary, a property mortgaged to a person can be mortgaged to another person during the continuance of the previous contract.

But beasts of burden cannot be subjected to suc[c]essive mortgages.

727. — The parties to a contract of mortgage may agree that the obligation shall be performed by instalments.

728. — A contract of mortgage must be made in writing in the presence of and registered by the competent official in accordance with the rules relating thereto.

CHAPTER II.
EXTENT OF MORTGAGE.

729. — The mortgaged property is security for the performance of the obligation and for the following accessories :

1) Interest, if any.

2) Compensation in case of non—performance of the obligation. [241]

3) Costs of enforcement of the right of mortgage.

730. — The right of mortgage extends to all the properties mortgaged and to the whole of each of them, even after part performance.

ILLUSTRATION. — I. — A is the creditor of B for 10,000 baht and B has assigned as mortgage to A his land situated in Samsen. If B pays 5,000 baht to A, the whole of the land remains however security for the payment of 5,000 baht still due by B, and A may exercise his right against the whole land as well as if he had received no part performance.

II. — A is the creditor of B for 10,000 baht and B has assigned as mortgage to A his land situated in Samsen. B dies, and C, D and E are his statutory heirs. The debts of the estate will be divided between C, D and E. However, suppose C has received in his own part the land situated in Samsen and mortgaged by B, C is liable for the payment of 10,000 baht even by enforcement of the land mortgaged as the case may be, and has only a recourse against D and E if he pays or has his land sold.

731. — When the mortgaged property is divided into parcels, rights of mortgage continues to extend to each and all of them.

However, one parcel may be transferred free of any right of mortgage with the consent of the mortgagee. Such consent or order cannot be set up against the buyer of the mortgagee's right unless it has been registered.

732. — The right of mortgage extends to all things which are so connected with the mortgaged property as to form one thing with it, subject to the restrictions provided by the three following Sections. [242]

ILLUSTRATION. — I. — A mortgages to B his "dwelling house" in Bangkok. The mortgage extends of right to the servants' quarters, the garage, water—pipes, as well as to the doors, windows, gutters, lockers of the house because all those things are necessary to make a

"dwelling. house".

II. — A mortgages to B his "rice mill" in Ayuthia. The mortgage extends of right to all the fixtures and plant, such as boiler, engine etc., because such things are necessary to make a building fit to be used as "rice mill".

733. — The right of mortgage on a land does not extend to the buildings erected by the mortgagor upon it after the time of mortgage unless there is in the contract a special clause to that effect.

However, in any case, the mortgagee can have such buildings sold with the land, but his preferential right does not extend to the increase of value derived from the buildings.

734. — The right of mortgage over buildings made by a person upon or under another's land does not extend to that land, and vice versa.

735. — The right of mortgage does not extend to the fruits, interests and profits of the mortgaged property except after the time when the mortgagee has notified the mortgagor or the transferee of his intention to enforce the mortgage. [243]

CHAPTER III.
RIGHTS AND DUTIES OF MORTGAGEE AND MORTGAGOR.

736. — No agreement entered after the time of the mortgage creating servitudes or other real rights upon the mortgaged property which depreciates the property, can be set up against the mortgagee unless he has agreed to it.

ILLUSTRATION. — A has mortgaged to B his godown situated along the river Menam. A afterwards agrees with C, a Shipping Co., that the latter shall have the exclusive right to use the embankment as a landing place for passengers and cargo. This agreement cannot be set up against B unless he has agreed to it.

737. — If the mortgaged property is damaged, or if one of the mortgaged properties is lost or damaged, so that the security becomes insufficient, the mortgagee can enforce at once the mortgage, unless there is no fault of the mortgagor and the lat[t]er offers either to mortgage another property of sufficient value or to repair the damage within a reasonable time.

ILLUSTRATION. — I. — A has mortgaged to B, as security for a loan of 10,000 baht, his ship estimated 15,000 baht : [244]

a) The ship is totally destroyed by bad weather at sea. The mortgage is extinguished

b) the ship returns badly damaged by bad weather so that her value is now estimated 7,000

baht only. The security becomes insufficient. B is entitled to enforce his mortgage at once over the ship. However, A is entitled. provided there was no fault of his in the damage, to have the enforcement postponed on offering, either to repair the ship within a reasonable time, or to mortgage other properties of sufficient value to cover the balance of 8,000 baht.

II. — A has mortgaged to B, as security for a loan of 10,000 baht, his house estimated 8,000 baht, a ship estimated 5,000 baht and four pairs of buffaloes estimated 1200 baht.

The ship is destroyed by a typhoon. The security becomes insufficient. B is entitled to enforce his mortgage at once over the house and the buffaloes. However, A is entitled, provided there was no fault of his in the wreck, to have the enforcement postponed on offering to mortgage another property valued 5,000 baht.

738. — If a person who has mortgaged a property as security for the performance of an obligation by another person performs the obligation on behalf of the debtor to prevent the enforcement of the mortgage, he is entitled to recover from the debtor the amount of the performance.

If the mortgage is enforced, the mortgagor is entitled to recover from the debtor the amount up to which the mortgagee has been satisfied by such enforcement. [245]

739. — When two or more persons have mortgaged their properties as security for the performance of one and the same obligation by another person and no order has been specified, the mortgagor who has performed the obligation or on whose property the mortgage has been enforced, has no right of recourse against the other mortgagors.

740. — If a person has mortgaged a property as security for the performance of an obligation by another person, and the creditor grants to the debtor an extension of time, the mortgagor in discharged.

The mortgagor is not discharged if he agreed to the extension of time or if the extension ~~in~~[is] granted by the Court.

741. — If a person has mortgaged a property as security for the performance of an obligation by another person, the mortgagor is entitled to tender performance of the obligation to the mortgagee from the time when performance is due.

If the mortgagee refuses to accept performance[,] the mortgagor is discharged.

742. — When several persons have mortgaged their properties as security for the performance of one and the same obligation by another person and an order has been specified, the release granted by the mortgagee to one of the mortgagors discharges the subsequent mortgagors to the extent of the injury suffered by them thereby. [246]

ILLUSTRATION. — A borrows 10,000 baht from B. The return of the money borrowed is

secured by the mortgage of two pieces of land belonging one to C and the other to D and valued respectively at 6,000 baht and 12,000 baht, but it is specified that B shall enforce his right first on C's land. Later on B grants to C a release of his obligation. At the time when A's obligation becomes due, A appears to be insolvent and B asks for the enforcement of his right on D's land. If B had not granted a release to C, D would have been exposed to loss, on account of A's insolvency, only the difference between the value of C's land and the amount of A's debt, i. e. 4,000 baht. If B could sue D for 10,000 baht the release granted to C would cause to Dan injury amounting to 6,000 baht. Dis discharged of his liability to B up to 6,000 baht and can be sued only for reimbursement of 4,000 baht.

CHAPTER IV.
ENFORCEMENT OF MORTGAGE.

743. — In case of non-performance, the mortgagee is entitled to have the mortgage enforced in the manner described in the following sections.

744. — The mortgagee must first notify the debtor by registered letter to perform his obligation within a reasonable time to be fixed in the notice. If the debtor fails to comply with such notice, the mortgagee can apply to the Court for an order : [247]

1) either ordering that the property mortgaged be seized and sold by public auction; or

2) transfering to him the ownership of the mortgaged property.

745. — The Court shall not issue an order transfering the property to the creditor when :

1) the debtor has failed to pay interests for less than five years; or

2) the mortgagor has satisfied the Court that the value of the property overcovers the amount due; or

3) there are other registered mortgages or preferential rights on the same property.

746. — When one and the same property is mortgaged to several mortgagees, they rank according to the respective dates and hours of registration, and the earlier mortgagee shall be satisfied before the later one.

ILLUSTRATIONS. — I. — A mortgages his rice—mill in Bangkok to B for 50,000 baht. The mortgage is registered on the 5th of January 2459. A at the same time also mortgages the same rice-mill to C for another 25,000 baht. but the contract of mortgage is registered only on the 7th. of January 2459. C will rank after B: that is to say if A becomes bankrupt, B and C shall both be satisfied out of the proceeds of the sale of the rice-mill in preference to ordinary creditors, but if the rice-mill is sold for less than 75,000 baht, say for 60,000 baht, A will be first satisfied and will receive 50,000 baht ; C will receive only 10,000 baht and will come for the surplus as an ordinary creditor in bankruptcy. [248]

II. — A mortgages his rice-mill to B for 50,000 baht. the mortgage being registered on the 5th. of January 2459, and to C for 25,000 baht, the mortgage being registered on the 1st. of May 2460. B is first and C second mortgagee. If A comes to reimburse to B the sum due to him the mortgage is extinguished as regards B. Then C becomes ipso facto the first mortgagee, and if, after B having been reimbursed, A mortgages his rice-mill to D for another 25,000 baht, D will rank as second mortgagee.

747. — A later mortgagee cannot enforce his right to the injury of an earlier one.

ILLUSTRATION. — On the 1st. of April 2452, A mortgages his land to B as security for the return of 5,000 baht borrowed from B at 10% and to be reimbursed on the 1st. of April 2462. On the 1st. of June 2454, A mortgages again his land to C for the return of 500 baht borrowed from C at 5% and to be reimbursed on the 1st. of June 2457. On that date A does not perform his obligation to C. Supposing C is then allowed to enforce his right on A's land, that land will be sold by auction, say for 10,000 baht, out of which 5,000 baht and interest are first paid to B and 500 baht and interest are afterwards paid to C. B is thus reimbursed five years before the date provided in his contract with A. B is injury[ed] by this anticipated reimbursement because he will get no interest on his money until he has found a new investment for it. Moreover he is exposed to find a new investment only at a lower rate of interest or without mortgage security. C cannot therefore be allowed to enforce his right on A's land as long as A's obligation to B has not become due unless C offers to B a good investment for his money at the same rate of interest, with the same mortgage security and for the same period of time as is provided in his contract with A, or unless B agrees to the anticipated reimbursement of A's debt.

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748. — The nett proceeds of the auction shall be distributed to the mortgagees according to their ranks, and the[ ]surplus, if any, shall be delivered to the mortgagor.

749. — If the estimated value of the property, in case of transfer, or the nett proceeds, in case of auction, are less than the amount due, the debtor of the obligation remains liable for the difference.

750. — If a mortgage extends to several properties and no order has been fixed, the mortgagee can enforce his right upon such of them as he may select, provided that he does not do so upon more properties than is necessary for the satisfaction of his right.

751. — The mortgagee who intends to enforce the mortgage against the transferee of a mortgaged property must notify the transferee by registered letter of his intention one month before applying to the Court.

[250]

CHAPTER V.
RIGHTS AND DUTIES OF THE TRANSFEREE OF A MORTGAGED PROPERTY.

752. — The transferee of a mortgaged property may remove the mortgage, provided that he be not the principal debtor, a surety or an heir

of either of them.

ILLUSTRATION. — I. — A mortgages his land to B as security for the performance of an obligation due by C. Later on C buys A's land (or is given such land by A). C, although the transferee of a mortgaged land, cannot remove the mortgage because he is personally liable for the performance of the obligation secured.

II. — A mortgages his land to B as security for the performance of his obligation. C stands also as security for the performance of A's obligation. A dies and his estate devolves on C. C, although the transferee of a mortgaged land, cannot remove the mortgage because he is personally liable for the performance of the obligation secured.

753. — The transferee may remove the mortgage at any time until, or within one month after he has been notified by the mortgagee of his intention to enforce the mortgage. [251]

754. — The transferee who wishes to remove the mortgage must offer to all the registered creditors to pay such sum of money as he thinks fit.

755. — The form of the offer may be made to contain the following particulars :

1) the place and description of the mortgaged property,

2) the date of transfer of ownership,

3) the name of the former owner,

4) the name and residence of the transferee,

5) the sum offered,

6) a calculation of the total amount due to each of the creditors including accessories, and of the sums which would be distributed to them according to their respective ranks.

A certified copy of the entries in the official register referring to the property mortgaged will be enclosed.

756. — If all the creditors accept the offer, the mortgages, and preferential rights, i~~s~~[f] any, are removed by the payment of the sum offered.

757. — If a creditor refuses the offer, he is entitled to apply to the Court within one month from the date of the offer, for an order to have the mortgaged property sold by public auction, provided that he notifies his refusal to the transferee and to the other registered creditors. [252]

The transferee can bid at the auction.

758. — If the nett proceeds of the auction are not more than the sum

offered by the transferee, the creditor demanding sale shall bear the costs of the auction.

759. — If a creditor does not answer the offer of the transferee within one month from the date of the offer, the mortgage or preferential right is removed by the transferee depositing in lieu of performance the sum offered to such creditor.

760. — If the transferee who has been notified by the mortgagee of his intention to enforce the mortgage does not either perform the obligation or remove the mortgage, the mortgage is enforced against him in the same manner as if it were to be enforced against the mortgagor.

761. — Any right over the mortgaged property existing in favour of the transferee before the transfer and extinguished by merger in consequence of the transfer, shall revive in his favour when the enforcement or the removal of the mortgage results in the transfer of the ownership to another person.

ILLUSTRATION. — A has a right of passage on B's land. He buys that land. His right of passage is extinguished by merger. [253]

But B's land was mortgaged to C who, being unpaid by B, enforces his right on the mortgaged land. Such enforcement results in the sale by auction of the land which is bought by D. A being no longer the buyer of the land, the right of passage revives and can be exercised on D's land as it was when the land was owned by B.

762. — In case of enforcement or removal of mortgage, if the value of the mortgaged property has been reduced by the fault of the transferee, he is liable to pay compensation to the mortgagee up to the extent of the injury suffered by him thereby.

763. — In case of enforcement or removal of mortgage, if the value of the mortgaged property has been increased by the transferee, he is entitled to reimbursement of his expenses out of the proceeds of the sale up to the amount of the increase of value at the time of the auction.

CHAPTER VI.
EXTINCTION OF MORTGAGE.

764. — A contract of mortgage is extinguished :

1) by the total loss, or expropriation, of the mortgaged property ;

2) by the extinction of the obligation secured ; [254]

3) by the release of the mortgage granted in writing to the mortgagor ;

4) by the discharge of the mortgagor ;

5) by the removal of the mortgage ;

6) by the auction sale of the mortgaged property by order of the Court;

7) by the transfer of the ownership of the mortgaged property to the mortgagee.

765. — The mortgagee can enforce the mortgage even after the obligation secured has been extinguished by prescription, but the arrears of interest on mortgage cannot be enforced for more than five years.

766. — When a contract of mortgage is extinguished, the owner of the property concerned is entitled to have such extinction registered by the competent official.

767. — The mortgagor is entitled to have any part performance, or any discharge, or any agreement reducing the number of the mortgaged properties or the amount of the obligation secured, registered by the competent official.

Any such part performance, discharge, or agreement, cannot be set up against the buyer of the mortgagee's right unless it has been registered.

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CHAPTER VII.
REGISTRATION.

768. — The registration concerning mortgage shall be made at the Registry Offices, the number, places, districts ~~aud~~[and] competency of which are fixed by the special laws and regulations relating thereto.

769. — The parties who apply for the registration of contract of mortgage must:

1) make to the Registrar a statement of the terms of the agreement;

2) produce to him the land certificate, or, in case of movables, the registration certificate of the property concerned.

770. — On such application, the contract is drawn up according to the statement of the parties, and the Registrar shall enter on the certificate and on the Register counterfoil a summary of the contract showing the names of the parties, the nature of the obligation and the maximum amount for which the mortgaged property is security, the rate of interest, the date of maturity of the obligation, the date of registration.

771. — The person who applies for registration of an alteration or extinction of the mortgage must produce to the Registrar the land certificate, or, in case of movables, the registration certificate of the property concerned, and the document supporting his application. [256]

772. — On such application the Registrar shall enter on the certificate and on the Register counterfoil the alteration or extinction of the mortgage, and the date of such entry, and he shall annex thereto the documents produced.

773. — If in the opinion of the Registrar the application does not comply with the provisions of law, the Registrar shall decline to proceed with the registration until he has received an order of the Court to register.

He must however make on the certificate and Register counterfoil a note stating the fact and date of the application.

If the Registrar afterwards proceeds with the registration, such registration shall be deemed to have been made on the date of the application.

774. — When an alteration or extinction of the mortgage has been registered otherwise than with the consent of the mortgagee or by an order of the Court, the mortgagee may have such registration cancelled by the Court if he proves that in fact there had been no alteration or extinction of the mortgage.

On registration of the cancellation, the mortgagee shall be restored in his right and rank.

775. — Every person is entitled to consult the register's during the Office hours, without removing the books, and to obtain from the Registrar a certified copy or abstract of all the entries and documents relating to the mortgaged property, on payment of such fees as may be fixed by the competent Minister. [257]

TITLE XII.
PLEDGE.

CHAPTER I.
GENERAL PROVISIONS.

776. — A contract of pledge is a contract whereby a person, called the pledgor, agrees to deliver to another person, called the pledgee, a movable property, called pledge, as a security for the performance of an obligation to the pledgee.

ILLUSTRATION. — A has made a contract with B according to which it is agreed that A's golden watch is sold to B with right of redemption for 200 baht and that A will pay 1% interest per month on that price until he redeems the golden watch. It is obvious that this so—called sale with right of redemption is made by way of security for reimbursement of the price which is only lent to A. The contract entered into between A and B cannot therefore be considered as a contract of sale with right of redemption, but in case of discussion it shall be considered as a contract of pledge : that is to say A remains the owner, and is at the same time the pledgor, of his golden watch : B is only the pledgee of the golden watch, and should the 200 baht not be reimbursed to him, he cannot dispose of the watch otherwise than provided by the chapter of this Code concerning enforcement of pledge.

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777. — A contract of pledge is complete only on delivery of the pledge.

778. — A property which is not transferable cannot be pledged.

779. — A movable property which is already mortgaged cannot be pledged.

780. — The pledge is security for the performance of the obligation and for the following accessories :

1) Interest, if any.

2) Compensation in case of non-performance of the obligation.

3) Costs of enforcement of the right of pledge.

4) Expenses for the preservation of the pledge.

5) Compensation for injury caused by non-apparent defects of the pledge.

781. — The parties to a contract of pledge can agree that the pledge shall be kept by a third person.

[259]

782. — A property pledged to a person may be pledged to another person during the continuance of the first contract.

If the first pledgee has been notified in writing of the existence of the second contract of pledge, the following rules apply:

1) The first pledgee is bound, after the obligation due to him has been performed, to deliver the pledge to the second pledgee.

2) If the first pledgee has enforced the pledge and sold it by public auction, he must deliver to the second pledgee the surplus of the nett proceeds, if any.

If no notification in writing of the second contract of pledge has been made to the first pledgee, the first pledgee is under no obligation to the second pledgee.

ILLUSTRATION. — I. — A borrows 500 baht from B and delivers to B as pledge gold ornaments. Before repaying the 500 baht to B, A borrows another sum from C and agrees with C that he shall pledge to C the gold ornaments already pledged to B. If no notification in writing of the second contract is made to B, B is under no obligation to C.

II. — If B is notified in writing of the existence of the second contract of pledge, B is bound, on A repaying the 500 baht, to deliver the gold ornaments to C. If A does not repay the 500 baht and B sells the gold ornaments according to la w and the nett proceeds of the auction reach 600 baht, B can appropriate 500 baht and must deliver the surplus, viz. 100 baht to C. [260]

783. — If the pledge is a right represented by a written instrument, the contract of pledge is void ~~nn~~[un]less such instrument be delivered to the pledgee and the contract of pledge be notified in writing to the debtor of the right.

784. — Instruments to bearer may also be pledged by mere delivery.

785. — If the instrument is transferable by indorsement, the contract of pledge is void unless the pledgor indorses such instrument to the pledgee and the indorsement shows that it was made for the purpose of pledge.

No notification to the debtor of such instrument is necessary.

786. — If the instrument is a share certificate or other such instrument issued to a named person and not transferable by indorsement, the contract of pledge is void unless such instrument is pledged by making on it a statement to that effect.

No notification to the debtor of such instrument is necessary.

787. — If a pledged right becomes due before the obligation for which it is security is due, the debtor of such right must deliver to the pledgee the property due. The property delivered constitutes a pledge in lieu of the pledged right. If the property delivered is money, it shall be appropriated to the performance of the obligation. [261]

ILLUSTRATION. — I. — On April 1st. 2455, A lets out to B a steam launch for a period of 6 months. A document of lease is made, in which it is provided that on October 1st. 2455 B shall return the launch to A. On the 1st. of June 2455, A borrows from C 1,000 baht to be returned on the 1st. of January 2455 and wishes to give to C as security his rights over the steam launch. A delivers to C the document of lease and gives to B a notice in writing of the contract. On the 1st. of Od[c]tober, B must deliver the steam launch to C. The steam launch becomes a pledge in the hands of C as security for the return of the 1,000 baht.

II. — On April 1st. 2455, A borrows from B 1,000 baht to be returned on April 1st. 2456. A endorses to B as pledge a promissory note of 500 baht made by C to the order of A and payable on January 1st. 2455. On January 1st. 2455, C must pay the 500 baht to B, who shall appropriate them as part payment of the 1,000 baht due to him.

788. — If a right is pledged, it cannot be extinguished or modified to the injury of the pledgee without the consent of the pledgee.

789. — In the cases when a property is pledged by a person other than its owner, the contract is voidable unless the pledgee has received the pledge believing in good faith that the pledgor is the owner, or unless the owner authorizes or ratifies the contract, or unless the pledgor becomes owner of the property. [262]

If the property pledged is a property lost or a property obtained through an offence or the pledging of which constitutes an offence, the contract of pledge is void.

790. — If a person who has pledged property as a security for the performance of an obligation by another person performs the obligation, he is entitled to recover from that person the amount of the performance.

ILLUSTRATION. — A owes 500 baht to B. C agrees to pledge to B gold ornaments as security for payment of A's debt. On the debt of A becoming due, C pays 500 baht to B and withdraws the gold ornaments. C is entitled to recover 500 baht from A.

791. — If a person has pledged property as a security for the performance of an obligation by another person and the pledge is enforced, the owner of the pledge is entitled to recover from such person the amount up to which the pledgee has been satisfied by such enforcement.

ILLUSTRATION. — A owes 500 baht to B. C agrees to pledge to B gold ornaments as security for the payment of A's debt. A does not pay the debt. The pledge is enforced and the ornaments are sold by auction. The nett proceeds of the auction are 400 baht, which are appropriated by B. C is entitled to recover 400 baht from A.

792. — The provisions of this Title XII apply to contracts of pledge entered into with licensed pawnbrokers only in so far as they are not contrary to the laws or regulations concerning pawnbrokers. [263]

CHAPTER II.
RIGHTS AND DUTIES OF PLEDGOR AND PLEDGEE.

793. — The pledgee is entitled to retain the pledge until he has received full performance of the obligation and accessories.

794. — The pledgee is bound to keep the pledge in safe custody and take as much care of it as a person of ordinary prudence would take of his own property.

795. — The pledgee is not allowed, without the consent of the pledgor, to use the pledge or to let a third person have the use or custody of it.

796. — If the pledgee acts contrary to any of the provision[s] of section 795, he becomes liable for any loss or damage caused to the pledge, even by *force majeure*, unless he proves that the pledge would have been lost or damaged even if he had not acted contrary to such provision[s].

797. — The pledgee must collect the interest and profits of the pledge and appropriate them to the performance of the obligation and accessories. [264]

798. — The pledgor is bound to reimburse the pledgee for any expenses which were necessary for the preservation or maintenance of the pledge, unless such expenses were incumbent upon the pledgee under the contract of pledge.

799. — The pledgee is bound to return the pledge to the pledgor when the obligation and accessories are extinguished.

800. — The following liabilities are extinguished by prescription six months after the return of the pledge or its sale by auction:

1) The liability for compensation for damage caused to the pledge by the pledgee.

2) The liability for reimbursement of expenses incurred for the preservation or maintenance of the pledge.

3) The liability for compensation for injury caused to the pledgee by non-apparent defects in the pledge.

CHAPTER III.

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ENFORCEMENT OF PLEDGE.

801. — If the obligation and accessories for which the pledge is security are not performed, the pledgee is entitled to have the pledge enforced in the manner described in the following sections.

802. — The pledgee must first notify by registered letter the debtor to perform the obligation and accessories within a reasonable time to be fixed in the notice.

If the debtor fails to comply with the notice, the pledgee can sell the pledge by public auction.

The pledgee must notify the pledgor by registered letter of the day and time when, and of the place where, the auction shall be held.

803. — If notification is impossible, the pledgee can sell the pledge by public auction one month after the obligation became due.

804. — The buyer of a pledge duly sold by public auction acquires over it the same rights as if he had bought it from the owner.

805. — The pledgee of a bill is entitled to collect it on the day of its maturity without previous notification.

806. — If the pledge is a sum of money, the pledgee is entitled to appropriate it up to the amount of the obligation and accessories.

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807. — The pledgee must appropriate the nett proceeds of the public auction or of his collection to the extinction of the obligation and accessories and must return the surplus, if any, to the pledgor.

If the proceeds are less than the amount due, the debtor of the obligation remains liable for the difference.

808. — If several properties are pledged as security for one obligation, the pledgee can sell such of them as he may select, but he cannot sell more than required for the satisfaction of his claim.

809. — As long as the obligation is not due, the pledgor cannot agree that the pledgee shall, in case of non-performance, become the owner of the pledge or dispose of it otherwise than as provided by this Chapter.

ILLUSTRATION. — On April 1st, 2455, A borrows from B 500 baht to be returned on April 1st. 2456, A pledges gold ornaments to B as security for the return of the money. Until April 1st.

2456, A cannot agree with B that B shall keep the ornaments as payment of the 500 baht or that B [shall] sell the ornaments privately. But A and B can make any such agreement on or after April 1st, 2456.

CHAPTER IV. [267]

EXTINCTION OF PLEDGE.

810. — A contract of pledge is extinguis[h]ed :

1) When the obligation for which the pledge is security is extinguished otherwise than by prescription, or

2) When the pledgee allows the pledge to remain in, or to return into the possession of the pledgor.

TITLE XIII.
WAREHOUSING.

CHAPTER I.
GENERAL PROVISIONS.

811. — A warehouseman is a person whose business is to receive goods for storage in a warehouse, for remuneration.

812. — The provisions of Sections 658, 660 to 665, 668, 669, 670, 672, 676 and 678 concerning deposit apply to warehousing in so far as they are not contrary to the provisions of this Title XIII.

813. — The warehouseman is liable for any loss or damage caused to the goods unless he proves that such loss or damage has been caused by *force majeure* or by the nature of the goods. [268]

814. — The warehouseman is liable for the loss or damage caused by apparent defects in the packing of the goods stored if he accepted them without reservation.

815. — The warehouseman is not liable for the loss or damage caused by non-apparent defects in the packing of the goods.

816. — If the goods are of a dangerous nature or are likely to cause injury to persons or property, the depositor must declare their nature to the warehouseman on making the contract of warehousing, otherwise he will be liable for any injury caused by them.

817. — A provision in a warehouse receipt excluding or limiting the liability of the warehouseman is void, unless the depositor expressly agreed to such exclusion or limitation of liability.

818. — The warehouseman is bound to allow the holder of the warehouse receipt and the holder of the warrant to inspect the goods at any reasonable intervals during business hours and to take samples.

819 — No compensation is due for loss or damage discoverable from the external condition of the goods if the goods were withdrawn without express reservation. [269]

820. — In case of loss or damage not discoverable from the external condition of the goods, no compensation is due unless notice of loss or damage be given to the warehouseman within eight days after

withdrawal.

821. — If no time for the return of the goods was fixed, the warehouseman can return the goods at any time on giving three months notice to the depositor.

822. — If the remuneration due is not paid, the warehouseman is entitled to retain the goods, provided that the depositor or the holder of the warehouse receipt may at any time apply to the Court for an order, either :

1) Restricting the exercise of this right to such part of the goods as the Court may deem sufficient to cover the remuneration, or.

9) Ordering the warehouseman to return the goods on the depositor or the holder of the warehouse receipt giving security for the remuneration.

823. — It the depositor or the holder of the warehouse receipt does not withdraw the goods at the proper time, or does not pay the remuneration due, the warehouseman can notify the depositor by registered letter to withdraw the goods and pay the remuneration within a reasonable time to be fixed in the notice.

If the depositor fails to comply with the notice, the warehouseman can [270] sell the goods by public auction.

The proceeds of the public auction must be appropriated as provided by Sections 839 and 840.

CHAPTER II.
WAREHOUSE RECEIPT AND WARRANT.

824. — If required by the depositor, the warehouseman must deliver to him a warehouse receipt and a warrant.

825. — The warehouse receipt is a document by the indorsement of which the rights and liabilities of the depositor are transferred to the indorsee.

826. — The warrant is a document by the indorsement of which the goods mentioned in it may be pledged to the indorsee without being delivered to him.

827. — The warehouse receipt and the warrant must each bear a serial number and contain the following particulars :

1) The name or trade name and the address of the depositor.

2) The place of storage.

3) The remuneration for storage. [271]

4) The nature of the goods stored, their weight or bulk and the nature, number and marking of the packages, if any.

5) The place where, and the time when, the receipt and the warrant are made out.

6) The period for which the gooks are stored, if any has been fixed.

7) If the goods stored are insured, the amount of the insurance, the period for which the goods are insured and the name or trade name of the underwriter.

The receipt and the warrant must each be signed by the warehouseman.

828. — The fact and date of the issue of the warrant and the serial number of such warrant must be stated in the warehouse receipt.

829. — The fact of the issue of the warehouse receipt and warrant must be entered in the books of the warehouseman together with the particulars and serial numbers of such warehouse receipt and warrant.

830. — The holder of a warehouse receipt can require the warehouseman to divide the goods stored and to deliver to him a separate warehouse receipt for each part. In such case, the holder must return the original warehouse receipt to the warehouseman.

The expenses for such division and for the delivery of the new receipt or receipts must be borne by the holder. [272]

831. — The ownership of the goods stored can be transferred only by indorsement on the warehouse receipt.

832. — The goods stored can be pledged only by indorsement of the warrant. After the warrant has been indorsed, the goods may be pledged to a second pledgee by indorsing the warehouse r[e]ceipt in the same way as a warrant.

833. — As long as the goods stored are not pledged, the warehouse receipt and the warrant cannot be transferred separately.

834. — The first indorsement on a warrant must mention the amount of the obligation for the security of which the goods are pledged, the interest to be paid and the day of maturity of the obligation.

The same particulars must be noted by the first pledgee on the warehouse receipt with his signature, otherwise the first pledgee and the subsequent pledgees cannot set up their right of pledge against the holder of the warehouse receipt.

835. — The delivery of the goods stored can be obtained only on surrender of the warehouse receipt.

836. — If a warrant has been issued, the delivery of the goods can be obtained only on surrender of both the warehouse receipt and the warrant. [273]

However, the holder of the warehouse receipt can at any time have the goods returned to him on depositing with the warehouseman the whole amount of the obligation entered in the warrant, with interest up to the date when the obligation is due.

The amount so deposited must be paid by the warehouseman to the holder of the warrant upon surrender of such warrant.

837. — If the obligation for which the goods have been pledged is not performed on the day of its maturity, the holder of the warrant is entitled to have the goods sold by public auction by the warehouseman, provided that the public auction shall not be held less than eight days after the day of maturity of the obligation.

838. — The holder of the warrant must notify the depositor by registered letter of the day and time when, and of the place where, the auction shall be held.

839. — The warehouseman must deduct from the nett proceeds of the public auction, the sums due to him in connection with the storage[,] and out of the balance he must, on surrender of the warrant, pay to the holder thereof the amount due to him.

Any surplus must be paid to the second pledgee on surrender of the warehouse receipt or, if[f] there is no second pledgee or after he has been satisfied, to the holder of the warehouse receipt. [274]

840. — If the nett proceeds of the public auction are not sufficient to satisfy the holder of the warrant the warehouseman must return the warrant to the holder stating thereon the amount paid, and make an entry thereof in his books.

841. — The holder of the warrant can have recourse for the amount unpaid against all or any of the prior indorsers, jointly or separately, provided that the public auction has been held within one month after the day of maturity of the obligation.

842. — As far as circumstances admit, the provisions of this Code concerning promissory notes apply to warrants and to warehouse receipts indorsed as warrants.

843. — If a warehouse receipt or a warrant has been lost or stolen, the holder on giving proper security can require the warehouseman to deliver him a new receipt or warrant.

TITLE XIV.
AGENCY.

[275]

CHAPTER I.
GENERAL PROVISIONS.

844. — A contract of agency is a contract whereby a person, called the principal, directs another person, called the agent, to act for him and the agent agrees to do so.

845. — Agency may be express or implied.

846. — An employee is presumed to have an implied authority to do for his employer whatever is customary in the course of his employment.

847. — The *compradore* of a Bank is presumed to have no authority to bind his employer.

848. — Unless refused at once, an offer of agency is deemed to be accepted by the agent if it refers to acts to be done in the ordinary course of his business or which the agent offered to do by a notice or advertisement addressed to the public.

849. — Acts done by an agent on behalf of an incapacitated principal are valid only in so far as they would be valid if done by the incapacitated person himself. [276]

ILLUSTRATION. — A, a minor, directs B, his agent, to buy a ship for him. This act is beyond A's capacity, and its consequences are likely to cause injury to A. The contract of sale would be voidable if entered into by A himself. It is also voidable when entered into by B on behalf of A.

850. — Agency is void in so far as the principal directs the agent to do acts which by nature or by law cannot be done through representatives.

851. — The principal who employs an incapacitated person as an agent is bound by the acts of that agent in the same way as if he was capable.

But the liability of the agent to the principal is governed by the provisions concerning capacity.

852. — If the principal appoints an agent without limiting or specifying the nature or extent of his authority, the agent is said to have a general authority.

853. — If the nature or extent of his authority is limited or specified, the agent is said to have a special authority.

854. — The agent who has a special authority can do on behalf of his principal whatever is necessary for the due execution of the matters entrusted to him. [277]

855. — The agent who has a general authority can do anything on behalf of his principal, except:

1) Sell immovable property.

2) Make a gift.

3) Make a compromise.

4) Enter an action in Court.

5) Submit a dispute to arbitration.

856. — In case of emergency, the agent can do in order to protect his principal from loss all such acts as would be done by a person of ordinary prudence in his own case.

ILLUSTRATION. — A, of Bangkok, is the agent of B, of Chiengmai, with a general authority, B is creditor of C, of Bangkok, but, when A becomes aware of it only five days remain before B's right is extinguished by prescription. A cannot get a special authority from B for entering an action in Court against C before these five days have elapsed. A can nevertheless enter such action in Court on behalf of B.

857. — The agent is only entitled to receive a remuneration in the cases provided by agreement or by custom.

858. — If several agents have been appointed by the same principal for the same matters, it is presumed that they cannot act separately. [278]

CHAPTER II.

DUTIES OF THE AGENT TO THE PRINCIPAL.

859. — The agent is bound to act for his principal according to the directions given by the principal or, in the absence of such directions, according to the custom and with such care as may be expected from a person of ordinary prudence.

If the agent acts otherwise, he must make compensation for any injury which the principal may sustain therefrom ; and, if any profit accrues, he must account for it to the principal.

860. — If required, the agent must at any reasonable time give information to his principal as to the condition of the matters entrusted to him.

861. — After determination or extinction of the agency, the agent must as soon as possible report to the principal how the matters have been executed.

862. — The agent must transfer to the principal the rights which he has acquired in his own name but on behalf of the principal.

863. — The agent must hand over to the principal all the monies and other properties which he receives in the execution of the agency. [279]

864. — If the agent has used for his own benefit money which he ought to have handed over to the principal or to have used for the principal, he must pay interest thereon from the day when he used it for his own benefit.

CHAPTER III.
DUTIES OF THE PRINCIPAL TO THE AGENT.

865. — The principal is bound to reimburse the agent for any advances made or expenses incurred by him in his capacity as agent and within the scope of his authority.

Interest is due by the principal to the agent on such advances or expenses from the day when they were made.

866. — The principal is bound to make compensation to the agent for the consequences of acts done by him in his capacity as agent and within the scope of his authority.

867. — The principal must, if so required, advance to the agent such sums as are necessary for the execution of the matters entrusted to him.

868. — The remuneration of the agent shall be fixed by agreement. In the absence of any agreement, it shall be governed by custom. [280]

869. — In the absence of any agreement or custom as to the time of payment, remuneration is payable only after the determination or extinction of the agency.

870. — The agent is not entitled to remuneration in respect of that

part of his agency which he has misconducted.

871. — The agent can withhold, out of any sum received by him on account of the principal in the execution of the agency, all monies due to himself for advances, expenses or remuneration.

872. — If any of the monies due to the agent are not paid, the agent can exercise over any property of the principal in his possession by reason of the agency the rights described in Sections 673, 674 and 675 concerning deposit.

CHAPTER IV.
LIABILITY OF PRINCIPAL AND AGENT TO THIRD PERSONS.

873. — The principal is bound to third persons by the acts which the agent has made within the scope of his authority and in the name of the principal.

A limitation of authority which is not customary or is not inherent in the nature of the matters entrusted cannot be set up against third persons who had no knowledge of it. [281]

ILLUSTRATION. — A, a general outfitter in Bangkok, has appointed B as his agent, manager of a branch in Chiengmai. But B's authority is limited ; B has no power to sign receipts. This limitation is not customary. If B signs a receipt to C who has no knowledge of such limitation, such receipt shall stand good and C can set it up against A's claim.

874. — A person who expressly or impliedly represents another person as his agent or knowingly allows another person to be represented as his agent, is liable to third persons in good faith in the same way as if such person was his agent.

875. — A principal who represents his agent or knowingly allows his agent to be represented as having a wider authority than he actually has is liable to third persons in good faith in the same way as if the agent had such wider authority.

876. — If a person does an act without authority or beyond the scope of his authority such act does not bind the principal unless he expressly or impliedly ratifies it.

877. — If the principal does not ratify the act, the person who has acted as agent is personally liable to third persons, unless he proves that such third persons knew that he was acting without authority or beyond the scope of the authority. [282]

878. — A principal is not bound by a contract entered into by his agent

with a third person, if the contract was entered into by the agent in consideration of any property or other advantage given or promised to him by such third person.

879. — Notifications made by, or to the agent within the scope of his authority are deemed to be notifications made by, or to, the principal.

CHAPTER V.
EXTINCTION OF AGENCY.

880. — Agency is extinguished in the following cases :

1) By the execution of the agency being completed.

2) If the authority was given for a limited period of time, by the expiration of such time.

3) By the death of the principal or of the agent.

4) By the principal becoming incapacitated.

881. — Agency is determined by the principal revoking the authority or the agent renouncing the agency. [283]

882. — The principal can revoke the authority and the agent renounce the agency at any time. The party who determines the agency at a time which is inconvenient to the other party is liable to such party for any injury resulting therefrom, unless the determination of the agency was caused by some unavoidable necessity.

883. — When agency is extinguished by the principal dying or becoming incapacitated, the agent is bound to take all reasonable steps to protect the interests entrusted to him until the heirs or representatives of the principal can themselves protect such interests.

884. — When agency is extinguished by the death of the agent, the heirs of the agent are bound to notify the principal and to take all reasonable steps to protect the interests entrusted to the agent until the principal can himself protect such interests.

885. — The principal is bound to the agent for the acts done by him before he knew or ought to have known of the determination or extinction of the agency.

886. — The agent is bound to the principal to continue the execution of the agency until the time when the principal knows or ought to have known of the renunciation by the agent. [284]

887. — The principal is not bound to third persons for the consequence of acts done by the agent after determination or extinction of the agency, if such persons knew or ought to have known of the extinction.

888. — Determination or extinction of the agency for any cause whatsoever is deemed to be known to third persons after three successive advertisements in a local paper.

889. — On determination or extinction of the agency the principal can require the surrender of any written authority delivered to the agent.

CHAPTER VI.
SUBAGENCY.

890. — The agent cannot appoint a subagent, unless he be allowed by the principal to do so, or unless by custom a subagent may be appointed.

891. — An agent who has appointed a subagent although he was not allowed by the principal or by custom to do so is liable for all the acts done by that subagent in such capacity. [285]

892. — The agent who has lawfully appointed a subagent is not liable to the principal for the acts done by the subagent unless the principal proves that the agent has not selected the subagent with such care as may be expected from a person of ordinary prudence.

893. — If the discretion left to the agent for the appointment of a subagent has been limited to persons designated by name by the principal, the agent is not liable for the acts done by any such subagent.

894. — The principal has a direct cause of action against the subagent for his rights arising out of the subagency.

895. — The subagent has a direct cause of action against the principal for his rights arising out of the subagency.

896. — The principal is bound to third persons by the acts done by a lawfully appointed subagent within the scope of the authority and in the name of the principal, in the same way as if such acts were done by the agent.

[286]

CHAPTER VII.
IMPORTATION AGENTS.

897. — Importation agents, whether called agents, commission agents, representatives or otherwise are personally liable for the execution of the contracts entered into by them as such.

TITLE XV.
BROKERAGE.

898. — A broker is a person who acts as intermediary between other persons fo[r] the nego[t]iation of contracts.

The remuneration which may be due to a broker for his services is called brokerage.

899. — A broker who has been instructed by a party not to disclose his name shall not communicate it to the other party.

900. — A broker is not personally liable for the execution of the contracts entered into through his mediation.

However when a broker has not disclosed to one party the name of the other party, he is liable for performance to the former party.

901. — A broker who has been instructed by a party to sell or buy property at a fixed price may be himself the buyer or the seller, provided he gives notice thereof to that person. [287]

In such case the broker incurs the same liability as an ordinary party to a contract of sale, but he is still entitled to charge brokerage.

902. — A broker is presumed to have no authority to receive on behalf of the parties the payments or other prestations due in execution of the contract.

903. — The promise to pay brokerage is implied unless the services, under the circumstances of the case, shall have been expected to be rendered gratuitously.

904. — No brokerage is due to the broker unless the contract is the result of his services.

905. — A broker loses his right to brokerage if he agrees to accept brokerage from both parties to the contract without their consent.

906. — The brokerage shall be fixed by agreement. In the absence of any agreement, it shall be governed by custom.

If the brokerage agreed upon is excessive, the Court can reduce it.

TITLE XVI.
COMPROMISE.

[288]

907. — A contract of compromise is a contract whereby the parties agree to settle a dispute between them by mutual concessions.

908. — A compromise referring to property the sale of which is subject to the execution of an official document is void unless made in writing before the proper official.

909. — The effect of the compromise is to extinguish the claims abandoned by each party and to secure to each party the rights which are declared to belong to him.

910. — The parties to a compromise are liable for defects or for eviction as provided in the Title concerning sale.

ILLUSTRATION. — D having died, A inherits a house. B claims the house on the ground that he has acquired the ownership of it by virtue of a contract of exchange passed a few days before D's death. A and B make a compromise and the house is delivered to B.

a) — (Defects): After delivery B discovers that the house which has been described as having stone walls has wooden walls. This defect impairs the value of the house (S. 408), B has against A the remedies described in the Code concerning non-performance.

b) — (Eviction) : After delivery, C, a third person, claims the house and proves that it had been lawfully sold to him by D before the exchange. B suffers total eviction (S. 417). He has against A the remedies described in the Code concerning non-performance.

[289]

911. — Cancellation of a compromise on the ground of mistake is limited to the following cases :

1) Mistake as to the identity of one of the parties to the compromise.

2) Compromise based on forged or invalid documents.

912. — A compromise based on forged or invalid documents cannot be cancelled by the Court if, at the time of the compromise, all the parties knew that such documents were forged or invalid.

TITLE XVII.
GAMBLING AND BETTING.

913. — Gambling or betting contracts are void unless expressly authorized by law.

914. — If a person, in order to pay a void gambling or betting debt, agrees to incur another obligation, such obligation is void. [290]

But a bill subscribed or indorsed according to Title XXIV on bills in order to pay a gambling or betting debt is valid in the hands of a holder in good faith.

915. — A person who has knowingly performed a gambling or betting contract is not entitled to restitution.

TITLE XVIII.
CURRENT ACCOUNT.

916. — A contract of current account is a contract whereby two persons agree that transactions between them shall be entered in a separate account and that from time to time the respective obligations shall be set off and only the difference paid.

ILLUSTRATION. — On the 1st. January 2455, A, a banker, and B agree that all the sums received or paid by A shall be entered in a separate account, the balance struck each year on the 1st. July and the difference then paid. This agreement is a contract of current account and works as follows:

[291]

On	*the*	*15th. January A pays for a cheque drawn by B ..... Baht*	*500*	
,,	,,	*20th. January A pays for a promissory note signed by B .....*	*200*	
,,	,,	*1st. February A receives from a lessee for the rent of a house belonging to B .....*		*200*
,,	,,	*15th. February A pays for call upon shares belonging to B .....*	*400*	
,,	,,	*31st. March A receives for payment of a debt incurred by a third person towards B*		*2000*
,,	,,	*15th. April A lends to B .....*	*500*	
,,	,,	*31st. May A sends to a third person designated by B .....*	*300*	
,,	,,	*15th. June A receives for dividend on shares belonging to B .....*		*100*

On the 1st. July the balance is struck and shows a difference of 100 baht in favour of B. The respective obligations of A and B entered in the current account have been extinguished by set off: There remains only one obligation, viz. the obligation of A to pay 400 baht to B.

917. — The parties can agree to have several current accounts at the same time.

918. — The entry of a bill in a current account is presumed to be made on condition that the bill will be paid. If the bill is not paid, the entry may be cancelled.

919. — A surety for a party to a current account guarantees the payment of the difference due by him when the balance is struck. [292]

920. — The balance must be struck at the time agreed by the parties. If no time has been agreed, the balance must be struck at the time fixed

by the custom.

921. — Either party can at any time determine the contract of current account and have the balance struck.

922. — The contract of current account is extinguished and the balance must be struck when one party dies or becomes incapacitated.

923. — The difference, if not paid, bears interest from the day when the balance was struck.

924. — The obligations, resulting from a current account are extinguished by prescription five years after the balance was struck.

TITLE XIX.
INSURANCE AGAINST LOSS.

925. — A contract of insurance is a contract whereby a person agrees to make compensation for a contingent loss and another person agrees to pay therefor a sum of money called premium. [293]

926. — The party who agrees to make compensation is called the underwriter.

The party who agrees to pay the premium is called the insurer.

The person who is to receive compensation is called the insured.

927. — A contract of insurance is void unless made in writing.

928. — If two or more contracts of insurance are made simultaneously for the same loss and the total amount of the sums insured exceeds the actual amount of the loss, the insured is entitled to receive compensation up to such amount only.

Each underwriter must pay a part of the actual loss in proportion to the sum insured by him.

Contracts of insurance are deemed to have been made simu[l]taneously if their dates are the same.

929. — If two or more contracts of insurance are made successively, the first underwriter is first liable for the loss. If the amount paid by him is not sufficient to cover the loss, the next underwriter is liable for the difference and so on, till the loss is covered.

930. — If a person who has insured his own property transfers the ownership of such property to another person, the contract of insurance is extinguished. [294]

The foregoing provision does not apply and the contract of insurance is transferred with the property in the following cases :

1) When the property is transferred by way of inheritance.

2) When the underwriter, having received notice of the transfer, agrees to it.

931. — The underwriter is bound to pay compensation for the actual amount of the loss.

The actual amount of the loss shall be valued at the place where, and at the time when, the loss occurred. The sum insured is presumed to be a

correct basis for such valuation.

The compensation cannot exceed the sum insured.

932. — The actual amount of the loss includes:

1) The damage caused to the insured property by reasonable measures used for preventing the loss.

2) All reasonable expenses incurred for preserving the insured property from the loss.

933. — A contract of insurance on carriage covers every loss which the goods carried may sustain from the time when they are received by the carrier until they are delivered to the consignee, and the amount of compensation must be fixed according to the value which the goods carried would have had on arrival at the place of destination. [295]

934. — The expenses of valuation of the loss must be borne by the underwriter.

935. — If the loss is caused by the fault of a third person, the underwriter who pays compensation is subrogated, up to the amount paid by him, to the rights of the insurer and of the insured against such third person.

If the underwriter has paid part only of the amount of the loss, he cannot exercise the rights mentioned in the foregoing paragraph to the prejudice of the rights which the insurer or the insured retain against the third person for the remainder of the loss.

ILLUSTRATION. — A, underwriter, has paid to B whose house was destroyed by fire the total amount of the loss baht 30,000. It is proved that C caused the fire and an action for compensation may be brought against him. A is entitled to sue C for baht 30,000. Had A paid no more than baht 25,000, he would have had no action against C until B recovered from C the remainder of the loss viz. 5,000 baht.

936. — The underwriter is liable even if the loss is caused by the fault of the insured, unless the insured failed to comply with a particular clause of the contract.

937. — If the contract of insurance provides that, on the happening of the loss, the insurer or the insured are bound to inform the underwriter within a certain period of time, no such notice is necessary if the underwriter knew otherwise within that period of the happening of the loss. [296]

938. — The liability for payment of compensation is extinguished by

prescription two years after date of loss.

The liability for payment of a premium is extinguished by prescription two years after the date when the premium became due.

TITLE XX.
INSURANCE ON LIFE.

939. — A contract of insurance on life is a contract whereby the underwriter agrees to pay to the beneficiary a sum of money, dependent upon the life or death of a person, and the insurer agrees to pay him a premium therefor.

940. — The beneficiary may be the insurer or any third person.

941. – The sum payable may be a lump sum or an annuity.

942. — The person upon whose life or death the payment of the sum depends may be the insurer, beneficiary or any third person. [297]

943. — If the insurer is not the beneficiary, he has the right to transfer the benefit of the contract to another person so long as the beneficiary has not notified the underwriter in writing of his intention to take such benefit.

After the beneficiary has notified in writing the underwriter of his intention to take the benefit of the contract, no transfer is possible unless the beneficiary agrees to it.

944. — If at the time of making the contract of insurance on life the person upon whose life or death the payment of the sum payable depends knowingly omits to disclose facts which would have induced the underwriter to raise the premium or to refuse to enter into the contract, or knowingly makes false statements in regard to such facts, the contract is voidable.

But the underwriter must return to the insurer or to his heirs the redemption value of the policy.

945. — If the underwriter knew of the facts mentioned in Section 944 or knew the statements to be false, or would have known of them or of their falsity if he had exercised such care as may be expected from a person of ordinary prudence, the contract shall be valid.

946. — If the age of the person upon whose life or death the payment of the sum depends has been incorrectly stated, the contract of insurance shall not be voidable, but the sum payable shall be the sum to which the beneficiary would have been entitled if the age of the person had been correctly stated. [298]

947. — When the parties to a contract of insurance on life, in fixing the amount of the premium, took into consideration a particular risk, and such risk ceases to exist, the insurer is entitled to have the premium reduced proportionately.

948. — The insurer is entitled at any time to determine the contract of insurance by discontinuing to pay the premium. If the premium had been paid for at least three years he is entitled to receive from the underwriter the surrender value of the policy or a paid up policy.

949. — Whenever the sum is to be paid on the death of a person, the underwriter is bound to pay it on such death unless :

1) Such person voluntarily committed suicide within one year after the date of the contract, or

2) Such person was intentionally killed by the beneficiary.

In case number 2, the underwriter is bound to pay the insurer or to his heirs the redemption value of the policy.

950. — If the death is caused by the fault of a third person, the underwriter cannot claim compensation from that person, but the heirs of the deceased do not lose their right to compensation from the third person, even if the sum payable under the contract of insurance on life reverts to them. [299]

951. — If the insurer has made an insurance payable on his death in favour of his heirs, the sum payable shall be part of the assets of his estate available for his creditors.

If the insurance has been made in favour of a particular person, only the amount of the premiums paid by the insurer shall be part of the assets of his estate available for his creditors.

ILLUSTRATION. — I. — A has made an insurance for 10,000 baht payable on his death " to his heirs", without specifying any particular persons. The liabilities of his estate amount to 13,000 baht while the assets are :

Cash	*500*	*baht*
Furniture of house	*600*	*,,*
Credit balance in Bank	*5,000*	*,,*
Total	*6,100*	*baht*

This total would not be sufficient to satisfy the creditors. But the amount of the insurance shall be added to the assets making a gross total of 16,000 baht out of which all the debts shall be paid leaving a balance of 3000 baht to be distributed among A's heirs.

II. — A has made an insurance for 10,000 baht payable on his death to his wife B (a particular person). [300]

The liabilities of his estate amount to 7,000 baht while the assets are :

Cash	300	baht
Furniture of house	500	„
Pony and carriage	400	„
Credit balance in Bank	1,000	„
Total	2,200	baht

But A has paid to the underwriter five premium of 500 baht each. B will receive the total sum insured, 10,000 baht, but B must refund the premiums, 2,500 baht, to the estate, the total assets of which will thus be 4,700 baht to be distributed among the creditors according to their rank.

TITLE XXI.
BILLS.

CHAPTER I.
GENERAL PROVISIONS.

952. — Bills within the meaning of this Code are of three kinds, namely: bills of exchange, promissory notes and cheques.

953. — References to matters provided in this Title are void unless written on the bill. [301]

954. — If matters not provided in this Title are written on the bill, they have no effect under the bill.

955. — A person who puts his signature upon a bill is liable thereon according to the tenor of such bill.

956. — A person who affixes on a bill a mere mark, such as a cross or a finger print, even if certified by witnesses, cannot exercise the rights and does not incur the liabilities resulting from the specific rules concerning bills. He is only bound by the general rules concerning obligations.

957. — If an agent puts his signature upon a bill without stating that he is acting on behalf of a principal, the agent is liable under the bill but the principal is not.

958. — Although one or more of the parties to a bill may be incapacitated, the bill is valid as regards capable parties.

959. — No extension of time can be granted by the Court for the payment of a bill.

960. — Holder means a person who is in possession of a bill as a payee or indorsee, or the bearer if the bill is payable to bearer. [302]

961. — The indorsee of a bill is not a holder unless the first indorsement be signed by the payee and each subsequent indorsment be signed by the person described in the preceding indorsement, so that there be an unbroken series of indorsements.

962. — The expression *prior parties* includes the drawer or maker of the bill and the prior indorsers.

963. — When there is no room on a bill for further indorsements, a slip of paper, called an allonge, may be attached thereto. It becomes part of the bill.

The first indorsement on the allonge must be written partly on the bill itself and partly on the alionge [= allonge].

CHAPTER II.
BILLS OF EXCHANGE.

PART I. — DRAWING OF A BILL OF EXCHANGE.

964. — A bill of exchange is a written instrument by which a person, called the drawer, orders another person, called the drawee, to pay a sum of money to, or to the order of, a person called the payee. [303]

965. — A bill of exchange must be dated, signed by the drawer, and must contain the following particulars :

1) A sum certain in money.

2) The name or trade name of the drawee.

3) The name or trade name of the payee.

4) An unconditional order to pay.

5) A day of maturity.

6) The place of payment.

966. — The sum must be expressed at least once in letters.

967. — If the sum is expressed in letters and figures and the two expressions do not agree, the bill of exchange is good for the sum expressed in letters.

968. — If the sum is expressed several times in letters and the several expressions do not agree, the bill of exchange is good for the lowest sum only.

969. — A stipulation as to interest in a bill of exchange is valid.

970. — A person can draw a bill of exchange payable to himself or to his order. [304]

971. — A person can draw a bill of exchange upon himself.

972. — A bill of exchange can be drawn payable to bearer.

973. — The drawer can insert in the bill of exchange a referee in case of need at the place of payment.

974. — The maturity of the bill of exchange must be:

1) On a fixed day, or

2) At the end of a fixed period after the date of the bill, or

3) On demand, or at sight, or

4) At the end of a fixed period after sight.

975. — If the drawer has not specified the maturity in the bill of exchange, the bill is payable on demand.

976. — A document which complies with the requirements of the present part is a bill of exchange within the meaning of this Code.

977. — A document which does not comply with the requirements of the present part is not a bill of exchange within the meaning of this Code. [305]

[Part] II. — EFFECTS OF A BILL OF EXCHANGE.

978. — The drawer of a bill of exchange engages that it shall be accepted and paid according to its tenor and that, if it be dishonoured by non-acceptance or non-payment, he will pay it to the holder or to any indorser who has been compelled to pay it, provided that the requisite proceedings on non-acceptance or non-payment be duly taken.

979. — The drawer may specify in the bill of exchange that he assumes no liability or only a limited liability under the bill.

980. — The drawer may specify in the bill of exchange that he waives some or all of the duties of the holder.

981. — A debtor under a bill of exchange can set up against a person who makes a claim under such bill the following defences only:

1) Defences resulting from the provisions of this Title XXI.

2) Defences which the debtor has personally against the claimant.

[Part] III. — TRANSFER AND INDORSEMEMT. [306]

982. — A bill of exchange issued to a named payee may be transferred by indorsement unless the drawer of the bill has inserted in it a clause

forbidding indorsement.

983. — A bill of exchange payable to bearer is transferred by mere delivery. It may be also transferred by indorsement.

984. — Any person, even if drawer, acceptor or prior indorser, who acquires a bill of exchange by indorsement, may again transfer it by indorsement.

985. — An indorsement is made by writing the name or trade name of the indorsee on the bill of exchange, with the signature of the indorser.

986. — An indorsement may also be made by the mere signature of the indorser on the back of the bill of exchange. Such indorsement is called blank indorsement.

987. — A bill of exchange bearing a blank indorsement may be transferred by mere delivery.

Any holder of a bill bearing a blank indorsement can fill up the indorsement.

988. — When a bill of exchange payable to bearer has been transferred by indorsement, the bill ceases to be payable to bearer until it is indorsed to bearer or indorsed in blank. [307]

989. — An indorser may, in indorsing the bill of exchange, insert a referee in case of need at the place of payment.

990. — Indorsement must be for the whole amount of the bill of exchange. A partial indorsement is void.

991. — The indorser of a bill of exchange engages that it shall be accepted and paid according to its tenor and that, if it be dishonoured by non-acceptance or non-payment, he will pay it to the holder or to a subsequent indorser who has been compelled to pay it, provided that the requisite proceeding on non-acceptance or non-payment be duly taken.

992. — An indorser may, in indorsing the bill of exchange, specify that he assumes no liability or only a limited liability under the bill.

993. — If an indorser specifies that he forbids further indorsements, he incurs no liability under the bill of exchange to subsequent indorsers.

994. — If the holder of a bill of exchange indorses it after the time for [308]

protest for non-acceptance or non-payment has elapsed, the indorsee acquires only the rights of his indorser.

995. — A holder can by indorsement pledge the bill of exchange or give an authority to another person to collect it. The purpose of such indorsement must be stated on the bill.

996. — Whenever a bill of exchange has been indorsed for pledge or collection, the indorsee cannot indorse it, except for the same purpose.

[Part] IV. — ACCEPTANCE.

1. — ACCEPTANCE BY DRAWEE.

997. — The holder of a bill of exchange is entitled to present it at any time for acceptance to the drawee, unless there be a clause in the bill forbidding presentation for acceptance.

998. — The holder of a bill of exchange payable at the end of a period after sight must present it for acceptance within one year from its date, or, if the drawer has specified a shorter time, within such time.

If the holder fails to present the bill for acceptance within the above mentioned period, he loses his rights under the bill against the prior indorsers. [309]

999. — If the drawee does not refuse to accept the bill of exchange on presentation, he is allowed till midday on the following day, to seek out the holder and accept it.

1000. — Acceptance is made by a declaration of acceptance written on the bill of exchange with the signature of the drawee.

1001. — If the drawee merely puts his signature on the bill of exchange, he is deemed to have accepted it.

1002. — If the bill of exchange is payable at the end of a period after sight, the acceptance must be dated.

1003. — If the drawee omits to date his acceptance, any person can date it.

1004. — If the acceptance is not dated, the last day of the period fixed for acceptance is deemed to be the day of acceptance.

1005. — The drawee cannot cancel his acceptance.

1006. — The drawee may limit his acceptance to a part of the sum payable. [310]

1007. — If the drawee subjects his acceptance to any other limitation than to part of the sum payable, acceptance is deemed to be refused.

1008. — By acceptance the drawee becomes bound to pay the amount accepted on the day of maturity of the bill of exchange.

2. — RIGHT OF RECOURSE IN CASE OF NON-ACCEPTANCE.

1009. — If the bill of exchange is presented for acceptance as provided by Sections 997 to 999 and the drawee fails to accept it, the holder has a right of recourse against all or any of the prior parties, jointly or separately, provided that he complies with the rules prescribed in Sections 1011 to 1018.

1010. — If the acceptance is limited to part of the sum payable, the holder has the right of recourse for the difference only.

1011. — The holder must, on the day following the day of presentation, send to the drawee through the Post Office a notice called protest.

1012. — The protest shall be entered by the Post Office in three copies in the form provided by Schedule A attached to this Code. [311]

1013. — Each copy shall be signed by the clerk of the Post Office where the protest is made and shall bear the date stamp of such Office. It must contain the following particulars :

1) The date of the protest.

2) The date of the bill of exchange.

3) The name or trade name of the drawer.

4) The name or trade name of the drawee.

5) The amount of the bill of exchange.

6) The day of maturity of the bill of exchange.

7) The day of presentation.

8) The name or trade name and address of the holder.

9) A statement that the drawee can, during the three days next following the date of protest, seek out the holder and accept the bill of exchange on paying the expenses of protest.

1014. — Copy No. 1 being the protest shall be sent to the drawee under registered cover.

Copy No. 2 being the receipt for the protest shall be delivered to the holder.

Copy No. 3 being the original shall be kept by the Post Office.

1015. — If the bill of exchange is not accepted within the three days [312]
period, the bill is said to be dishonoured by non-acceptance and the holder must, within the four days next following, send notice of dishonour to the person or persons, against whom he intends to take recourse.

1016. — If the drawee notes on the bill of exchange the fact and date of refusal of acceptance and signs such note, no protest is necessary and the holder must, within eight days from the date of refusal, send notice of dishonour to the person or persons against whom he intends to take recourse.

1017. — The notice of dishonour must contain the date of the bill of exchange, the names or trade names of the drawer and drawee, the amount of the bill, the name or trade name and address of the holder, the date of the protest or of the refusal of acceptance, the fact that the bill was not accepted and the reason why the bill was not accepted or the fact that no reason was given for its non-acceptance.

1018. — The right of recourse of the holder against the person or persons to whom notice of dishonour was sent is extinguished by prescription one year after date of non-acceptance.

1019. — An indorser to whom notice of dishonour has been given by a subsequent party can take recourse against all or any of the parties prior to him, jointly or separately.

In such case the indorser must send notice of dishonour to the person [313]
or persons against whom he intends to take recourse, within four days from the date when he himself has received notice of dishonour.

1020. — The right of recourse of the indorser is extinguished by prescription one year after date of notice sent by him.

1021. — The return of the non accepted bill of exchange with the Post Office receipt for protest annexed to it is a sufficient notice of dishonour.

1022. — When a notice of dishonour has been duly addressed and posted, the sender is deemed to have given due notice of dishonour,

notwithstanding any miscarriage by the Post Office.

1023. — If the holder or indorser fails to take the proceedings prescribed by Sections 1011 to 1021 he loses his rights under the bill of exchange against all prior parties, except those who have waived protest or notice of dishonour.

1024. — The holder is entitled to take recourse for the following amounts:

1) The non accepted amount of the bill of exchange less interest thereon up to the date of maturity.

In order to fix the date of maturity, the day of presentation is to be considered as the day of acceptance. [314]

2) The expenses of presentation for acceptance and of protest and of notice of dishonour.

1025. — An indorser against whom recourse has been taken is himself entitled to take recourse for the following amounts:

1) The sum paid by him together with interest thereon from the date of his payment.

2) All expenses paid by him.

1026. — Reimbursement of a dishonoured bill of exchange can be obtained only on surrender of the bill and of a recourse account.

The payer can require the payee to make a receipt on the recourse account and sign it.

1027. — A drawer or prior indorser to whom a bill of exchange has been re-indorsed or re-transferred has no right of recourse against a party to whom he was previously liable under the bill.

3. — ACCEPTANCE FOR HONOUR.

1028. — If the drawee has failed to accept the bill of exchange, any person may, with the consent of the holder, accept the bill for the honour of any party liable thereon. [315]

1029. — The holder cannot refuse acceptance offered by a referee in case of need.

If he refuses it he loses his right of recourse against the prior parties.

1030. — Acceptance by a referee in case of need or by a third person is

called acceptance for honour.

1031. — An acceptance for honour is made by a declaration of acceptance on the bill of exchange with the signature of the acceptor.

1032. — If the acceptor for honour does not designate in the bill of exchange the person for whom he accepts, the acceptance is deemed to have been made for the honour of the drawer.

1033. — When a bill of exchange payable at the end of a period after sight is accepted for honour, its maturity is calculated from the date of such acceptance.

1034. — If the drawee fails to pay the bill of exchange, the acceptor for honour is liable to the holder and to the parties subsequent to the person for whose honour he has accepted, for any amount unpaid on the bill up to the amount of his acceptance together with the expenses. [316]

But he is exempted from such liability if the holder fails :

1) To present the bill for payment on maturity to the drawee, and

2) To present the bill for payment to the acceptor for honour not later than the day following the day of maturity, and

3) To send a protest to the drawee within the proper time.

1035. — Sections 1002 to 1007 apply to acceptance for honour.

[Part] V. — SURETYSHIP.

1036. — Every party to a bill of exchange may be guaranteed by a surety.

1037. — Suretyship is created by a signed statement to that effect on the bill of exchange.

1038. — A person who not being the drawee merely puts his signature on the face of a bill of exchange is deemed to be a surety.

1039. — Suretyship may be for part only of the amount of the bill of exchange. [317]

1040. — If the surety does not state on the bill of exchange for whom he is surety, he is deemed to be surety for the drawer.

1041. — A surety who has performed his obligation is subrogated to the rights which the holder had against the guaranteed debtor and to the rights of such debtor against the prior parties.

[Part] VI. — PAYMENT.

1. — GENERAL PROVISIONS.

1042. — A bill of exchange is payable on the day of its maturity. The holder must present it for payment on that day.

1043. — In order to fix the day of maturity of a bill of exchange payable at the end of a period after sight which has not been accepted, the day of presentation shall be considered as the day of acceptance.

1044. — A bill of exchange payable on demand is payable on the day of its presentation.

1045. — The holder of a bill of exchange payable on demand must present it for payment within one year from its date or, if the drawer has specified any shorter time, within such time. [318]

1046. — Payment can be obtained only on surrender of the bill of exchange. The payer can require the holder to give a receipt on the bill and to sign it.

1047. — The holder of a bill of exchange cannot refuse part payment, although the bill has been accepted for its full amount.

1048. — In case of part payment, the holder must note it on the bill of exchange and deliver a receipt to the payer.

1049. — If a bill of exchange is not presented for payment on the day of maturity, the acceptor can free himself from his liability by depositing the amou[n]t due on the bill.

1050. — The holder of a bill of exchange cannot be compelled to receive payment of it before maturity, except in case of a documentary bill.

[“Documentary bill” means a bill of exchange which is transferred with, and cannot be transferred without, documents constituting evidence that goods which are in transit are pledged to secure either the payment of the bill on the date of its maturity or the acceptance by the drawee.]

1051. — If the holder grants an extension of time to the drawee, he

loses his right of recourse against the prior parties who do not agree to the extension.

1052. — Payment of a bill of exchange before the day of maturity is at the risk of the payer. [319]

1053. — The drawee is bound to refuse payment:

1) If it appears sufficiently that the person presenting the bill of exchange is not a holder or has no capacity to receive payment, or

2) If the bill of exchange has been lost or obtained through an offence and due notice thereof has been given to the drawee.

1054. — A payment made by a party to a bill of exchange avails for all parties subsequent to him.

2. — RIGHT OF RECOURSE IN CASE OF NON-PAYMENT.

1055. — If a bill of exchange is presented for payment on the day of maturity and the drawee fails to pay it, the holder has a right of recourse against all or any of the prior parties, jointly or separately, provided that he complies with the rules prescribed in sections 1057 to 1064.

1056. — If part only of a bill of exchange is paid, the holder has the right of recourse for the difference.

1057. — The holder must, on the day following the day of maturity, send to the drawee through the Post Office a notice called protest.

1058. — The protest shall be entered by the Post Office in three copies in the form provided by Schedule B attached to this Code. [320]

1059. — Each copy shall be signed [by] ~~be~~ the clerk of the Post Office where the protest is made and shall bear the date stamp of such office. It must contain the following particulars :

1) The date of protest.

2) The date of the bill of exchange.

3) The name or trade name of the drawer.

4) The name or trade name of the drawee.

5) The amount of the bill of exchange.

6) The day of maturity of the bill of exchange.

7) The name or trade name and address of the holder.

8) The amount payable to the holder, including expenses of protest.

9) A statement that the drawee can, within the three days next following the day of protest, seek out the holder and pay that amount.

1060. — Copy No. 1 being the protest shall be sent to the drawee under registered cover.

Copy No. 2 being the receipt for the protest shall be delivered to the holder.

Copy No. 3 being the original shall be kept by the Post Office.

1061. — If the bill of exchange is not paid within the three days period, [321] the bill is said to be dishonoured by non-payment and the holder must, within the four days next following, send notice of dishonour to the person or persons against whom he intends to take recourse.

1062. — If the drawee notes on the bill of exchange the fact and date of refusal of payment and signs such note, no protest is necessary and the holder must, within eight days from date of refusal, send notice of dishonour to the person or persons against whom he intends to take recourse.

1063. — The notice of dishonour must contain the day of maturity of the bill of exchange, the names or trade names of the drawer and drawee, the amount of the bill, the name or trade name and address of the holder, the date of protest or of the refusal of payment, the fact that the bill was not paid and the reason why it was not paid or the fact that no reason was given for its non-payment.

1064. — The right of recourse of the holder against the person or persons to whom notice of dishonour was sent is extinguished by prescription one year after the day of maturity.

1065. — An indorser to whom notice of dishonour has been given by a subsequent party can take recourse against all or any of the parties prior to him, jointly or separately.

In such case the indorser must send notice of dishonour to the person [322] or persons against whom he intends to take recourse within four days from the date when he himself has received notice of dishonour.

1066. — The right of recourse of the indorser is extinguished by prescription one year after date of the notice sent by him.

1067. — The return of the unpaid bill of exchange with the Post Office receipt for protest annexed to it is a sufficient notice of dishonour.

1068. — When a notice of dishonour has been duly addressed and posted, the sender is deemed to have given due notice of dishonour, notwithstanding any miscarriage by the Post Office.

1069. — If the holder or indorse fails to take the proceedings prescribed by Sections ~~1000~~[1057] to ~~1010~~[1067], he loses his rights under the bill of exchange against all prior parties, except those who have waived protest or notice of dishonour.

1070. — The holder is entitled to take recourse for the following amount:

1) The unpaid amount of the bill together with interest thereon from the day of maturity.

2) The expenses of presentation for payment and of protest and of notice of dishonour. [323]

1071. — An indorser against whom recourse has been taken is himself entitled to take recourse for the following amounts:

1) The sum paid by him, together with interest thereon from the date of his payment

2) All expenses paid by him.

1072. — Reimbursement of a dishonoured bill of exchange can be obtained only on surrender of the bill and of a recourse account.

The payer can require the payee to make a receipt on the recourse account and sign it.

1073. — A drawer, acceptor or prior indorser to whom a bill of exchange has been reindorsed or re-transferred has no right of recourse against a party to whom he was previously liable under the bill.

3. — PAYMENT FOR HONOUR.

1074. — A bill of exchange accepted for honour must, on the day of maturity, be presented for payment first to the drawee.

If the drawee fails to pay it, the holder must, on the day of maturity or on the following day, present it for payment to the acceptor for honour. [324]

If there is no acceptor for honour or if the acceptor for honour does not pay the holder must, within same period of time, present the bill for payment to the referee in case of need, if any.

1075. — If the acceptor for honour or the referee in case of need fails to pay the fact must be stated in the notice of dishonour.

1076. — If the holder fails to proceed as prescribed in sections 1017 and 1018 he loses his right of recourse against the person who has named the referee in case of need, or against the person in whose favour acceptance for honour has been made, and against the parties subsequent to them.

1077. — If the bill of exchange is not paid on presentation, any person, even not a party to it, can pay it.

The holder cannot refuse such payment. If he refuses, he loses his right of recourse against the party for whom payment was offered and against the subsequent parties.

1078. — Payment by an acceptor for honour or by a referee in case of need or by a third person is called payment for honour.

1079. — If several persons offer to pay a bill of exchange for honour, the holder must accept that payment which will discharge the greatest number of persons from their obligations. [325]

1080. — If a payer for honour who is not a referee in case of need or an acceptor for honour does not name the person for whose honour he pays, such payment is deemed to be made for the honour of the drawee.

1081. — The holder must enter the fact of the payment for honour on the Post Office receipt for the protest for non-payment if such protest has been made. The holder must on payment of the sum due and of the expenses for protest deliver to the payer for honour the Post Office receipt and the bill of exchange.

1082. — The payer for honour must, within two days after date of payment, notify the payment to the person for whose honour he has paid and send the Post Office receipt for the protest, if any, to him.

1083. — The payer for honour is subrogated to the rights which the holder had against the acceptor, the person for whose honour he has paid and the parties prior to such person.

1084. — Sections 1046, 1047, 1048, 1050, 1052, 1053 and 1054 apply to payment for honour.

[Part] VII. — BILL OF EXCHANGE IN A SET. [326]

1085. — The payee is entitled to require the drawer to deliver to him the bill of exchange in a set consisting of several parts.

1086. — The several parts must be designated as such by the words First of Exchange, Second of Exchange, Third of Exchange, etc.

If they are not designated as such, each of them is good as an independent bill of exchange.

1087. — The acceptance must be made on one part only.

1088. — If one part of the set is paid, there is no liability under the other parts except those on which an acceptance is made.

1089. — A person who has indorsed different parts of a bill of exchange to different persons or who has made his acceptance on several parts is liable according to the provisions of the present Title for any such part not surrendered to him at the time of payment.

CHAPTER III. [327]

PROMISSORY NOTES.

1090. — A promissory note is a written instrument by which a person, called the maker, promises to pay a sum of money to, or to the order of[,] a person[,] called ~~to~~[the] payee.

1091. — A promissory note must be dated, signed by the maker, and must contain the following particulars :

1) A sum certain in money.

2) The name or trade name of the payee.

3) An unconditional promise to pay.

4) The place where the promissory note is made.

5) A day of maturity.

1092. — If the maker does not state in the promissory note a place of payment, the place where it is made is the place of payment.

1093. — The following provisions of Chapter II concerning bills of exchange apply *mutatis mutandis* to promissory notes :

Sections 966 to 969, 972, 974 to 977 concerning the drawing of a bill of exchange.

Sections 978, 980, 981 concerning the effects of a bill of exchange.

Sections 982 to 988, 990 to 996 concerning transfer and indorsement. [328]

Sections 1036 to 1041 concerning suretyship.

Sections 1042 to 1054 concerning payment.

Sections 1055 to 1073 concerning the right of recourse in case of non-payment.

Sections 1077 to 1084 concerning payment for honour.

1094. — The holder of a promissory note payable at the end of a period after sight must present it to the maker within one year from its date, or, if the maker has specified a shorter time in the promissory note, within such time.

If the holder fails to present the promissory note within the above mentioned time, he loses his right of recourse against the prior indorsers.

1095. — The maker must note on the promissory note the date of presentation and sign it.

1096. — If the maker merely puts his signature on the promissory note, the promissory note is deemed to have been duly presented to him and any person can fill up the date.

If there is no date, the last day of the time fixed by section 1094 is deemed to be the day of presentation.

1097. — If the maker does not on presentation sign the promissory note as provided by section 1095, the holder and the indorsers have a right of recourse against the prior parties, provided that they comply with the provision of sections 1011 to 1027 concerning bills of exchange, *mutatis mutandis*. [329]

1098. — If the holder fails to have a protest made, he loses his right of recourse against all prior parties except the maker.

CHAPTER IV.
CHEQUES.

[Part] I. — GENERAL PROVISIONS.

1099. — A cheque is a written instrument by which a person, called the drawer, orders a banker to pay a sum of money to or to the order of another person called the payee.

1100. — A cheque must be dated, signed by the drawer, and must contain the following particulars :

1) A sum certain in money;

2) The name or trade name and address of the banker;

3) The name or trade name of the payee; [330]

4) An unconditional order to pay.

1101. — The provisions of Chapter II concerning bills of exchange apply to cheques, *mutatis mutandis,* in so far as they are not contrary to the provisions of this Chapter IV.

1102. — A cheque can be drawn payable to bearer, or payable to the drawer.

If no payee is named in the cheque, it is payable to bearer.

1103. — A cheque is payable on demand.

1104. — No reference to a day of maturity can be inserted in a cheque.

1105. — A cheque which contains a reference to a day of maturity, such as "on demand" or "on such day," etc., is a bill of exchange.

1106. — The holder of a cheque must present it for payment to the banker within two months after the date of drawing, otherwise he loses his right of recourse against the prior parties.

1107. — A banker is bound to pay a cheque drawn on him by his [331] customer unless:

1) There be not enough money to the credit of the account of the customer to meet the cheque, or

2) The cheque be presented for payment more than one year after its date of drawing.

1108. — A banker is bound to refuse payment of a cheque drawn on him if:

1) The drawer has countermanded payment, or

2) The banker has received notice of the death of the drawer, or

3) The cheque has been lost, or obtained through an offence and notice thereof has been given to the banker.

1109. — If the banker signs on the cheque a statement such as "good" or "good for payment," or words to the same effect, he becomes bound to pay the cheque in the same way as the acceptor of a bill of exchange.

If the statement is "good for payment on such and such day" the banker is bound to pay only if the cheque is presented on that day.

The foregoing provisions do not apply if the banker has only signed a statement certifying the genuineness of the signature of the drawer.

1110. — Whoever draws a cheque except against a deposit or a credit granted to him shall be punished with fine not exceeding two thousand baht.

[Part] II. — CROSSED CHEQUES.

[332]

1111. — If the cheque bears across its face two parallel lines, with or without the words “Company” or “Bank” or any other words having the same meaning, between such lines, the cheque is said to be crossed and [d]payment of it can only be made to a banker.

1112. — If the name of a particular banker is written between the parallel lines payment can only be made to that banker.

But the banker to whom the cheque is crossed can cross it to another banker for collection.

1113. — The banker who pays a crossed cheque contrary to the provisions of Sections 1111 or 1112 is liable for any injury resulting therefrom.

CHAPTER V.
PRESCRIPTION.

1114. — The obligations incurred under a bill of exchange by the acceptor or under a promissory note by the maker are extinguished by prescription after three years from day of maturity.

1115. — If a bill has been made, transferred or indorsed in respect of an obligation and the rights under such bill have been lost by prescription or by the omission of any necessary proceedings, the original obligation remains in force, unless it be extinguished by prescription or otherwise.

[333]

CHAPTER VI.
FORGED, STOLEN AND LOST BILLS.

1116. — A forged bill means a bill which has been fabricated or altered or which bears false signatures as defined by Section 222 of the Penal Code.

1117. — A person who forges a bill has no rights under such bill.

1118. — A bill bearing false signatures is valid for the genuine signatures which may be on it.

1119. — If a statement in a bill has been altered without the consent of the parties, any person who affixes his signature on such bill after the alteration is liable according to the tenor of the altered bill.

If it is impossible to find out whether the signature was affixed before or after the alteration was made, the signature is presumed to have been affixed before alteration.

1120. — No rights can be exercised under a forged bill by a person who acquired it or became a party to it in bad faith or without such care as may be expected from a person of ordinary prudence. [334]

1121. — The holder of a bill which is lost or stolen must, as soon as he knows of the loss or theft, notify in writing the maker, the drawee, the referee in case of need, the acceptor for honour and the surety, if any, to refuse payment of the bill.

1122. — If the lost or stolen bill is presented for acceptance or payment to a person who has received the notice provided by Section 1121 he must inform the person presenting it that the bill is a lost or stolen bill.

He must also notify the holder of the bill without delay the name and description of the person presenting it.

1123. — The person presenting a bill which was lost or stolen must surrender it to its holder without compensation if it is proved that he acquired it in bad faith or without such care as may be expected from a person of ordinary prudence.

1124. — If the lost or stolen bill is not presented for payment on the day of maturity the holder is entitled to get a copy.

The copy must be demanded through the successive indorsers.

1125. — If the lost or stolen bill was payable after sight but not accepted or was payable on demand, the holder is entitled to get the copy as soon as the notice of loss or theft has reached the maker, the drawee, the referee in case of need, the acceptor for honour and the surety, if any. [335]

1126. — The holder has under the copy the same rights as under the original bill, except rights lost by prescription or by the omission of any necessary proceedings.

1127. — Whoever presents a bill which has been lost or stolen, and receives payment of it is bound to repay the sum received by him if it is proved that he acquired the bill in bad faith or without such care as may be expected from a person of ordinary prudence.

1128. — If the loss, theft or forgery of a bill was caused or facilitated by the fault of one of the parties to the bill, he is liable to the person who has paid or repaid the bill for such part of the injury caused, as the Court may think fit.

TITLE XXII.
PARTNERSHIPS AND COMPANIES.

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CHAPTER I.
GENERAL PROVISIONS.

1129. — A contract of partnership or company is a contract whereby two or more persons agree to unite for a common undertaking, with a view of sharing the profits which may be derived therefrom.

1130. — There are three kinds of partnerships or companies, that is to say:

1) Ordinary partnerships.
2) Limited partnerships.
3) Limited companies.

1131. — Offices for the registration of partnerships and companies shall be established by regulations issued by the Minister of Justice.

1132. — Every registered partnership or company constitutes a juristic person distinct from the partners or shareholders of whom it is composed.

1133. — The registration must be made at the Registration Office of that part of the Kingdom where the principal business Office of the partnership or company is situated. [337]

Any alterations subsequently made in the registered particulars, as well as any other matters ordered or allowed to be registered by this Title must be registered at the same place.

If a fact to be registered or published happens in a foreign country, the period for its registration or publication shall be computed from the time when notice thereof arrives at the place of registration or publication.

1134. — There shall be paid in respect of registration such fees as may be provided by the regulations issued by the Minister of Justice.

1135. — If an application for registration or a document subject to registration does not contain all the particulars required by this Title to be mentioned in it, or if any of the documents prescribed to be deposited with it are not produced, or if any other condition imposed by law is not complied with, the Registrar must decline to make any entry in his register till the application or document has been completed or modified or till the prescribed documents are produced, or till the condition is fulfilled.

1136. — Every person is entitled to inspect the documents kept by the Registrar, or to require a certificate of the registration of any partnership or company, or a certified copy or extract of any other document, to be delivered to him by the Registrar, on payment of such fee as may be prescribed by the regulations issued by the Minister of Justice. [338]

1137. — Every Registrar shall cause to be published periodically in the Government Gazette, in the form provided by special rules to be issued by the Minister of Justice, a summary of the entries made in his register.

1138. — On such publication being made, the registered documents or matters referred to in the summary shall be deemed to be known to all persons whether connected with the partnership or company or not.

1139. — Until such ~~app~~[pub]lication has been made, no advantage can be taken by the partners, the partnership or the company against third persons of the existence of the non-registered agreements, documents or particulars, but third persons may take advantage of such existence.

However, the partner, shareholder, partnership or company who has, before such publication, received performance of an obligation is not bound to make restitution.

1140. — As between the partners or shareholders, the partners and the partnership, the shareholders and the company, all books, accounts and documents of any partnership or company or of the liquidators of any partnership or company are presumed to be correct evidence of all matters therein recorded.

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CHAPTER II.
ORDINARY PARTNERSHIPS.

[Part] I. — DEFINITION.

1141. — The ordinary partnership is that kind of partnership in which all the partners are jointly and unlimitedly liable for all the obligations of the partnership.

[Part] II. — RELATION OF PARTNERS BETWEEN THEMSELVES.

1142. — Each partner must bring a contribution to the partnership.

Such contribution may consist of money or other properties or of services.

1143. — In case of doubt, contributions are presumed to be of equal value.

1144. — If the contribution of the partner consists merely of his personal services and the contract of partnership does not fix the value of such services, the share of such partner in the profits is equivalent to the average of the shares of the partners whose contributions are in money or other properties.

1145. — If a partner brings as contribution the use of a property, the [340]
relations between such partner and the partnership with regard to:

delivery and repair,
liability for defects,
liability for eviction,
clause of non-liability,

are governed by the provisions of this Code concerning Hire of property.

1146. — If the contribution of a partner consists of the ownership of a property, the relations between such partner and the partnership with regard to:

delivery and repair,
liability for defects,
liability for eviction,
clause of non-liability.

are governed by the provisions of this Code concerning Sale.

1147. — If a partner fails to deliver his contribution, he may be excluded from the partnership by a decision of all the other partners, or of such majority as provided in the contract.

If the excluded partner had delivered part of his contribution, such part or its value must be returned to him.

1148. — No change in the original contract of partnership or in the [341]
nature of the business can be made except by the consent of all the partners, unless there be an agreement to the contrary.

1149. — If nothing has been agreed between the partners as to the management of the business of the partnership, such business may be managed by each of the partners, provided that no partner can enter into a contract to which another partner objects.

In such case, every partner is a managing partner.

1150. — If it is agreed that matters relating to the business of the partnership shall be decided by a majority of partners, each partner shall have one vote, irrespective of the amount of his contribution.

1151. — If it is agreed that the business of the partnership shall be managed by several managing partners, such business may be managed by each of the managing partners, provided that no managing partner can do anything to which another managing partner objects.

1152. — Managing partners can be removed from their position only by the consent of all the other partners, unless there be an agreement to the contrary.

1153. — Even if the partners have agreed that the business of the partnership shall be managed by one or more managing partners, every non-managing partner has the right to enquire at any time into the management of the business and to inspect and copy any of the partnership books and documents. [342]

1154. — No partner can either on his own account or on account of another person carry on, without the consent of the other partners, any business of the same nature as and competing with that of the partnership.

1155. — If a partner acts contrary to the provisions of Section 1154, the other partners are entitled to claim from him all the profits which he has made or compensation for the injury which the partnership has suffered thereby, but their right is extinguished by prescription one year after date of contravention.

1156. — A partner is bound to manage the business of the partnership with as much care as he would take of his own business.

1157. — No person may be introduced as a partner in the partnership without the consent of all the partners, unless there be an agreement to the contrary.

1158. — If a partner, without the consent of the other partners, transfers to a third person the whole or part of his share in the profits of the partnership, such third person does not become a partner.

1159. — The relations of the managing partners with the other partners are governed by the provisions of this Code concerning Agency. [343]

1160. — If a non-managing partner manages the business of the partnership or a managing partner acts beyond the scope of his authority, the provisions of this Code co[n]cerning the relations between spontaneous agent and principal shall apply.

1161. — The share of each partner in the profits or losses is in proportion to his contribution.

1162. — If the share of a partner is fixed only as to profits or only as to losses the proportion is presumed to be the same for profits and losses.

1163. — No partner is entitled to remuneration for having managed the business of the partnership, unless there be an agreement to the contrary.

1164. — If the name of a partner whose membership has ceased is used in the firm name, he is entitled to demand that such use shall cease.

1165. — A partner can claim from the other partners a share even in a transaction where his own name did not appear.

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[Part] III. — RELATIONS OF PARTNERS WITH THIRD PERSONS.

1166. — No partner can acquire any right against third persons by a transaction where his own name did not appear.

1167. — All the partners are bound by the acts done by any of them in the ordinary course of the business of the partnership and are jointly and unlimitedly liable for the performance of the obligations incurred in such management.

1168.—A partner whose membership has ceased continues to be liable in respect of obligations incurred by the partnership before such membership ceased.

1169. — A person who becomes member of a partnership is liable for any obligations incurred by the partnership before he became a partner.

1170. — No restriction of the power of a member of a non-registered partnership to bind the other partners can have effect with respect to third persons.

1171. — A person who by words spoken or written, or by conduct, or by

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consenting to the use of his name in the firm name of the partnership, represents himself. or who knowingly suffers himself to be represented as a member of a partnership becomes liable to third persons as a partner for all the obligations of the partnership.

If after the death of a partner the partnership business is continued in the old firm name, the continued use of that name or of the name of the deceased partner, as part thereof, does not in itself make his estate liable for any obligations incurred by the partnership after his death.

[Part] IV. — DISSOLUTION AND LIQUIDATION OF ORDINARY PARTNERSHIPS.

1172. — An ordinary partnership is dissolved:

1) In the cases, if any, provided by the contract of partnership.

2) If made for a definite period of time, by the expiration of such period.

3) If made for a single undertaking, by the termination of such undertaking

4) If made for an indefinite period of time, by any of the partners giving to the other partners one month notice of his intention to withdraw from the partnership.

5) By any of the partners dying or becoming bankrupt or incapacitated.

An ordinary partnership may also be dissolved by the Court on application by a partner in any of the following cases:

1) When a partner, other than the partner suing. wil[l]fully or by gross [346]
negligence violates any essential obligation imposed upon him by the partnership contract.

2) When the business of the partnership can only be carried on at a loss and there is no prospect of its fortunes being retrieved.

3) When there is any other cause making the continuance of the partnership an impossibility.

1173. — If at the expiration of the period agreed upon, the business of the partnership is continued by the partners or by such of them as habitually managed it during the said period, without any settlement or liquidation of accounts, the partners are deemed to have agreed to continue[ ]the partnership for an indefinite period of time.

1174. — In any case under Section 1172, sub-section 4 or 5, if the subsisting partners buy the share of the partner whose membership has ceased, the contract of partnership continues between the subsisting

partners.

1175.—When a partnership is dissolved, the partners must liquidate its business.

1176. — The liquidation must be made in the following order:

1) Performance of the obligations incurred towards third persons,

2) Reimbursement of advances made and expenses incurred by the [347]
partners in managing the business of the partnership.

3) Return of the contributions made by each partner.

The balance, if any, must be distributed as profit between the partners.

1177. — If, after the performance of the obligations incurred towards third persons and reimbursement of advances and expenses, the assets are insufficient to return the whole of the contributions to the partners, the deficiency constitutes a loss and must be divided as such.

[Part] V. — REGISTRATION OF ORDINARY PARTNERSHIPS.

1178. — An ordinary partnership may be constituted as a juristic person distinct from the persons of whom it is composed, by being registered as provided in the following sections.

1179. — The entry in the register must contain the following particulars:

1) The firm name of the partnership.

2) Its object.

3) The address of the principal business office and of all branch offices.

4) The full names, addresses and occupations of every partner: if a [348]
partner has a trade name the entry in the register must contain his name and his trade name.

5) The names of the managing partners, if only some of the partners have been appointed as such.

6) The restrictions, if any, imposed upon the powers of the managing partners.

7) The seal or seals which are binding on the partnership.

The entry may contain any other particulars which the parties may deem expedient to make known to the public.

The entry must be signed and sealed by every member of the partnership, and must also be sealed with the common seal of the

partnership.

1180. — A certificate of registration must be delivered to the partnership.

1181. —A partner can take advantage against third persons of any right acquired by the registered partnership, even though his name did not appear in the transaction.

1182. — No partner of a registered partnership may, either on his own account or on account of another person, carry on without the consent of all the other partners any business of the same nature as and competing with that of the partnership or without such consent be a member of another registered partnership or limited partnership having the same object. [349]

Such prohibition does not apply if it was already known to the partners at the time of registration of the partnership that one of them was engaged in a business or in another partnership having the same object, and if his withdrawal was not stipulated in the contract of partnership.

1183. — If a partner acts contrary to the provisions of section 1182 the registered partnership is entitled to claim from him all the profits which he has made or compensation for the injury which the registered partnership has suffered thereby.

1184. — The right described in the foregoing section is extinguished by prescription one year after date of contravention.

1185. — The liability of a partner in a registered partnership in respect to obligations incurred by the partnership before he ceased to be a member of such partnership, is extinguished by prescription two years after he ceased to be a member.

1186. — In addition to the cases provided by Section 1172 a registered partnership is dissolved if it becomes bankrupt.

1187.— The creditor of an obligation due by a registered partnership is entitled, as soon as the partnership is in default, to demand performance of the obligation from any of the partners. [350]

1188. — In the case provided by section 1187, if the partner proves:

1) That the assets of the partnership are sufficient to perform the whole or part of the obligation, and

2) That enforcement against the partnership would not be difficult,

the Court may, in its discretion, order that the obligation be enforced first against the assets of the partnership.

1189. — As long as a registered partnership is not dissolved the creditors of a partner can exercise their rights only on the profits or other sums due by the partnership to such partner. After dissolution they can exercise their rights on the share of such partner in the assets of the partnership.

[Part] VI. — AMALGAMATION OF REGISTERED PARTNERSHIPS.

1190. — A registered partnership may amalgamate with another registered partnership with the consent of all the partners, unless there be an agreement to the contrary.

1191. — When a registered partnership has decided to amalgamate, [351]
the partnership must publish twice in a local paper and send to all creditors known to the partnership a notice of the proposed amalgamation requiring the creditors to present within three months from date of notice any objection they may have to it.

If no objection is raised during such period, none is deemed to exist.

If an objection is raised, the partnership cannot proceed with the amalgamation unless it has satisfied the claim or given a security for it.

1192. — When the amalgamation has been made it shall be the duty of each of the partnerships to cause the amalgamation to be registered as a new partnership.

1193. — The new partnership is entitled to the rights and subject to the liabilities of the amalgamated partnerships.

CHAPTER III.
LIMITED PARTNERSHIPS.

1194. — A limited partnership is that kind of partnership which is entered between:

1) One or more partners whose liability is limited to such amount as they may respectively undertake to contribute to the partnership, and

2) One or more partners who are jointly and unlimitedly liable for all [352]
the obligations of the partnership.

1195. — A limited partnership must be registered.

1196. — The entry in the register must contain the following particulars:

1) The firm name of the partnership.

2) A statement that the partnership is a limited partnership and the object of such partnership.

3) The address of the principal business office and of all branch offices.

4) The full names, trade names, addresses and occupations of the partners with limited liability, and the amount of their respective contributions to the partnership

5) The full names, trade names, addresses and occupations of the partners with unlimited liability.

6) The names of the managing partners.

7) The restrictions, if any, imposed upon the power of the managing partners to bind the partnership.

The entry may contain any other particulars which the parties may deem expedient to make known to the public.

The entry must be signed and sealed by every member of the partnership, and must also be sealed with the common seal of the partnership.

1197. — A certificate of registration shall be delivered to the partnership. [353]

1198. — Until registration a limited partnership is deemed an ordinary partnership in which all the partners are jointly and unlimitedly liable for all the obligations of the partnership.

1199. — The provisions concerning ordinary partnerships apply to limited partnerships in so far as they are not excluded or modified by the provisions of this Chapter III.

1200. — If there are several partners with unlimited liability, the rules of the ordinary partnership apply to their relations to one another and to the partnership.

1201. — The firm name shall not contain any of the names of the partners with limited liability.

1202. — A partner with limited liability who expressly or impliedly consents to the use of his name in the firm name is liable to third persons

in the same manner as if he was a partner with unlimited liability.

As between the partners themselves, the liability of such partner remains governed by the contract of partnership.

1203. — The contributions of the partners with limited liability must be in money or other properties. [354]

1204. — No dividend or interest can be distributed to partners with limited liability except out of the profits made by the partnership.

If the capital of the partnership has been reduced by losses, no dividend or interest can be distributed to partners with limited liability until the said losses have been made good.

Provided that a partner with limited liability cannot be obliged to return the dividend or interest which he has received in good faith.

1205. — If a partner with limited liability has, by letter, circular or otherwise, informed third persons that his contribution is greater than the registered amount, he becomes liable for such greater amount.

1206. — Agreements entered into between the partners for altering the nature or reducing the amount of the contribution of a partner with limited liability have no effect as regards third persons until registered.

When registered, they have effect only as to obligations incurred by the partnership after their registration.

1207. — A limited partnership must be managed only by the partners with unlimited liability.

1208. — If a partner with limited liability interferes with the management of the partnership, he becomes jointly and unlimitedly liable for all the obligations of the partnership. [355]

Opinions and advice, votes given for the appointment or dismissal of managers in cases provided by the contract of partnership, are not considered as interference with the management of the partnership.

1209. — A partner with limited liability may be appointed a liquidator of the partnership.

1210. — Partners with limited liability may carry on any business, either on their own account or on the account of third persons, even if such business is of the same nature as that of the partnership.

1211. — Partners with limited liability may transfer their shares

without the consent of the other partners.

1212. — Unless otherwise provided by the contract, a limited partnership is not dissolved by the death of one of the partners with limited liability or by his becoming bankrupt or incapacitated.

1213. — If a partner with limited liability dies, his heirs become partners in his place, unless otherwise provided by the contract.

1214. — If a partner with limited liability becomes bankrupt, his share in the partnership must be sold as an asset of the bankruptcy. [356]

1215. — The creditors of a limited partnership have no action against the partner with limited liability as long as the partnership is not dissolved.

After the dissolution of the partnership, they can enter actions against every partner with limited liability up to the following amounts:

1) The part of the contribution of such partner which has not been delivered to the partnership.

2) Such part of the contribution as the partner may have withdrawn from the assets of the partnership.

3) Dividends and interest which the partner may have received in bad faith and contrary to the provisions of Section 1204.

CHAPTER IV.
LIMITED COMPANIES.

[Part] I. — NATURE AND FORMATION OF LIMITED COMPANIES

1216. — A limited company is that kind of company which is formed with a capital divided into equal shares, the liability of the shareholders being limited to the amount, if any, unpaid on the shares respectively held by them.

1217. — Any seven or more persons may, by subscribing their names to a memorandum and otherwise complying with the provisions of this Code, promote and form a limited company. [357]

1218. — The memorandum must contain:

1) The name of the proposed company, which must always end with the word “limited.”

2) The part of the Kingdom in which the registered office of the company shall be situated.

3) The object of the company.

4) A declaration that the liability shareholders shall be limited.

5) The amount of capital with which the company proposes to be registered.

6) The number and amount of shares.

7) The names, addresses, occupations, and signatures of the promoters, and the number of shares subscribed by each of them.

1219. — The liability of the directors of a limited company may be unlimited. In such case, a statement to that effect must be inserted in the memorandum.

The unlimited liability of a director terminates at the expiration of two years after the date at which he ceased to hold office.

1220. — No promoter may subscribe less than one share. [358]

1221. — The memorandum must be made in two original copies at least and signed by the promoters, and the signatures shall be certified by two witnesses at least.

1222. — One of the copies of the memorandum must be deposited and registered at the Registration Office of that part of the Kingdom in which the registered office of the company is declared to be situated.

A certificate of registration shall be delivered to the promoters.

1223. — No invitation to subscribe for shares may be published before registration of the memorandum.

1224. — A copy of every prospectus, notice, advertisement or other invitation to subscribe for shares must be dated and signed by the promoters of the company, and registered before its publication.

1225. — Every such prospectus, notice, advertisement or invitation must state:

1) The contents of the memorandum.

2) The amount payable in money on each share before the registration of the company.

3) The number and amount of preference shares, if any, the nature and [359] extent of the preferential rights accruing to such shares, and the reason why they are proposed to be issued.

4) The number and amount, if any, of ordinary shares or preference shares to be allotted as fully or partly paid up otherwise than in money,

the extent to which they shall be considered as paid up, and a description of the services or property in return for which such shares are proposed to be allotted.

5) The amount or estimated amount of preliminary expenses.

6) The amount, if any, intended to be paid to any promoter, and the reasons for such payment.

7) Full particulars of the nature and extent of any material contracts entered into by the promoters whether in their own names or in the name of the company in connection with the promotion, the management or the future business of the company.

1226. — The whole number of shares with which the company proposes to be registered must be subscribed or allotted before registration of the company.

1227. — The amount payable on each share before the registration of the company cannot be less than fifteen per cent of the nominal amount of the share.

1228. — A person by subscribing for shares binds himself, on condition that the company be formed, to pay to the company the amount of such shares in conformity with the prospectus and regulations. [360]

1229. — When all the shares to be paid in money have been subscribed, the promoters must hold a general meeting of the subscribers which shall be called the statutory meeting.

1230. — The business to be transacted at the statutory meeting is:

1) The adoption of the regulations of the company, if any.

2) The ratification of any contracts entered into and any expenses incurred by the promoters in promoting the company.

3) The fixing of the amount, if any, to be paid to the promoters.

4) The fixing of the number of preference shares. if any are to be issued, and the nature and extent of the preferential rights accruing to them.

5) The fixing of the number of ordinary shares or preference shares to be allotted as fully or partly paid up otherwise than in money, if any, and the amount up to which they shall be considered as paid up.

The description of the services or property in return for which such ordinary shares or preference shares shall be allotted as paid up otherwise than in money shall be expressly laid down before the meeting.

6) The appointment of the first directors and auditors and the fixing of

their respective powers.

1231. — A promoter or subscriber cannot take part in the vote if he has in the question some interest contradictory to the interest of other promoters or subscribers. [361]

No resolutions of the statutory meeting are valid unless passed by a majority including at least one half of the total number of the subscribers entitled to vote, and representing at least one half of the total number of their shares.

1232. — After the statutory meeting is held, the promoters shall hand over the business to the directors.

The directors shall thereupon cause the promoters and subscribers to forthwith pay upon each share payable in money such amount, not less than fifteen per cent. as provided by the prospectus, notice, advertisement or invitation.

1233. — When the amount mentioned in section 1232 has been paid, the directors must apply for registration of the company.

Such application must be accompanied by the copy of the regulations, if any, and of the proceedings of the statutory meeting, both certified by the signature of at least one director.

1234. — The directors must at the same time deposit at the Registration Office fifty printed copies of the memorandum and of the regulations, if any, of the company.

1235. — The application and the entry in the register must contain, in conformity with the decisions of statutory meeting, the following particulars: [362]

1) The total number of shares subscribed or allotted distinguishing ordinary shares and preference shares

2) The number of ordinary shares or preference shares allotted as fully or partly paid up otherwise than in money, and in the latter case, the extent to which they are so paid up.

3) The amount already paid in money on each share.

4) The total amount of money received in respect of shares.

5) The names, occupations and addresses of the directors.

6) If the directors have power to act separately, their respective powers and the number or names of the directors whose signature is binding on the company.

7) The period, if any has been fixed, for which the company is formed.

The entry may contain any other particulars which the directors may deem expedient to make known to the public.

1236. — A certificate of registration shall be delivered to the company.

1237. — If registration does not take place within three months after the statutory meeting, the company is not formed, and all the money received from the applicants must be repaid without deduction. [363]

If any such money has not been so repaid within three months after the statutory meeting, the directors of the company are jointly liable to repay that money with interest from the expiration of the three months.

Provided that a director shall not be liable for repayment or interest if he proves that the loss of money or delay was not due to his fault.

1238. — Until registration, the promoters are jointly and unlimitedly liable for all obligations and disbursements sanctioned by the statutory meeting.

1239. — The promoters of the company remain jointly and unlimitedly liable for all obligations and disbursements not approved by the statutory meeting.

1240. — Upon the registration being made, the company is formed as a juristic person, distinct from the shareholders of whom it is composed, and subject to Siamese law and Siamese jurisdiction.

1241. — After a company is registered, a subscriber of shares cannot enter a claim for cancellation by the Court of his subscription on the ground of mistake, duress or fraud.

1242. — If the name inserted in a memorandum is identical with the name of an existing registered company or with the name inserted in a registered memorandum, or so nearly resembling the same as to be likely to deceive the public, any interested person can enter a claim for compensation against the promoters of the company and can ask for an order from the Court that the name be changed. [364]

Upon such order being made, the new name must be registered in the place of the former name and the certificate of registration must be altered accordingly.

1243. — Any person is entitled to obtain from any company a copy of its memorandum and regulations, if any, on payment of a sum not exceeding one baht.

1244. — Railway, Insurance, Banking, or Land and Mortgage

Companies cannot be formed unless incorporated by Royal Charter.

[Part] II. — SHARES AND SHAREHOLDERS.

1245. — The amount of a share may not be less than ten baht.

1246. — Shares of more than ten baht may be divided into shares of not less than ten baht.

1247. — The whole amount of every share must be paid in money, [365]
except shares allotted under Section 1230 subsection 5, or under Section 1356.

1248. — Unless otherwise decided by a general meeting, the directors may make calls upon the shareholders in respect of all moneys unpaid on their shares.

1249. — Twenty-one days notice at least must be given by registered letter of each call and each shareholder must pay the amount of such call to the persons and at the time and place fixed by the directors.

1250. — If the call payable in respect of any share has not been paid on the day fixed for payment thereof the holder of such share is bound to pay interest from the day fixed for payment to the time of the actual payment.

1251. — If a shareholder fails to pay a call on the day fixed for payment thereof, the directors may give him notice by registered letter to pay such call with interest.

1252. — The notice must fix a reasonable time within which such call and interest must be paid. It must also fix the place where payment must be made. The notice may also state that in the case of non-payment the share in respect of which such call was made may be forfeited by the company.

1253. — If a statement as to forfeiture has been m in the notice the [366]
directors may, as long as the call and interest remain unpaid, declare the shares to be forfeited.

1254. — Shares forfeited must be sold at once by public auction. The proceeds must be applied to the payment of the call and interest due. The surplus if any, must be returned to the shareholder.

1255. — The title of the purchaser of a forfeited share is not affected

by any irregularity in the proceedings of such forfeiture and sale.

1256. — A certificate or certificates shall be delivered to each shareholder for the shares held by him.

1257. — The delivery of a certificate may be subject to the payment of such fee, not exceeding fifty satang, as the directors may decide.

1258. — Every certificate of shares shall be signed by one of the directors at least, and shall bear the seal of the company.

It must contain the following particulars:

1) The name of the company.

2) The numbers of the shares to which it applies.

3) The amount of each share.

4) In case the shares are not fully paid up, the amount paid on each share. [367]

5) The name of the shareholder or a mention that the certificate is to bearer.

1259. — A transfer of shares entered in a name certificate is void unless made in writing.

Such transfer is invalid as against the company and persons until the fact of transfer and the name and address of the transferee are entered in the register of shareholders.

1260. — The instrument of transfer of shares must be signed by the transferor and the transferee whose signatures shall be certified by one witness at least. The instrument must state the numbers of the shares to which it refers.

1261. — The company can decline to register a transfer of shares on which a call is due.

1262. — The transfer book may be closed during the fourteen days immediately preceding the ordinary general meeting.

1263. — If by some event such as the death, bankruptcy or marriage of any shareholder, another person becomes entitled to a share, the company shall, on surrender of the share certificate, when possible, and proper evidence being produced, register such other person as a shareholder. [368]

1264. — The transferor of a share not fully paid up continues to be

liable for the full amount unpaid thereon, provided that:

1) No transferor be liable in respect of any obligation of the company incurred after the transfer.

2) No transferor be liable to contribute unless it appears to the Court that the existing shareholders are unable to satisfy the contributions required to be made by them.

1265. — The liability of the transferor is extinguished by prescription two years after the transfer.

1266. — Certificates to bearer may be issued only if authorised by the regulations of the company and for shares which are fully paid up.

1267. — Shares entered in a certificate to bearer are transferred by the mere delivery of the certificate.

1268. — The. holder of a certificate to bearer is entitled to receive a name-certificate on surrendering the certificate to bearer for cancellation.

1269. — If it is prescribed by the regulations of the company that a director must hold a certain number of shares of the company as a qualification for such office, such shares must be shares entered in a name-certificate. [369]

1270. — Every registered company must keep a register of shareholders containing the following particulars:

1) The names, addresses and occupations of the holders of name-certificates, the numbers and dates of the certificates held by each of them, the respective number of the shares entered in each certificate and the amount paid on each share.

2) The numbers and dates of certificates issued to bearer, and the respective numbers of the shares entered in each such certificate.

3) The date of cancellation of any name-certificate or certificate to bearer.

1271. — The register of shareholders commencing from the date of the registration of the company shall be kept at the registered office of the company.

It shall be gratuitously open to inspection by the shareholders during the business hours, subject to such reasonable restriction as the directors may impose, but not less than two hours a day.

1272. — Any shareholder is entitled to require a copy of such register

or of any part thereof to be delivered to him on payment of fifty satangs for every hundred words required to be copied.

1273. — The register of shareholders is presumed to be correct [370] evidence of any matters directed or authorised by law to be inserted therein.

1274. — A registered company may not own its own shares or take them in pledge.

[Part] III. — MANAGEMENT OF LIMITED COMPANIES.

1. — GENERAL.

1275. — Every registered company shall be managed by a director or directors under the control of the general meeting of shareholders and according to the regulations of the company.

1276. — After registration of the company, no regulations may be made and no additions to or alterations of the regulations or of the contents of the memorandum may be adopted except by passing a special resolution.

1277. — It shall be the duty of the company to cause to be registered every new regulation, addition or alteration within fourteen days after the date of the special resolution.

1278. — Fifty printed copies of every new regulation or of the altered memorandum or regulations shall be deposited at the same time at the Registration Office.

1279. — Every limited company must have a registered office to which [371] all communications and notices may be addressed.

1280. — As long as the shares have not been fully bid up, the company may not print or mention the capital of the company in any notices, advertisements. is invoices, letters or other documents, without clearly mentioning at the same time what proportion of such capital has been paid up.

2. — DIRECTORS.

1281. — The n[u]mber and remuneration of the directors shall be fixed by a general meeting.

1282. — A director can be appointed or removed only by general meeting.

1283. — At the first ordinary general meeting after the registration of the company and at the first ordinary general meeting in every subsequent year one third of the directors (or, if their number is not a multiple of three, then the number nearest to one third) must retire from office.

1284. — Unless otherwise agreed by the directors between themselves, the directors to retire during the first and second years following the registration of the company shall be drawn by lots. In every subsequent year the directors who have been longest in office shall retire. [372]

1285. — A retiring director is re-eligible.

1286. — If a director becomes bankrupt or incapacitated his office is vacated.

1287. — Any vacancy occur[r]ing in the board of directors otherwise than by rotation may be filled up by the directors, but any person so appointed shall retain his office during such time only as the vacating director was entitled to retain the same.

1288. — If a general meeting removes a director before the expiration of his period of office, and appoints another person in his stead, the person so appointed shall retain his office during such time only as the removed director was entitled to retain the same.

1289. — The appointment of every new director shall be registered within fourteen days from its date.

1290. — Unless otherwise provided by the regulations of the company, the directors have the powers described in the six following sections.

1291. — The subsisting directors may act notwithstanding any vacancy among them. [373]

1292. — The directors may fix the quorum necessary for the transaction of business at their meetings.

1293 — Questions arising at any meeting of directors are decided by a majority of votes; in case of an equality of votes the chairman has a casting vote.

1294. — A director may at any time summon a meeting of directors.

1295. — The directors may elect a chairman of their meetings, and fix the period for which he is to hold office; but if no such chairman is elected, or if at any meeting the chairman is not present at the time appointed for holding the same, the directors present may choose one of their number to be chairman of such meeting.

1296. — The directors may delegate any of their powers to managers or to committees consisting of members of their body. Every manager or committee shall, in the exercise of the power so delegated, conform to any regulations that may be imposed on them by the directors.

1297. — Unless otherwise provided by the delegation, questions arising at any meeting of a committee shall be decided by a majority of votes of the members; in case of an equality of votes the chairman has a casting vote. [374]

1298. — All acts done by a director shall, not. withstanding that it be afterwards discovered that there was some defect in his appointment, or that he was disqualified, be as valid as if such person had been duly appointed and was qualified to be a director.

1299. — Unless otherwise provided by this Title the relations between the directors, the company and third persons are governed by the provisions of this Code concerning Agency.

1300. — The liability of a company for the consequence of the wrongful acts committed by its directors in the course of their management is governed by sections 122 and 123 of this Code.

1301. — Claims against the directors for compensation for injury caused by them to the company can be entered by the company or in case the company refuses to act, by any of the shareholders.

1302. — When the acts of a director have been approved by a general meeting, such director is no longer liable for the said acts to the shareholders who have approved them, or to the company.

1303. — The liability of the directors to shareholders who did not approve such acts is extinguished by ~~prse~~[pres]cription six months after date of the general meeting in which such acts were approved. [375]

3. — GENERAL MEETINGS.

1304. — A general meeting of shareholders shall be held within six months after the registration, and shall subsequently be held once at least in every twelve months.

Such meeting is called an ordinary general meeting.

All other general meetings are called extraordinary meetings.

1305. — The directors can summon extraordinary meetings whenever they think fit.

1306. — Extraordinary general meetings must be summoned if a requisition to that effect is made in writing by shareholders holding not less than one fifth of the shares of the company. The requisition must specify the object for which the meeting is required to be summoned.

1307. — Whenever a requisition for the summoning of an extraordinary general meeting is made by shareholders according to the last preceding section, the directors shall forth with summon such meeting.

If the meeting is not summoned within thirty days after the date of the requisition, the requisitionists [=requisitioners], or any other shareholders amounting to the required number, may themselves summon it. [376]

1308. — Notice of the summoning of every general meeting shall either be published as least twice in a local paper, not later than seven days before the date fixed for the meeting, or shall be sent by post not later than seven days before the date fixed for the meeting to every shareholder whose name appears in the register of shareholders.

The notice shall specify the place, the day and the hour of meeting and the nature of the business to be transacted.

1309. — Every shareholder has the right to be present at any general meeting.

1310. — Unless there are provisions to the contrary in the regulations of the company, the rules provided by the following sections shall apply to general meetings. But section 1306 shall apply notwithstanding any provision to the contrary.

1311. — A general meeting cannot transact any business unless shareholders representing at least one fourth of the capital of the company are present.

1312. — If within an hour from the time appointed for the general meeting the quorum prescribed by Section 1311 is not present, the meeting, if summoned upon the requisition of shareholders, shall be dissolved.

If the general meeting had not been summoned upon the requisition of [377] shareholders, another general meeting shall be summoned within fourteen days and at such meeting no quorum shall be necessary.

1313. — The chairman of the board of directors shall preside at every general meeting of shareholders.

If there is no such chairman, or if at any general meeting he is not present within fifteen minutes after the time appointed for holding the meeting, the shareholders present can elect one of their number to be chairman.

1314. — The chairman may, with the consent of the meeting adjourn any general meeting, but no business can be transacted at any adjourned meeting other than the business left unfinished at the original meeting.

1315. — Every shareholder has one vote for every share held by him.

1316. — If the regulations of the company provide that no shareholder is entitled to vote unless he is possessed of a certain number of shares, the shareholders who do not possess such number of shares have the right to join in order to form the said number and appoint one of them as proxy to represent them and vote at any general meeting.

1317. — No shareholder is entitled to vote unless all calls due by him [378] have been paid.

1318. — A shareholder who has in a resolution some interest contradictory to the interest of the other shareholders cannot vote on such resolution.

1319. — Holders of certificates to bearer cannot vote unless they have deposited their certificates with the company before the meeting.

1320. — Every shareholder may vote by proxy, provided the power given to such proxy be in writing.

1321. — No person may be appointed a proxy who is not a shareholder.

1322. — The instrument appointing a proxy shall be dated and signed by the shareholder and shall contain the following particulars:

1) The number of shares held by the shareholder.

2) The name of the proxy.

3) The meeting or meetings or the period for which the proxy is appointed.

1323. — The instrument appointing a proxy must be deposited with the chairman at or before the beginning of the meeting at which the proxy named in such instrument proposes to vote. [379]

1324. — At any general meeting, a resolution is passed if adopted by a majority of votes.

1325. — At any general meeting, unless a poll be demanded by at least two shareholders, a declaration by the chairman that a resolution has been passed and an entry to that effect in the books of the company shall be sufficient evidence of the fact.

1326. — If a poll is demanded it shall be taken in such manner as the chairman directs.

1327. — In case of equality of votes, the chairman has a casting vote.

1328. — A resolution is deemed to be a special resolution if passed by two successive general meetings in the following way:

The substance of the proposed resolution has been included in the notice for summoning the first general meeting.

The resolution has been passed in the first meeting by a majority of not less than three fourths of the votes.

The subsequent general meeting has been summoned and has been held not less than fourteen day and not more than six weeks after the former meeting. [380]

The full text of the resolution passed in the first meeting has been included in the notice summoning the second meeting.

The resolution passed in the former meeting has been confirmed in the subsequent meeting by a majority of two thirds of the votes.

1329. — If preference shares have been issued, the preferential rights attributed to such shares cannot be altered.

1330. — If a general meeting has been summoned or held or a resolution passed contrary to the provisions of this Title or contrary to the regulations of the company the Court shall, on application of any director

or shareholder, cancel any such resolution or any resolutions passed at such irregular general meeting, provided that the application be entered within one month after the date of resolution.

4. — BALANCE-SHEET.

1331. — A balance-sheet must be made at least once in every twelve months. at the end of such twelve months as constitute the financial year of the company.

It must contain a summary of the assets and liabilities of the company and a profit and loss account.

1332. — The balance-sheet must be examined by one or more auditors and submitted for adoption to a general meeting within four months after its date. [381]

A copy of it must be sent to every person entered in the register of shareholders at least three days before the general meeting.

Copies must also be kept open at the offices of the company during the same period for inspection by the holders of certificates to bearer.

1333. — On submitting balance-sheet, the directors must lay before the general meeting a report showing how the business of the company was conducted during the year under review.

1334. — Any person is entitled to obtain from any company a copy of its latest balance-sheet on payment of a sum not exceeding fifty satang.

5. — DIVIDENDS AND INTERESTS.

1335. — The distribution of dividends or interest must be made in proportion to the amount paid upon each share, unless otherwise decided with regard to preference shares.

1336. — No dividend or interest may be paid to the shareholders except in execution of a resolution passed by a general meeting and out of the profits arising from the business of the company. [382]

1337. — If the company has incurred losses, no dividend or interest may be paid unless such losses have been made good.

1338. — If dividends or interest have been paid contrary to the provisions of the last two preceding sections the creditors of the company are entitled to have the amount so distributed returned to the company. provided that a shareholder cannot be obliged to return dividends or interest which he has received in good faith.

1339. — Notice of any dividend that may have been declared shall be either published twice in a local paper or given by letter to each shareholder whose name appears on the register of shareholders.

1340. — No dividend can bear interest against the company.

6. — BOOKS AND ACCOUNTS.

1341. — The directors must cause true accounts to be kept:

1) Of the sums received and expended by the company and of the matters in respect of which each receipt or expenditure takes place.

2) Of the assets and liabilities of the company. [383]

1342. — The directors must cause minutes of all proceedings and resolutions of meetings of shareholders and directors to be duly entered in the books. Any such minute signed by the chairman of the meeting at which such resolutions were passed or proceedings had. or by the chairman of the next succeeding meeting, are presumed corre*t*[ct] evidence of the matters therein contained, and all resolutions and proceedings of which minutes have been so made are presumed to have been duly passed.

[Part] IV. — AUDIT.

1343. — The auditors may be shareholders of the company; but no person is eligible as an auditor who is interested otherwise than as a shareholder in any transaction of the company and no director or other agent or employee of the company is eligible as an auditor during his continuance in office.

1344. — The auditors shall be elected every year by the ordinary general meeting.

A retiring auditor is re-eligible.

1345. — The remuneration of the auditors shall be fixed by the general meeting.

1346. — If any casual vacancy occurs among the auditors, the directors shall forthwith summon an extraordinary general meeting for the purpose of filling the vacancy. [384]

1347 — If no election of auditors is made in manner aforesaid the Court shall, on the application of not less than five shareholders, appoint an auditor for the current year and fix his remuneration.

1348. — Every auditor shall at all reasonable times have access to the books and accounts of the company and he can in relation to such books and accounts examine the directors or any other agents or employees of the company.

1349. — The auditors must make a report to the ordinary general meeting on the balance-sheet and accounts.

They must state in such report whether in their opinion the balance-sheet is properly drawn up so as to exhibit a true and correct view of the state of the affairs of the company.

[Part] V. — INSPECTION.

1350. — Upon the application of shareholders holding not less than one fifth part of the shares of the company, the Minister of Justice shall appoint one or more competent inspectors to examine into the affairs of any registered company and to report thereon. [385]

The Minister may, before appointing any inspector, require the applicants to give security for payment of the expenses of the inspection.

1351. — The directors, employees and agents of the company are bound to produce to the inspectors all books and documents in their custody or power.

Any inspector may examine upon oath the directors, employees and agents of the company in relation to its business.

1352. — The inspectors must make a report to be written or printed as the Minister of Justice directs. Copies must be forwarded by the Minister to the registered office of the company and to the shareholders upon whose application the inspection was made.

1353. — All expenses of such inspection must be repaid by the applicants, unless the company, in the first general meeting after such inspection is finished, consents that the same shall be paid out of the assets of the company.

1354. — The Minister of Justice may also, of his own motion, appoint inspectors to report to the Government on the affairs of the company. Such appointment lies entirely within the discretion of the Minister.

[Part] VI. — INCREASES AND REDUCTIONS OF CAPITAL. [386]

1355. — A registered company can by special resolution increase its capital by issuing new shares.

1356. — No new shares of a registered company can be allotted as fully or partly paid up otherwise than in money, except in execution of a special resolution.

1357. — Unless decided otherwise by a general meeting, all new shares must be offered to the shareholders in proportion to the shares held by them.

Such offer must be made by notice specifying the number of shares to which the shareholder is entitled. and fixing a date after which the offer, if not accepted. shall be deemed to be declined.

After such date or on the receipt of an intimation from the shareholder that he declines to accept the shares offered, the director may offer such shares for subscription to third persons.

1358. — Every prospectus, notice, advertisement or other invitation to third persons to subscribe for new shares must be dated and signed by the directors and registered before its publication.

1359. — Every such prospectus, notice, advertisement or invitation must contain the following particulars:

1) The names, occupations and addresses of the directors and auditors. [387]

2) The contents of the memorandum of association.

3) The registered capital of the company, distinguishing ordinary shares and preference shares, and shares paid up otherwise than in money.

4) The total amount paid up in money on the capital.

5) A summary of the last balance-sheet showing the assets and liabilities of the company.

6) The number and amount of the new shares, and the object for which they are issued.

7) The amount payable on application on each share; such amount cannot be less than fifteen per cent of the nominal amount of the shares.

8) If the whole or part of the new shares are preference shares, the preferential rights accruing to such shares.

9) The number and amount, if any, of new shares to be allotted as fully or partly paid up otherwise than in money, the extent to which they shall be considered as paid up and a description of the services or property in return for which such shares are proposed to be allotted.

1360. — A limited company can, by special resolution, reduce its

capital either by lowering the amount of each share or by reducing the number of shares.

1361. — The capital of the company cannot be reduced to less than one fourth of its total amount.

1362. — When a company proposes to reduce its capital, it must [388] publish seven times in a local paper and send to all creditors known to the company a notice of the particulars of the proposed reduction, requiring the creditors to present within three months from the date of such notice any objection they may have to such reduction.

1363. — If no objection is raised within the period of three months, none is deemed to exist.

If objection is raised, the company cannot proceed with the reduction of its capital unless it has satisfied the claim or given security for it.

1364. — If a creditor has, in consequence of his ignorance of the proposed reduction of capital, failed to give notice of his objection thereto, and such ignorance was in no way due to his fault, those shareholders of the company to whom has been refunded or remitted a portion of their shares remain, for a period of two years from the date of registration of such reduction, personally liable to such creditor to the extent of the amount refunded or remitted.

1365. — The special resolution by which any increase or reduction of capital has been authorised must be registered within fourteen days after its date by the care of the company.

[Part] VII. — DEBENTURES.

1366. — Debentures cannot be issued except by a special resolution.

1367 — The total amount of debentures cannot exceed the amount [389] which has been paid up on the capital.

If the latest balance-sheet shows the amount of the assets to be less than the amount which has been paid up on the capital, the total amount of debentures cannot exceed the amount represented by the assets.

1368. — The amount of a debenture cannot be less than fifty baht.

1369. — Every debenture must be paid in money.

1370. — Before debentures are issued the following particulars must

be registered:

1) The total amount of the loan.

2) The total number of debentures.

3) The amount of each debenture.

4) The rate of interest.

5) The manner in which and the time within which the debentures must be reimbursed.

6) If the company has issued any debentures before, the amount for which the company is still indebted on account of such debentures.

7) The price at which the debentures are to be issued.

8) The manner in which and the time within which the debentures must be paid up.

9) The share capital of the company and the total amount which has been paid upon it. [390]

10) The amount represented by the existing assets of the company as shown by the latest balance-sheet.

1371. — Every prospectus, notice, advertisement or other invitation to subscribe for debentures must be dated and signed by the directors, and registered before its publication, and must contain the particulars mentioned in Section 1370.

1372. — The provisions of Sections 1256 to 1261 and 1263 to 1268 concerning certificates for shares apply to certificates for debentures, *mutatis mutandis*.

1373. — Every certificate of debentures must contain the particulars mentioned in sub-sections 1 to 5 of Section 1370.

[Part] VIII. — DISSOLUTION.

1374. — A limited company is dissolved:

1) In the cases, if any, provided by its regulations,

2) If formed for a period of time, by the expiration of such period.

3) If formed for a single undertaking, by the termination of that undertaking.

4) By a special resolution to dissolve. [391]

5) By the company becoming bankrupt.

A limited company may also be dissolved by the Court on the following grounds:

1) If default is made in filing the statutory report or in holding the statutory meeting.

2) If the company does not commence its business within a year from the date of registration or suspends its business for a whole year.

3) If the business of the company can only be married on at a loss and there is no prospect of its fortunes being retrieved.

[Part] IX. — AMALGAMATION OF LIMITED COMPANIES.

1375. — A limited company cannot amalgamate with another ~~registered~~ [limited] company except by special resolution.

1376. — The special resolution by which an amalgamation is decided must be registered by the company within fourteen days from its date.

1377. — The company must publish seven times in a local paper and send to all creditors known to the company by registered letter a notice of the particulars of the proposed amalgamation requiring the creditors to present within six months after the date of notice any objection they may have to it.

If no objection is raised during such period, none is deemed to exist. [392]

If an objection is raised, the company cannot proceed with the amalgamation unless it has satisfied the claim or given security for it.

1378. — When the amalgamation has been made, it must be registered within fourteen days by each amalgamated company and the limited company formed by the amalgamation must be registered as a new company.

1379. — The share capital of the new company must be equivalent to the total share capital of the amalgamated companies.

1380.—The new company is entitled to the rights and subject to the liabilities of the amalgamated companies.

[Part] X. — NOTICES.

1381. — A notice is deemed to be duly served by the company to a shareholder if it is delivered personally or sent by post to such shareholder at the address appearing in the register of shareholders.

1382. — Any notice sent by post in a letter properly addressed is deemed to have been served at the time when such letter would have been delivered in the ordinary course of post. [393]

CHAPTER V.
LIQUIDATION OF REGISTERED PARTNERSHIPS, LIMITED PARTNERSHIPS AND LIMITED COMPANIES.

1383. — The liquidation of a bankrupt registered partnership or limited partnership or limited company shall be made, as far as practicable, in accordance with the provisions of the Law of Bankruptcy for the time being in force.

[Regulations for the liquidation of partnerships and companies may be issued by the Minister of Justice.]

1384. — When a general meeting is prescribed in this Chapter, this means:

1) As to registered partnerships and limited partnerships, a meeting of all the partners, in which a majority of votes decides.

2) As to limited companies, the general meeting provided by section 1304.

1385. — A partnership or company is deemed to continue after its dissolution as far as it is necessary for the purpose of liquidation.

1386. — The duties of the liquidators are to settle the affairs of the partnership or company, to pay its debts and to distribute its assets.

1387. — Upon dissolution of a partnership or company for any other cause than bankruptcy, the managing partners or directors become liquidators unless otherwise provided by the contract of partnership or by the regulations of the company. [394]

If there are no persons to be liquidators under the preceding provision, a liquidator or liquidators shall be appointed by the *b*[C]ourt upon the application of any interested person.

1388. — The managing partners or directors retain as liquidators the same respective powers which they had as managing partners or directors.

1389. — Within fourteen days after the date of dissolution (or, in case of liquidators appointed by the Court, after the date of appointment), the liquidators must:

1) Notify the public by two successive advertisements in a local paper that the partnership or company is dissolved and that its creditors must apply for payment to the liquidators, and

2) Send a similar notice by registered letter to each creditor whose name appears in the books or documents of the partnership or company.

1390. — The dissolution of the partnership or company and the names of the liquidators must be registered within fourteen days after the date of dissolution by the liquidators.

1391. — The liquidators must, as soon as possible, make a balance-sheet and have it examined and certified by the auditors, and must summon a general meeting. [395]

1392. — The business of the general meeting is:

1) To confirm the directors as liquidators, or to appoint other liquidators in their stead, and

2) To examine the balance-sheet.

The general meeting may direct the liquidators to make an inventory or to do whatever the meeting may deem advisable for the settlement of the affairs of the partnership or company.

1393. — Liquidators not appointed by the Court may be removed and superseded by a unanimous vote of the partners or by a general meeting of the shareholders. Liquidators either appointed by the Court or not may be removed and superseded by the Court on the request of one of the partners or of the shareholders representing one twentieth part of the paid up capital of the company.

1394. — Any change amongst the liquidators must be registered, within fourteen days after the date of change, by the liquidators.

1395. — The liquidators have power:

1) To bring or defend any legal proceeding, civil or criminal, and to make compromises, in the name of the partnership or company.

2) To carry on the business of the partnership or company, as far as may be necessary for a beneficial settlement of the affairs. [396]

3) To sell the movéable and immovéable property of the partnership or company.

4) To do all other acts as may be necessary for a beneficial settlement of the liquidation.

1396. — No limitation of the power of the liquidators is valid as against third persons.

1397. — Unless otherwise fixed by the general meeting or by the Court

at the time of the appointment of the liquidators, no act of the liquidators is valid except if done by them jointly.

1398. — A resolution of a general meeting or a decision of the Court authorising a liquidator or liquidators to act separately must be registered within fourteen days from its date.

1399. — All costs, charges and expenses properly incurred in the liquidation must be paid by the liquidators in preference to other debts.

1400. — If a creditor does not apply for payment, the liquidators must deposit the amount due to him as described by the provisions of this Code concerning deposit in lieu of performance.

1401. — The liquidators can require the partners or shareholders to pay such part of their contributions or shares as may be still unpaid. [397]

1402. — Such part must be paid at once, even if it was previously agreed by the contract of partnership or the regulations of the company that it would be called for at a later period.

1403. — If the liquidators find that after the whole of the contributions or shares has been paid up, the assets shall be insufficient to meet the liabilities, they must apply at once to the Court to have the partnership or company declared bankrupt.

1404. — The liquidators must deposit every three months at the Registration Office a report of their dealings, showing the situation of the accounts of the liquidation. Such report shall be open gratuitously for inspection to the partners, shareholders, or creditors.

1405. — If the liquidation continues for more than one year, the liquidators must summon a general meeting at the end of each year from the beginning of the liquidation, and must lay before this meeting a report of their dealings and a detailed account of the situation.

1406. — Only so much of the property of the partnership or company may be divided amongst the partners or shareholders as is not required for performing all the obligations of the partnership or company. [398]

1407. — As soon as the affairs of the partnership or company are fully liquidated, the liquidators must call a general meeting before which they must lay an account showing the manner in which the liquidation has been conducted.

After the account is approved, the proceedings of the meeting must be

registered, within fourteen days from its date, by the liquidators.

1408. — The books, accounts and documents of the liquidated partnership or company shall be deposited at the same time with the Registrar who shall keep them during ten years after the end of the liquidation.

All interested persons shall be allowed to consult them there gratuitously.

1409. — The obligations incurred by:

1) The partnership or company,

2) The partners or shareholders as such,

3) The liquidators as such,

are extinguished by prescription two years after the registration of the end of the liquidation.

1410. — The provisions of Sections 1305 to 1327, 1330 and 1342 apply to general meetings held during liquidation, *mutatis mutandis*.

CHAPTER VI. [399]

PENALTIES.

1411. — Whoever publishes a prospectus, notice, advertisement or other invitation to subscribe for shares of a limited company before the memorandum of the said company is registered, shall be punished with fine of one hundred to one thousand baht.

1412. — Whoever publishes a prospectus, advertisement or other invitation to subscribe for debentures of a limited company before the said company is registered[,] shall be punished with fine of one hundred to one thousand baht.

1413. — Whoever publishes a prospectus, notice, advertisement or other invitation to subscribe for shares or debentures contrary to the provisions of sections 1224, 1225, 1358, 1359, 1371, shall be punished with fine of one hundred to one thousand baht.

1414. — Whoever makes or causes to be made in any memorandum for the promotion of a company or in any prospectus, notice, advertisement or other invitation to subscribe for shares or debentures, or in any of the entries for registration provided by this Title, a statement which he knows to be false in any material point, shall be punished with imprisonment not exceeding three years[,] or fine not exceeding five thousand baht or both.

1415. — If a registered company fails in any seal, signboard, notice, advertisement, letter, circular or other document of the company to mention the word “limited” at the end of its name, such company shall be punished with a fine not exceeding one hundred baht. [400]

1416. — If a company fails to comply with any of the provisions of Section 1270 concerning the keeping of the register of shareholders, such company shall be punished with fine not exceeding twenty baht for every day during which such default continues.

1417. — If a company fails to comply within the proper time with any of the provisions of Sections 1277, 1365, 1376, 1378 concerning registration, such company shall be punished with fine not exceeding twenty baht for every day during which such default continues.

1418. — If a company fails to comply with the provisions of Section 1243 concerning delivery of copies of the memorandum and regulations, ~~of~~[or] Section 1271 concerning the register of shareholders, ~~of~~[or] Section 1280 providing how the capital of a company shall be mentioned in the documents of the company, such company shall be punished with fine not exceeding fifty baht.

1419. — If a company acquires its own shares or takes them in pledge, or fails to sell forfeited shares contrary to the provisions of section 1254, such company shall be punished with fine not exceeding ten baht for every share unduly acquired or kept.

1420. — If the default for which a company has been fined under Sections 1414, 1415, 1416, 1418, 1419 is due to the fault of one or more of its directors, such company is entitled to recover from the said directors the amount of the fines, costs and other expenses incurred in connection with the action. [401]

1421. — If a certificate to bearer of shares or debentures is issued contrary to the provisions of Sections 1266 or 1372, every director who has signed such certificates shall be punished with fine not exceeding one thousand baht.

1422. — If any of the meetings prescribed by Section 1304 or 1306 is not summoned, every director of the company shall be punished with fine not exceeding fifty baht for every day during which such default continues.

1423. — If dividends or interest are paid out contrary to the provisions of Section 1336 or 1337, every director of the company shall be punished with imprisonment not exceeding one year or fine not exceeding five

thousand baht, or both.

1424. — If default is made in complying with any of the provisions of Sections 1289 concerning the registration of the appointment of new directors, or 1331 or 1332 concerning the balance-sheet or of Section 1342 concerning minutes of proceedings and resolutions, every director of the company shall be punished with fine not exceeding one thousand baht.

1425. — If the advertisements prescribed by Section 1389 are not made in a local paper within the proper time, every liquidator shall be punished with fine not exceeding ten baht for every day during which such default continues. [402]

1426. — If default is made in complying within the proper time with any of the provisions of Sections 1390, 1394 or 1407 concerning registration, every liquidator shall be punished with fine not exceeding five baht for every day during which such default continues.

1427. — If the report prescribed by Section 1404 is not deposited at the Registration Office within the proper time, every liquidator shall be punished with fine not exceeding five baht for every day during which such default continues.

1428. — If during liquidation any of the meetings prescribed by Sections 1306 and 1405 is not summoned, every liquidator shall be punished with fine not exceeding twenty baht for every day during which such default continues.

1429. — A director or liquidator who proves that he has opposed the act or default described in Sections 1422 to 1428 shall not be liable to punishment under those Sections.

TITLE XXIII.
ASSOCIATIONS.

[403]

1430. — A contract of association is a contract whereby several persons agree to unite for a common undertaking other than that of sharing profits.

1431. — Every association must have regulations and must be registered.

1432. — The regulations must specify at least:

1) The name of the association.

2) Its object.

3) The address of its principal office.

4) Rules for the admission and exclusion of members.

5) Rules for the management of the association by committees, directors or otherwise.

1433. — The application for registration must be made in writing and signed by three of the members of the association at least. It must be accompanied by three copies of the regulations.

1434. — The offices for the registration of associations shall be established by regulations issued by the Minister responsible for the local administration.

[404]

1435. — The Registration must be made at the Registration office of that part of the Kingdom where the principal office of the association is situated. Any alterations subsequently made in the registered particulars, as well as any other matters ordered to be registered by this Title must be registered at the same place.

1436. — The entry in the register must specify:

1) The name of the association.

2) Its object.

3) The address of its principal office.

4) The names, addresses and occupations of the person or persons entrusted with its management.

1437. — The registration shall be granted if the documents and particulars mentioned in Sections 1432 and 1436 are produced and if the

persons entrusted with management of the association appear to be responsible persons whose standing corresponds to the object and importance of the association.

1438. — Every person may inspect the documents kept by the Registrar or require a certificate of the registration of any association, or a certified copy or extract of any other document, to be delivered to him by the Registrar, on payment of such fee as may be prescribed by the Regulations issued by the Minister responsible for the local administration.

1439. — Upon registration being made, the managers shall be entitled to a certificate of registration. [405]

1440. — Upon registration being made, the association is formed as a juristic person, distinct from the persons of whom it is composed.

1441. — Unless otherwise provided by the regulations. no alterations of or additions to the regulations of an Association can be made, except by a resolution passed by a majority of the members of the association.

Three copies of every such addition or alteration must be deposited for registration within fourteen days from the date of the resolution.

1442. — Any change in the person or persons entrusted with the management of the association shall be registered within fourteen days from the date of the change.

The Registrar may refuse to register the change if he is not satisfied that the new manager or managers are responsible persons as defined by Section 1437.

1443. — An association is represented in its relations with third persons by the person or persons entrusted with its management.

1444. — The relations between an association, the person or persons entrusted with its management, and third persons, are governed by the provisions of this Code concerning Agency. [406]

1445. — An association is jointly liable with the wrongdoer for the consequences of the wrongful acts which any of its members or managers may commit in pursuance of their common undertaking.

1446. — If the members of an association have to pay subscriptions, the whole of each subscription is due as soon as the period to which it applies has begun.

1447. — The membership in an association is not transferable.

1448. — Every member of an association is entitled to withdraw at any time from the association, provided he pays such subscriptions as may be due by him at that time.

1449. — Unless otherwise provided by the regulations, the liability of each member to the association is limited to the amount of the subscriptions due by him.

1450. — The creditors of an association cannot enter actions against the members of such association for obtaining performance of obligations incurred by the association.

1451. — If a resolution has been passed by an association contrary to its regulations or contrary to law, the Court shall cancel such resolution on the application of any member or of the Public Prosecutor, provided that an application by a member shall not be made later than one month from the date of the resolution. [407]

1452. — An association is dissolved:

1) In the cases, if any, provided by its regulations,

2) If formed for a definite period of time, by the expiration of such period.

3) If formed for a single undertaking, by the termination of such undertaking.

4) By a resolution to dissolve passed by the association in general meeting.

5) By the association becoming bankrupt.

6) By a decree published in the Government Gazette, as provided by Section 1453.

1453. — The Government may, by decree, order an association to be dissolved in any of the following cases:

1) If the object of the association is or becomes unlawful.

2) If, for any reason whatsoever, the association cannot be any more managed.

3) If the association appears to be managed by persons other than the registered managers.

4) If it appears that the association is or may become a danger to the public peace. [408]

5) If the association or any of its members or managers acts contrary to law.

6) If the person or persons proposed to be registered as managers are not responsible persons whose standing corresponds to the object and importance of the association.

1454. — If an association is dissolved under section 1453, the Government shall appoint a liquidator or liquidators of the association.

1455. — Sections 1385 to 1388, 1389 No. 1, 1390, 1393 to 1400, 1403, 1405 1407, 1408 and 1409 of Title XXII concerning Partnerships and Companies apply to the liquidation of associations, *mutatis mutandis*.

1456. — The liquidators can require the members to pay the subscriptions which were due by them at the time of dissolution.

1457. — After liquidation, the remaining assets, if any, cannot be distributed among the members of the association. They shall be transferred to such other juristic person as may have been designated by the regulations or by the association in general meeting.

1458. — If no juristic person has been designated by the regulations or by the association in general meeting, the remaining assets become the property of the State. [409]

1459. — If the notifications prescribed by this Title XXIII are not made to the Registrar within the proper time, the association shall be punished with fine not exceeding five baht for every day during which such default continues.

1460. — Whoever is a member of a non-registered association shall be punished with fine not exceeding five hundred baht.

The person or persons entrusted with the management of such an association shall be punished with fine not exceeding one thousand baht, or imprisonment not exceeding six months, or both.

1461. — Whoever continues being a member of an association, after publication of a decree for its dissolution shall be punished with fine not exceeding one thousand baht, or imprisonment not exceeding six months, or both.

Whoever continues being a manager of such an association shall be punished with fine not exceeding two thousand baht, or imprisonment not exceeding one year, or both[.]

1462. — Whoever is found guilty of recidive [=recidivism] within one year, the prior and subsequent offences coming under the provisions of this Title, shall be liable to double the punishment prescribed for the subsequent offence. [410]

1463. — The provisions of this Code concerning Associations shall apply without prejudice to the punishment prescribed for any person being a member of a secret society or criminal association, as provided by Sections 177 to 182 of the Penal Code.

SCHEDULES.



SCHEDULE A (SECT. 1012).

POST OFFICE NO. OF [1]

PROTEST OF BILL FOR NON ACCEPTANCE.

On the [2] .....

in the presence of the undersigned [3] .....

Mr. [4] .....

declared that on the [5] .....

he has presented for acceptance to Mr. [6] .....

as he now presented to me for protest, a bill of exchange

dated [7] .....

by which Mr. [8] .....ordered him to pay

to [9] .....

The sum of [10] .....

the day of maturity of the bill being [11] .....

that is to say [12] .....

Whereas on such presentation Mr. [6] .....

refused to accept the bill on account of [13] .....

Mr. [4] .....further declared to me and

hereby notifies that he formally protests against the

drawer of the said bill and all others concerned for all

exchange, re-exchange, and all costs, damages and

interest present and to come for want of acceptance and that he reserves his right to exercise every recourse provided by law if Mr. (6) ..... does not on or before the (14) ..... accept the said bill and pay the expenses of the protest that is to say (15) .....

In witness whereof I (3) ..... sign the present protest in three copies.

date

stamp (16)

Post Office.

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(1) town or village
(2) date of protest
(3) Name and style of the clerk of Post Office
(4) Name and address of the holder of the bill
(5) date of presentation
(6) Name or trade name of the drawee
(7) Date of the bill of exchange
(8) Name or trade name of the drawer
(9) Name or trade name of the payee with mention whether the bill is payable to order or to bearer
(10) Amount of the bill of exchange (in full)
(11) So many days or months after issue or after presentation
(12) Day of maturity calculated according to fore going mention
(13) reasons given for non acceptance if any
(14) third day from the date of protest
(15) costs of protest
(16) Signature of clerk.

SCHEDULE B (SECT. 1058).

POST OFFICE NO. OF [1]

PROTEST OF BILL FOR NON ACCEPTANCE.

On the [2] .....

in the presence of the undersigned [3] .....

Mr. [4] .....

declared that on the [5] .....

he has presented for payment to Mr. [6] .....

as he now presented to me for protest, a bill of exchange

dated [7] .....

by which Mr. [8] .....ordered him to pay to [9] .....

the sum of [10] .....

the day of maturity of the bill being [11] .....

that is to say [12] .....

Whereas on such presentation Mr. [6] .....

refused to pay the bill on account of [13] .....

Mr. [4] .....further declared to me and

hereby notifies that he formally protests against the

drawer of the said bill and all others concerned for all

exchange, re-exchange, and all costs, damages and

interest present and to come for want of payment and

that he reserves his right to exercise every recourse provided by law if Mr. (6) ..... does not on or before the (14) ..... pay the said bill and pay the expenses of the protest that is to say (15) .....

In witness whereof I (3) ..... sign the present protest in three copies.

date

stamp (16)

Post Office.

---

(1) Town or village
(2) Date of protest
(3) Name and style of the clerk of Post Office
(4) Name and address of the holder of the bill
(5) Date of presentation
(6) Name or trade name of the drawee
(7) Date of the bill of exchange
(8) Name or trade name of the drawer
(9) Name or trade name of the payee with mention whether the bill is payable to order or to bearer
(10) Amount of the bill of exchange (in full)
(11) So many days or months after issue or after presentation.
(12) Day of maturity calculated according to fore going mention
(13) reasons given for non payment, or for part payment, if any.
(14) third day from the date of protest
(15) Costs of protest
(16) Signature of clerk