

BOOK II. OBLIGATIONS.

TITLE I. GENERAL PROVISIONS.

CHAPTER I. SUBJECT OF OBLIGATIONS.

194. – By virtue of an obligation the creditor is entitled to claim performance from the debtor. The performance may consist in a forbearance.

(G. 241).

195. – When the thing which forms the subject of an obligation is described only in kind, if its quality cannot be determined by the nature of the juristic act or the intention of the parties, the debtor must deliver a thing of medium quality.

If the debtor has done every thing required on his part for the delivery of such thing, or if he on obtaining the consent of the creditor has designated a thing for delivery, such thing becomes from that time the subject of the obligation.

(c/p old text 301; G. 243; c/p J. 401).

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(c/p old text 301, G. 243; c/p J. 401).

196. If a money debt is expressed in a foreign currency, payment may be made in Siamese currency.

The commutation is made according to the rate of exchange current in the place of payment at the time of payment.

(c/p old text 302, 303; c/p G. 244).

197. - If a money debt is payable in a specific kind of money which is no longer current at the time of payment, the payment shall be as if the kind of money were not specified.

(G.245).

198. - If several acts of performance are due in such manner that only one of them is required to be done, the right to elect belongs to the debtor unless otherwise stipulated.

(c/p old text 213, 214; c/p G. 262).

199. The election is made by a declaration of intention to the other party.

The performance elected is deemed to be the only one due from the beginning.

(G. 263).

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

If no period of time was fixed, when the obligation becomes due, the party who has not the right of election can notify the other party to exercise his right of election within a reasonable time to be fixed in such notice.

(c/p old text 215, 216; c/p G. 264; c/p J. 408).

201. – If a third person is to make the election, it is done by a declaration of intention made to the debtor, who must inform the creditor.

If such third person cannot make the election or is unwilling to do so, the right of election passes to the debtor.

(c/p old text 217; c/p J. 409).

202. – If one of the acts of performance is impossible from the beginning, or if it subsequently becomes impossible, the obligation is limited to the other act of performance. This limitation does not arise if the performance becomes impossible in consequence of a circumstance for which the party not entitled to elect is responsible.

(c/p old text 219. G. 265).

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

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CHAPTER II. EFFECT OF OBLIGATIONS.

PART I. NON-PERFORMANCE.

203. If a time for performance is neither fixed nor to be inferred from the circumstances, the creditor may demand the performance forthwith, and the debtor may perform his part forthwith.

If a time is fixed, it is to be presumed, in case of doubt, that the creditor may not demand the performance before that time; the debtor, however, may perform earlier.

(G. 271).

204. – If the debtor does not perform after warning given by the creditor after maturity, he is in default through the warning.

If a time by calendar is fixed for the performance, the debtor is in default without warning if he does not perform at the fixed time. The same rule applies if a notice is required to precede the performance, and the time is fixed in such manner that it may be reckoned by the calendar from the time of notice.

(c/p G. 284; S.O. 102).

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สำนักงานคณะกรรมการกฤษฎีกา TUDC ไทย *(c/p G. 284; S.O. 102).*

205. – The debtor is not in default so long as the performance is not effected in consequence of a circumstance of a circumstance for which he is not responsible.

(G. 285).

206. – In obligations arising from an unlawful act, the debtor is in default from the time when he committed it.

(c/p old text 327; c/p Br. 962; c/p Fr. 1302 par.2; G. 848).

207. – A creditor is in default if, without legal ground, he does not accept the performance tendered to him.

(c/p old text 354, 355; G. 293; c/p J. 413; c/p Br. 955; S.O. 91).

208. – The performance must be actually tendered to the creditor in the manner which it is to be effected.

But if the creditor has declared to the debtor that he will not accept performance, or if for effecting the performance an act of the creditor is necessary, it is sufficient for the debtor to give him notice that all preparations for performance have been made and that it is for him to accept it. In such cases the notice by the debtor is equivalent to a tender.

(G. 294, 295; c/p J. 492; old text 356).

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(G. 294, 295; c/p J. 492; old text 356).

209. – If a time certain is fixed for the act to be done by the creditor, tender is required only if the creditor does the act in due time.

(c/p old text 357; c/p G. 296).

210. – If the debtor is bound to perform his part only upon counter-performance by the creditor, the creditor is in default if, though prepared to accept the performance tendered, he does not offer the required counter-performance.

(G. 298).

211. – A creditor is not in default if the debtor is not in a position to effect the performance at the time of tender, or, in the case provided by Section 209, at the time fixed for the act of the creditor.

(G. 297).

212. – If the time of performance is not fixed, or if the debtor is entitled to perform before the fixed time, the creditor is not in default by reason of the fact that he is temporarily prevented from accepting the tendered performance, unless the debtor has given him notice of this intended performance a reasonable time beforehand.

(G. 299).

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(G. 299).

213. - If a debtor fails to perform his obligation, the creditor may make a demand to the Court for compulsory performance, except where the nature of the obligation does not permit it.

When the nature of an obligation does not permit of compulsory performance, if the subject of the obligation is the doing of an act, the creditor may apply to the Court to have it done by a third person at the debtor's expense; but if the subject of the obligation is doing of a juristic act, a judgment may be substituted for a declaration of intention by the debtor.

As to an obligation whose subject is the forbearance from an act, the creditor may demand the removal of what has been done at the expense of the debtor and have proper measures adopted for the future.

The provisions of the foregoing paragraphs do not affect the right to claim damages.

(c/p old text 331 - 334; c/p J. 414; Restitution in kind G. 249 - 251 included in this section).

214. - The creditor is entitled to have his obligation performed out of the whole of the property of his debtor including any money and other property due to the debtor by third person.

(c/p old text 373).

215. - When the debtor does not perform the obligation in accordance with the true intent and purpose of the same, the creditor may claim compensation for any damages caused thereby.

(c/p J. 415).

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216. – If by a reason of default, the performance becomes useless to the creditor, he may refuse to accept it and claim compensation for non-performance.

(c/p G. 286; c/p Br. 956).

217. – A debtor is responsible for all negligence during his default. He is also responsible for impossibility of performance arising accidentally during the default, unless the injury would have arisen even if he had performed in due time.

(c/p G. 287; c/p Br. 957).

218. – When the performance becomes impossible in consequence of a circumstance for which the debtor is responsible, the debtor shall compensate the creditor for any damage arising from the non-performance.

In case of partial impossibility the creditor may, by declining the still possible part of the performance, demand compensation for non-performance of the entire obligation, if the still possible part of performance is useless to him.

(G. 280).

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In case of a partial impossibility the creditor may, by declining the still possible part of the performance, demand compensation for non-performance of the entire obligation, if the still possible part of performance is useless to him.

(G. 280).

219. – The debtor is relieved from his obligation to perform if the performance becomes impossible in consequence of a circumstance for which he is not responsible occurring after the creation of the obligation.

If the debtor, after the creation of the obligation, becomes unable to perform, it is equivalent to a circumstance rendering the performance impossible.

(G. 275).

2[20]. – A debtor is responsible for the fault of his agent, and of person whom he employs in performing his obligation, to the same extent as for his own fault. *[In such case the provisions of Section 373 have no application.]*

(c/p G. 278).

22[1]. A money debt bearing interest ceases to bear interest during the default of the creditor.

(c/p old text 360 par.2; c/p G. 301).

22[2]. The claim of damages is for compensation for all such damage as usually arises from non performance.

The creditor may demand compensation even for such damage as has arisen from special circumstances, if the party concerned foresaw or ought to have foreseen such circumstances.

(c/p old text 339; J. 416).

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The creditor may demand compensation even for such damage as has arisen from special circumstances, if the party concerned foresaw or ought to have foreseen such circumstances.

(c/p old text 339; J. 416).

22[3]. If any fault of the injured party has contributed in causing the injury, the obligation to compensate the injured party and the extent of the compensation to be made depends upon the circumstances, especially upon how far the injury has been caused chiefly by the one or the other party.

This applies also even if the fault of the injured party consisted only in an omission to call the attention of the debtor to the danger of an unusually serious injury which the debtor neither knew nor ought to have known, or in an omission to avert or mitigate the injury. The provisions of Section 220 apply mutatis mutandis.

(G. 254; c/p Jenk's 282, 283; c/p J. 418)

224. - A money debt bears interest during default seven and half percent per annum. If the creditor can demand higher interest on any other legitimate ground, this shall continue to be paid.

Interest for default shall not be paid upon interest.

Proof of further damage is admissible.

(G. 288; c/p G. 289).

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This applies also even if the fault of the injured party consisted only in an omission to call the attention of the debtor to the danger of an unusually serious injury which the debtor neither knew nor ought to have known, or in an omission to avert or mitigate the injury. The provision of section 220 applies mutatis mutandis.

(G. 254; c/p Jenk's 282, 283; c/p J. 418).

224. - A money debt bears interest during default at seven and half per cent per annum. If the creditor can demand higher interest on any other legitimate ground, this shall continue to be paid.

Interest for default shall not be paid upon interest.

Proof of further damage is admissible.

(G. 288; c/p G. 289).

23.6.68 225. – If the debtor is bound to make compensation for
 23.6.68 the value of an object which has perished during the default, or
 which cannot be delivered for a reason which has arisen during
 the default, the creditor may demand interest [.] on the amount
 to be paid as compensation [.] from the time which serves as the
 basis for the estimate of the value. The same rule applies if the
 debtor is bound to make compensation for the diminution in
 value of an object which has deteriorated during the default.

(G. 290).

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(G. 290).

PART II. SUBROGATION.

[226] 225. bis. – A person who is subrogated to the rights of a creditor is entitled to exercise in his own name all the rights which the creditor had in respect of the obligation including any security for it.

By real subrogation, ~~the~~ **[a]** property is substituted for another property in the same juristic position as the previous one.

(old text 6.).

226[227]. – When a creditor has received as compensation for damage the full value of the thing or right which is the subject of the obligation, the debtor is, by operation of law, subrogated into the position of the creditor with regard to such thing or right.

[Text from Roll 12-8 (Vol. 82), 82/81/1]

227[8]. If, in consequence of the circumstance which makes the performance impossible, the debtor acquires a substitute or a claim for compensation for the object owed, the creditor may demand delivery of the substitute received or may claim for compensation by himself.

If the creditor has a claim for compensation on account of non-performance, the compensation to be made to him is diminished, if he exercises the right specified in the foregoing paragraph, by the value of the substitute received or of the claim for compensation.

(G. 281).

PART II. SUBROGATION.

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By real subrogation, ~~the~~ property is substituted for another property in the same juristic position as the previous one. *(G. 281/6.).*

227³. – If, in consequence of the circumstance which makes the performance impossible, the debtor acquires a substitute or a claim for compensation for the object owed, the creditor may demand delivery of the substitute received or may himself claim for compensation.

If the creditor has a claim for compensation on account of non-performance, the compensation to be made to him is diminished, if he exercises the right specified in the foregoing paragraph, by the value of the substitute received or of the claim for compensation.

(G. 281).

228[9]. – Subrogation takes place by operation of law and ensues to the benefits of the following persons:

(1) The person who being himself a creditor pays another creditor who has priority to him owing to such other creditor having a preferential right[, pledge] or mortgage.

(2) The person who, when he acquires an immovable property, uses the purchase price in paying off the persons who have mortgages thereon.

(3) The person who, being bound with others or for others to pay a debt, and was interested in paying the same, has paid it.

(Fr. 1251; Br. 985).

229[30]. – If the creditor levies compulsory execution upon an object belonging to the debtor, any person who through the execution incurs danger of losing a right in the object is entitled to satisfying the creditor. The same right belongs to the possessor of a thing if he incurs danger of losing possession through the execution.

If a third person satisfies the creditor ~~the claim is transferred to him. The transfer [he is subrogated of the claim of the latter. Such claim]~~ may not be enforced to the detriment of the creditor.

(c/p G. 268).

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228⁹. – Subrogation takes place by operation of law, and ensues to the benefits of the following persons:

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(Fr. G. 268).

230[1]. – If properties mortgaged, pledged or otherwise subject to a preferential right, are insured, the mortgage, pledge or other preferential right extends to the claim against the insurer.

In case of immovable property, the insurer shall not pay the indemnity to the assured until he has given notice of his intention to do so to the mortgagee or other preferred creditor, and has not within one month from such notice received any objection to the payment; provided always that the insurer knew or ought to have known of the mortgage or other preferential rights, ~~and provided further that~~ [however,] any right registered in the Land Registry ~~shall be~~ [is] deemed to be known to the insurer. The same rule shall apply to mortgage of movables allowed by law.

In case of movable property, the insurer may pay the indemnity to the assured direct, unless he knew or ought to have known of the pledge or other preferential right.

The insurer is not liable to the creditor if the insured property is restored or a substitute for it is provided.

The same rule shall be applied mutatis mutandis in case of expropriation as well as in case of indemnity due to the owner of the property for destruction or damage.

(Belg. Law 11 Juno 1874 sect. 7; German Law on Application of Civil Code sect. 52; French Law 19 February 1889, art. 2; Belg. Law 16 December 1851; S.C. 822; Spain. Civ. 1877; Spain Law on Mortgage 1844 sect. 11).

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231[2]. – If under the foregoing section a sum of money is being substituted for the property destroyed or damaged, such sum shall in no case be delivered to the mortgage, pledge or other preferred creditor before the obligation secured is due, and, if the parties cannot come to an agreement with the debtor, each of them is entitled to demand that the said sum be deposited at the Deposit Office their common benefit unless the debtor gives proper security.

(Luxember 18 May 1892 sect. 6. German Law on Application of Civil Code sect. 53).

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PART III.

23.6.68 EXERCISING DEBTOR'S **RIGHT OF ACTION [CLAIM]**.

23.6.68 23[3]. – If, to the prejudice of the creditor, the debtor refuses or neglects to exercise a **right of action [claim]** the creditor may, in order to protect his obligation, exercise such **right of action [claim]** in his own name on behalf of the debtor, except those which are purely personal to the debtor.

(c/p old text 404; Fr. 1166; J. 423).

23[4]. – The creditor who exercises a **right of action [claim]** belonging to his debtor must summon the debtor to appear in the action.

(c/p old text 405; Plan. Vol. II No. 292).

23.6.68 23[5]. – A creditor may exercise a **right of action [claim]** belonging to the debtor for the whole amount due to the debtor, without regard to the amount due to him. But the defendant may satisfy the creditor by paying the amount due to him alone, provided that if the original debtor has joined as a plaintiff he may proceed to judgment for the balance.

In any case the creditor cannot obtain more than what is due to him.

(c/p old text 406; Plan. Vol. II No. 293).

PART III.

23.6.68 EXERCISING DEBTOR'S ^{Claim}~~RIGHT OF ACTION~~.

23.6.68 23³. – If, to the prejudice of the creditor, the debtor refuses or neglects to exercise a ^{Claim}~~right of action~~ the creditor may, in order to protect his obligation, exercise such ^{claim}~~right of action~~ in his own name on behalf of the debtor, except those which are purely personal to the debtor.

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(c/p. old text 406; Plan. vol. II No. 293).

Section 235[6]. The defendant may set up against the creditor all defences which he may have against the debtor, excepting those which arose after the entry of the action.

(old text 408; Tunis. 307).

235⁶. - The defendant may set up against the creditor all defences which he may have against the debtor, excepting those which arose after the entry of the action.

(old text 408; Tunis. 307).

PART IV.
CANCELLATION OF FRAUDULENT ACTS.

236[7]. The creditor is entitled to claim cancellation by the Court of any juristic act done by the debtor with knowledge that it would prejudice his creditor; but this does not apply if the person enriched by such act did not know, at the time of the act, or the facts which could make it prejudicial to the creditor, provided, however, that in case of gratuitous act the knowledge on the part of the debtor alone is sufficient.

The provisions of the foregoing paragraph do not apply to a juristic act whose subject is not a property right.

(c/p old text 409; J. 424; It. 1239. Quebec 1032 – 1039; Walton Vol. II p. 107).

237[8]. – The cancellation under the foregoing section cannot affect the right of a third person acquired in good faith ~~before the commencement of the action for cancellation.~~

~~The foregoing paragraph does not apply~~ [The foregoing paragraph does not apply] if the right is acquired gratuitously.

(It. 1235; Fr. Jurisprudence, Plan. Vol. II No. 325).

PART IV
CANCELLATION OF FRAUDULENT ACTS.

236. – The creditor is entitled to claim cancellation by the Court of any juristic act done by the debtor with knowledge that it would prejudice his creditor; but this does not apply if the person enriched by such act, did not know, at the time of the act, of the facts which would make it prejudicial to the creditor, provided, however, that in case of a gratuitous act the knowledge on the part of the debtor alone is sufficient.

The provisions of the foregoing paragraph do not apply to a juristic act whose subject is not a property right.

(c/p old text 409; J. 424; It. 1239. Quebec 1032 – 1039; Walton Vol. II p. 107).

237^s. – The cancellation under the foregoing section cannot affect the right of a third person acquired in good faith. ~~before the commencement of the action for cancellation~~
~~The foregoing paragraph does not apply~~
~~The foregoing paragraph does not apply~~ if the right is acquired gratuitously.

(It. 1235; Fr. Jurisprudence, Plan. Vol. II No. 325).

238[9]. – Cancellation operates in favour of all the creditors.

(old text 412; J. 425).

239[40]. – A claim for cancellation cannot be brought later than one year from the time when the creditor knew of the cause of cancellation, or later than ten years since the act was done.

(c/p old text 413; 414; J. 426).

238⁹. – Cancellation operates in favour of all the creditors.

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239⁴⁰. – A claim for cancellation cannot be brought later than one year from the time when the creditor knew of the cause of cancellation, or later than ten years since the act was done.

(c/p. old text 413; 414; J. 426).

PART V.
RIGHT OF RETENTION.

240[1]. – If the possessor of a property belonging to another has an obligation in his favour relating to the property possessed, he may retain the property until the obligation is performed; but this does not apply, if the obligation is not yet due.

The provisions of the forgoing paragraph do not apply, if the possession begins by an unlawful act.

(J. 295; c/p S.C. 895).

241[2]. – The right of retention does not exist if it is incompatible with the obligation assumed by the creditor or **[with]** the instructions given by the debtor before or at the time of delivery of the property or if it is against public order.

(c/p S.C. 896).

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The provisions of the foregoing paragraph do not apply, if the possession began by an unlawful act.

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241. – The right of retention does not exist if it is incompatible with the obligation assumed by the creditor, or the instruction given by the debtor before or at the time of delivery of the property or if it is against public order.

(c/p S.C. 896).

243[3]. – In case of insolvency of the debtor, the creditor has the right of retention even if his claim is not due. If the insolvency has occurred or become known to the creditor after the delivery of the property, he can exercise the right of retention even if an obligation previously assumed by him, or the instruction given by the debtor, opposes it.

(c/p S.C. 897).

244[4]. – The holder of a right of retention may exercise his right against the whole of the property retained until the obligation is wholly performed.

(J. 296.)

245[5]. – The holder of a right of retention may take the fruits of the property retained and appropriate them to the performance of the obligation in preference to other creditors.

Such fruits must first be appropriated to the interest on the obligation, and if there is any surplus, that must be appropriated to the principal.

(J. 297).

243. – In case of insolvency of the debtor, the creditor has the right of retention even if his claim is not due. If the insolvency has occurred or become known to the creditor after the delivery of the property, he can exercise the right of retention even if an obligation previously assumed by him, or the instruction given by the debtor, opposes it.

(c/p S.C. 897)

244. – The holder of a right of retention may exercise his right against the whole of the property retained, until the obligation is wholly performed.

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Such fruits must first be appropriated to the interest on the obligation, and if there is any surplus, that must be appropriated to the principal.

(J. 297.)

246[6]. – The holder of a right of retention is bound to take such appropriate care of the property retained as might be expected from him in his situation.

The holder of a right of retention cannot use or let the property retained or give it as security, without the consent of the debtor; but this does not apply to such use as is necessary for the preservation of the property.

If the holder of a right of retention acts contrary to **[any]** provision of the foregoing **two** paragraphs, the debtor may claim the extinction of the right.

(J. 298).

247[87]. – If the holder of a right of retention incurs necessary expenses in respect to the property retained, he may require the owner to reimburse him.

(J. 299 par.1).

248[78]. – Subject to the provisions of Section 189, **[t]he** exercise of a right of retention does not prevent the running of prescription against the obligation.

(J. 300).

246. – The holder of a right of retention is bound to take such appropriate care of the property retained as might be expected from him in his situation.

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247. – If the holder of a right of retention incurs necessary expenses in respect to the property retained, he may require the owner to reimburse him.

(J. 299 par.1).

248. – Subject to the provisions of section 189, ~~The~~ exercise of a right of retention does not prevent the running of prescription against the obligation.

249[89]. – The debtor may claim the extinction of the right of retention on giving proper security. ~~The giving of security by sureties is not permitted.~~

(J. 301; c/p G. 273).

250[4950]. – A right of retention is extinguished by the loss of possession of the property; but this does not apply to the case where the property retained is let or pledged with the consent of the debtor.

(J. 302).

251. – ~~In case of movable property the holder of a right of retention may enforce his right in the same manner as a pledgee. The provisions of this Code concerning enforcement of pledge shall apply mutatis mutandis.~~

249.⁷ – The debtor may claim the extinction of the right of retention on giving proper security. ~~The giving of security by sureties is not permitted.~~
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251. – ~~In case of movable property the holder of a right of retention may enforce his right in the same manner as a pledgee. The provisions of this Code concerning enforcement of pledge shall apply mutatis mutandis.~~

PART VI.
PREFERENTIAL RIGHTS.

250[1]. – A holder of a preferential right has according to the provisions of this Code or other laws, a right as to the property of his debtor to receive therefrom performance of an obligation due to him in preference to other creditors.

(c/p old text 375, 379; J. 303).

251[2]. – The provisions of Section 243 apply correspondingly to preferential rights.

(J. 305).

I. – GENERAL PREFERENTIAL RIGHTS.

252[3]. – A person in whose favour an obligation exists based upon any of the following grounds has a preferential right in the whole property of the debtor:

- (1) Expenses for the common benefit;
- (2) Funeral expenses;
- (3) Taxes and rates;
- (4) Wages of clerk, servant and workman;
- (5) Supplies of daily necessities.

(J. 306).

PART VI.
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250. – A holder of a preferential right has according to the provisions of this Code or other laws, a right as to the property of his debtor to receive therefrom performance of an obligation due to him in preference to other creditors.

(c/p old text 375, 379; J. 303).

251. – The provisions of section 243 apply correspondingly to preferential rights.
(J. 305).

I. – GENERAL PREFERENTIAL RIGHTS.

252. – A person in whose favour an obligation exists based upon any of the following grounds has a preferential right in the whole property of the debtor:

- (1) Expenses for the common benefit;
- (2) Funeral expenses;
- (3) Taxes and rates;
- (4) Wages of clerk, servant and workman;
- (5) Supplies of daily necessities.

(J. 306).

253[4]. – The preferential right on account of expenses for the common benefit is for expenses incurred for the common benefit of all the creditors in regard to preservation, liquidation or distribution of the debtor's property.

If any such expense was not incurred for the benefit of all the creditors, the preferential right only exists against those creditors for whose benefit it was incurred.

(j. 307).

254[5]. – The preferential right on account of funeral expenses is for such funeral expenses as are accordant to the station in life of the debtor.

(j. 308 par.1).

255[6]. – The preferential right on account of **rates and taxes** **[and rates]** is for all land, property or other taxes or local rates due from the debtor for the current year and the preceding year.

(c/p Bankruptcy Act Sect. 57, 2 (a)).

256[7]. – The preferential right on account of wages of any clerk or servant in respect of services rendered to the debtor is for the wages for four months back not exceeding three hundred baht for each clerk or servant.

253⁴. – The preferential right on account of expenses for the common benefit is for expenses incurred for the common benefit of all the creditors in regard to the preservation, liquidation or distribution of the debtor's property.

If any such expense was not incurred for the benefit of all the creditors, the preferential right only exists as against those creditors for whose benefit it was incurred.

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(c/p Bankruptcy Act Sect. 57, 2 (a)).

256⁷. – The preferential right on account of wages of any clerk or servant in respect of services rendered to the debtor is for the wages for four months back not exceeding three hundred baht for each clerk or servant.

The preferential right on account of wages of any workman is for the wages for two months back not exceeding [one hundred and] fifty baht for each workman.

(c/p old text 398; c/p J. 309; Bankruptcy Act. 57).

257[18]. – The preferential right on account of supplies of the daily necessities is for supplies for six months back of food, drink, light, firewood and charcoal, necessary for the living of the debtor, of members of his family, who live with him and whom he is bound to support, and of his servants.

(c/p J. 310).

II. – SPECIAL PREFERENTIAL RIGHTS

(a) Preferential Rights in Movables.

258[9]. – A person in whose favour an obligation exists based upon any of the following grounds has a preferential right in particular movables of the debtor:

- (1) Hiring of an immovable;
- (2) Lodging in an inn;
- (3) Carriage of passengers of goods;
- (4) Preservation of movables;
- (5) Sale of movables;
- (6) Supply of seeds, young plants or manure;
- (7) Agricultural or industrial services.

(c/p old text 380; J. 311).

The preferential right on account of wages of any workman is for the wages for two months back not exceeding ^{one hundred and} fifty baht for each workman.

(c/p old text 398; c/p J. 309; Bankruptcy Act 57).

257. – The preferential right on account of supplies of the daily necessities is for supplies for six months back of food, drink, light, fire wood and charcoal, necessary for the living of the debtor, of members of his family, who live with him and whom he is bound to support, and of his servants.

(c/p J. 310).

II. – SPECIAL PREFERENTIAL RIGHTS.

(a) Preferential Rights in Movables.

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- (3) Carriage of passengers or goods;
- (4) Preservation of movables;
- (5) Sale of movables;
- (6) Supply of seeds, young plants or manure;
- (7) Agricultural or industrial services.

(c/p old text 380; J. 311).

259[60]. – The preferential right on account of the hiring of an immovable is for the hire of the immovable and for other obligations of the hirer arising from the relation of hiring, and is in the movables of the hirer which are in or on the immovable.

(c/p old text 384; J. 312).

260[61]. – The preferential right of the letter of land is in such movables as have been brought by the hirer upon the land hired or into buildings subservient to the use of such land, in such movables as are destined for the use of such land and in such fruits of the land as are in the possession of the hirer.

The preferential right of the letter or a building is in such movables as have been brought into the building by the hirer.

(J. 313).

261[62]. – If a hirer of immovable property is transferred or sublet, the preferential right of the original letter extends to the movables brought by the transferee or sub-hirer into the property. The same applies to the money which the transferor or the sub-letter is to receive from the transferee or sub-hirer.

(J. 314).

259. – The preferential right on account of the hiring of an immovable is for the hire of the immovable and for other obligations of the hirer arising from the relation of hiring, and is in the movables of the hirer which are in or on the immovable.

(c/p old text 384; J. 312).

260. – The preferential right of the letter of land is in such movables as have been brought by the hirer upon the land hired or into buildings subservient to the use of such land, in such movables as are destined for the use of such land and in such fruits of the land as are in the possession of the hirer.

The preferential right of the letter of a building is in such movables as have been brought into the building by the hirer.

(J. 313).

261. – If a hire of immovable property is transferred or sublet, the preferential right of the original letter extends to the movables brought by the transferee or sub-hirer into the property. The same applies to the money which the transferor or the sub-letter is to receive from the transferee or sub-hirer.

(J. 314).

262[63]. – In case of a general liquidation of the property of the hirer the preferential right of the letter is only for the rent and other obligations of the last preceding, the current and the next following rent period and for such damages as have arisen during the last preceding and the current rent period.

(J. 315).

263[64]. – If the letter has received security money, he has a preferential right only with regard to that part of his claim which is not covered by the security money.

(c/p J. 316).

264[5]. – The preferential right on account of lodging in an inn is for what is due to the proprietor for lodging and other services afforded to the traveller or guest in satisfaction of his needs, including disbursements, and is in the luggage or other property of the traveller or guest which is in the inn, hotel or other such place.

(c/p J. 317; c/p sect. 679).

265[6]. – The letter of an immovable property or the proprietor of an inn, hotel or other such place may enforce his preferential right in the same manner as a pledgee. The provisions of this Code concerning Enforcement of Pledge apply mutatis mutandis.

(c/p G. 559, 704).

266. – In case of a general liquidation of the property of the hirer the preferential right of the letter is only for the rent and other obligations of the last preceding, the current and the next following rent period and for such damages as have arisen during the last preceding and the current rent period.

(J. 315).

268. – If the letter has received security money, he has a preferential right only with regard to that part of his claim which is not covered by the security money.

(c/p J. 316).

264. – The preferential right on account of lodging in an inn is for what is due to the proprietor for lodging and other services afforded to the traveller or guest in satisfaction of his needs, including disbursements, and is in the luggage or other property of the traveller or guest which is in the inn, hotel or other such place.

(c/p J. 317; c/p sect. 679).

265. – The letter of an immovable property or the proprietor of an inn, hotel or other such place may enforce his preferential right in the same manner as a pledgee. The provisions of this Code concerning enforcement of pledge apply mutatis mutandis.

(c/p G. 559, 704).

266[7]. – The preferential right on account of carriage is for charges for the carriage of a passenger or goods and for accessory expenses, and is in all goods and luggage in the hands of the carrier.

(J. 318).

267[8]. – The letter of an immovable, the proprietor of an inn, or the carrier may enforce ~~the~~ **[his]** preferential right against movables belonging to a third person in the case contemplated in the preceding eight sections, unless he knew in due time that they belong to the third person.

If such movables have been stolen or lost the **rules** **[provisions of the law]** concerning recovery of possession shall apply.

(as to due time see Fr. Court of Cassation; 1st Dec. 1883; Turdif vs. Thomas, Sirey 1864 Part I p. 852; c/p J. 319 (J. 192 – 195); Old text 384; Book on Thing 118).

268[9]. – The preferential right on account of the preservation of a movable is for the expense of the preservation of movable, and is in such movable.

The preferential right exists also for necessary expenses incurred for the purpose of having a right relating to a movable preserved, **ratified** **[acknowledged]** or enforced.

(J. 321).

269[7270]. – The preferential right on account of the sale of a movable is for the price and interest thereon, and is in such movable.

(J. 322).

266. – The preferential right on account of carriage is for charges for the carriage of a passenger or goods and for accessory expenses, and is in all goods and luggage in the hands of the carrier.

(J. 318)

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The preferential right exists also for necessary expenses incurred for the purpose of having a right relating to a movable preserved, ~~ratified~~ ^{acknowledged} or enforced.

(J. 321).

269. – The preferential right on account of the sale of a movable is for the price and interest thereon, and is in such movable.

270[1]. – The preferential right on account of the supply of seeds, young plants or manure is for the price of seeds, young plants or manure and interest thereon, and is in the fruits which have grown on the land for which those things have been used within one year after their use.

(J. 323).

271[2]. – The preferential right on account of agricultural and industrial services is as to the person who rendered agricultural service for wages for one year back, and as to a person who rendered industrial services for wages for three months back, and is in the fruits or manufactured things produced by his service.

(J. 324).

(b) Preferential Rights in Immovables.

272[3]. – A person in whose favour an obligation exists based upon any of the following grounds has a preferential right in a particular immovable of the debtor:

- (1) Preservation of an immovable;
- (2) Work done upon an immovable;
- (3) Sale of an immovable.

(c/p old text 380; J. 325).

270. – The preferential right on account of the supply of seeds, young plants or manure is for the price of seeds, young plants or manure and interest thereon, and is in the fruits which have grown on the land for which those things have been used within one year after their use.

(J. 323).

272. – The preferential right on account of agricultural and industrial services is as to a person who rendered agricultural services for wages for one year back, and as to a person who rendered industrial services for wages for three months back, and is in the fruits or manufactured things produced by his services.

(J. 324).

(b) Preferential Rights in Immovables.

272³. – A person in whose favour an obligation exists based upon any of the following grounds has a preferential right in a particular immovable of the debtor:

- (1) Preservation of an immovable;
- (2) Work done upon an immovable;
- (3) Sale of an immovable.

(c/p old text 380; J. 325).

273[4]. – The preferential right on account of the preservation of an immovable is for the expense of preservation of an immovable, and is in such immovable.

In case of the foregoing paragraph the provisions of Section 269 paragraph 2 apply correspondingly.

(c/p Old text 382; J. 326).

274[5]. – The preferential right on account of work done upon an immovable is for charges for the work done upon an immovable of the debtor by a builder an architect or a contractor, and is in such immovable.

This preferential right exist only if there is a present increase of the value of such immovable due to such work, and is only in such increased value.

(c/p old text 383; J. 327).

275[6]. – The preferential right on account of the sale of an immovable is for the price and interest thereon, and is in such immovable.

(c/p old text 387; J. 328).

273⁴. – The preferential right on account of the preservation of an immovable is for the expense of preservation of an immovable, and is in such immovable.

In the case of the foregoing paragraph the provisions of section 268 paragraph 2 apply correspondingly.

(c/p Old text 382, J. 326).

274⁵. – The preferential right on account of work done upon an immovable is for the charges for work done upon an immovable of the debtor by a builder, an architect or a contractor, and is in such immovable.

This preferential right exists only if there is a present increase of the value of such immovable due to such work, and is only in such increased value.

(c/p old text 383; J. 327).

275⁶. – The preferential right on account of the sale of an immovable is for the price and interest thereon, and is in such immovable.

(c/p Old text 387; J. 328).

III. RANK OF PREFERENTIAL RIGHTS.

276[7]. – When general preferential rights conflict, the rank of their precedence is according to the order in Section 252.

When a preferential right conflicts with a special preferential right, the latter takes precedence; but the preferential rights on account of expenses for the common benefit takes precedence as against all creditors who are benefited thereby.

(c/p old text 399; J. 329).

277[8]. – When preferential rights in the same movable conflict, the rank of their precedence is as follows.

(1) The preferential right on account of the hiring of an immovable, of lodging in an inn and of carriage;

(2) The preferential right on account of the preservation of a movable; but if there are several persons entitled as preservers, a later preserver takes precedence of an earlier one;

(3) The preferential right on account of the sale of a movable, of the supply of seeds, young plants or manure, and of agriculture and industrial services.

If a person who has a preferential right of the first rank knew at the time when he acquired his obligation that other persons

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(2) The preferential right on account of the preservation of a movable; but if there are several persons entitled as preservers, a later preserver takes precedence of an earlier one;

(3) The preferential right on account of the sale of a movable, of the supply of seeds, young plants or manure, and of agricultural and industrial services.

If a person who has a preferential right of the first rank knew at the time when he acquired his obligation that other persons

had preferential rights of the second or third rank, he cannot exercise his right of precedence against them. The same applies as against a person who has preserved a thing for the benefit of a person having a preferential right of the first rank.

As to fruits, a person who rendered agricultural services has the first rank, a supplier of seeds, young plants or manure the second, and the letter of the land third.

(c/p old text 400; J. 330).

278[9]. – When special preferential rights in the same immovable conflict, the rank of their precedence is according to the order in Section 272.

In successive sales have been made of the same immovable, the rank of precedence of the seller as between themselves is according to the priority of the sales.

(J. 331).

279[80]. – When several persons have preferential rights of the same rank in the same thing, each is to receive performance in proportion to the amount of his obligation.

(c/p Old text 403; J. 332).

had preferential rights of the second or third rank, he cannot exercise his right of precedence against them. The same applies as against a person who has preserved a thing for the benefit of a person having a preferential right of the first rank.

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(c/p old text 400; J. 330).

279. – When special preferential rights in the same immovable conflict, the rank of their precedence is according to the order in the section 272.

If successive sales have been made of the same immovable, the rank of precedence of the sellers as between themselves is according to the priority of the sales.

(J. 331).

280. – When several persons have preferential rights of the same rank in the same thing, each is to receive performance in proportion to the amount of his obligation.

(c/p old text 403; J. 332).

IV. EFFECT OF PREFERENTIAL RIGHTS.

280[1]. – A preferential right in a movable cannot be exercised after the debtor has delivered the thing to a third person who has acquired it from him.

(J. 333).

281[2]. – When a preferential right conflicts with a pledge of a movable, the pledgee has the same rights as the holder of a preferential right of the first rank mentioned in Section 277.

(J. 334).

282[3]. – A person who has a general preferential right must receive performance first out of **[the movable]** property **other than immovables [of the debtor]**, and only in case that is insufficient he can receive performance out of immovables.

As to immovables, he must receive performance first out of such immovables as are not subject to a special security.

If a person who has a general preferential right **[negligently]** omits to intervene in a distribution according to the provisions of the foregoing two paragraphs, he cannot exercise his preferential right against a third person whose right is registered, to the extent of what he would have received through such intervention.

IV. - EFFECT OF PREFERENTIAL RIGHTS.

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282. – When a preferential right conflicts with a pledge of a movable, the pledgee has the same rights as the holder of a preferential right of the first rank mentioned in the section 277.

(J. 334).

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282. – A person who has a general preferential right must receive performance first out of ^{the movable of the debtor} ~~property other than~~ immovables, and only in case that is insufficient can he receive performance out of immovables.

As to immovables he must receive performance first out of such immovables as are not the subject of a special security.

If a person who has a general preferential right ^{negligently} ~~omits~~ to intervene in a distribution according to the provisions of the foregoing two paragraphs, he cannot exercise his preferential right against a third person whose right is registered, to the extent of what he would have received through such intervention.

The provisions of the foregoing three paragraphs do not apply, if the proceeds of an immovable are to be distributed before those of other property, or if the proceeds of an immovable which is the subject of a special security are to be distributed before the proceeds of other immovables.

(J. 335).

283[4]. – A general preferential right, even though not registered in respect to an immovable, may be set up against any creditor who has no special security; but this does not apply against a third person who made registration.

(J. 336).

284[5]. – A preferential right on account of the preservation of an immovable retains its effect by being registered immediately after the act of preservation is completed.

(c/p Old text 390 par.2; J. 337).

285[6]. – A preferential right on account of work done upon an immovable retains its effect by a provisional estimate of the cost being registered before the work has begun. If, however, the costs of the work exceeds the provisional estimate, there is no preferential right for the excess.

The provisions of the foregoing three paragraphs do not apply, if the proceeds of an immovable are to be distributed before those of other property, or if the proceeds of an immovable which is the subject of a special security are to be distributed before the proceeds of other immovables.

(J. 335)

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(J. 336)

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(c/p Old text 390 par. 2, J. 337).

285⁶. – A preferential right on account of work done upon an immovable retains its effect by a provisional estimate of the cost being registered before the work has begun. If, however, the cost of the work exceeds the provisional estimate, there is no preferential right for the excess.

The increase of value of an immovable arising from the work done upon it is to be estimated by experts appointed by the Court at the time of the intervention in the distribution.

(c/p old text 383 par.2; J. 338).

286[7]. – A preferential right registered in accordance with the provisions of the preceding two sections can be exercised in preference to a mortgage.

(J. 339).

287[8]. – A preferential right on account of the sale of an immovable retains its effect by registering at the same time with the contract of sale the fact that the price or the interest thereon has not been paid.

(c/p Old text 392; J. 340).

288[9]. – As to the effect of a preferential right, in addition to provisions of Sections 280 to 288[7] **[inclusive]** the provisions as to Mortgage apply correspondingly.

(c/p Old text 395; J. 341).

The increase of value of an immovable arising from the work done upon it is to be estimated by experts appointed by the Court at the time of the intervention in the distribution.

(c/p old text 383 par 2, J. 338).

286. – A preferential right registered in accordance with the provisions of the preceding two sections can be exercised in preference to a mortgage.

(J. 339).

287. – A preferential right on account of the sale of an immovable retains its effect by registering at the same time with the contract of sale the fact that the price or the interest thereon has not been paid.

(c/p Old text 392; J. 340).

288. – As to the effect of a preferential right, in addition to the provisions of sections 280 to 288, ^{inclusive} the provisions as to mortgages apply correspondingly.

(c/p Old text 395; J. 341).

CHAPTER III. PLURALITY OF DEBTORS AND CREDITORS.

289[90]. – If several persons owe a divisible performance, or if a divisible performance is owed to several persons, each debtor is, in case of doubt, liable only for an equal share, and each creditor is entitled to an equal share.

(c/p Old text 220, 221, 222; G. 420).

290[91]. – If several persons owe an act of performance in such manner that each is bound to effect the whole performance, though the creditor is entitled to obtain the whole performance only once (i.e. joint debtors), the creditor may demand the performance at his option from any one of the debtors, in the whole or in part. Until the whole performance has been effected all of the debtors remain bound.

(c/p Old text 225, 245; c/p G. 421; c/p J. 432).

291[2]. – Performance of the obligation by one joint debtors operates in favour of the other debtors. The same rule applies to any act in lieu of performance **[.] of the obligation** to the deposit of lieu of performance and to

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(c/p Old text 220, 221, 222, G. 420).

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(c/p old text 225, 245; c/p G. 421; c/p J. 432).

291. – Performance of the obligation by one joint debtor operates in favour of the other debtors. The same rule applies to any act in lieu of performance, **of the obligation,** to deposit in lieu of performance and to

set off.

A claim belonging to one of the joint debtors may not be set off by the other debtors.

(c/p old text 247, 248; G. 422).

292[3]. – A release of the obligation **made [granted]** to one of the joint debtors avails for the benefit of the other debtors only in respect **to such [of the share of the] debtor's share [who has been released]** unless otherwise agreed.

(c/p old text 254; G. 423; J. 437).

293[4]. – The default of the creditor towards one joint debtor avails also in favour of the other debtors.

(c/p old text 252; G. 424).

294[5]. – Facts other than those specified in Sections 291[2] to 293[4] avail, unless **a [the] contrary intention** appears from the nature of the obligation, in favour of and as against only the joint debtor to whom they particularly refer.

This applies, in particular, to the giving of notice, default, imputability of fault, impossibility of performance on the part of one joint debtor, prescription or its interruption, and merger of the claim in debt.

(c/p old text 246, 256, 257, 260; G. 425).

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This applies, in particular, to the giving of notice, default, imputability of fault, impossibility of performance on the part of one joint debtor, prescription or its interruption, and merger of the claim in the debt.

(c/p old text 246, 256, 257, 260; G. 425).

295[6]. – As between themselves joint debtors are liable in equal shares, unless it is otherwise provided. If from one of the joint debtors the contribution due from him cannot be obtained, the deficiency shall be borne by the other debtors who are bound to make contribution; provided that one of the joint debtors has been released from joint obligation, the creditor takes upon himself that share which the debtor released by him ought to have borne.

(c/p old text 258, 259; G. 426 par.1; J. 445).

296[7]. – If in a contract several persons bind themselves in common to effect a performance, they are liable, in case of doubt, as joint debtors even in the case of a divisible performance.

(c/p Old text 227; G. 427).

297[8]. – If several persons are entitled to demand an act of performance in such manner that each can demand the whole performance, though the debtor is bound **[to effect the whole]** performance only once (i.e. joint creditors), the debtor may at his option perform in favour of any one of the creditors. This applies even if one of the creditors has already brought an action for the performance.

(c/p old text 229, 230, 231, 232; G. 428).

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(c/p old text 229, 230, 231, 232; G. 428).

298[9]. – Default on the part of one joint creditor avails also against the other creditors.

If [a] claim and [a] debt become merged in one joint creditor, the rights of the other creditors against the debtor are extinguished.

For the rest ~~of~~ the provisions of Sections 291, 292, 294 apply mutatis mutandis. In particular, if one joint creditor transfers his claim to another person, the rights of the other creditors remain unaffected.

(c/p old text 238; G. 429).

299[300]. – Joint creditors are, as between themselves, entitled to equal shares, unless it is otherwise provided.

(G. 430).

300[301]. – In [f] several [a] persons owe an indivisible performance, they are liable as joint debtors.

(c/p old text 265, 266; G. 431).

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(G. 430).

300. – In several persons owe an indivisible performance they are liable as joint debtors.

(c/p old text 265, 266; G. 431).

301[2]. – If an indivisible performance is owed to several persons, and if they are not joint creditors, the debtor may only perform in favour of all in common, and each creditor may only demand the performance in favour of all. Each creditor may demand that the debtor deposits the thing owed for the benefit of all the creditors, or if the thing is not suitable to be deposited, that it be consigned to a custodian appointed by the Court.

For the rest **of** a fact which refers only to one creditor does not avail in favour of nor as against the other creditors.

(c/p Old text 265; G. 432).

302. – If an indivisible performance is owed to several persons, and if they are not joint creditors, the debtor may only perform in favour of all in common, and each creditor may only demand the performance in favour of all. Each creditor may demand that the debtor deposit the thing owed for the benefit of all the creditors, or if the thing is not suitable to be deposited, that it be consigned to a custodian appointed by the Court.

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(c/p Old text 265, = G. 432).

CHAPTER IV. TRANSFER OF CLAIMS.

302[3]. – A claim may be transferred , unless its nature does not admit of it.

The provisions of the foregoing paragraph do not apply, if the parties have declared a contrary intention. Such declaration of intention, however, cannot be set up against a third person acting in good faith.

(c/p old text 266, 267; J. 466).

303[4]. – A claim is not transferable if it is not subject to judicial attachment.

(G. 400).

304[5]. – With the transferred claim the rights of mortgage or pledge existing on its account and the rights arising from a suretyship established for it, pass to the transferee.

The transferee may also enforce any preferential right connected with the claim in case of compulsory execution or bankruptcy.

(G. 401).

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(G. 401).

305[6]. – The transfer of an obligation performable to a specific creditor is not valid unless it is made in writing. It can be set up against the debtor or third person only if a notice thereof has been given to the debtor, or if the debtor has consented to the transfer. Such notice or consent must be in writing.

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

(c/p old text 271; J. 467; c/p S.O. 165).

306[7]. – If a right is claimed under different transfers, the first transfer notified, or agreed to, shall be preferred.

(Old text 272; c/p G. 408; Tun. 207).

307[8]. – If a debtor has given the consent mentioned in Section 305 without reservation, he cannot set up against the transferee a defence which he might have made against the transferor. If, however, in order to extinguish the obligation, the debtor has made any payment to the transferor, he may recover it, or if for such purpose he has assumed an obligation to the transferor, he may treat it as if it did not exist.

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If the debtor has only received a notice of the transfer, he may set up against the transferee any defence which he had against the transferor before he received such notice. If the debtor had against the transferor a claim not yet due at the time of the notice, he can set off such claim provided that the same would become due not later than the claim transferred.

(c/p old text 273; J. 468; S.O. 169 par.2).

308[9]. – The transfer of an obligation performable to order can be set up against the debtor or other third person only if the transfer is endorsed on the instrument, and the instrument itself is delivered to the transferee.

(J. 469).

309[310]. – The debtor of an obligation performable to order has the right, but is not bound, to verify the identity of the holder of the instrument or the genuineness of his signature or seal; but if the debtor acts in bad faith or with gross negligence, his performance is invalid.

(J. 470).

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(J. 470).

310[1]. – The provisions of the foregoing section apply correspondingly, if a creditor is designated in the instrument, but it is added that performance shall be made to the holder of such instrument.

(J. 471).

311[2]. – The debtor of an obligation performable to order cannot set up against any transferee in good faith defences which he might have set up against the original creditor, except such as appear on the face of the instrument or result naturally from its character.

(J. 472).

312[3]. – The provisions of the foregoing section apply correspondingly to obligations performance to bearer.

(J. 473).

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(J. 472).

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(J. 473).

CHAPTER V. EXTINCTION OF OBLIGATION.

PART I. PERFORMANCE.

313[4]. – Performance of an obligation may be made by any third person, unless its nature does not admit of it, or the parties concerned have declared a contrary intention.

A person who has no interest in the performance, cannot make performance against the will of the debtor.

(c/p Old text 289; G. 267; J. 474).

314[5] bis. – Performance must be made to the creditor or a person having authority to receive performance on his behalf. A performance made to a person who has no authority to receive is valid if the creditor ratifies it.

(c/p Old text 291; Fr. 1239).

316[317]. – Except in the case mentioned in the foregoing section, a performance made to a person who is not entitled to receive it, is valid only to the extent to which the creditor has been enriched thereby.

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316-7[318]. – A person who holds a receipt is deemed to have a right to receive performance; but this does not apply, if the person making performance knows that such right does not exist or is ignorant thereof by reason of his negligence.

(c/p old text 293; J. 480).

317-8[319]. – When a third debtor who has been ordered by a Court to refrain from making performance, has made the same to his own creditor, the seizing creditor may, in so far as he has sustained damage, demand another performance from the third debtor.

The provisions of the foregoing paragraph do not prevent the third debtor from exercising the right to recourse against his **[own]** creditor.

(c/p old text 295; J. 481).

318-bis[320]. – The creditor cannot be compelled to receive part performance or any other performance than that which due to him.

(Old text 299; Fr. 1243).

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[This page is supplemented from the "Roll 12-8 (Vol. 82)"]

318.— An obligation is extinguished if the creditor accepts in lieu of performance another performance than that agreed upon.

If the debtor, for the purpose of satisfying the creditor, assumes a new obligation towards him, it is not to be presumed, in case of doubt, that he assumes the obligation in lieu of performance.

319[321→322].— If a thing, a claim against a third person, or any other right is given in lieu of performance, the debtor shall be liable for defect and for eviction in the same manner as the seller.

319[322→321].— An obligation is extinguished if the creditor accepts in lieu of performance another performance than that agreed upon.

If the debtor, for the purpose of satisfying the creditor, assumes a new obligation towards him, it is not to be presumed, in case of doubt, that he assumes the obligation in lieu of performance.

If performance is made by making, transferring or indorsing a bill or warrant, the obligation is extinguished only if such bill or warrant is paid.

(c/p Old text 297; 298; G. 364).

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(c/p Old text 297; G. 365).

320[323]. — If the subject of an obligation is the delivery of a specific thing, the person making performance must deliver the thing in condition in which it is at the time when delivery is to be made.

The debtor must, until he delivers it, keep the thing with such care as a person of ordinary prudence would take of his own property.

(J. 400, 483; Fr. 1245; c/p Sect. 464).

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(J. 400, 483; Fr. 1245; c/p Sect. 464).

322[324]. – When there is no special declaration of intention as to the place of performance, if a specific thing is to be delivered, the delivery is to be made at the place where the thing was at the time when the obligation arose; other kinds of performance must be made at the place of the creditor's present domicile.

(c/p Old text 313; J. 484).

323[325]. – When there is no declaration of intention as to the expenses of performance, such expenses are to be borne by the debtor; if, however, because of the creditor's transfer of his domicile or any other act of his the expenses are increased, such increase must be borne by the creditor.

(c/p Old text 311; J. 485).

324[326]. – The person making performance is entitled to a receipt from the person who receives performance, and if the performance is wholly performed, he is entitled to have the document embodying the obligation surrendered to him or cancelled. If such document is declared to be lost, he is entitled to have the extinction of the obligation mentioned in the receipt or in a separate document.

If the obligation is partly performed or if the document gives the creditor any other right, the debtor is only entitled to **have** a receipt and to **have** the performance noted in the document.

(c/p Old text 304 – 306; S.O. 88 – 90; G. 371)

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(c/p Old text 304 – 306; S.O. 88 & 90; G. 371).

[This page is supplemented from the "Roll 12-8 (Vol. 82)"]

324[327] bis. – In case of interest or other periodical performance if the creditor gives a receipt for one term without any reservation it is presumed that he has received performance for the previous terms.

If he gives receipt for the capital, it is presumed that he has received the interest.

If the document embodying the obligation has been surrendered, it is presumed that the obligation has been extinguished.

(c/p Old text 308, 309, 310; S.O. 89)

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327
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(c/p Old text 308, 309, 310; S.O. 89)

325-4[328]. – If a debtor is bound to the creditor to do similar acts of performance by virtue of several obligations, and if the performance effected by him is insufficient for the discharge of all debts, that debt is discharged which he specifies on effecting the performance.

If the debtor makes no specification, then that debt which is due is first discharged; among several debts due that one is first discharged which affords the creditor least security; among several equal secured debts the one most burdensome to the debtor; among several equally burdensome debts the oldest debt; and where several are equally old every debt proportionately.

(c/p Old text 317 to 320; J. 488, 489; G. 366).

326-5[329]. – If the debtor, besides the principal performance, has to pay interest and costs, the value of an act of performance insufficient to discharge the whole debt is applied first to the costs, then to the interest, and lastly to the principal performance.

If the [debtor] specifies any other application the creditor may refuse acceptance of the performance.

(c/p Old text 322; G. 367; J. 491).

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~~328~~. – If a debtor is bound to the creditor to do similar acts of performance by virtue of several obligations, and if the performance effected by him is insufficient for the discharge of all the debtors, that debt is discharged which he specifies on effecting the performance.

If the debtor makes no specification, then that debt which is due is first discharged; among several debts due that one is first discharged which affords the creditor least security; among several equally secured debts the one most burdensome to the debtor; among several equally burdensome debts the oldest debt; and where several are equally old every debt proportionately.

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If the debtor specifies any other application the creditor may refuse acceptance of the performance.

(c/p Old text 322; G. 367; J. 491).

327-6[330]. – By a **[proper]** tender of performance a discharge is effected, from the time of the tender, from all responsibilities arising out of non-performance.

(J. 492; See also Section 207).

328-7[331]. – If the creditor refuses or is unable to accept performance, the person performing may be discharged from the obligation by depositing for the creditor's benefit the thing forming the subject of the obligation. The same applies, if the person performing without fault on his part, cannot ascertain the right or identity of the creditor.

(c/p J. 494. c/p Old text 361. G. 378).

329-8[332] bis. – If the debtor is bound to perform only after the counter-performance has been effected by the creditor, he may make the right of the creditor to receive the thing deposited dependent upon counter-performance by the creditor.

(G. 373).

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330
327. – By a ^{proper} tender of performance a discharge is effected, from the time of the tender, from all responsibilities arising out of non-performance.

(J. 492; see also Section 207).

331
328. – If the creditor refuses or is unable to accept performance, the person performing may be discharged from the obligation by depositing for the creditor's benefit the thing forming the subject of the obligation. The same applies, if the person, performing without fault on his part, cannot ascertain the right or identity of the creditor.

(c/p J. 494. c/p Old text 361. G. 378).

332
329. – If the debtor is bound to perform only after the counter-performance has been effected by the creditor, he may make the right of the creditor to receive the thing deposited dependent upon counter-performance by the creditor.

(G. 373).

330-9[333]. – A deposit must be made to the deposit office or the place where the obligation is to be performed.

If there are no special provisions by law or regulations as to the deposit offices, the Court must on application of the person performing designate a deposit office and appoint a custodian of the thing deposited.

The depositor must without delay give notice of the deposit to the creditor.

(c/p Old text 362, 363; J. 495; G. 374).

331-9[334]. – The debtor has the right to withdraw the thing deposited. If he withdraws it, the deposit is deemed never to have been made.

The right of withdrawal is barred:

- (1) If the debtor declares to the deposit office that he waives his right of withdrawal;
- (2) If the creditor declares his acceptance to the deposit office;
- (3) If the deposit has been ordered or confirmed by the Court and the fact is notified to the deposit office.

(c/p Old text 365, 366; G. 376, 379).

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(c/p Old text 365, 366; J. 376, 379).

332[335]. – The right of withdrawal is not subject to judicial attachment.

If bankruptcy proceedings are instituted against the property of the debtor, the right of withdrawal cannot be exercised during the bankruptcy proceedings.

(G. 337).

333[336]. – If the thing forming the subject of performance is not suitable for deposit, or if in regard to the thing there is an apprehension that it may perish or be destroyed or damaged, the person performing may with the permission of the Court sell it at auction and deposit the proceeds. The same applies, if the keeping of the thing would be unreasonably expensive.

(G. Old text 368, 369; J. 497).

334[337]. – The auction is not permissible until after the creditor has been warned of it. The warning may be dispensed with if the thing is liable to deterioration, and there is danger in delaying the auction.

The debtor shall without delay notify the creditor of the auction; if the debtor fails to do so, he is liable for compensation.

The warning and the notice may be dispensed with if they are impracticable.

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The warning and the notice may be dispensed with if they are impracticable.

The time and place of the auction, with a general description of the thing, shall be publicly advertised.

(G. 384, and c/p G. 383).

335[338]. – The costs of the deposit or of the auction shall be borne by the creditor unless the deposit be withdrawn by the debtor.

(c/p Old text 371; G. 381, 386).

336[339]. – The right of the creditor to the deposit is extinguished after the lapse of ten years since receipt of notice of the deposit, unless the creditor reports himself at the deposit office within such period. **[After the right of the creditor is extinguished]** the debtor is entitled to withdraw even if he has waived the right of withdrawal.

(c/p Old text 364, 367; G. 382).

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(c/p Old text 364, 367; G. 382).

PART II. RELEASE.

337[340]. – If the creditor declares to the debtor an intention to release the obligation, it is extinguished.

When an obligation has been evidenced by writing, the release must also be in writing or the document embodying the obligation be surrendered to the debtor or cancelled.

*(§ 1 c/p old text 416; J. 519; G. 397;
§ 2 c/p Monténégro Code des biens 621; Hals Vol. 7 No. 927).*

PART III. SET OFF.

338[341]. – If two persons are bound to each other by obligations whose subject is of the same kind and both of which are due, either debtor may be discharged from his obligation by set off to the extent to which the amounts of the obligations correspond; unless the nature of one of the obligations does not admit of it.

The provisions of the foregoing paragraph do not apply, if the parties have declared a contrary intention; but such intention cannot be set up against a third person acting in good faith.

(c/p Old text 417; J. 505; G. 387).

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339[342]. – Set off is made by a declaration of intention by one party to another. A condition or time commencement or ending cannot be added to such declaration.

The declaration of intention mentioned in the foregoing paragraph relates back in its effect to the time when both obligations could first have been set off.

(c/p Old text 418, 419; J. 506; G. 388, 389).

340[343]. – A set off may be made even though the place of performance of the two obligations is different; but the party who makes the set off must indemnify the other party for any damage caused thereby.

(c/p Old text 422; J. 507; G. 391).

341[344]. – A claim against which there is a defence may not be set off. Prescription does not exclude set off, if the claim barred by prescription was not barred at the time at which it could have been set off against the other claim.

(G. 390; c/p J. 508).

342[345]. – If an obligation arises from an unlawful act, the debtor cannot avail himself of a set off against the creditor.

(J. 509; c/p G. 393; Fr. 1293).

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343[346]. – If a claim is not subject to judicial attachment, it is not subject to set off.

(G. 394 par.1; c/p J. 510).

344[347]. – ~~When a~~ ^[A] third debtor who has received from the Court an order of prohibition of payment cannot set up against the seizing creditor an obligation subsequently acquired by him.

(c/p J. 511; Old text 421; G. 392).

345[348]. – If either party has several claims suitable for set off, the party making the set off may specify the claims which are to be set off against each other. If the set off is declared without such specification, or if the other party objects without delay, provision of Section **325[328]** paragraph 2 applies mutatis mutandis.

If the party making the set off owes the other party interest and costs in addition to the principal performance, the provisions of Section **326[329]** apply mutatis mutandis.

(G. 396; c/p J. 512; Old text 423).

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(G. 396; c/p J. 512; Old text 423).

PART IV. NOVATION.

346[349]. – When the parties concerned have concluded a contract changing the essential elements of an obligation, such obligation is extinguished by novation.

If a conditional obligation is made unconditional, or a condition is added to an unconditional obligation, or if a condition is changed, it is regarded as a change of an essential element of such obligation.

A novation by a change of the creditor is governed by the provisions of this Code concerning transfer of claims.

(J. 513 c/p J. 515, 516; c/p Fr. 1271; S.O. 116, 117; A. 1408).

347[350]. – A novation by a change of the debtor may be effected by a contract between the creditor and the new debtor, but this cannot be done against the will of the original debtor.

(J. 514; Fr. 1274, 1275, 1277; G. 414–9).

348[351]. – If the obligation resulting from a novation does not come into existence, or is annulled, because of an illegality in its ground or because of some reason unknown to the parties, the original obligation is not extinguished.

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348[352]. – The parties to a novation may, to the extent of the subject of the original obligation, transfer a right of pledge or mortgage given as security for it to the new obligation; but if such security was given by a third person, his consent is necessary.

(J. 518; Fr. 1278–80).

PART V. MERGER.

349[353]. – If rights and liabilities in an obligation become vested in the same person, the obligation is extinguished, except when it has become the subject of the right of a third person, or when a bill has been re-indorsed according Section 917 paragraph 3.

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