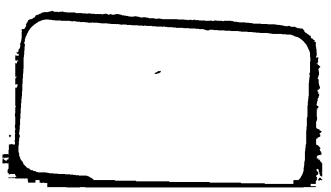

GENERAL

CIVIL CODE

FOR

ALL THE GERMAN HEREDITARY PROVINCES

OF THE

AUSTRIAN MONARCHY.

TRANSLATED

BY

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VIENNA 1866.

SOLD BY RUDOLPH LECHNER,

BOOKSELLER TO THE UNIVERSITY.

GENERAL

CIVIL CODE

FOR

ALL THE GERMAN HEREDITARY PROVINCES

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AUSTRIAN MONARCHY.

CONTENTS.

Second Part.

Second Subdivision of the laws concerning the rights to things.

Of the personal rights to things.

Third Part
of the civil Code.

Of the dispositions, which are common to the rights of persons and to the rights to things.

We Francis the First by the Grace of God Emperor of Austria; king of Hungary and Bohemia; Archduke of Austria etc. etc.

From the consideration, that the civil laws, in order to give the citizens full tranquillity as to the safe enjoyment of their private rights, must not only be composed according to the general principles of justice, but also according to the peculiar circumstances of the inhabitants; be made known in a language intelligible to them, and kept in continual remembrance by a proper collection — We, since We entered upon the Government, have unceasingly cared, that the drawing up of a complete, homely civil Code, already concluded and undertaken by Our Ancestors, should be fully accomplished.

The project, which was brought about during Our Government by Our Court-Commission in legislative affairs, as well as formerly the project of the Code in regard to crimes and heavy transgressions of the police-laws, was communicated to the commissions expressly appointed in the different provinces to give their opinion, but in the meantime put in force in Galicia.

After having taken advantage in this way of the opinions of persons versed in the matter, and the experience obtained in the application, to rectify this important branch of the legislation, We have now determined to publish this general civil Code for all Our German hereditary provinces, and command, that the same shall come into operation from the 1st. January 1812.

By this act the common law accepted till now, the first part of the civil Code published the 1st. November 1786, the civil Code granted for Galicia, together with all laws and customs, which have reference to the objects of this general civil law, are repealed.

But, as We have etablished even in this Code as a general rule, that the laws cannot be retro-active; so, this Code is not to have any influence on acts, which preceded the day, on which this law received obligatory force, and on the rights, which were already acquired according to the former laws; these acts may consist in bilateral contracts (*negotia juridica*), or in such declarations of a will, which can be altered voluntarily by the person, who made the declaration, and can be regulated according to the prescriptions contained in the present code.

Therefore a usucapio (*usucapio*) or prescription (*praescriptio*), which commenced even before this code came into force, is to be considered according to the older laws. Should any one refer to a usucapio prescription or which is fixed in the newer law at a shorter period, than in the former laws; he can also commence calculating this shorter term only from the moment, at which the present law received obligatory force.

The prescriptions of this Code are, it is true, generally binding; still there exist for the military estate and for persons belonging to the military body, special prescriptions having reference to private law, which are to be observed in case of juridical acts to be untertaken by them, or with them, although no reference has been made to them in the Code. Commercial business and business relating to drafts are to be judged according to the peculiar commercial laws and laws for bills-of-exchange, as far as they differ from the prescriptions of this Code.

The prescriptions, which have been published in regard to political, fiscal and financial objects, limiting or more minutely defining the private rights, also remain in force, although it may not be mentioned especially in this Code.

Especially the rights and obligations having reference to payments of money are to be judged of according to the Patent

already issued under date 20 February 1811 as to the money intended for circulation, and for the general value of the Country (Wiener Währung), or according to laws, which are to be especially issued, and only in want of them, according to the general prescriptions of the Code.

We declare at the same time the present German text of the Code to be the original text, according to which the translations ordered in the different languages in use in Our provinces are to be judged of.

Given in Our Metropolis and Residence Vienna the first day of the month of June 1811 and in the 19th. year of Our Government.

(L. S.) **Francis.**

Louis Count of and to Ugarte
Royal Bohemian High- and Archducal Austrian first Chancellor.

Francis Count Woyna.

By the especial command of His Imp. and Royal Majesty
John Nep. Baron Geisslern.

Introduction.

Of the civil laws in general.

§. 1.

The complex of the laws, by which the private rights and obligations of the inhabitants of the State towards one another are determined, constitutes the Civil Right (Law) in it.

§. 2.

As soon as a law has been properly published, no one can excuse himself, that he had no cognizance of it.

§. 3.

The operation of a law and the juridical consequences arising from it, begin immediately after the publication of it, unless in the published law itself, the term of its efficacy be further postponed.

§. 4.

The civil laws are binding for all the citizens of the countries, for which they have been published. The citizens remain likewise bound by these laws in their acts and business, which they undertake beyond the territory of the State, as far as their personal capacity for undertaking them is limited by them, and as far as these acts and the business at the same time are to produce juridical consequences in these countries. How far strangers are bound by these laws, is determined in the following chapter.

§. 5.

Laws are not retro-active; they have therefore no influence on acts, which have taken place before, and on rights, which have been acquired before.

§. 6.

Ne other construction can be attributed to a law in the application, than that, which is apparent from the peculiar meaning of the words in their connection, and from the clear intention of the legislator.

§. 7.

If a case cannot be decided either from the words, or from the natural construction of a law, similar cases, which are distinctly decided in the laws, and the motives of other laws allied to them, must be taken into consideration. Should the case still remain doubtful; it must be decided, with regard to the carefully collected and well considered circumstances, according to the natural principles of right.

§. 8.

The Legislator alone has the power to interpret a law in a generally binding manner. Such an interpretation must be applied to all the cases still to be decided, as far as the Legislator does not declare, that his interpretation cannot have reference to the decision of cases, the object of which are acts undertaken and rights claimed, before the interpretation was given.

§. 9.

Laws are obligatory till they have been either altered, or expressly abolished by the Legislator.

§. 10.

Customs can only be taken into consideration in cases referred to by a law.

§. 11.

Only those statutes of single provinces and districts of the country have obligatory force, which after the publication of this Code have been expressly confirmed by the Sovereign.

§. 12.

The determinations issued in single cases and the sentences passed by the Courts in particular law disputes, have never the power of a law; they cannot be extended to other cases, or to other persons.

§. 13.

The privileges and immunities granted to individuals or to corporations, are to be judged of the same as other rights, so far as the political ordinances do not contain any particular determination on the subject.

§. 14.

The prescriptions contained in the civil Code have for their object the law of the rights of persons, the law of the rights of things and the determinations, which are common to both of them.

First Part.

The Rights of persons.

First Chapter.

Of the rights having reference to personal qualities and relations.

§. 15.

The rights of persons refer partly to personal qualities and relations; they are partly founded on family-relations.

§. 16.

Every man has inborn rights, which are already apparent from reason, and is therefore to be considered as a person. Slavery or bondage and the exercise of a power having reference to it, is not permitted in these countries.

§. 17.

All, that corresponds to the inborn natural rights, must be considered to exist as long, as the legal restriction of these rights is not proved.

§. 18.

Every one is capable of acquiring rights under the conditions prescribed by the laws.

§. 19.

Every one, who considers himself injured in his rights, is allowed to bring his complaint before the authority fixed by the law. But whoever disregarding it employs, his arbitrary remedy,

or whoever exceeds the limits of the legal defence in case of peril, is answerable for it.

§. 20.

Even such juridical business, which concerns the Head of the state, but has reference to his private estate, or to the modes of acquiring founded in civil law, are to be judged of by the judicial authorities according to the laws.

§. 21.

Those, who for want of years, infirmities of the mind, or other circumstances are themselves unable to take proper care of their affairs, stand under the peculiar protection of the laws. To this class belong: children, who have not yet reached their seventh year; those, who have not attained the age of discretion, namely their fourteenth year; minors, who have not completed the twenty fourth year of their life; then: raving persons, mad persons and idiots, who are either entirely deprived of the use of their reason, or are at least incapable of understanding the consequences of their actions; further those, whom the judge, as declared prodigals, has forbidden the further administration of their property; lastly persons, who are absent, and communities.

§. 22.

Even children unborn, have from the time of their conception, a claim to the protection of the law. In as far as their rights, and not the rights of a third are concerned, they are to be regarded as born; but a child born dead, is, in regard to the rights reserved for it in case of its living, considered as if it had never been conceived.

§. 23.

In cases of doubt, whether a child has been born living or dead, the former is to be presumed. Whoever maintains the contrary, must prove it.

§. 24.

If there should be a doubt, as to whether an absent person,

or a missing person, is still living or not; his death is only to be supposed under the following circumstances:

1. when a period of eighty years has elapsed since his birth, and his place of residence has remained unknown for ten years.
2. without regard to the time, which has elapsed since his birth, if his place of residence has remained unknown for full thirty years;
3. when he has been severely wounded in war; or when he was on board a ship at the time it was shipwrecked, or otherwise in imminent danger of his life, and when he has been missing for three years from that time.

In all these cases the declaration of death can be applied for, and granted under the precautions prescribed (§. 277).

§. 25.

In cases of doubt, as to which of two or several deceased persons, died first, he, who maintains the previous death of the one or the other, must prove his assertion; if he cannot do that, they will all be considered as having died at the same time, and there can be no question of transferring the rights of the one to the others.

§. 26.

The rights of the members of a society authorized, among one another, are determined by the deed, or object and particular prescriptions existing for the same. In their relation towards others, authorized societies enjoy as a rule equal rights with individuals.

Illegal societies have as such no rights, either against the members, or against others, and are incapable of acquiring rights.

Illegal societies however are those, which are especially forbidden by the political laws, or are evidently contrary to safety, public order, or good morals.

§. 27.

How far communities, in regard to their rights, are under

the particular protection of the public administration, is to be found in the political laws.

§. 28.

The full enjoyment of civil rights is acquired by citizenship. The citizenship in these hereditary states is inherent in the children of Austrian citizens from their birth.

§. 29.

Foreigners acquire the Austrian citizenship by entering the public service; by undertaking a business, the carrying out of which requires a regular domicile in the country; by an uninterrupted residence of ten years completed in these states, under the condition however, that the foreigner during this time has not brought any punishment on himself for a crime.

§. 30.

Even without undertaking a business or craft, and before the expiration of ten years, the naturalization can be applied for to the political authorities, and be granted by the same, as far as the property, the capability of earning a livelihood, and the moral behaviour of the person applying, are constituted.

§. 31.

From the mere possession, or temporary use of an estate, house, or ground; from establishing a trade, a manufactory, or the participation in one or the other, without a personal domicile in a province of these states, the Austrian citizenship is not acquired.

§. 32.

The loss of citizenship by emigration, or by a marriage contracted by a female citizen with a foreigner, is regulated by the emigration-law.

§. 33.

Foreigners have in general equal civil rights and obligations with the natives, if the quality of a citizen is not expressly required for the enjoyment of these rights. Foreigners must also in order to enjoy the same rights as natives, prove in cases of

doubt, that the state, to which they belong, will likewise treat the citizens of this country, in regard to the rights in question, like its own.

§. 34.

The personal capacity of foreigners to undertake juridical acts, is in general to be judged of according to the laws of the place, under which the foreigner stands in consequence of domicile, or if he has no real domicile, in consequence of his birth, as a subject; so far as nothing else is provided in the law for individual cases.

§. 35.

A business undertaken by a foreigner in this state, by which he gives rights to others, without binding them mutually, is to be judged of either according to this code, or according to the law of the country, of which the foreigner is a subject, according as the one or the other law mostly favours the validity of the business.

§. 36.

When a foreigner in this country enters into a mutually binding business with a citizen, it is to be judged of without exception, according to this code. But, in as far as the foreigner concludes it with a foreigner, it is only then to be considered according to this code if it is not proved, that at the conclusion of the business another law has been taken into consideration.

§. 37.

If foreigners enter into a business in a foreign country with foreigners, or with subjects of these states, they are to be judged of according to the laws of the place, where the business has been concluded; when at the conclusion another law has evidently not been declared decisive, and as far as the prescription contained above in §. 4 is not opposed.

§. 38.

The foreign ministers, the public chargés d'affaires and persons in their service enjoy the exemptions founded in the national rights and in the public treaties.

§. 39.

A difference of religion has no influence on private rights, except as far as this is especially decreed for some objects by the laws.

§. 40.

Under family are to be understood the progenitors with all their posterity. The connection between these persons is called relationship, but the connection, which arises between one spouse and the relations of the other is called affinity.

§. 41.

The degrees of relationship between two persons are to be determined according to the number of generations, by means of which in the direct line the one depends upon the other, and in the branch line both upon their next branch in common. In whatever line and in whatever degree some one is related with the one spouse, in the same line and in the same degree he is related by marriage with the other spouse.

§. 42

Under the name of parents are comprehended as a rule all relations in the ascending line without distinction of degree; and under the name of children all relations in the descending line.

§. 43.

The peculiar rights of the members of a family are enumerated on the occasion of the different juridical situations, in which they belong to them.

Chapter the Second.

Of the law of marriage.

§. 44.

The relation, in which one member of a family stands towards the others, is established by the marriage-contract. In the marriage-contract two persons of different sexes declare legally their resolution to live together in inseparable community, to beget children, to educate them, and mutually to assist one another.

§. 45.

A betrothal or a promise given beforehand, to marry one another, under whatever circumstances or conditions it was given, or has been received, does not cause any legal obligation, either for the conclusion of the marriage itself, or the performance of that, which has been agreed upon, in case, one of the parties should withdraw.

§. 46.

The party however, on whose side no reasonable ground has arisen for withdrawing from the marriage, has the right to make his or her claim for compensation for any real injury, which it can be proved has occured from the withdrawal.

§. 47.

A contract of marriage can be entered into by anyone, as far as no legal impediment prevents his doing so.

§. 48.

Raving persons, madmen, idiots and persons, who are under the age of discretion, are not able to conclude a valid contract of marriage.

§. 49.

Minors, as well as persons, who have attained their majority , but who, for whatever reason, are not able alone to conclude a valid obligation, are likewise incapable of marrying without the consent of their legitimate father. If the father is no longer alive, or incapable of representing his children, besides the declaration of the proper representative, the consent of the tribunal is required for the validity of the marriage.

§. 50.

Illegitimate children, being minors, require for the validity of their marriage besides the declaration of their guardian, the consent of the tribunal.

§. 51.

For a foreigner, being a minor, and wishing to marry in these states, but who is not able to produce the consent required, a representative is to be appointed by the tribunal of this country, to which he would belong according to his position in life and residence, This representative has either to give his consent to the marriage, or express his disapproval to the tribunal.

§. 52.

Should a minor or a person of full age, but being under guardianship, be refused the consent to marry, and should the persons intending to marry consider themselves aggrieved, they are authorized to recur to the proper judge for redress.

§. 53.

The want of the necessary income, proved, or notorious bad morals, contagious diseases, or infirmities, which are a hinderance to the object of marriage of the person, with whom the marriage is to be contracted, are lawful reasons for refusing the consent.

§. 54.

The military laws determine, with what military persons, or with what persons belonging to the military body, no valid mar-

riage - contract can be concluded without the permission in writing of their regiment, corps, or in general of their superiors.

§. 55.

The consent to the marriage has no force, if it has been extorted by well founded fear. Whether the fear was founded or not, must be judged of, from the probability and importance of the danger, and from the state of body and mind of the person threatened.

§. 56.

The consent is likewise invalid, when it has been given by a person carried off, and not set at liberty.

§. 57.

An error makes the consent to a marriage only then invalid, when it has occured in the person of the future spouse.

§. 58.

If a husband finds after the marriage, that his wife was already pregnant by another man, he is, with the exception of the case mentioned in §. 121 entitled to demand, that the marriage be declared invalid.

§. 59.

All other errors of the spouses, as well as their disappointed expectations in the conditions presumed, or even agreed to, are no hinderance to the validity of the marriage-contract.

§. 60.

Continual impotency is an impediment to marriage, if it existed already at the time of the marriage-contract. An impotency merely temporary, or impotency, that has only befallen the one or the other of the spouses during the marriage, even if incurable, cannot dissolve the marriage-tie.

§. 61.

A criminal sentenced to the severest, or severe imprisonment, cannot contract a valid marriage from the day of the sentence

being announced to him, and as long as his term of punishment lasts.

§. 62.

One man can only be married to one woman at the same time, and one woman can only be married to one man. Whoever was once married and will marry again, must legally prove the dissolution, which has taken place, that is to say, the complete annullation of the marriage-tie.

§. 63.

Ecclesiastics, who have received higher consecrations; as well as members of religious orders of both sexes, who have taken solemn vows of celibacy, cannot conclude valid marriages.

§. 64.

Marriage-contracts between christians and persons, who do not profess the christian religion, cannot be validly concluded.

§. 65.

No valid marriage can be concluded between relations in the ascending and descending line; between brothers and sisters born of the same parents or half-blood; between male and female cousins; or with the brothers and sisters of the parents, namely with the uncle and aunt on the side of the father or mother, whether the relationship arises from legitimate or illegitimate birth.

§. 66.

Affinity is an impediment to marriage, namely, the husband cannot marry the relations of his wife mentioned in §. 65, nor the wife the relations of her husband mentioned in the same section.

§. 67.

A marriage contracted between two persons, who have committed adultery with one another, is invalid. The adultery must however be proved before the conclusion of the marriage.

§. 68.

A valid marriage cannot be concluded between two persons who, even without having committed adultery, have promised to marry one another, and when, in order to attain their object, only one of them has attempted the life of the spouse, who was a hinderance to the marriage, even supposing the murder was not really perpetrated.

§. 69.

For the validity of the marriage the publication of the banns and the solemn declaration of the consent is required.

§. 70.

The publication of the banns consists in an announcement of the intended marriage, mentioning the christian-name, family-name, place of birth, station and domicile of both persons betrothed, with the remark, that everyone, who knows any impediment to the marriage should give notice of the same. The notice must be given directly, or by means of the guardian of souls (*curator animarum*), who has published the banns, to the guardian of souls, who is competent to celebrate the marriage.

§. 71.

The publication of the banns must take place on three sundays or holidays before the usual eongregation of the parish, and when each of the persons intending to marry live in another parish, before the usual congregations of both parishes. For marriages between non-catholic Christians, the publication of the banns must take place not only in their meetings for the celebration of divine service, but also in those catholic parish-churches, in the district of which they live; and for marriages between Catholic and non-catholic Christians, both in the parish-church of the Catholic, and in the prayerhouse of the non-catholic party, as well as in the catholic parish-church in the district, in which the latter lives.

§. 72.

When the persons intending to marry, or one of them, has not resided during six weeks in the parish district, in which it is intended to celebrate the marriage, the banns must also be published in the last place of residence, where they have lived longer, than the time just mentioned, or the parties intending to marry must continue to reside in the place, they are living at, for six weeks, that the publication of their marriage there, may be sufficient.

§. 73.

Should the marriage not be concluded within six months after the publication of the banns, the three publications must be repeated.

§. 74.

To constitute the validity of the publication of the banns and the validity of the marriage depending upon it, it is sufficient, it is true, that the names of the persons intending to marry and their imminent marriage should be announced at least once, both in the parish-district of the bridegroom, as well as of the bride, and any insufficiency in the form or number of publications, which has occured, does not make the marriage invalid; but on the one side the parties intending to marry or their representatives, on the other side the guardians of souls are, under the threat of a suitable punishment, bound to take care, that all the publications prescribed here, be carried out in proper form.

§. 75.

The solemn declaration of consent must take place before the proper guardian of souls of one of the persons intending to marry, whether his denomination, according to the difference of the religion, be parson, pastor or otherwise, or before their representatives, in the presence of two witnesses.

§. 76.

The solemn declaration of the consent to the marriage can

take place by means of a man in power; but the permission of the government of the province (*praefecturae provinciae*) must be obtained for the purpose and the person, with whom the marriage is to be concluded, must be inserted in the power of attorney. A marriage concluded without such a special power of attorney, is invalid. Should the power of attorney be revoked before the conclusion of the marriage, the marriage, it is true, is invalid, but the constituent is answerable for any injury caused by his revoke.

§. 77.

When a catholic and a non-catholic marry one another, the consent must be declared before the catholic parish-priest in the presence of two witnesses; but at the request of the other party, the non-catholic guardian of souls can also assist at this solemn act.

§. 78.

If the persons intending to marry cannot produce a certificate in writing, that the banns have been duly published; or, if the persons mentioned in §§. 49, 50, 51, 52 and 54 cannot produce the permission necessary for their marriage; if further those persons, whose majority is not clearly apparent, cannot produce the certificate of baptism, or the certificate in writing of their majority, or, if another impediment to the marriage is raised; the guardian of souls is under severe punishment forbidden to perform the marriage-ceremony, till the persons intending to marry have produced the necessary certificates, and removed all difficulties.

§. 79.

Should the persons intending to marry feel themselves aggrieved by the refusal to marry them, they can bring their complaint before the government of the province, and in places, where no government exists, before the authority of the district (*praefectura circuli*).

§. 72.

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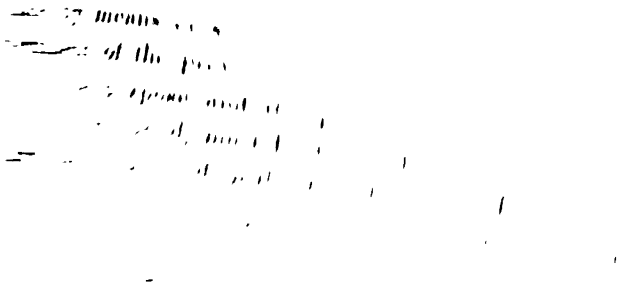
§. 76.

The solemn declaration of the consent



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§. 80.

As a lasting proof of the marriage-contract concluded, the head priests of the parish are bound to enter it in the marriage-register intended especially for the purpose. The christian and family-name, the age, the place of residence, as well as the station in life of the spouses, with the remark, whether they were married before or not; the christian and family-name, then the station in life of their parents and the witnesses; further the day, on which the marriage has been concluded, lastly the name of the guardian of souls, before whom the consent has been solemnly declared, must be distinctly inserted, and the documents, by which the difficulties, which have occured, have been removed, must be mentioned.

§. 81.

If the marriage is to be concluded in a third place, in which neither of the persons intending to marry is a parishioner, the proper guardian of souls must immediatly, in drawing up the document, by which he appoints another as his representative, insert this circumstance in the marriage-register of his parish, mentioning the place, where, and the guardian of souls, before whom the marriage is to be concluded.

§. 82.

The guardian of souls of the place, where the marriage has been concluded, must likewise enter the conclusion of the marriage, which has taken place, in the marriage-register of his parish, adding at the same time, by what parish priest he has been appointed a representative, and must, within a week, give notice of the conclusion of the marriage to the parish priest, by whom he has been authorized.

§. 83.

On account of important reasons the dispensation from marriage-impediments can be applied for to the government of

the province, which is bound to enter into communication according to the peculiarity of the circumstances.

§. 84.

Before the conclusion of the marriage, the dispensation from impediments, must be applied for by the parties themselves, and in their own names. But if, after the conclusion of a marriage, a removable impediment, which was before unknown, should become apparent, the parties can also apply for dispensation through their guardian of souls and without mentioning their names to the government of the province.

§. 85.

In places, where no government of the province exists, the district-authorities are for important reasons, authorized to dispense with the second and third publication of the banns.

§. 86.

Under urgent circumstances the publication of the banns can be entirely dispensed with by the government of the province, or the district-authorities, and when the certified, near approach of death does not permit of any delay, even by the person in authority in the place; still the persons intending to marry must declare upon oath, that they know of no existing impediment to their marriage.

§. 87.

The dispensation from all three publications of the banns is also to be granted under the condition, that the above mentioned oath is taken, when two persons wish to be married, who, it was generally assumed, had been already married. In this case the dispensation can be applied for by the guardian of souls, without mentioning the names of the parties to the government of the province.

§. 88.

If dispensation is given from an impediment, which existed at the time of the conclusion of the marriage, the consent must be declared again before the guardian of souls and two witnesses, whom

one can depend upon, without a repetition of the publications of the banns, and the solemn act must be entered in the marriage-register. If this measure has been observed, such a marriage is to be considered as if it had been originally concluded in a valid manner.

§. 89.

The rights and obligations of the spouses arise from the object of their union, from the law and from the agreements, which have been entered into. In this part, the rights of the persons of the spouses alone are determined; on the other hand, the rights to things arising from the marriage articles are determined in the second part.

§. 90.

Above all, both parties are equally bound to marriage-duty, fidelity and suitable treatment.

§. 91.

The husband is the hend of the family. In this quality he has especially the right to manage the household; but he is also bound to procure a respectable maintenance to the wife, according to his means, and to represent her in all occurrencies.

§. 92.

The wife receives the name of her husband, and enjoys the rights of his station in life. She is bound to follow her husband to his place of residence, to assist him according to the best of her ability in the housekeeping, and in earning a maintenance, and as far as domestic order requires, herself to follow, and to compel others to follow the measures introduced by him.

§. 93.

The spouses are on no acount allowed to dissolve arbitrarily the marriage-union, even, although they may have agreed on the subject; they may maintain the invalidity of the marriage, or its dissolution, or wish to come only to a separation a mensa and toro.

§. 94.

The invalidity of a marriage, to which one of the impediments mentioned in §§. 56, 62, 63, 64, 65, 66, 67, 68, 75 and 119 is opposed, is to be inquired into ex officio. In all other cases the application of those, who have been injured in their rights, by the marriage contracted with an impediment, must be awaited.

§. 95.

The spouse, who knew the error, which has taken place in the person, or the fear, in which the other party has been set; further the spouse, who has concealed the circumstance, that he cannot according to §§. 49, 50, 51, 52 and 54 conclude for himself a valid marriage, or who has falsely pretended to have the consent necessary to him, cannot object to the validity of the marriage from his own illegal act.

§. 96.

In general, the innocent party alone, has the right to demand, that the marriage shall be declared invalid; he or she loses however this right, if he, or she, has continued in the marriage-state, after having acquired a knowledge of the impediment. A marriage contracted by a minor, or a person under guardianship without authorization, can only be disputed by the father or by the guardians, so long as the paternal power or guardianship lasts.

§. 97.

The proceedings in regard to the invalidity ot the marriage belong exclusively to the privileged court in the first instance (*forum nobilium*) of the district, in which the spouses have their usual place of residence. The privileged court must appoint the representative of the Fiscus (*procurator fisci*), or anothor skilful and respectable man, to inquire into the circumstances, and defend the marriage, in order to discover ex officio the real nature of the matter, even, when the proceedings take place at the request of one party.

§. 98.

If the impediment can be removed the privileged court must endeavour, to settle it by the arrangements necessary for this purpose, and the understanding of the parties; but, when this is not possible, the privileged court must pronounce sentence as to the validity of the marriage.

§. 99.

Presumption is always for the validity of the marriage. The alledged impediment to the marriage must consequently be fully proved, and neither the coinciding confession of the two spouses, has in such a case the force of proof, nor can an oath to be taken by the spouses, be admitted in regard to it.

§. 100.

Especially in case, it is maintained, that previons and continual incapacity to perform the marriage-duty exists, the proof must be supplied by experts namely by experienced physicians and surgeons, and according to circumstances even by midwives.

§. 101.

If it is not possible, to determine with certainty, whether the impotency is lasting, or only temporary, the spouses are still compelled to live together for a year, and should the impotency have continued during this time, the marriage is to be declared invalid.

§. 102.

If it is shown from the proceedings, with regard to the validity of the marriage, that either the one, or both the parties, were acquainted with the impediment to the marriage beforehand, and they have purposely concealed it, the guilty persons are to be punished according to the code for heavy transgressions. Should one party be innocent, he or she is entitled to demand compensation. Last of all should children be the fruit of such a marriage, they must be provided for, according to those rules, which are determined in the chapter treating of the duties of parents.

§. 103.

The separation a mensa et toro must be granted by the tribunal, under the following precautions, to the spouses, if they are agreed and consent to the conditions.

§. 104.

The spouses are first of all compelled, to communicate their determination to be separated, together with the motives, to their parish priest. It is the duty of the parish priest to remind the spouses of the solemn promise, they made to one another at the marriage; to exhort them emphatically to consider the evil consequences of the separation. These exhortations must be repeated three different times. If they remain without effect, the parish priest is bound to deliver a certificate in writing to the parties, stating, that notwithstanding the exhortations, which have taken place three times, they persist in the request to be separated.

§. 105.

Both the spouses must apply to their proper tribunal for the separation, enclosing this certificate. The tribunal must summon them personally, and if they state before the tribunal, that they have agreed with one another about their separation, as well as the conditions in regard to property and sustenance, the separation requested is to be granted without further enquiry, and inserted in the acts of the judicial proceedings. Should there be any children, the tribunal is bound to provide for them according to the prescriptions contained in the following chapter.

§. 106.

A spouse being a minor, or under guardianship, can, it is true, consent to the separation for him- or herself; but in regard to the agreement as to the property of the spouses, and the sustenance, as well as the provision for the children, the consent of the legal representative and the tribunal, which is charged with the guardianship, is necessary.

§. 107.

Should the one party not agree to the separation, and should

the other have legal grounds to urge the same; even in this case, the friendly exhortations of the parish priest must previously take place. Should they be fruitless, or should the accused party refuse to appear before the parish priest, then, the request with the certificate of the parish priest, and the necessary proofs is to be handed in to the proper tribunal, which has to enquire ex officio into the affair, and give its decision on the subject. The judge can grant the party exposed to danger, even before the decision, a separate and respectable residence.

§. 108.

Disputes, which may arise in case of a separation applied for without the consent of the other spouse, as to the separation of the property and the sustenance of the children, are to be treated according to the same prescription given below in §. 117 in regard to the dissolution of a marriage.

§. 109.

Important reasons, for which separation can be recognized, are: When the defendant has been declared guilty of adultery or a crime; when he has wickedly deserted the complaining spouse, or has led an irregular life, by which a considerable part of the property of the complaining spouse, or the good morals of the family have been placed in danger; further attempts dangerous to life or health; severe illtreatement, or according to the circumstances of the persons, very sensible and repeated injuries; continual defects connected with the danger of infection.

§. 110.

Spouses separated are at liberty to live together again; still the fact, that they have joined one another, must be announced to the proper tribunal. Should the spouses wish to be separated again after such a union; they are bound to observe the same rules, which are prescribed in regard to the first separation.

§. 111.

The tie of a valid marriage contracted between catholic

persons can only be dissolved by the death of one of the spouses. The tie of marriage is equally indissoluble, when even only one of the parties professed the catholic religion at the time, the marriage was concluded.

§. 112.

The mere lapse of the time fixed in §. 24 for the declaration of death, during which time one of the spouses is absent, does not, it is true, authorize the other party to consider the marriage as dissolved and to proceed to another marriage; if however, this absence is accompanied by such circumstances, which leave no reason to doubt, that the absent person is dead, the judicial declaration, that the absent person may be considered dead, and the marriage dissolved, may be applied for to the privileged court of the district, in which the deserted spouse resides.

§. 113.

This petition having been delivered, a curator is appointed to make inquiries for the absent person, and the latter is summoned by an edict, fixing a whole year, and which is to be inserted three times in the public newspapers of the country, and according to circumstances, in foreign newspapers. The edict must contain the addition that, if he, or she, does not appear during this period, or if he, or she does not give notice to the tribunal of his, or her being alive in another way; the latter will proceed to declare him, or her dead.

§. 114.

After this time has elapsed fruitlessly, on the repeated request of the deserted spouse either the representative of the fiscus, or another respectable and skilful man is to be appointed as defensor matrimonii, and after the proceedings have been closed, it must be decided, whether the application is to be granted, or not. A decision in the affirmative is not to be notified to the party immediately, but is to be submitted through the court of appeal for decision in the highest instance.

§. 115.

The law permits those, who do not profess the catholic religion, to demand for important reasons the dissolution of the marriage according to their conception of religion. Such reasons are: When one of the spouses has been guilty of adultery or a crime, which has produced a sentence of at least five years imprisonment; when one of the spouses has wickedly deserted the other, and in case his or her place of residence is unknown, he or she has not appeared in consequence of a public judicial summons within a year; attempts dangerous to life or health; repeated severe ill-treatment; a disinclination not to be surmounted, on account of which both the spouses apply for the dissolution of the marriage; still, in the latter case the dissolution of the marriage is not to be granted immediately, but first of all, a separation a mensa and toro is to be tried, and according to circumstances, even on repeated occasions. However in all these cases the proceedings must take place in conformity with the prescriptions, which are given for the inquiry into, and decision of an invalid marriage.

§. 116.

The law permits non-catholic spouses to apply for the dissolution for the reasons mentioned, although the other party has joined the catholic religion.

§. 117.

If on the occasion of a dissolution of the marriage, disputes take place, which have reference to a contract separately concluded, to the separation of the property, to the provision for the children or to other claims and counter-claims; the proper judge must endeavour above all to settle the disputes by an arrangement. But, if the parties cannot be induced, to come to an arrangement; he must direct them to the ordinary proceedings, which are be decided in conformity with the prescriptions contained in the chapter for marriage articles, but in the meantime a respectable provision is to be fixed for the wife and children.

§. 118.

If the spouses, whose marriage has been dissolved, wish to join one another again, the union must be considered as a new marriage and must be concluded with all the necessary solemnities, which are required according to the law for the conclusion of a marriage.

§. 119.

Persons, whose marriage has been dissolved, are, it is true, in general allowed to marry again; still a valid marriage cannot be concluded with those, who according to the proofs alleged on the occasion of the dissolution, have caused the dissolution, which took place, by adultery, by incitation, or in another punishable manner.

§. 120.

When a marriage is declared invalid, dissolved by judicial proceedings, or by the death of the husband; the wife, when she is pregnant, cannot proceed to a new marriage till after her confinement, and when a doubt arises as to her pregnancy, not till the sixth month has elapsed; but if, according to the circumstances, or according to the evidence of skilful persons a pregnancy is not probable; after the lapse of three months, dispensation can be given in the metropolis by the government of the province, and in the country by the district-office.

§. 121.

The infringement of this law (§. 120) does not, it is true, cause the marriage to be invalid; but the wife loses the advantages granted to her by her former husband, by marriage articles, by agreement respecting claims of inheritance, last will, or by the agreement concluded at the dissolution; but the husband, with whom she concludes the second marriage, loses the right granted to him with the exception of this case, by §. 58 to have the marriage declared invalid, and a suitable punishment is to be inflicted on both the spouses according to circumstances. If a child is born in such a marriage and it is at least doubtful,

whether it was the fruit of the former husband; a curator is to be appointed for the same, in order to represent its rights.

§. 122.

If a marriage is declared invalid, or is declared to be dissolved; the result must be entered in the marriage-register at the place, where tho marriage is inserted; and for this purpose the tribunal, where the proceedings for invalidating or dissolving the marriage have taken place, must address an admonition to the authority charged with the care of the accuracy of the marriage-register.

§. 123.

The following exceptions from the general law of marriage, explained in this chapter, exist for the Jews in regard to the circumstances of their religion.

§. 124.

In order to conclude a valid marriage, the persons intending to marry must obtain the consent of the political authority, in the district of which the chief-community is situated, to which the one and the other party is attached.

§. 125.

The impediment to marriage founded on relationship does not extend by Jews among persons related by a collateral line further, than the marriage between brother and sister, then between the sister and a son or grandchild of her brother or sister; but the impediment to marriage founded on affinity is limited to the following persons. The husband is not allowed after the dissolution of the marriage, to marry a relation of his wife in the ascending and descending line, nor the sister of his wife, and the wife is not permitted to marry a relation of her husband in ascending and descending line, nor the brother of her husband, nor a son or a grandchild of her husband's brother or sister.

§. 126.

The publication of banns for the marriage of Jews must take place in the Synagogue, or in the common place of prayer, or where such a prayerhouse does not exist, by the chief authority of the place, in the presence of the principal and the special community, to which the one and the other party intending to marry is attached, on three successive sabbaths or holidays, observing the rules prescribed in §§. 70 to 73. The dispensation of the publications of the banns is to be obtained according to the prescriptions of §§. 83 to 88.

§. 127.

The marriage must be celebrated in the presence of two witnesses by the Rabbin, or instructor of religion (teacher of religion) of the principal community of the one or other party intending to marry, after they have produced the necessary certificates. The Rabbin, or teacher of religion can also empower the Rabbin or the teacher of religion of another community to celebrate the marriage.

§. 128.

The proper Rabbin, or teacher of religion must enter the marriage contracted in the marriage-register in the language of the country in the way prescribed in §§. 80 to 82, mark the necessary certificates, produced by the persons intending to marry, with the corresponding number, under which the married persons have been entered in the marriage-register, and attach them to the marriage-register.

§. 129.

A jewish marriage, which is concluded without observing the rules prescribed by the law, is invalid.

§. 130.

Persons intending to marry, or Rabbins and teachers of religion, who act contrary to the above mentioned rules, then those, who celebrate a marriage without being properly authorized, are

to be punished according to §. 252 of the second part of the criminal law.

§. 131.

Rabbins or teachers of religion, who do not keep the marriage-registers, as prescribed by the law, are to be punished by a suitable fine, or bodily punishment, to be dismissed, and to be declared incapable of accepting such an appointment for ever.

§. 132.

In regard to the separation a mensa and toro the general prescriptions are likewise in force for jewish spouses. They must therefore address themselves likewise to the Rabbin or teacher of religion, and the latter must observe the instruction mentioned above (§§. 104—110).

§. 133.

A marriage validly contracted between Jews, can be dissolved with their mutual frec consent, by means of a letter of divorce given by the husband to the wife. But the spouses must first of all appear on account of the divorce, before their Rabbin or teacher of religion, who must endeavour with the most impressive remonstrances, to induce them, to live together again, and only, when the attempt is fruitless, is bound to deliver them a certificate in writing, that he has fulfilled the duty imposed upon him, but notwithstanding all his endeavours has not been able to induce the parties, to give up their determination.

§. 134.

Both the spouses must appear with this certificate before the privileged court of the district, in which they reside. Should this authority discover from the circumstances, that there is some hope of inducing the spouses, to live together again, it must not grant an immediate dissolution of the marriage, but must refuse the application of the spouses for one or two months. Only, when this also is fruitless, or, from the commencement there is no hope of inducing them, to live together again, the

privileged court must allow, that the husb. d deliver the letter of divorce to the wife, and after, both the parties have again declared before the tribunal, that they are determined to give and to receive the letter of divorce of their own free will, the letter of divorce must be considered valid, and the marriage dissolved in consequence of it.

§. 135.

When the wife has committed adultery and the act is proved, the husband has the right to dismiss her even against her will, by means of a letter of divorce. But the complaint, the object of which is the dissolution of the marriage, must be brought before the privileged court of the district, in which the spouses usually reside, and must be tried in the same manner as another suit.

§. 136.

The marriage is not dissolved in consequence of a jewish spouse assuming the christian religion, but it can be dissolved for the motives mentioned above (§§. 133—135).

Chapter the third.

Of the rights between parents and children.

§. 137.

If children are born of a marriage, a new relation of rights arises; rights and obligations between legitimate parents and children are established by it.

§. 138.

The presumption is for the legitimacy of those children, which are born of the wife in the seventh month after the conclusion of the marriage, or in the tenth month either after the death of the husband, or after the entire dissolution of the marriage-tie.

§. 139.

The parents have in general the obligation to educate their legitimate children, that is, to provide for their life and their health, to procure them respectable aliment, to develope their bodily powers and powers of mind, and to lay a foundation for their future welfare by instruction in religion and useful knowledge.

§. 140.

The political ordinances provide in what religion a child is to be educated, whose parents do not agree with regard to the religion, which they profess, and at what age a child is entitled to accept another religion to the one, in which it was educated.

§. 141.

It is principally the duty of the father to provide for the aliment of the children, till they can provide for themselves. It

is the chief-duty of the mother to take charge of their bodies and health.

§. 142.

If the spouses are separated, or the marriage entirely dissolved, and they do not agree, as to which party is to have the charge of the education, the tribunal, without permitting a law-suit, has to provide, that the male-children are to be attended to and educated by the mother till the completion of their fourth year, and the female-children till the completion of their seventh year; unless important reasons, coming to light especially from the causes of the separation or the dissolution of the marriage demand another disposition. The expenses of the education must be supported by the father.

§. 143.

If the father possesses no means, the mother before all must provide for the aliment, and should the father die, in general for the education of the children. If the mother also is no longer living, or is without means, this charge falls upon the grandfather and grandmother on the father's side, and then upon the grandfather and grandmother on the mother's side.

§. 144.

The parents have the right to direct by mutual consent the acts of their children; the children owe them respect and obedience.

§. 145.

The parents are authorized to search for children, who are missing, to demand the delivery of those, who have run away, and to bring back with the assistance of the authorities those, who have absconded; they are likewise entitled to punish immoral, disobedient children, or children, who disturb the domestic order and peace, in a manner not exagerated and dangerous to their health.

§. 146.

The children obtain the name of their father, his coat-of-arms, and all other not merely personal rights of his family and station in life.

§. 147.

The rights, which belong especially to the father, as head of the family, form the paternal authority.

§. 148.

The father can educate his child, who is still under the age of discretion, to the condition in life, which he finds suitable for the same; but the child can after attaining the years of discretion and having fruitlessly explained to his father his desire for another occupation more suitable to his inclination and his capacities, bring his demand before the ordinary tribunal, which has to decide upon it ex officio, taking into consideration the position in life, the means and the objections of the father.

§. 149.

Every thing, that the children acquire in any legal way whatever, is their property; but as long as they are under the paternal authority, the father has the right to administer it. Only, when the father is incapable of the administration, or has been excluded from the same by those, who have bestowed the property on his children, the tribunal appoints another administrator.

§. 150.

From the income derived from the property, as far as it reaches, the expenses of the education are to be covered. If there is an overplus, it must be laid ont at interest and a yearly account delivered of the same. Only, when this overplus is unimportant, the father can be dispensed from delivering an account and he is permitted to apply the same as he thinks proper. Should the enjoyment be conceded to the father by the person, to whom the child is indebted for the property; still the income

is always liable for the aliment of the child, according to his station in life, and it cannot be attached to the injury of the child by the creditors of the father.

§. 151.

In respect to what a child, although a minor, but being out of the alimentation of his parents, acquires by his diligence, as well as in regard to things, which have been delivered to a child for his use, after having attained the years of discretion, he can freely dispose.

§. 152.

Children, who are under the paternal authority, cannot enter into a valid obligation without the express, or at least the taciturn consent of the father. Every thing, that is determined in the next chapter as to the obligatory acts of minors, who are under guardianship, is to be applied in general to such obligations. The father is also obliged to represent his children, who are not of age.

§. 153.

The prescriptions, which must be observed for the valid marriage of a person under age, are contained in the former chapter (§. 49 and the following).

§. 154.

The expense incurred for the education of the children, does not give the parents any claim on the property afterwards acquired by the children. But should the parents fall into distress, their children are bound to maintain them in a respectable manner.

§. 155.

Illegitimate children do not enjoy the same rights with legitimate children. The legal presumption of the illegitimate birth takes place in regard to those children, who, it is true, have been born of a married woman, but before, or after the legal

period mentioned above (§. 138) with regard to the concluded, or dissolved marriage.

§. 156.

This legal presumption however, only takes place, if an earlier birth occurs, when the husband, who did not know of the pregnancy before marrying, at furthest within three months after receiving the information of the birth of the child, denies judicially, that he is the father.

§. 157.

The legitimacy of an earlier, or later birth legally denied within this period by the husband, can only be proved by experienced persons, who after a strict examination of the constitution of the child, and the mother, can distinctly state the cause of the extraordinary case.

§. 158.

If a husband maintains, that a child born of his wife within the legal period, is not his, he must dispute the legitimate birth of the child at farthest within three months after receiving the information, and prove the impossibility of his having engendered the same in opposition to the curator to be appointed for the defence of the legal birth. Neither the fact of adultery committed by the mother, nor her statement, that her child is illegitimate, can alone deprive it of the rights of legitimate birth.

§. 159.

Should the husband die before the expiration of the period granted to him for disputing the legitimate birth, the heirs also, who would suffer injury in their rights, can for the reason mentioned dispute within three months after the death of the husband the legitimate birth of such a child.

§. 160.

Children, who, it is true, are begotten of an invalid marriage, but not of such a marriage, to which the impediments mentioned in §§. 62—64 are opposed, are to be considered as legitimate,

children, when the impediment to the marriage has been subsequently removed, or when the innocent ignorance of the marriage-impediment is in favour of at least one of their parents; still in the latter case such children are excluded from obtaining that property, which is especially reserved by family-arrangements for the legitimate descendants.

§. 161.

Children not born in wedlock, and which have been received into the family in consequence of a marriage afterwards contracted by their parents, are, as well as their descendants, considered as legally begotten; they can only not dispute the quality of primogeniture and other rights already acquired, by the legitimate children begotten in a marriage, which has existed in the meantime.

§. 162.

The illegitimate birth can be no prejudice to a child in his civil respectability and his career in life. For this purpose no especial grace of the Sovereign is required, by which the child is declared legitimate. The parents alone can apply for the same, when they wish the child to participate in the privileges of the station, or the right to the free inheritable property, the same as a legitimate child. In regard to the other members of the family this favour produces no effect.

§. 163.

Whoever is convicted in a manner prescribed by the civil procedure, of having cohabited with the mother of a child within the period, from which, to her confinement, not less than six, and not more than ten months have elapsed; or whoever even confesses it extra-judicially, will be considered as having begotten the child.

§. 164.

The entry of the father's name in the register of births, which has taken place at the request of the mother, is only

then a perfect proof, when the entry was made according to the legal prescription, with the consent of the father, and this consent has been confirmed by the evidence of the guardian of souls and the godfather with the addition, that the father is personally known to them.

§. 165.

Illegitimate children are in general excluded from the rights of the family and relationship; they have no claim either to the family-name of the father, or the nobility, the coat-of-arms, and other privileges of the parents; they bear the family-name of the mother.

§. 166.

But even an illegitimate child has the right to demand from his parents aliment, education, and a provision suitable to their property; and the rights of the parents over the same extend so far as the object of the education requires. However the illegitimate child is not under the real paternal authority of his genitor, but is represented by a guardian.

§. 167.

The father is chiefly obliged to provide for the aliment; but when the father is not able to provide aliment for the child, this obligation falls upon the mother.

§. 168.

As long as the mother will, and can educate her illegitimate child herself according to its future destination, it dare not be taken from her by the father; but notwithstanding, he must provide for the expenses of the aliment.

§. 169.

But if the welfare of the child is in danger from the motherly education, the father is bound, to separate the child from the mother and take it to himself, or provide a safe and respectable asylum for it elsewhere.

§. 170.

The parents are allowed to make an arrangement with one another as to the aliment, the education, and the provision for the illegitimate child; but such an arrangement cannot be prejudicial to the rights of the child.

§. 171.

The obligation to provide aliment and provision for illegitimate children passes, the same as another obligation, to the heirs of the parents.

§. 172.

The paternal authority ceases immediately with the majority of the child, if the continuation of the same has not been granted and publicly made known by the tribunal for a just reason at the request of the father.

§. 173.

Just reasons for applying for the continuation of the paternal authority to the tribunal are: When the child, nothwithstanding its majority, is not able to maintain itself, or to manage its affairs on account of bodily or mental defects; or when it has entangled itself during its minority in considerable debts, or has been guilty of such transgressions, on account of which it must be kept further under the strict surveillance of the father.

§. 174.

Children can also be released from the paternal authority before the completion of their twenty fourth year, if the father expressly releases them with the consent of the tribunal, or if he allows a son of twenty years of age the management of his own household.

§. 175.

If a daughter being a minor marries, it is true, she comes in regard to her person, under the authority of her husband (§§. 91 and 92), but in regard to her property the father has

the rights and obligations of a curator, till she attains her majority. Should her husband die during her minority, she comes again under the paternal authority.

§. 176.

If a father loses the use of his reason, when he is declared prodigal, or is sentenced for a crime to a longer term of imprisonment than a year, if he emigrates without the necessary permission, or if he is absent for more than a year, without giving notice of his place of residence, the paternal authority is interrupted and a guardian is appointed; but should these impediments cease, the father enters again upon his rights.

§. 177.

Fathers, who entirely neglect the maintenance and education of their children, lose the paternal authority for ever.

§. 178.

For the abuse of the paternal authority, by which the child is injured in its rights, or for the omission of the duties connected with it, not only the child itself, but everyone, who has a knowledge of it, and particularly the nearest relations can apply for the assistance of the tribunal. The tribunal has to enquire into the subject of the complaint and take measures suitable to the circumstances.

§. 179.

Persons, who have not solemnly vowed to remain unmarried and who have no legitimate children of their own, can adopt; the person adopting is called adopter (adoptive father or mother), the person adopted is called an adopted child.

§. 180.

Male or female adopters must have completed their fiftieth year and an adopted child must be at least eighteen years younger than his adopters.

§. 181.

The adoption can, if the child is a minor, only take place with the consent of the legitimate father, or, in want of a father, only with the consent of the mother, the guardian and the tribunal. Even, when the child is of age, but his legitimate father is still living, the consent of the same is required. Against the refusal of the consent without sufficient reason one is permitted to complain to the ordinary tribunal. The adoption provided with the necessary consent is to be submitted to the government of the province for confirmation, and to the competent tribunal of the adoptersand adopted child, for entry in the judicial acts.

§. 182.

An essential legal effect of the adoption is, that the person adopted receives the name of the male adopter or the maiden-name of the female adopter; but it retains at the same time its former family-name and its own family-nobility, should it possess any. Should the adopters wish, that their own nobility and the coat-of-arms may pass over to the child, the consent of the Sovereign must be applied for.

§. 183.

Between the adopters and the adopted child and its descendants, in so far as the law makes no exception, the same rights exist as between legitimate parents and children. The male adopter charges himself with the paternal authority. In regard to the other members of the family of the adopters the relation between the adopters and the adopted child is of no influence; on the contrary the adopted child does not even lose the rights of his own family.

§. 184.

The rights between adopters and adopted children may be determined otherwise by an agreement, in as far as the essential effect of the adoption mentioned in §. 182 is not altered by it, nor the rights of a third person injured.

§. 185.

The legal relation between the adopters and the adopted child can, as long as the adopted child is a minor, only be dissolved with the consent of the minor's representatives and the tribunal. After the legal relation between the adopter and the adopted child has ceased, the child being a minor comes under the authority of the legitimate father again.

§. 186.

The rights and obligations of the adopters and adopted children cannot be applied to persons, who are only received as foster-children. This fostering is open to everyone, but if the parties wish, to conclude a contract with regard to it, it must be judicially confirmed, so far as the rights of the fostered child are limited, or so far as peculiar obligations are imposed upon it. The foster-parents can make no claim for the expenses for fostering the child.

Chapter the fourth.

Of guardianships and committeeships.

§. 187.

The laws grant by means of a guardian or a curator especial protection to persons, who do not enjoy the care of a father and who are still minors, or incapable for another reason of managing their affairs themselves.

§. 188.

A guardian is bound chiefly to care for the person of the minor, but at the same time to administer his property. A curator is appointed for the management of the affairs of those, who are incapable of managing them themselves for another reason, than the minority.

§. 189.

If the case occurs, that a guardian must be appointed for a minor, whether he is of legitimate or illegitimate birth, the relations of the minor or other persons, who are in near connection with him are bound under a suitable punishment to give notice of it to the tribunal, under whose jurisdiction the minor is. The political authorities also, the lay and ecclesiastical heads of communities must take care, that the tribunal is informed of it.

§. 190.

The tribunal must, as soon as it is informed of it, proceed ex officio to the appointment of a suitable guardian.

§. 191.

In general those persons are disqualified for the guardianship,

who cannot manage their own affairs on account of their minority, on account of bodily or mental defects, or for other reasons; those, who have been declared guilty of a crime, or from whom a respectable education of the orphan, or a proper administration of the property is not to be expected.

§. 192.

Persons also of the female sex, priests, belonging to religious orders, and the inhabitants of foreign states cannot as a rule (§. 198) be appointed guardians.

§. 193.

To a determined guardianship those persons are not to be admitted, whom the father has expressly excluded from the guardianship; who have lived notoriously at enmity with the parents of the minor, or with the latter himself, or who are either entangled with the minor in a law suit, or could be entangled in one on account of claims not yet settled.

§. 194.

Persons, who either do not live at all in the province, to which the minor according to jurisdiction belongs, or must still be absent for more than a year from the same, are in general not to be appointed guardians.

§. 195.

Secular clergymen, military persons in active service, and government-clerks; those likewise, who have completed their sixtieth year; who are charged with the care of five children or grand-children; or who have to manage already one irksome guardianship, or three smaller ones, cannot be compelled against their will to undertake a guardianship.

§. 196.

Above all the guardianship belongs to him, whom the father has nominated to it, if none of the impediments mentioned in §§. 191—194 stand in the way.

§. 197.

If a mother, or another person has left an inheritance to a minor, and at the same time nominated a guardian, the latter must be accepted only in the quality of a curator for the property bequeathed.

§. 198.

If the father has nominated no guardian, or an incapable one; the guardianship must above all be entrusted to the grand father on the father's side, then to the mother, so on to the grandmother on the father's side, lastly to another relation, and especially to him, who belongs to the male sex, who is the next, or of several equally near, the eldest.

§. 199.

If a guardianship cannot be constituted in the manner described, it depends upon the tribunal, whom they will appoint as guardian, having regard to capacity, station, property and domicile.

§. 200.

The court of ward must immediately direct every guardian appointed, without distinction, to undertake the guardianship. The guardian, although, so far as his person is concerned, he is under another jurisdiction, is bound to undertake the guardianship, and is subjected in regard to all affairs belonging to this appointment, to the authority of the court of ward.

§. 201.

Should the person, who has been called to the guardianship by the tribunal, believe, that he is not suitable for this appointment, or that the law exempts him from the same, he must within a fortnight from the time, that the judicial order has been made known to him, apply to the court of ward, or if he is not subjected to it, so far as his person is concerned, to his proper tribunal, which must add their opinion to his reasons and submit them to the court of ward for decision.

§. 202.

Whoever conceals his incapacity for a guardianship, is, as well as the tribunal, which knowingly appoints a guardian incapable according to the law, answerable to the minor for the damage caused by it, and the loss of profit, which has occured.

§. 203.

Whoever refuses, without reasonable motives, to take upon himself a guardianship, exposes himself likewise to this responsibility and he is besides to be compelled to accept it by suitable coercive measures.

§. 204.

One can only take upon one'self the appointment of guardian after having received an order to do so from the proper jurisdiction. Whoever forces himself wilfully into a guardianship, is bound to replace all the damage, that may arise from it, to the minor.

§. 205.

Every guardian with the exception of the grandfather, the mother, and the grandmother, is bound to promise solemnly by shaking the hand, that he will inculcate into the minor probity, fear of God and virtue, that he will educate him according to his position as a useful citizen, that he will represent him before the tribunal, and extrajudicially, that he will administer the property faithfully and zealously, and follow in every respect the prescriptions of the laws.

§. 206.

The tribunal must deliver to a guardian, bound in this manner, a formal document for the purpose of accrediting him with respect to his appointment, and that he may be able to justify himself in cases of necessity. Should a grandfather, a mother or a grandmother take upon him or herself a guardianship, a similar document must be delivered to them, and it is necessary to insert in it, whatever other guardians solemnly vow.

§. 207.

Every court of ward is bound to keep a so called guardianship- or orphan-book. In this book must be entered the christian names, family names, age of the minors, and every thing of importance, which has occured on taking charge of, the continuation and termination of the guardianship.

§. 208.

In this book reference must also be made to all documents in such a manner, that both the tribunal itself, and subsequently the orphans, after having attained their full age, may also be able to inspect every thing, that it is useful for them to know, in an authentic form.

§. 209.

In the same manner, as a guardian nominated by the father, has to take care not only of the person of the minor, but also of his property, so it is likewise presumed, that the father intended to entrust the person, whom he has appointed the curator for the property, at the same time with the care of the person. But if the father has not appointed a guardian for all the children, or a curator for the whole property, the tribunal is bound, to appoint a guardian for the other children, or a curator for the rest of the property.

§. 210.

If several guardians have been appointed, they can, it is true, administer the property of the minor in common, or separately. But should they administer it in common, or divide the administration among themselves without the approbation of the tribunal, each separately is liable for the whole damage, which may arise to the minor. The tribunal must always provide , that the person of the minor and the principal management of the affairs shall be entrusted to the care of one person.

§. 211.

A co-guardian must be appointed in cases, where mothers and grandmothers take upon themselves a guardianship. In the choice of the co-guardian regard is to be had before all to the expressed will of the father, then to the proposition of the female guardian, and lastly to the relations of the minor.

§. 212.

The co-guardian must receive also a document for his legitimation from the tribunal and solemnly vow, that he will promote the good of the minor, and he must for this purpose assist the female guardian with his advice. Should he remark important defects; he must endeavour to remedy them, and in case of need give notice of them to the court of ward.

§. 213.

Another essential duty of the co-guardian is, to add his signature to the application of the female guardian in business-affairs, which may occur, for the validity of which the consent of the court of ward is necessary, or to affix his separate opinion, or deliver his opinion on such business at the request of the tribunal direct to it.

§. 214.

A co-guardian, who has fulfilled these duties, is released from all further responsibility; but should a co-guardian be charged at the same time with the administration of the property, he has with this administration taken upon himself all the duties of a curator.

§. 215.

If a female guardian retires from the guardianship; the guardianship is in general to be entrusted to the former co-guardian.

§. 216.

A guardian has the same as the father, the obligation and the right to provide for the education of the minor; but he

must in important and critical affairs first of all apply for the consent and instructions of the court of ward.

§. 217.

The minor is bound to respect and follow his guardian; but he is also authorized to complain to his next relations or to the tribunal, if the guardian abuses, in any manner, his power, or neglects his duties of the necessary care and superintendence. The relations of the minor also and everyone, who becomes acquainted with it, are entitled to give notice of it. The guardian must also apply to this authority, if he is not able to put a stop to the transgressions of the minor by means of the power allotted to him for the education.

§. 218.

The care of the person of the orphan is to be entrusted especially to the mother, even when she has not taken upon herself the guardianship, or has married again; except in cases, when the good of the child required another disposition.

§. 219.

The court of ward has to fix the expenses of aliment, and is in determining them, to have regard to the arrangement of the father, the opinion of the guardian, the property, station in life, and other circumstances of the minor.

§. 220.

When the income is not sufficient to defray these expenses, or to cover the expense, by which the minor is to be placed in a permanent position to obtain his living, the principal of the property may be applied with the consent of the tribunal.

§. 221.

Supposing the orphans are entirely without means, the court of ward is bound to endeavour to induce the next relations, who are in easy circumstances, to care for their maintenance, if they

are not already legally obliged to do so according to §. 143. The guardian has besides a well grounded claim on public charitable foundations and the existing institutions for the poor as long as the minor is not able to support himself by his own work and application.

§. 222.

The care of the fortune of the orphan entrusted to the court of ward, requires, that it must first of all endeavour to ascertain the amount of the property, and to secure it by interdiction (*obsignatio*), by an inventory and a valuation of it.

§. 223.

By the judicial interdiction the movable articles are only then to be placed in safe custody, if it is necessary for security; but the inventory, that is an exact list of all the property belonging to the orphan, must always be made, notwithstanding the father or another testator may have forbidden it.

§. 224.

The list of the property and the taxation of the movable articles must be made without loss of time, eventually also, before the guardian has been nominated. The inventory is to be kept with the deeds of succession and an authentic copy of it is to be communicated to the guardian. The taxation of the immovable property must take place as soon as is convenient; but it can also, if the value is ascertainable from other sources, which can be depended upon, be entirely omitted.

§. 225.

Should an immovable estate of the minor be situated in another province, or even in a foreign state; the court of ward must apply to the proper tribunal of the other province, or the foreign state for the inventory and taxation, and the communication of them, but leave the appointment of a curator over this estate to the tribunal mentioned.

§. 226.

Should the immovable estate be situated in the same province, but under another authority; all rights referring to the estate belong, it is true, to this authority, consequently the inventory and taxation; but it must not only, on application, communicate a copy of them to the court of ward, but leave also the free administration of the estate to the guardian without claiming a sort of jurisdiction over his acts of guardianship.

§. 227.

Those movable articles, which are on an immovable estate in order to remain continually on the same, are to be considered as a part of this estate, all other movable articles, even obligations, and the capital mortgaged on an immovable estate, belong to the jurisdiction of the court of ward.

§. 228.

As soon, as a guardian or curator takes upon himself the property, he must administer it with all the attention of an honest and diligent father of a household, and answer for his faults.

§. 229.

Jewels, other precious articles and the obligations must be placed, as well as all important documents, in judicial custody; the guardian receives a list of the former and of the latter the copies necessary for his use.

§. 230.

Only so much ready money is to remain in the hands of the guardian, as is necessary for the education of the orphan and for the ordinary carrying on of the economy. What remains, must be employed principally for the payment of any debt, which may exist, or in another advantageous manner, and when no further advantageous use can be made of it, must be placed out at interest in the public treasury, or under legal security even

in the hands of private persons. But the security is only then legal, when from the mortgage reckoning any burden, which may already exist, a house is not incumbered for more than the half, an estate or parcel of ground for more than two thirds of its real value.

§. 231.

The remaining movable property, which is not to be kept for the use of the minor, or in remembrance of the family, or according to the disposition of the father, and which cannot be employed advantageously in another way, must as a rule be sold by public auction. The household utensils can be left to the parents and the coheirs without a public auction at the price, at which they have been judicially valued. The guardian can sell articles, which have not been sold at the public auction, with the consent of the court of ward, even under the price, at which they have been valued.

§. 232.

An immovable estate can be sold with the consent of the court of ward, only in case of necessity, or when it is clearly to the advantage of the minor, and as a rule only by means of public auction. But for important reasons, a sale under the hand can also be granted by the tribunal.

§. 233.

A guardian can in general undertake nothing without the judicial consent in any business, which does not belong to the ordinary economy and which is of greater importance. He can therefore of his own accord, neither refuse a succession, nor accept it without the benefit of the law of the inventory; he cannot undertake a sale of the goods entrusted to his custody; he cannot conclude a contract for a lease; he cannot recall capital, which has been invested with legal security; he cannot cede a demand; he cannot arrange a lawsuit; he cannot commence, continue or give up without the judicial consent, any manufactory, shop, and business.

§. 234.

A guardian cannot receive for himself alone any capital of the minor, when it is repaid. The debtor, from whom such a capital has been recalled, must for his own security insist on the production of the judicial consent for raising the capital by the guardian and not content himself with the receipt of the guardian alone; he is also at liberty to pay the money direct to the tribunal itself.

§. 235.

As often as the case occurs, that capital, which is owing, is to be paid, the guardian has to provide for its advantageous application and to apply for the consent of the tribunal in regard to the real employment of it.

§. 236.

With regard to demands, to prove which there are no documents, the guardian must procure himself documents and those, which are not secured, he must endeavour to secure as far as possible, or realise when due. Still the capital belonging to a minor, even if it is not legally secured, but there is however no probability of the minor being exposed to any danger of loss, is not to be recalled from his parents, as far as the repayment would be difficult for them without selling their immovable estate, or without giving up their business.

§. 237.

The guardian is not bound to give caution on entering upon his guardianship. He remains also for the future released from the caution, as long as he strictly observes the prescriptions existing in law for the security of property and delivers regular accounts at the proper time.

§. 238.

As a rule, every guardian and curator is bound to render an account of the administration entrusted to him. The testator can, it is true, release the guardian from delivering an account with respect to the amount voluntarily bequeathed by him; the

court of ward can also do so, when the income probably does not exceed the expenses for the maintenance and the education of the minor; but at all events a guardian must prove, that the principal fortune and capital inserted in the inventory still exists, he must also deliver a report of the state of the person committed to his care, if an important change is taking place in it.

§. 239.

The accounts must be delivered with every necessary voucher to the court of ward every year, or at furthest within two months after the expiration of the year. In these accounts the income and expenses, the surplus or diminution of the capital must be clearly constituted. If a trade is included in the property of the minor, the court must be satisfied with the authenticated statement submitted to it, or with the so called balance, and it must remain a secret. Against a guardian, who neglects to render the account within the time fixed, legal coercive measures suited to the circumstances must be applied.

§. 240.

If the minor possesses immovable estates in different provinces, the administration of which is entrusted to one guardian alone, the guardian must keep an extra account for each province and submit it to the authority of the province; but he is at liberty, to apply the surplus of the property situated in one province for the benefit of the minor in another province.

§. 241.

The court of ward is bound to have the accounts of the guardian examined and corrected according to the special prescriptions by accountants and experts, and to communicate the resolution, which the court has come to, to the guardian.

§. 242.

If anything has been forgotten in the accounts, or if any other mistake has occured, this cannot be prejudicial either to the guardian, or the minor.

§. 243.

A minor can neither appear before the tribunal as plaintiff or defendant; either the guardian must himself represent him or have him represented by another.

§. 244.

A minor is, it is true, authorized, to acquire something for himself by allowed acts without the co-operation of his guardian; but he can without the consent of the guardianship neither alienate any of his property, nor take upon himself an obligation.

§. 245.

Minors cannot especially conclude a valid marriage without the consent of the guardianship (§§. 49—51).

§. 246.

If the minor has entered into service without the consent of his guardian, the guardian cannot recall him without some important reason before the expiration of the legal or stipulated term; whatever he acquires in this or another manner by his assiduity, he can freely dispose of and can contract obligations in regard to it, as well as in regard to those things, which have been handed to him for his use, after having attained the years of discretion.

§. 247.

The court of ward can allow a minor, who has completed his twentieth year, the own free administration of the clear surplus of his income; with regard to this amount entrusted to his administration he is authorized to bind himself arbitrarily.

§. 248.

A minor, who after having completed his twentieth year himself declares in undertaking a business, that he has attained his majority, is answerable for all the damage, when the other party had not an opportunity of making enquiries as to the truth of the allegation before concluding the business. In general he is answerable not only with his person, but also with his property in regard to other forbidden acts, and for the damage caused by his fault.

§. 249.

The guardianship ceases entirely on the death of a minor. But should the guardian die, or be dismissed, another must be appointed according to the prescription of the law (§§. 198 and 199).

§. 250.

The guardianship ceases also directly, when the father takes upon himself again his power, in exercising which he was interrupted for some time (§. 176).

§. 251.

The guardianship ceases also directly, when the pupil has attained his majority; still the court of ward can on the application of the guardian or after having heard him and the relations, order the continuance of the guardianship for a longer or indefinite period on account of bodily or mental defects of the pupil, on acount of dissipation, or for other important reasons. But this disposition must be made publicly known within a suitable term before the commencement of the majority.

§. 252.

The court of ward can, after having obtained the opinion of the guardian and also in case of need of the nearest relations, grant a minor, who has completed his twentieth year, the dispensation of age and declare him of full age. If the carrying on of a trade or a business is granted to a minor by the authorities, he is on that account at the same time declared of age. The declaration of majority has quite the same legal effect as the really attained majority.

§. 253.

The dismission of the guardian is ordered by the tribunal in some cases ex officio, in others, when it is applied for.

§. 254.

A guardian must be dismissed ex officio, when he administers the guardianship contrary to his duty; when one recognizes

him as incapable; or when, with regard to him, such difficulties arise, which, according to the law, would have excluded him from taking upon himself the guardianship.

§. 255.

When a mother, who manages the guardianship of her child, marries again; she herself or the co-guardian must give notice of it the court of ward for their decision whether the continuation of the guardianship is to be granted to her.

§. 256.

Has the testator or the tribunal appointed a guardian only for a certain period, or excluded him for a certain case, which may arise, he must be dismissed as soon as the time has expired, or the case determined has occured.

§. 257.

If during the guardianship such reasons arise, which according to the laws would have liberated or excluded the guardian from taking it upon himself, he is in the former case authorized, but in the latter bound, to apply for his dismission.

§. 258.

A guardian, on whom one has imposed the guardianship as the supposed nearest relation of the minor, is at liberty to propose a nearer and suitable relation discovered afterwards in his stead; but the nearer relation has not the right to demand, that a person not so nearly related cede to him a guardianship, which he has already entered upon; except he was prevented giving notice beforehand.

§. 259.

The mother or the brother can, if they were themselves minors at the time, the guardianship was established, claim the guardianship after having attained their majority. Every relation is also at liberty to claim the guardianship within a year, if the tribunal has nominated for guardians persons, who are not relations.

§. 260.

When a female minor marries, it depends upon the decision of the tribunal, whether the committeeship shall be ceded to her husband (§. 175).

§. 261.

A guardian can as a rule only give up the guardianship at the close of the tutelar year, after his successor has regularly taken upon himself the administration of the property. But should the tribunal find it necessary for the security of the person or of the property, they can also immediately remove him from the guardianship.

§. 262.

A guardian is bound to deliver his final accounts to the tribunal at furthest within two months after the expiration of the guardianship and receives, after they have been found correct, a document testifying, that he has honestly and properly administered his office. This document however does not release him from the obligation on account of a deceitful act, which may be discovered later.

§. 263.

It is the duty of the guardian to deliver the property to the pupil, who has attained his majority, or to the newly appointed guardian at the close of a guardianship on receiving a receipt, and to prove to the tribunal that he has done so. The inventory of the property, which has been taken, and the yearly approved accounts serve as a basis for such a delivery.

§. 264.

A guardian is in general answerable only for his own fault and not for the fault of the persons subordinate to him. But if he has knowingly appointed incapable persons, or retained them, or not insisted on compensation for the injury caused by them; he is also answerable for this negligence.

§. 265.

Even the court of ward, which has neglected its office to the prejudice of a minor, is answerable for it, and when other means of compensation are wanting, is bound to make good the injury.

§. 266.

The tribunal can allot to zealous guardians a proportionate yearly reward from the income, which has been saved; still this reward dare not exceed five per cent of the clear income and amount at most to four thousand florins a year.

§. 267.

When the property of the minor is so limited, that but little or nothing can be saved yearly; at least at the conclusion of the guardianship a reward proportioned to the circumstances can be allotted to a guardian, who has preserved the property undiminished or procured the minor a respectable station in life.

§. 268.

A guardian, who considers himself aggrieved by an order of the court of ward, must bring his complaint first of all before the same tribunal, and only, when this was fruitless, have recourse to the higher tribunal.

§. 269.

The tribunal has to appoint a curator or administrator for persons, who are not able to attend themselves to their own affairs, and cannot themselves protect their rights, if the fatherly or tutelar power does not take place.

§. 270.

This case occurs for minors, who possess immovable property in another province (§. 225); or cannot be represented by the father or guardian in a particular case; for persons of full age, who have become mad or idiotic; for declared dissipated persons; for unborn persons; at times also for deaf and dumb persons; for persons, who are absent, and for criminals.

§. 271.

The tribunal must be applied to, to appoint an especial curator for the minor in affairs, which occur between parents and a child being a minor, or between a guardian and his pupil.

§. 272.

Should legal disputes arise between two or several minors, who are under one and the same guardian, this guardian dare not represent either of the minors, but he must apply to the tribunal to appoint another curator for each separately.

§. 273.

Only those can be considered as mad or idiots, who have judicially been declared so after a strict examination of their behaviour and after hearing the opinion of the physicians nominated for this purpose by the tribunal. Such persons must be declared by the tribunal as dissipated, who, it is apparent from the information given, and the examination, which has taken place in consequence, spend their property in an inconsiderate manner and who expose themselves or their family to future want by wanton borrowing, concluded under ruinous conditions. In both cases the judicial declaration must be publicly proclaimed.

§. 274.

With regard to unborn persons an administrator is nominated either for the posterity in general, or for a foetus, which already exists (§. 22). In the first case the administrator has to provide, that the posterity may not be prejudiced in a succession destined for them; but in the second case, that the rights of the still unborn child may be preserved.

§. 275.

Deaf and dumb persons, if they are at the same time idiots, remain continually under guardianship; but if they are able, after entering upon their twenty fifth year to administer their affairs, no curator can be appointed for them without their consent; only they are never to appear before the tribunal without council.

§. 276.

The appointment of a curator for persons, who are absent, or for participators in a business, who are for the moment still unknown to the tribunal, takes place, when they have not left behind them a regular representative, and when without such a representative their rights would be in danger by delay, or the rights of another interrupted in their course. If the place of residence of a person, who is absent, is known, his curator must inform him of the state of his affairs, and care for these affairs, when no other measure is taken, in the same manner as those of a minor.

§. 277.

If some one, supposing the requisites determined by the law in §. 24 are extant, applies for the judicial declaration of the death of a person, who is absent, the tribunal has first of all to appoint a curator for the person, who is absent; he is then to be summoned by an edict, the term of which is fixed for a year, with the addition, that the tribunal, if he does not appear within this time, or if he does not inform the tribunal in another way of his existence, will proceed to the declaration of his death.

§. 278.

The day, on which a declaration of death has obtained its validity at law, is considered as the legal day of the death of a person, who is absent; still a declaration of death does not exclude the proof, that the absent person has died sooner or later, or that he is still living. If such a proof is established, the person, who on the ground of the judicial declaration of death has taken possession of a property, is to be treated like another bona fide possessor.

§. 279.

A curator is to be appointed for a criminal sentenced to the strictest or strict imprisonment, if he possesses property, which would be exposed to danger by a punishment, which lasts for a longer period.

§. 280.

The tribunal, to which the appointment of a guardian belongs, must, as a rule, nominate also the curator with the same precaution and according to the same principles. But if it is a question of the administration of a thing or business, which belongs to another jurisdiction, this tribunal has also to appoint the curator.

§. 281.

Whoever possesses the proper qualities for the tutelar office, can also take upon himself a committeeship. For the committeeship exist also the same reasons for excuse and rights of preference, as for the guardianship.

§. 282.

The rights and obligations of the curators, who have only to care for the administration of the property, or at the same time for the person entrusted to their protection, are to be decided according to the prescriptions given to the guardians.

§. 283.

The committeeship ceases as soon as the matters entrusted to the curator are finished, or when the reasons, which have prevented the person under committeeship administering his own affairs, cease. Whether a mad person or an idiot has recovered the use of his reason, or whether the will of a dissipated person has improved thoroughly and lastingly, must be decided after a strict examination of the circumstances, by continous experience, and in the first case at the same time from the certificates of the physicians appointed by the tribunal for the examination.

§. 284.

The peculiar precautions to be taken for the guardianship and committeeship of peasants are contained in the political laws.

Second Part.

The law determining the rights to things.

Of things and their legal classification.

§. 285.

Every thing, which differs from the person and serves for the use of men, is called a thing in the legal sense.

§. 286.

The things in the territory of the state are either the property of the state, or private property. The latter belongs to single or juridical persons, to smaller societies or whole communities.

§. 287.

Things, which are left to the appropriation of all the members of the state, are called things open to every occupant. Those, which they are only permitted to use, namely: high-roads, streams, rivers, sea-ports, and sea-shores, are called universal or public possessions. Whatever is destined to cover the expenditure of the state, namely the mint-regal, the post-regal and other regals, the domains, the mines and salt-works, the duties and customs, is called public property.

§. 288.

In the same manner things, which, according to the constitution of the country, are destined for the use of every member of a community, form communal possessions; but those, the income of which is destined to cover the communal expenses, the communal property.

§. 289.

Even the property of the Sovereign, which He does not possess in His qualification as head of the state, is considered as private property.

§. 290.

The provisions contained in this private law in regard to the legal mode of acquiring, preserving and transferring to another the property in things, are as a rule also to be observed by the administrators of the state-and communal property. The exceptions in regard to the administration and the use of these possessions, and the especial provisions are to be found in the public law and in the political ordinances.

§. 291.

With regard to the difference of their qualification, the things are divided into corporeal and incorporeal; into movable and immovable; into consumable and inconsumable; into valuable and invaluable.

§. 292.

Coporeal things are those, which strike the senses; in the contrary case they are called incorporeal, f. i. the right of shooting, fishing and all other rights.

§. 293.

Things, which without a violation of their substance can be removed from one place to another, are movable, in the contrary case they are immovable. Things, which in themselves are movable, are in the legal sense considered immovable, if they form the appurtenance of an immovable thing, either by virtue of the law or by virtue of the determination of the proprietor.

§. 294.

Under appurtenance one understands whatever is placed in lasting connection with a thing. It comprehends not only the accession of a thing, in so far as it has not yet been separated from the same; but also the accessories, without which the prin-

cipal thing cannot be used, or which have been destined for the lasting use of the principal thing either by the law or the proprietor.

§. 295.

Grass, trees, fruit and all useful things, which the earth produces on its surface, remain immovable property as long as they have not been separated from the ground. Even the fish in a pond and the game in a wood become only movable things, when the pond has been fished and the game caught or killed.

§. 296.

The grain, the wood, the fodder and all other products, although they have already been got in, as well as all cattle and all the instruments and implements belonging to an estate, are also considered immovable things as far as they are required for the continuation of the regular economy.

§. 297.

In the same manner things, which have been raised on the ground with the intention, that they shall permanently remain there, namely, houses and other buildings with the atmosphere, which is over them in the perpendicular line belong to immovable things; further not only every thing, which is in lasting connection with the ground and the walls, the fixtures, namely brewing coppers, brandy distillery boilers, cupboards fixed in the walls; but also the articles, which are destined for the continual use of a whole f. i. well buckets, ropes, chains, apparatus for extinguishing fire and so on.

§. 298.

Rights are reckoned to movable things, if they are not connected with the possession of an immovable thing, or if they are not declared for an immovable thing by the constitution of the country.

§. 299.

Active debts are not changed into immovable property, when they are secured on an immovable estate.

§. 300.

Immovable things are subject to the laws of the district, in which they are situated; all other things on the contrary are, the same as the person of their proprietor, under the same legislation.

§. 301.

Things, which without being destroyed or consumed, do not afford the common advantage, are called consumable; but those of a contrary qualification inconsumable things.

§. 302.

A comprisal of several individual things, which are to be considered as one thing and which are generally designated by a common name, forms a collective thing and is regarded as a whole.

§. 303.

Valuable things are those, the value of which can be fixed by their comparison with others, for the purpose of commerce; services, manual and spiritual work belong to them. Things on the contrary, [the value of which cannot be fixed by a comparison with other things in commerce, are called invaluable things.

§. 304.

The fixed value of a thing is called its price. If the evaluation is to be made by the tribunal, it must be made by fixing a certain sum of money.

§. 305.

If a thing is valued according to the use which it affords in regard to time and place, commonly and generally, its ordinary and common price is fixed; but if one takes into consideration the peculiar circumstances and the predilection of the person, who is to be compensated for its value, which predilection is founded

on the accidental qualities of the thing, an extraordinary price arises.

§. 306.

In all cases, where no other agreement has been come to, or where the law has not disposed otherwise, the common price must be taken as a direction in valuing a thing.

§. 307.

Rights, which belong to a person over a thing without regard to certain persons, are called real rights. Rights, which arise direct from a law, or from an obligatory act, in regard to a thing only towards certain persons, are called personal rights to things.

§. 308.

Real rights in things are the right of possession, of property, of pledge, of easement and inheritance.

First subdivision of the laws concerning the rights to things.

Of real rights.

Chapter the first.

Of the possession.

§. 309.

Whoever has a thing in his power or custody, is called the holder of it. If the holder of a thing has the intention to keep it as his own, he is the possessor of it.

§. 310.

Persons, who have not the use of their reason, are incapable themselves of acquiring a possession. They are represented by a guardian or curator. Persons under the age of discretion, who have passed the years of childhood, can take possession of a thing for themselves alone.

§. 311.

All corporeal and incorporeal things, which are an object of legal commerce, can be taken possession of.

§. 312.

Corporeal movable things are taken possession of, by physical seizure, by leading away or by the custody; but immovable things by setting foot upon, by bordering, by fencing in, by marking or by working. One acquires the possession of incorporeal things or rights by using them in one's own name.

§. 313.

A right is made use of, when some one demands something of another as an obligation, and the latter performs it for him; further, when some one applies the thing belonging to another with his consent to his own benefit; lastly, if another person in consequence of a prohibition from some one else omits, what he otherwise would have been authorized to do.

§. 314.

One acquires the possession both of rights and corporeal things, either directly, when one gets into one's power rights and things, which are vacant; or indirectly, if one gets into one's power a right or a thing, which belongs to another.

§. 315.

By seizing directly and by seizing indirectly, but wilfully, one obtains only the possession of so much, as one has really seized, put foot on, made use of, marked, or has brought into one's own custody; by the indirect seizure, when the holder delivers a right or a thing in his name or in the name of another to us, one receives every thing, which the former holder has had and has delivered up by distinct signs, without its being necessary to receive especially every part of the whole.

§. 316.

The possession of a thing is called legitimate, when it rests on a valid title, that is on a legal ground suitable for the acquisition. In a contrary case it is called illegitimate.

§. 317.

The title for vacant things exists in the inborn liberty to acts, by which the rights of other persons are not violated; for other things in the will of the former possessor, or in the sentence of the judge, or lastly in the law, by which the right of possession is given to some one.

§. 318.

The holder, who detains a thing not in his own name, but in the name of another, has still no legal ground to take possession of this thing.

§. 319.

The holder of a thing is not authorized to change of his own accord the reason of his custody and to arrogate to himself by doing so a title; but still the person, who till now legitimately possessed a thing in his own name, can transfer the right of possession to another and keep it for the future in the name of the latter.

§. 320.

By means of a valid title one receives only the right to possess a thing, but not the possession itself. Whoever has only the right to possess, is not allowed in case of refusal to put himself in possession wilfully; he must demand it from the ordinary judge alleging his title by means of legal procedings.

§. 321.

Where so called provincial tables (tabulae provinciales), records of a town, or registers of landed property or other similar public registers are introduced, the legitimate possession of a real right in immovable things is only attained by the proper entry in these public books.

§. 322.

If a movable thing has been delivered by degrees to several persons; the right of possession belongs to him, who has it in his power. But if the thing is immovable and public books exist; the right of possession belongs exclusively to him, who is inscribed as the possessor of it.

§. 323.

The possessor of a thing has the legal presumption of a valid title in his favour; he cannot therefore be summoned to allege it.

§. 324.

This summons does not even take place, when some one maintains, that his adversary's possession is not consistent with other legal presumptions f. i. with the freedom of property. In such cases the adversary, who maintains it, must complain before the ordinary judge and prove his supposed better right. In case of doubt the possessor has the preference.

§. 325.

The criminal and political laws decide, how far the possessor of a thing, the traffic in which is forbidden, or which seems to have been purloined, is bound to allege the title of his possession.

§. 326.

Whoever from probable reasons considers the thing, he possesses, his own, is a bona fide possessor. A mala fide possessor is one, who knows or must suppose from the circumstances, that the thing in his possession belongs to another. One can be an illegitimate (§. 316) and still a bona fide possessor from errors in facts or from ignorance of the legal provisions.

§. 327.

If one person possesses the thing itself, but another the right to all or some of the produce of this thing; one and the same person can, when he exceeds the limits of his right, be in different respects a bona fide and a mala fide, a legitimate and an illegitimate possessor.

§. 328.

In case of a law-suit it must be decided by judicial sentence, whether the possession is bona or mala fide. In case of doubt the presumption is, that the possession is bona fide.

§. 329.

A bona fide possessor can alone for the reason of the bona fide possession make use of, consume and even destroy the thing, which he possesses, at his will, without any responsability.

§. 330.

All the fruits arising from the thing belong to the bona fide possessor, as soon as they are separated from the thing. All other produce already raised also belongs to him, as far as it has already become due during the quiet possession.

§. 331.

If the bona fide possessor has either incurred a necessary expense for the continual preservation of the substance or a useful expense for increasing the still existing produce; compensation is due to him according to the actual value, as far as it does not exceed the expense really incurred.

§. 332.

Of the expenses, which have been incurred only for pleasure and for beautifying, so much only is to be compensated, as the thing has really gained by it according to the common value; still the former possessor has the choice to remove everything for himself, that can be taken away without injuring the substance.

§. 333.

Even the bona fide possessor cannot demand the price, which he has given his predecessor for the thing delivered to him. But whoever has acquired for himself in a bona fide manner a thing belonging to a third person, which the proprietor would otherwise scarcely have obtained again, and has in doing so procured the proprietor a profit, which can be proved, can demand a suitable compensation.

§. 334.

It is determined in the chapter treating of the right of pledge, whether a bona fide possessor has the right to retain the thing on account of his claim.

§. 335.

The mala fide possessor is bound not only to return all the advantages obtained by the possession of a thing belonging to

another, but also to replace those, which the injured person would have obtained, and all the damage caused by his possession. In case the mala fide possessor has obtained possession by an act forbidden by the criminal laws, the compensation extends itself to the value of the peculiar predilection.

§. 336.

If the mala fide possessor has incurred an expense for the thing, the provisions given in the chapter of the authorization, in regard to an expense incurred by a manager of a business without authority, are to be applied.

§. 337.

The possession of a community is to be considered according to the bona fide or mala fide of the persons in power acting in the name of the members. Still the persons acting mala fide must always replace the damage both to the bona fide members and the proprietor.

§. 338.

The bona fide possessor also, if he is condemned by judicial sentence to the restitution of the thing, is from the period of the complaint being delivered to him, to be treated the same as a mala fide possessor in regard to the compensation of the produce and the damage, as well as in regard to the expense; still he is only responsable for the accident, which the thing would not have suffered with the proprietor in case he has delayed the delivery of the thing by a wilful lawsuit.

§. 339.

The possession may be of whatever description, no one is authorized to disturb it wilfully. The person disturbed has the right to demand judicially the interdiction of the encroachment, and compensation for the damage, which can be proved.

§. 340.

If the possessor of an immovable thing or a real right is endangered in his rights by the carrying out of a new building,

water-works or another work, without the manager of the work having protected himself against him according to the provision of general procedure, the person endangered is justified in demanding from the tribunal an interdiction of such an alteration and the tribunal is bound to decide the matter as quick as possible.

§. 341.

Till the affair is decided, the continuation of the work is, as a rule, not to be permitted by the tribunal. Only in case of an approaching, apparent danger, or when the manager of the work gives suitable security, that he will place the thing in the former state and compensate the damage, the interdictor on the contrary in the latter case does not give any similar security for the consequence of his interdiction, the provisional continuation of the work is to be granted.

§. 342.

Whatever is ordered in the preceding §§. in regard to a new construction, is also to be applied to the pulling down of an old building or other work.

§. 343.

If the possessor of a real right can prove that an already existing building belonging to another or another thing belonging to some one else is about to fall down and evidently threatens to injure him; he is justified in urging judicially security, if the political authority has not already cared sufficiently for the public security.

§. 344.

To the rights of possession belongs also the right to protect one's self in one's possession and in case, the judicial assistance should come too late, to drive off force with suitable force (§. 19). The political authority has besides to care for the preservation of the public peace as well as the criminal court for the punishment of public acts of violence.

§. 345.

If some one forces himself or sneaks secretly by fraud or by entreaty, into the possession, and endeavours to change into a continual right that, which has been permitted him from kindness, without taking upon himself a lasting obligation; the possession in itself illegitimate and mala fide becomes besides spurious *(vitiosa)*; in contrary cases the possession is considered not spurious *(non vitiosa)*.

§. 346.

One can bring a complaint against every spurious possessor both for the restitution to the former state, as well as for compensation. The tribunal must order both after legal proceedings, even without regard to a better right, which the person complained against may have to the thing.

§. 347.

If it is not directly apparent, who is in a non spurious possession and how far the one or the other party has a claim to judicial support; the thing, which forms the object of dispute, is entrusted so long to the custody of the tribunal or a third person, till the dispute in regard to the possession has been tried and decided. The person condemned can still after this decision institute the complaint on the ground of an assumed better right to the thing.

§. 348.

If the mere holder is requested at the same time by several claimants to the possession for the delivery of the thing and if there is one amongst them, in whose name the thing is kept; the thing is to be delivered to him in preference to the others and the delivery notified to the others. If there is no one, who can allege this fact, the thing is entrusted to the custody of the judge or a third person. The judge must examine the legal grounds of the claimants to the possession, and decide the matter.

§. 349.

The possession of a corporeal thing ceases in general, when

it is lost without any hope of its being found again; when it is voluntarily relinquished; or comes into the possession of another.

§. 350.

The possession of those rights and immovable things, which form an object of the public books, ceases, when they are struck out from the provincial tables, records of a town, or registers of landed property; or if they are entered in the name of another.

§. 351.

With regard to other rights the possession ceases, when the contrary party declares, that he is no longer willing to perform, what he has till now performed, if he no longer suffers the exercise of the right of another, or if he no longer pays attention to the interdiction to undertake something, but the possessor in all these cases acquiesces in it, and does not sue for the preservation of the possession. From the mere non-exercise of a right the possession is not lost, except in the cases of prescription determined by the law.

§. 352.

As long as the hope of recovering a lost thing still exists, one can maintain the possession of it by the mere will. The absence of the possessor, or the subsequent incapability to acquire a possession, do not annul the possession already acquired.

Chapter the second.

Of the right of property.

§. 353.

Every thing, that belongs to some one, all his corporeal and incorporeal things are called his property.

§. 354.

Regarded as a right, property is the competence of disposing voluntarily of the substance and the produce of a thing and excluding every one else from it.

§. 355.

All things in general are objects of property and every one, whom the laws do not expressly exclude, is justified in acquiring the same himself, or through another in his name.

§. 356.

Whoever maintains therefore, that a legal impediment stands in the way of a person, who wishes to acquire something, either in regard to his personal capacity or in regard to the thing, which is to be acquired, is bound to prove it.

§. 357.

If the right to the substance of a thing is united in one and the same person with the right to the produce, the right of property is complete and undivided. But if one person has only a right to the substance of a thing; the other on the contrary in addition to a right to the substance the exclusive right to the produce of it, the right of property is then divided and incomplete for both parties. The former is called lord paramount; the latter usufructuary proprietor (*dominus utilis*).

§. 358.

All other kinds of restrictions imposed by the law or by the will of the proprietor do not remove the integrity of the property.

§. 359.

The separation of the right to the substance from the right to the produce arises partly from the disposition of the proprietor; partly from legal provision. According to the diversity of circumstances existing between the lord paramount and the usufructuary proprietor, the estates, in which the property is divided, are called fiefs, fee-farms and copy-hold-estates. The fiefs are treated of in the particular feodal-laws existing; but the fee-farms and copy-hold-estates in the chapter treating of contracts for letting and hiring.

§. 360.

From the mere payment of a continual fee or yearly rent for a parcel of land one can still not infer the division of the property. In all cases, in which the separation of the right to the substance from the right to the produce is not expressly clear, every bona fide possessor is to be considered as a complete proprietor.

§. 361.

If a still undivided thing belongs at the same time to several persons; a common property arises. In regard to the whole the co-proprietors are to be considered as one person; but as far as certain, although undivided parts are assigned to them, each co-proprietor has the complete property in the part belonging to him.

§. 362.

By virtue of the right to dispose freely of his property, the complete proprietor can as a rule employ the thing belonging to him according to his pleasure, or leave it unemployed; he can destroy it; confer it wholly or partly on others, or renounce it unconditionally, that is, relinquish it.

§. 363.

The same rights enjoy also imperfect proprietors, both lords paramount as well as usufructuary proprietors; only the one dare not undertake anything, which is in contradiction to the right of the other.

§. 364.

In general the exercise of the right of property only takes place, as far as one does not encroach in doing so upon the rights of a third person, and the restrictions prescribed in the laws for preserving and forwarding the common welfare are not transgressed.

§. 365.

If the common good requires it, a member of the state must cede even the complete property in a thing for a suitable compensation.

§. 366.

With the right of the proprietor to exclude every other person from the possession of his thing, is also connected the right to demand judicially by way of complaint for property, the thing withheld from him by every holder. Still he, who has alienated a thing in his own name at a time, that he was not the proprietor of it, but afterwards has obtained the property in it, does not possess this right.

§. 367.

The complaint does not take place against the bona fide possessor of a movable thing, when he proves, that he has acquired this thing either at a public auction, or from a tradesman authorized to carry on such a trade, or on payment from some one, to wohm the plaintiff himself has entrusted it for use, for preservation, or with whatever intention. In these cases the property is acquired by the bona fide possessors and the former proprietor is only authorized to demand compensation against those, who are answerable to him for it.

§. 368.

But, when it is proved, that the possessor could already have derived a well-founded suspicion against the bona fides of his

possession, either from the nature of the thing he had acquired, or from the strikingly low price of it, or from the known personal qualities of his predecessor, from his trade or other circumstances; he must as a mala fide possessor deliver up the thing to the proprietor.

§. 369.

Whoever undertakes the complaint for property, must prove, that the defendant detains the thing complained of, and that this thing is his property.

§. 370.

Whoever demands back judicially a movable thing, must describe it by marks, by which it is to be distinguished from all similar things of the same description.

§. 371.

Things, which do not permit ot their being distinguished in this way, for instance ready money mixed with other ready money, or obligations running in the name of the bearer, are therefore, as a rule, no subject of the complaint for property, when such circumstances do not occur, by which the complainant can prove his right to the property and by which the defendant must know, that he was not justified in appropriating the thing.

§. 372.

When the plaintiff does not succeed, it is true, with the proof of the property acquired in a thing withheld from him, but has proved the legal title and the just manner, by which he acquired the possession; he is still considered the real proprietor in regard to every possessor, who is unable to allege a title, or who is able to allege only a weaker one to his possession.

§. 373.

Therefore, when the defendant possesses the thing in a mala fide or in an illegal manner; if he can allege no predecessor or only a suspicious predecessor; or, if he has received the thing

without payment, but the plaintiff has received it for payment; he must give way to the plaintiff.

§. 374.

If the defendant and the plaintiff have an equal title to their just possession, the defendant is to have the preference by virtue of the possession.

§. 375.

Whoever possesses a thing in the name of another, can guard himself against the complaint for property by mentioning the name of his predecessor and by alleging the proofs.

§. 376.

Whoever denies the possession of a thing before the tribunal and is convicted of it, must on that account alone cede the possession to the plaintiff, still he does not lose the right, afterwards to bring in his complaint for property.

§. 377.

Whoever pretends to possess a thing, which he does not possess, and misleads the plaintiff by it, is answerable for all the damage, which may arise from it.

§. 378.

Whoever possessed a thing and relinquished it after the complaint was handed to him, must procure it back at his own expense to the plaintiff, if the latter will not have recourse to the real holder; or replace the extraordinary value of it.

§. 379.

It has been determined in the preceding chapter, what, both the bona fide and the mala fide possessor have to replace the proprietor in respect to the profit lost to him, or the damage suffered.

Chapter the third.

Of the acquisition of property by occupancy.

§. 380.

No property can be acquired without title and without a legal mode of acquisition.

§. 381.

For vacant things the title consists in the inborn liberty to take possession of them. The mode of acquisition is the occupancy, by which one seizes a vacant thing with the intention to treat it as his own.

§. 382.

Vacant things can be acquired by all members of the State by means of occupancy, as far as this right is not restricted by the political laws, or as far as some members have not the privilege of occupancy.

§. 383.

This holds good especially in regard to the catching of animals. It is determined in the political laws, to whom the right of shooting or fishing belongs; how the immoderate increase of the game must be checked, and the damage caused by the game replaced; how the stealing of honey, which is carried out by the bees of another person is to be prevented. The criminal laws determine how poachers are to be punished.

§. 384.

Domestic swarms of bees and other animals, which ara tame or have been tamed, are not an object of the free catching of animals; on the contrary the proprietor has the right to follow them on the land of another person, still he must replace any damage caused to the proprietor of the land. In case the proprietor of a

bee-hive kept for breeding has not oflolwed the swarm within two days; or in case an animal, which has been tamed, has remained away of itself for forty two days, every one can take and keep it on common ground and the proprietor on his land.

§. 385.

No private person is authorized in acquiring by occupancy the produce reserved to the State by the political ordinances.

§. 386.

Every member of the State can acquire by occupancy movable things, which the proprietor will no longer keep as his own and which he therefore relinquishes.

§. 387.

The political laws determine how far parcels of land on account of the entire omission of the cultivation, or buildings on account of the omission of the repairs, are to be considered as relinquished, or are to be confiscated.

§. 388.

In case of doubt it is not to be supposed that some one will relinquish his property; therefore no finder can consider the thing, which he has found, as relinquished, and appropriate it to himself. Still less can any one arrogate to himself strandright.

§. 389.

The finder is therefore bound to return the thing to the former possessor, if he is distinctly to be recognized from the marks on the thing or from other circumstances. If the former possessoris not known to him, the finder must, if the thing found exceeds a florin in value, publicly make known the finding of the thing within a week in the manner, which is usual at every place, and if the thing found is worth more than twelve florins, he must give notice of the occurrence to the authority of the place.

§. 390.

The authority has to publish the notice given, without mentioning the peculiar marks on the thing found, and without delay, in the manner usual at the place; but if the proprietor is not to be discovered within a suitable period, and the thing found exceeds twenty five florins in value, to advertise it three times in the public newspapers. If the thing found cannot be left without danger in the hands of the finder, the thing, or when it cannot be preserved without apparent damage, the value obtained for it at public auction, must be judicially deposited, or delivered to a third person for preservation.

§. 391.

If the former holder or proprietor of the thing found announces himself within a year from the time of the completion of the publication, and sufficiently proves his right, the thing or the money, which has been obtained for it, is to be delivered to him. But he is bound to defray the expenses, and to pay the finder at his request ten per cent of the common value as a reward. But if the reward has according to this calculation reached a sum of a thousand florins, it is to be calculated in regard to the surplus only at five per cent.

§. 392.

If the thing found is not rightly claimed by some one within a year, the finder obtains the right to use the thing or the value produced by the sale of it. If the former holder appears afterwards, the thing or the sum produced by the sale together with the interest, which may have been received, must be returned to him after deducting the expenses and the reward for finding. Only after the expiration of the term of prescription the finder, the same as a bona fide possessor, acquires the right of property.

§. 393.

Whoever neglects the dispositions enumerated in §§. 388 to 392, is answerable for all the injurious consequences. If the fin-

der neglects them, he forfeits also the reward for finding, and becomes besides guilty of fraud according to circumstances, in conformity with the criminal law.

§. 394.

Several persons, who have found a thing in common, have equal obligations and rights in regard to it. To the co-finders belongs also the person, who first discovered the thing and has striven to get it, although another got possession of it sooner.

§. 395.

If things belonging to an unknown proprietor, which have been buried, walled in or otherwise concealed, are discovered, notice must be given the same as on finding things in general.

§. 396.

If the proprietor is discovered by the outward marks or other circumstances, the thing is to be delivered to him; but he must, if he cannot prove, that he already had a knowledge of it before, pay the finder the reward for finding, fixed in §. 391.

§. 397.

In case the proprietor is not to be recognized immediately, the authority must proceed according to the dispositions of §§. 390 to 392.

§. 398.

If the discovered things consist of money, jewellery or other precious things, which have been so long concealed, that their former proprietor can no longer be discovered, they are then called treasure. The authority has to give notice of the discovery of a treasure to the government of the province.

§. 399.

The third part of a treasure is confiscated as the property of the state. Of the two remaining thirds the finder receives one, the proprietor of the ground the other. If the property in the

ground is divided, the third part falls to the lord paramount and usufructuary proprietor in equal shares.

§. 400.

Whoever on such an occasion becomes guilty of an unallowed act; whoever has sought for the treasure without the knowledge and consent of the usufructuary proprietor; or has concealed the finding; his share falls to the denunciator; or, if there is no denunciator, to the State.

§. 401.

If workmen find a treasure by chance, they are entitled as finders to a third part of it. But if they have been expressly engaged by the proprietor for the purpose of searching for a treasure, they must content themselves with the common wages.

§. 402.

The articles of war contain the dispositions as to the right of booty and things, which have been got back as booty from the enemy.

§. 403.

Whoever saves a movable thing of another from inevitable loss or ruin, is authorized in demanding from the proprietor, who requires the restitution, compensation for his expenses, and a proportionate reward not exceeding ten per cent.

Chapter the fourth.

Of the acquisition of property by accession.

§. 404.

Accession is called every thing, which arises from a thing, or which is united with it, without its having been delivered to the proprietor by some one else. The accession is caused either by nature, by art, or by both at the same time.

§. 405.

The natural produce of ground, namely, such advantages, which it produces, without being cultivated, for instance: herbs, fungus and such things, accrue to the proprietor of the ground, as well as all advantages, which arise from an animal to the proprietor of the animal.

§. 406.

The proprietor of an animal, which is impregnated by the animal of another person, is not bound to give the latter any reward, unless he has stipulated for it.

§. 407.

If an island is formed in the middle of waters, the proprietors of the land situated on both shores are exclusively authorized to appropriate to themselves the island formed, in two equal parts, and divide it between them according to the length of their parcels of ground. If the island is formed in one half of the waters, the proprietor alone, whose land lies nearer to it, has a claim to it. Islands on navigable rivers remain reserved to the State.

§. 408.

If islands are formed merely by the drying up of the waters, or by the division of the waters into several arms, or if land is inundated; the rights of the former property remain unviolated.

§. 409.

If waters take another course from their bed, before all, the proprietors, who suffer damage from the new course of the waters, have the right to be compensated by means of the bed abandoned, or from its value.

§. 410.

Except in case of such a compensation, the bed abandoned belongs, as has already been provided for an island, which has been formed, to the possessors of the adjoining shores.

§. 411.

The earth, which waters have washed on a shore imperceptibly, belongs to the proprietor of the shore.

§. 412.

But if a perceptible quantity of earth is laid on the shore belonging to another by the force of the river; the former possessor only loses his right of property in it in case he does not make use of it within a year.

§. 413.

Every proprietor of ground is authorized to secure his shore against the washing away of the river. But no one is allowed to establish such works or plantations, which alter the usual course of the river, or which could become prejudicial to the navigation, the mills, the fishing or other rights belonging to others. Such

works can in general only be made with the consent of the political authority.

§. 414.

Whoever works things belonging to another; whoever unites them with his own, mixes or intermixes them, does not acquire by it a claim to the property of another.

§. 415.

If such things, which have been worked, can be brought back to their former state; if the things united, mixed or intermixed can be separated again; every proprietor receives back, what belongs to him and he, to whom it is due, receives compensation. If the things cannot be brought back to their former state, or the separation is not possible, the thing becomes common to the participators; still he, whose thing has been united by the fault of the other, has the choice, whether he will keep the whole article in compensating the amelioration, or whether he will leave it to the other likewise for compensation. The participator, who is in fault, is treated according to the qualification of his bona fide or mala fide intention. But if no fault can be imputed to either party, the choice belongs to him, whose share is of greater value.

§. 416.

If the materials of another are only applied for the repair of a thing, the material belonging to the other devolves upon the proprietor of the principal thing, and the latter is bound according to the qualification of his bona fide or mala fide proceeding, to pay the former proprietor the value of the materials he has used.

§. 417.

If some one constructs a building on his own ground, and has employed for the purpose the materials of another, the building, it is true, remains his property; still, even a bona fide con-

structor must replace the injured person according to the general price the materials, which he has got in another way than those mentioned in §. 367; but a mala fide constructor must replace them at the highest price and besides all further damage.

§. 418.

If in a contrary case some one has built on the ground of another with his own materials, without the knowledge and consent of the proprietor, the building devolves upon the owner of the ground. The bona fide constructor can demand compensation for the necessary and useful expenses; the mala fide constructor is to be treated the same as a manager without mandate. If the proprietor of the ground has known of the construction, and has not immediately inhibited the bona fide constructor, he can only demand the common price for the ground.

§. 419.

If the building has been raised on the ground of another and with the materials of another, even in this case the property in the building accrues to the proprietor of the ground. The same rights and obligations, which have been established in the previous section, take place between the proprietor of the ground, and the constructor is bound to replace the former proprietor of the materials, according to the qualification of his bona or mala fide intention, the common or highest value.

§. 420.

What has till now been determined in regard to buildings constructed with the materials of another, is also applicable to cases, when a field has been sown with the seed of another, or has been planted with the plants of another. Such an accession belongs to the proprietor of the ground, provided the plants have already taken root.

§. 421.

The property in a tree is not to be judged of according to the roots, which spread themselves in the adjoining ground, but according to the stem, which rises from the ground. If the stem stands on the borders of several proprietors, the tree belongs to them in common.

§. 422.

Every proprietor of ground can remove the roots of a tree belonging to another from his ground, and cut away or otherwise use the branches hanging over his atmosphere.

Chapter the fifth.

Of the acquisition of property by delivery.

§. 423.

Things, which are already possessed by a proprietor, are indirectly acquired, in passing over in a legal manner from one proprietor to another.

§. 424.

The title of the indirect acquisition lies in a contract; in a disposition for the case of death; in the judicial sentence; or in the disposition of the law.

§. 425.

The mere title does not give property. The property and all real rights in general can only be acquired by the legal delivery and reception, except in the cases determined by the law.

§. 426.

Movable things can, as a rule, only be transferred by bodily delivery from hand to hand.

§. 427.

But for such movable things, which according to their nature do not admit a bodily delivery, as demands for debt, cargoes, a stock of goods or other collective thing, the law permits the delivery by signs; such a delivery takes place, when the proprietor delivers to the receiver the documents, by which the right of property is proved, or the utensils, by which the receiver is placed in a position to take exclusive possession of the thing; or when a mark is united with the thing, by which every one can distinctly recognise, that the thing has been transferred to another.

§. 428.

The thing is delivered by means of declaration, when the alienator expresses in a manner, which can be proved, his will, that he holds the thing in future in the name of the receiver; or that the receiver of the thing, which he held till now without a real right, may possess it in future on the ground of a real right.

§. 429.

As a rule things forwarded are only then to be considered as delivered, when the receiver obtains possession of them; unless the latter had himself determined or approved the manner of forwarding them.

§. 430.

If a proprietor has alienated one and the same movable thing to two different persons, to the one with delivery, to the other without delivery: it belongs to him, to whom it was first of all delivered; still the proprietor is answerable to the injured party.

§. 431.

For the transfer of the property of immovable things, the act of acquisition must be entered in the public books destined for the purpose. This entry is called intabulation.

§. 432.

Before all it is necessary for the intabulation in the public book, that the person, from whom the property is to pass over to another, is himself inscribed as proprietor.

§. 433.

For the further transfer by means of a contract it is sufficient for the estates belonging to peasants (*praedia rusticorum*), when deliverer and receiver, or even the deliverer alone appear before the tribunal, to which the estate belongs (*forum rei sitae*) and causes the intabulation of the act of acquisition in the public book.

§. 434.

But if the deliverer does not appear personally, and in all cases referring to estates belonging to the records of a town or to the provincial tables, a document in writing must be drawn up in regard to the act of acquisition, and must be signed both by the parties concluding the contract, and by two credible men as witnesses.

§. 435.

In such a document the persons, who deliver and receive the property; the thing, which is to be delivered with its boundaries; the title of acquisition; further the place and the time of the contract concluded, must be precisely notified, and the deliverer must either in this document or in a separate document declare his consent, that the receiver be entered as proprietor.

§. 436.

If the property of immovable things is to be transferred in consequence of a sentence valid in law, of a judicial deed of partition, or of a judicial surrender of an inheritance (*adictio hereditatis*); the intabulation of these documents is likewise necessary.

§. 437.

In the same manner it is not sufficient in order to acquire the property of a bequeathed immovable estate, that the disposition of the testator in general has been entered in the public books. Whoever has a claim of this description must still obtain from the authority the especial intabulation of the legacy.

§. 438.

If he, who claims the property of an immovable thing, possesses in regard to it, it is true, a creditable document, but not a document provided with all the requisites prescribed for the intabulation in §§. 434 and 435; he can still, in order, that no one may obtain a preference over him, cause the conditional entry in the public book (*inscriptio conditionata*), which entry is called prenotation (*praenotatio*). He acquires by it a conditional

right of property and he is considered, as soon, as he has justified the prenotation by virtue of a judicial sentence, the real proprietor from the time, he has handed in the application for prenotation according to the legal procedure.

§. 439.

The prenotation, which has been granted, must be made known by means of intimation handed personally both to the one, who has applied for the prenotation, as well as to his adversary. The person applying for the prenotation must bring in within a fortnight, after having received the intimation, the proper complaint, in order to prove the right of property; otherwise the prenotation, which has been obtained, is to be annulled on the application of the adversary.

§. 440.

If the proprietor has alienated one and the same immovable thing to two different persons; it belongs to the one, who has applied first of all for the intabulation.

§. 441.

As soon as the document concerning the right of property has been entered in the public book, the new proprietor enters into the legal possession.

§. 442.

Whoever acquires the property of a thing, obtains also the rights connected with it. The deliverer cannot cede rights, which are limited to his person. No one can in general cede more right to another, than he himself possesses.

§. 443.

The burdens charged on an immovable thing and noted in the public books, are taken upon one's self together with the property. Whoever does not inspect these books, suffers in all cases for his negligence. Other demands and claims, which some one has on the former proprietor, do not pass over to the new acquirer.

§. 444.

The property can in general cease by the disposition of the proprietor; by the law and by judicial sentence. But the property in immovable things only ceases, when it is struck out of the public books.

§. 445.

One must observe also for the other real rights referring to immovable things, the dispositions given in this chapter in regard to the mode of acquiring and the expiration of the right of property in immovable things.

§. 446.

The special dispositions, which exist with regard to the organization of the provincial tables and registers for landed property, contain the manner and the precautions, which are to be observed in general for the intabulation of real rights.

Chapter the sixth.

Of the right of pledge. (*De jure pignoris.*)

§. 447.

The right of pledge is the real right, conceded to the creditor, to obtain payment by means of a thing, when the obligation has not been fulfilled at the time fixed. The thing, over which the creditor has this right, is called in general a pledge.

§. 448.

Every thing, which exists in commerce, can serve as pledge. If it is movable, it is called pledge in the strict sense of the word; if it is immovable, it is called mortgage or security (*hypotheca*).

§. 449.

The right of pledge always has, it is true, reference to a valid demand, but not every demand gives a title for the acquisition of the right of pledge. The title is founded on the law; on a judicial sentence; on a contract; or the last will of the proprietor.

§. 450.

The cases, in which the law gives some one the right of pledge, are enumerated in the proper place of this code and in the procedure in cases of bankruptcy. The mode of proceeding for the civil tribunals determines, how far the court can grant a right of pledge. If the right of pledge is to be acquired by the consent of the debtor or a third person, who pledges his thing for him; the dispositions in regard to contracts and legacies serve as a direction.

§. 451.

In order to acquire the right of pledge in reality, the creditor provided with a title, must take the thing pledged into his

custody, if it is a movable one; and if it is an immovable one, he must have his demand intabulated in the manner prescribed for the acquisition of property in immovable estates. The title alone only gives a personal right to the thing, but no real right in the thing.

§. 452.

On pledging those movable things, which admit no corporeal delivery from hand to hand, one must the same as in delivering property (§. 427) use such signs, by which every one can easily obtain a knowledge of their having been pledged. Whoever neglects this precaution, is answerable for the prejudicial consequences.

§. 453.

If the intabulation of a demand in the public books does not take place on account of a want of the legal formalities in the document; the creditor can be prenoted. From this prenotation he obtains a conditional right of pledge, which, if the demand has been justified in the manner mentioned above in §§. 438 and 439, passes over in an unconditional one from the moment of the application for prenotation being brought in according to the legal way.

§. 454.

The holder of a pledge can pledge again his pledge to a third person as far, as he has a right to it, and it becomes an under-pledge so far, as the third person has delivered it at the same time to him, or has entered the underpledging over the right of pledge in the public books.

§. 455.

If the proprietor has been informed of the further pledging; he can only repay his debt with the consent of the person, who possesses the under-pledge, or he must deposit it judicially, otherwise the pledge remains liable to the holder of the under-pledge.

§. 456.

If a movable thing belonging to another has been pledged without the consent of the proprietor, he has, it is true, as a rule, the right to demand it back; but in such cases, in which the complaint for property against a bona fide possessor does not take place (§. 367), he is bound either to indemnify the bona fide holder of the pledge, or to abandon the pledge, and satisfy himself with the right of compensation against the pledger.

§. 457.

The right of pledge extends to all the parts belonging to the free property of the pledger, to the increase and accessories of the pledge, consequently also to the fruits, so long as they are not yet separated or drawn. Therefore, when a debtor pledges his estate to one creditor, and afterwards the fruits of it to another; the latter pledging is only effective in regard to the fruits already separated and drawn.

§. 458.

If the value of a pledge is no longer found sufficient to cover the debt, either from a fault of the pledger or on account of a defect in the thing, which has only been discovered later; the creditor is authorized to demand another suitable pledge from the pledger.

§. 459.

Without the consent of the pledger the creditor dare not make use of the thing pledged; he must rather preserve it accurately and answer for it, if it should be lost in consequence of his fault. If it is lost without any fault on his part, he does not therefore lose his demand.

§. 460.

If the creditor has pledged the pledge further, he is liable even for such an occurrence, by which the pledge would not have been destroyed or deteriorated, if it had remained in his custody.

§. 461.

If the creditor, who has the right of pledge, is not satisfied at the expiration of the time fixed, he is justified in demanding judicially the public sale of the pledge. The tribunal must proceed for this purpose according to the law of civil procedure.

§. 462.

Every intabulated mortgagee is, before the sale of the estate takes place, allowed to redeem the claim, on account of which the public sale has been applied for.

§. 463.

Debtors have in case of a public auction no right to bid at the same time for a thing pledged by them.

§. 464.

If the sum indebted is not redeemed by the pledge, the debtor must replace what is wanting; but what is redeemed above the sum indebted, falls also to him.

§. 465.

How far the creditor, who has the right of pledge, is bound to make use of his right of pledge, or is justified in laying claim to other property of his debtor, the law of civil procedure determines.

§. 466.

If the debtor has transferred the property of the thing pledged, during the time it was pledged, to another; the creditor is at liberty to seek first of all his personal right against the debtor, and then his full satisfaction in the thing pledged.

§. 467.

If the thing pledged is destroyed; if the creditor himself renounces legally his right to it; or if he returns it to the debtor without any reserve; the right of pledge, it is true, expires, but the demand still exists.

§. 468.

The right of pledge ceases besides with the expiration of the period, to which it was limited, consequently also with the temporary right of the pledger to the thing pledged; unless this circumstance was known to the creditor, or could have been known from the public books.

§. 469.

By the payment of the debt the right of pledge ceases. The pledger is however only bound to pay the debt on the condition, that the pledge is at the same time returned to him. In order to annul a mortgage the payment of the debt alone is not sufficient. An estate mortgaged is answerable as long as the document proving the debt is not struck out of the public books.

§. 470.

The rights of priority of the creditors, when a bankruptcy takes place, are determined by the law for procedure in cases of bankruptcy.

§. 471.

Neither the pledgee, nor any other holder of a thing belonging to another is authorized to retain the same on account of a demand, after the expiration of the right conceded to him. But he can, if the requisites determined in the law for civil procedure take place, and the thing is movable, place it in judicial custody, and lay an interdiction upon it, or, if it is immovable apply for the sequestration of it.

Chapter the seventh.

Of easements.

§. 472.

By the right of easement a proprietor is bound to permit or to omit something in regard to his own thing for the advantage of another. It is a real right, efficacious against every possessor of the thing under easement.

§. 473.

If the right of easement is connected with the possession of a piece of land for its more advantageous or more convenient use; an easement in the land arises; otherwise the easement is a personal one.

§. 474.

Easements in the land presuppose two land-holders, to one of whom, as the obligee, the land subject to easement belongs; to the other, as rightful owner, the land, in favour of which the easement has been constituted, belongs. The piece of land, in favour of which the easement has been constituted (*praedium dominans*) is either intended for economy or for another purpose; one therefore makes a distinction between field- and house-easements.

§. 475.

The house-easements are commonly: 1^{ly} the right to place the weight of one's building on the building belonging to another; 2^{ly} to introduce a beam or rafter in the wall of another; 3^{ly} to open a window in the wall of another, either for the purpose of light, or on account of the view; 4^{ly} to built a roof or a projecture over the neighbour's ground; 5^{ly} to conduct the smoke through the neighbour's chimney; 6^{ly} to conduct the wa-

ter running from the roof on to the ground of another; 7ly to pour or conduct fluids upon, or through the neighbour's ground. By these and similar house-easements the proprietor of a house is authorized to undertake something on the ground of his neighbour, which the latter must submit to.

§. 476.

In consequence of other house-easements the proprietor of the ground under easement (*praedii servientis*) is bound to abstain from something, which he would otherwise have been at liberty to do. Such things are: 8ly not raising one's house; 9ly not making it lower; 10ly not taking away light and air from the building in favour of which the easement has been constituted; 11th or not taking away the view; 12th not turning off the water running from the roof of one's house, from the ground of one's neighbour, to whom it can be useful for watering his garden, or filling his cisterns, or in another manner.

§. 477.

The principal field-easements are:

1ly the right to maintain a path, a way for driving cattle or a road for carriages upon the ground of another; 2ly to draw water to water the cattle, to turn off or conduct the water; 3ly to tend and to graze the cattle; 4ly to fell wood, to collect dried branches and brushwood, to collect acorns, to rake together the leaves; 5ly to shoot, to fish, to catch birds; 6ly to break stones, to dig for sand, to burn chalk.

§. 478.

Personal easements are: the necessary use of a thing; the usufruit; and the habitation.

§. 479.

Still easements, which in themselves are land-easements, can be conceded to the person alone; or concessions, which properly are easements, can only be granted on revocation. The deviations from the nature of an easement are still not to be presumed; whoever maintains them, is bound to prove them.

§. 480.

The title to an easement is founded on a contract, on a disposition of last will, on a sentence issued on the occasion of the division of common parcels of land, or finally on the prescription.

§. 481.

The real right of easement can in regard to immovable things, and in general in regard to such articles, as are entered in the public books, only be acquired by their registration in the same, but in regard to other things one acquires it by the modes of delivery mentioned above (§§. 426, 428).

§. 482.

All easements agree, that the possessor of a thing under easement, as a rule, is not bound to do any thing; but only to permit another the exercise of a right, or to abstain from that, which he would otherwise as proprietor have been justified in doing.

§. 483.

Consequently the expense also of the preservation and restoration of the thing, which is destined for easement, must as a rule, be supported by the person possessing the right. But if this thing is at the same time used by the person under obligation; he must contribute proportionately to the expense, and can only in ceding it to the person possessing the right, free himself, even without his consent, from the contribution.

§. 484.

The possessor of the estate in favour of which the easement has been constituted, can, it is true, exercise his right in a manner agreable to himself; still easements cannot be extended, they must on the contrary be restricted as far as their nature and the object, for which they have been constituted, permits.

§. 485.

No easement can be wilfully separated from the thing under

easement, nor can it be transferred to another thing or person. Every easement is also regarded in so far undividible, as the right attached to the piece of land can neither be altered nor divided by its enlargement, diminution or parcelling out.

§. 486.

A piece of land can be at the same time serviceable to several persons, if the prior rights of a third person do not suffer by it.

§. 487.

The legal relations for the peculiar kinds of easements are to be determined according to the principles established here. Therefore, whoever has to bear the weight of the neighbouring building; the insertion of the beam of another in his wall; or suffer the smoke of another to pass through his chimney; must contribute proportionately to the preservation of the wall, pillar, partition or chimney destined for the purpose. But one cannot demand that he should support the estate in favour of which the easement is constituted, or repair his neighbour's chimney.

§. 488.

The window-right only gives a claim to light and air; the view must be conceded especially. Whoever has no right to the view, can be forced to set bars to the window. With the window-right one is bound, to protect the opening; whoever neglects this protection, is answerable for the damage arising from it.

§. 489.

Whoever possesses the right of the water dropping from the roof (*jus stillicidii*), can let the rain-water flow freely, or through the gutters on the roof of another; he can also raise his roof; still he must take such precautions, so that the easement does not become more onerous from it. In the same manner he must clear away betimes snow, which has fallen in great quantities, as well as preserve the gutters destined for the flowing off of the water.

§. 490.

Whoever has the right to conduct the rainwater from the neighbouring roof to his land, is bound to support alone the expenses for gutters, tanks and other dispositions belonging to it.

§. 491.

If the fluids flowing away require ditches and sewers; the proprietor of the land in favour of which the easement has been constituted, must make them; he must also cover them over and clean them properly, and in this manner lighten the burden of the land under easement.

§. 492.

The right of pathway comprehends in itself the right to walk on this path, of being carried by other men, or of permitting other men to visit one. With the driving of cattle is connected the right of using a wheel-barrow; and with the carriage-road the right of driving with one or more teams.

§. 493.

On the contrary the right to walk cannot be extended without special consent, to the right of riding or being carried by animals; nor can the right of driving cattle, be extended to the right of trailing heavy burdens over the land under easement; nor the right of driving be extended to the right of driving free cattle over the same land.

§. 494.

For the preservation of the way, the bridges and small bridges, all persons or land-proprietors, who have the use of the same, contribute proportionately, consequently also the proprietor of the land under easement as far as he has a profit from it.

§. 495.

The space for these three easements must be suitable to the necessary use and the circumstances of the place. Should the ways and small bridges become unserviceable in consequence of

an inundation or from another accident; a new space must be allotted till the restauration to the former state, unless the political authority has already taken some other measure.

§. 496.

With the right of drawing the water belonging to another, access to it is also conceded.

§. 497.

Whoever has the right of conducting water from the land of another to his own; or from his land to another's, is also authorized to lay down pipes, and to establish gutters and floodgates at his own expense. The extent of these works, which is not to be exceeded, is determined by the requirement of the land, in favour of which this easement has been constituted.

§. 498.

If at the time of acquiring the right of pasture the description and number of the cattle to be driven; further the time and the extent of the enjoyment has not been determined; the quiet thirty years possession is to be protected. In cases of doubt the following dispositions serve as a direction.

§. 499.

The right of pasture extends, as far as the ordinances given for political and forest-affairs are not opposed, to every description of draught-cattle, horn-cattle and sheep, but not to swine and poultry; goats are likewise excluded in woody districts. Unclean, unhealthy and the cattle belonging to another are always excluded from the pasture.

§. 500.

If the number of the cattle driven has differed during the last thirty years; the medium of the driving during the first three years must be adopted. If it cannot be ascertained; one must have just regard, partly to the extent, partly to the quality of the pasture, and the person, who has the right, is at least not to be permitted to keep more cattle on another's pasture, than he can

keep over the winter with the forage produced by the land in favour of which the easement has been constituted. Sucking animals are not reckoned to the number fixed.

§. 501.

The period allowed for the pasturage of cattle is, it is true, in general determined by the undisputed custom introduced into every land-mark; but in no case the carrying on of the husbandry regulated by the political dispositions dare be prevented or aggravated by the grazing.

§. 502.

The enjoyment of the right of pasture does not extend itself to any other use. The authorized person dare not, either mow the grass, nor as a rule, exclude the proprietor of the land from the common pasture, but least of all injure the substance of the pasture. If damage is to be feared, he must have his cattle watched by a shepherd.

§. 503.

What has been prescribed till now in regard to the right of pasture, is to be applied proportionately also to the right of catching animals, the felling of wood, the quarrying of stone and the other easements. If some one believes, he is able to establish these rights on the co-property; the disputes, which may arise in regard to it, are to be decided according to the principles contained in the chapter treating of the community of property.

§. 504.

The exercise of personal easements is determined, if nothing else has been agreed to, according to the following principles:

The easement of use consists in some one being justified in using the thing belonging to another, without injuring the substance, merely according to his need.

§. 505.

Therefore, whoever has the right of using a thing, can with-

out regard to his other property, draw from it the profit suitable to his station in life, his business, and his household.

§. 506.

The need is to be determined according to the period, at which the use has been granted. Subsequent alterations in the station in life or the business of the person authorized do not give him a claim to a more extended use.

§. 507.

The person entitled dare not alter the substance of the thing granted to him for use, he dare not also transfer the right to another.

§. 508.

Every use, which can be got out of the thing without disturbing the person entitled to the right of using it, belongs to the proprietor. The latter is however bound to bear all ordinary and extraordinary charges incumbering the thing, and to keep it in a good state at his own expense. Only, when the expenses exceed the profit, which remains to the proprietor, the person entitled must bear the surplus, or cease using it.

§. 509.

The usufruit is the right of enjoying without any restriction a thing belonging to another, supposing the enjoyment does not injure the substance.

§. 510.

Consumable things are in themselves no object of use or usufruit, but only their value. The person entitled can dispose of the ready money according to his pleasure. But if a capital already invested is granted for usufruit or use; the person entitled can only demand the interest.

§. 511.

The usufructuary has a right to the full produce, both ordinary and extraordinary; therefore the clear gain of the shares of

a mine, which has been obtained in observing the existing laws for mining, and the wood felled according to the forest-regulations belong to him. He has no claim to a treasure, which is found in the land intended for the usufruit.

§. 512.

Only that can be considered as a clear profit, which remains after deducting all the neccessary expenses. The usufructuary therefore takes upon himself all the burdens, which were connected with the thing under easement at the time, the usufruit was granted, consequently the interest of the capital mortgaged on it. All the ordinary and extraordinary obligations to be paid for the thing, fall upon him as far, as they can be covered by the produce drawn during the existence of the usufruit; he bears also the expenses, without which the fruit could not be obtained.

§. 513.

The usufructuary is bound to keep the thing under easement, like a good householder, in the state, in which he has received it, and to provide for the repairs, redintegrations and restorations, from the produce. If notwithstanding the value of the thing under easement is diminished merely by the legal enjoyment without any fault of the usufructuary, he is not answerable for it.

§. 514.

If the proprietor carries out at his own expense, in consequence of notice given to him by the usufructuary, constructions, which have become necessary from the age of the building or from an accident; the usufructuary is bound to compensate him the interest of the capital employed in proportion to the usufruit improved by it.

§. 515.

If the proprietor cannot, or will not agree to it; the usufructuary is justified either in carrying out the construction and demanding, the same as a bona fide possessor, compensation after the expiration of the usufruit; or in demanding a suitable com-

pensation for the usufruit, which has escaped in consequence of the construction not having been carried out.

§. 516.

The usufructuary is not bound to allow without full compensation constructions, which are not necessary although otherwise beneficial for the increase of the produce.

§. 517.

The usufructuary can withdraw, whatever he has applied for the increase of the lasting produce without the consent of the proprietor; but he can only demand for still existing produce, which has been caused by the improvement, compensation, as far as a manager without power is justified in doing so.

§. 518.

In order to facilitate the proof of the mutual demands, the proprietor and the usufructuary are bound to have an authenticated description drawn up of all the things subject to easement. If this has been omitted; it is supposed, that the usufructuary has received the thing together with all the necessary requisites for the ordinary use of it in a serviceable state of middle quality.

§. 519.

After the usufruit has expired, the still existing fruits belong to the proprietor; still he must replace the usufructuary or his heirs, the same as á bona fide possessor, the expenses employed in obtaining them. The usufructuary or his heirs have a claim to other produce according to the duration of the usufruit.

§. 520.

The proprietor can, as a rule, demand from the person entitled to the use or usufruit, security for the substance only in case of danger becoming apparent. If it is not given, the thing is either to be delivered to the proprietor for a reasonable compen-

sation, or, according to circumstances, to be placed under judicial administration.

§. 521.

The easement of habitation is the right of using the habitable parts of a house for one's requirements. It is therefore an easement of use of a habitable building. But if some one is allowed to enjoy all the habitable parts of the house, without injuring the substance and without restriction; it is then a usufruit of the habitable building. The provisions given above are accordingly to be applied to the legal relations between the person entitled and the proprietor.

§. 522.

In any case the proprietor has the right to dispose of all the parts of the house, which do not strictly belong to the lodging; the necessary surveillance over his house dare not be made irksome to him.

§. 523.

In regard to easements there exists a double right of comi plaint. One can maintain the right of easement against the proprietor, or the proprietor can complain of the arrogation of an easement. In the former case the plaintiff must prove the acqusition of the easement, or at least the possession of it as a rearight, in the latter case he must prove the arrogation of the easement in his thing.

§. 524.

Easements expire in general in the same manner, in which according to the third and fourth chapter of the third part, rights and obligations in general cease.

§. 525.

The easement, it is true, is interrupted, when the land subject to easement or the land, with which the easement is connec-

ted, is ruined; but as soon as the land or the building is restored to its former state, the easement comes into force again.

§. 526.

When the property of the land subject to easement, and the land, with which the easement is connected, is united in one person, the easement ceases of itself. But if one of these united pieces of land is afterwards alienated again, without the easement having been in the meantime struck out of the public books; the new possessor of the land, with which the easement is connected, is authorized to exercise the easement.

§. 527.

If the mere temporal right of the person, who has constituted the easement, or the period, to which it has been restricted, could have been known to the holder of the easement from the public books, or in another manner; the easement ceases of itself after the expiration of this period.

§. 528.

An easement, which is granted to some one till the period, at which a third person attains a certain age, expires only at the time fixed; although the third person may have died before reaching this age.

§. 529.

Personal easements cease with death. If they are expressly extended to the heirs, in cases of doubt only the first legal heirs are to be understood. But the right granted to a family passes over to all the members of it. The personal easement acquired by a community or another moral person subsists as long as the moral person exists.

§. 530.

Continual yearly rents constitute no personal easement and can therefore according to their nature be transferred to all successors.

Chapter the Eighth.

Of the right of inheritance.

§. 531.

The complex of the rights and obligations of a deceased person, so far as they are not founded on mere personal relations, is called his succession (assets).

§. 532.

The exclusive right to take possession of the whole succession, or a part of it determined in regard to the whole, (for instance the half, a third part) is called the right of inheritance. It is a real right, which is efficacious against every one, who will arrogate the succession. He, to whom the right of inheritance is due, is called heir, and the succession in regard to the heir, is called inheritance.

§. 533.

The right of inheritance is founded on the will of the testator declared according the legal provision; on a heridatary contract admissible according to the law (§. 602), or on the law itself.

§. 534.

The three above mentioned descriptions of the right of inheiritance can also exist at the same time, so that a part determined in regard to the whole is due to one heir from the last will, to another from the contract, and to a third from the law.

§. 535.

If no such hereditary share, which has reference to the whole succession, but only a single thing, one or more things of a certain sort, a sum, or a right is bequeathed to some one;

he thing bequeathed, although its value constitutes the greatest part of the succession, is called a legacy, and he, to whom it has been left, is not to be considered as an heir, but only a legatee.

§. 536.

The right of inheritance only takes place after the death ot the testator. If a presumptive heir dies before the testator, he was not able to transfer the right of inheritance, which he had not yet obtained, to his heirs.

§. 537.

If the heir has survived the testator, the right of inheritance, even before the reception of the inheritance, passes over, like other free inheritable rights, to his heirs; if otherwise it had not yet expired by renunciation, or in another way.

§. 538.

Whoever is authorized to acquire property, can, as a rule, inherit. If some one has in general renounced the right to acquire something, or has validly resigned a determined inheritance; he has forfeited by it the right of inheritance in general, or the right to a determined inheritance.

§. 539.

The political ordinances determine how far clerical communities, or their members are capable of inheriting.

§. 540.

Whoever has injured or has attempted to injure the testator, his children, parents or spouse from a bad intention in regard to his honour, his body or property, in such a manner, that one can proceed against him ex officio, or at the request of the person injured according to the criminal laws; is unworthy of the right of inheritance as long, as it is not to be inferred from the circumstances, that the testator has pardoned him.

§. 541.

The descendants of the person, who has made himself unworthy, are, if the latter has died before the testator, not excluded from the right of inheritance.

§. 542.

Whoever has compelled the testator to the declaration of the last will, or has induced him to this declaration in a deceiptful manner, or prevented him from declaring or modifying the last will, or suppressed a last will already made by him, is excluded from the right of inheritance and remains answerable for all the damage caused by it to a third person.

§. 543.

Persons, who have judicially confessed, or have been convicted of adultery or incest, are excluded among one another from the right of inheritance on the ground of a declaration of the last will.

§. 544.

The political ordinances determine, how far natives of the country, who have left their country or the military service without proper permission, lose the right of inheritance.

§. 545.

The capacity of inheriting can only be determined according to the moment of the real falling of the succession to a person. This moment is in general the death of the testator (§. 703).

§. 546.

A capacity of inheriting acquired later, does not give a right of withdrawing from others that, which has already fallen to them in a legal manner.

§. 547.

The heir represents, as soon as he has accepted the inheritance, in regard to it the testator. Both of them are considered

as one person in regard to a third. Before the acceptance of the heir the succession is considered as if it were still possessed by the deceased.

§. 548.

The heir takes upon himself obligations, which the testator would have had to fulfil from his property. Fines inflicted by the law, to which the deceased was not yet sentenced, do not pass over to the heir.

§. 549.

To the burdens incumbent on an inheritance belong also the expenses for the funeral suitable to the customs of the place, the station in life, and the property of the deceased.

§. 550.

Several heirs are considered in regard to their common right of inheritance as one person. In this quality they stand good, before the judicial delivery of the inheritance, all for one, and one for all. The chapter treating of the taking possession of the inheritance determines how far they are answerable after the delivery has taken place.

§. 551.

Whoever can himself validly dispose of his right of inheritance, is also authorized in renouncing it beforehand. Such a renunciation operates also on the descendants.

Chapter the ninth.

Of the declaration of the last Will in general and Testaments in particular.

§. 552.

The disposition, by which a testator leaves his property, or a part of it to one or several persons, revocably, for the case of death, is called a declaration of the last Will.

§. 553.

If in a last Will an heir is nominated, it is called Testament; but if it only contains other dispositions, it is called codicil.

§. 554.

If the testator has nominated only one heir undeterminedly without restricting him to a part of the succession; he receives the whole succession. But if the only heir has been assigned merely a share of the inheritance determined in regard to the whole; the other shares fall to the legal heirs (heredibus ab intestato).

§. 555.

If several heirs have been nominated without the disposition of a division, they receive equal shares.

§. 556.

If several heirs have been nominated, and that is to say all of them to definite shares of the inheritance, which however do not exhaust the whole, the remaining shares fall to the legal heirs. But if the testator has instituted the heirs for the whole succession; the legal heirs have no claim, although he had omitted

something in calculating the amounts, or in enumerating the articles belonging to the inheritance.

§. 557.

If among several instituted heirs a definite share (f. i. a third part, a sixth part), has been alotted to some of them, but to others nothing definite; the latter receive the remaining part of he succession in equal shares.

§. 558.

If nothing remains, so much must be pro rata deducted from all the definite shares for the indefinitely instituted heir, that he may receive an equal share with the one, who has been the least avoured. If the shares are all equal, the heirs must cede so much to the indefinitely instituted heir, that he may receive an equal share with them. In all other cases, where the testator is mistaken in his account, the division must take place in a manner, by which the will of the testator is fulfilled in the best possible manner, according to the proportions declared with regard to the whole.

§. 559.

If among the instituted heirs there are persons, who in the legal succession must be considered, in regard to the others, as one person (f. i. the children of a brother in regard to the brother of the testator); they are also in the division on the ground of the testament only considered as one person. A corporation, a community, a congregation (f. i. the poor) are always regarded as one person.

§. 560.

If all the heirs have been nominated without defining the shares, or with the general expression of an equal division, and one of the heirs can, or will make no use of his right of inheritance; the share, which has become free, accrues to the other instituted heirs.

§. 561.

If one or several heirs have been nominated with a definite share of the inheritance, another or several without defining the share of the inheritance, the share, which has become free, accrues only to the one, or to several heirs, who have been instituted without defining their shares.

§. 562.

In no case the right of increase (jus accrescendi) is due to an heir definitely instituted. If therefore no indefinitely instituted heir remains; the share of the inheritance, which has become free, does not fall to one of the others, who have been nominated for a definite share, but to the legal heirs.

§. 563.

Whoever receives the share of the inheritance, which has become free, takes upon himself also the burdens connected with it, as far as they are not limited to personal acts of the nominated heir.

§. 564.

The testator must himself nominate the heir; he cannot leave the nomination of the heir to the decision of a third person.

§. 565.

The will of the testator must be declared in a determined manner, not consist merely in affirming a proposal made to him; it must be declared in a state of full consciousness, with consideration and seriousness, free from compulsion, fraud and essential error.

§. 566.

If it is proved, that the declaration has taken place in a state of rage, madness, imbecility or drunkeness, it is invalid.

§. 567.

If it is maintained, that the testator, who had lost the use of his understanding, has been at the time of the last disposition

in a perfect state of consciousness; the assertion must be placed beyond all doubt by experts, or by persons in authority, who have accurately examined the state of mind of the testator, or by other proofs, which can be depended upon.

§. 568.

A judicially declared prodigal can only dispose by his last will of the half of his property; the other half falls to the legal heirs.

§. 569.

Persons under the age of puberty are not capable of making a testament. Minors, who have not yet exceeded their eighteenth year, can only make a testament by word of mouth before the tribunal. The tribunal must endeavour to convince itself by a suitable enquiry, that the declaration of the last will takes place freely and with consideration. The declaration must be inserted in a protocoll and whatever has resulted from the enquiry, must be added to it. After the completion of eighteen years a last will can be declared without further restrictions.

§. 570.

An essential error of the testator makes the disposition invalid. The error is essential, when the testator has made a mistake in the person, whom he wished to favour or in the object, which he intended to bequeath.

§. 571.

If it appears, that the person favoured, or the thing bequeathed has only been named or described erroneously, the disposition is valid.

§. 572.

The disposition remains likewise valid, if the motive alleged by the testator is found false; unless it could be proved, that the will of the testator was entirely founded on this erroneous motive.

§. 573.

Members of a religious order are, as a rule, not authorized to make a will. But if the order has obtained a peculiar privilege, that its members can make a testament; when members of a religious order have obtained the anullation of their vows; when they have retired in consequence of the suppression of their order, abbey or monastery; or when they are appointed in such a manner, that according to the political ordinances they are no longer considered as belonging to the order, abbey or monastery, but can acquire real property; they are allowed to dispose of it by declaration of the last will.

§. 574.

A criminal, who has been sentenced to death, can, from the day of the sentence being announced to him make no valid declaration of his last will; but if he has been sentenced to the severest or severe imprisonment, as long, as his punishment lasts.

§. 575.

A validly declared last will cannot lose its validity by impediments, which may arise later.

§. 576.

The consecutive removal of the impediment does not make a last will, which was invalid from the commencement, valid. If in such a case no new disposition has been made; the right of inheritance arising from the law takes place.

§. 577.

One can make a wil ljudicially or extra-judicially; in writing, or by word of mouth; but if in writing, with or without witnesses.

§. 578.

Whoever intends to make a will in writing and without witnesses, must write the testament or codicil with his own hand

and must sign it with his name in his own hand-writing. The addition of the day, the year and the place, at which the will has been drawn up, is, it is true, not necessary, but advisable in order to avoid disputes.

§. 579.

If the testator has had a last will drawn up by another person, he must sign it with his own hand. He must further confirm before three capable witnesses, two of which at least must be present at the same time, that the draft contains his last will. Finally the witnesses must sign their names as witnesses of the last will, either in the interior of the will, or on the outside, but always on the document itself and not perhaps on a cover. It is not necessary for the witness to know the contents of the testament.

§. 580.

A testator, who cannot write, must not only observe the formalities provided in the former section, but also place, with his own hand his mark instead of his signature on the document and besides in the presence of all three witnesses. In order to facilitate a lasting proof for the identity of the testator, it is also prudent, that one of the witnesses should add the name of the testator, mentioning, that he has signed the name for him.

§. 581.

If the testator cannot read, he must have the draft read over by one witness in the presence of the two other witnesses, who have acquired a knowledge of the contents, and must confirm, that it agrees perfectly with his last will. The writer of the last will can in every case be at the same time a witness.

§. 582.

A disposition of the testator made by reference to a memorandum or to a draft has only then effect, when such a draft is provided with all the requisites necessary for the validity of a declaration of last will. With the exception of this case such

remarks in writing indicated by the testator can only be applied for the interpretation of his will.

§. 583.

One and the same document is, as a, rule, only valid for one testator. The chapter of marriage-articles contains the exception in regard to spouses.

§. 584.

A testator, who cannot, or will not observe the formalities required for a testament in writing, is at liberty to make a testament by word of mouth.

§. 585.

Whoever makes a testament by word of mouth, must seriously declare his last will before three capable witnesses, which are present at the same time and capable of confirming, that no fraud or error has occurred in the person of the testator. It is not necessary, it is true, but prudent, that the witnesses in common, or each for himself, in order to facilitate the memory, take notes themselves of the declaration of the testator, or have it noted by another as soon as possible.

§. 586.

A last disposition by word of mouth must, in order to be valid, on the demand of every one, who is interested in it, be confirmed by the coinciding evidence under oath of the three witnesses, or so far as one of them can no longer be examined, at least of the two remaining ones.

§. 587.

The testator can also make a testament before the tribunal in writing, or by word of mouth. The disposition in writing must at least be signed in the handwriting of the testator and delivered personally to the tribunal. The tribunal must draw the attention of the testator to the fact, that his own signature is to be annexed, must then seal the document judicially and make

a memorandum on the eover, as to whose last will is contained in it. A protocoll must be drawn up in regard to the business and the document deposited judicially on issuing a receipt.

§. 588.

If the testator wishes to declare his will by word of mouth; the declaration is to be drawn up in a protocoll, and the same is to be deposited sealed in the manner provided in the preceeding section with regard to the document containing the will.

§. 589.

The tribunal, which receives the declaration of the last will in writing or by word of mouth, must consist at least of two judicial persons bound by an oath, one of whom fills the office of judge in the place, where the declaration is given. The testimony of the second judicial person, but not the testimony of the judge, can be replaced by the testimony of two other witnesses.

§. 590.

In case of necessity the above mentioned persons can repair to the lodging of the testator, receive his last will in writing or by word of mouth, and then bring the business to a protocoll adding the day, year and place.

§. 591.

The members of a religious order, youths under eighteen years of age, women, persons, who have lost their understanding, blind persons, deaf or dumb persons, and those, who do not understand the language of the testator, cannot be witnesses for last dispositions.

§. 592.

Whoever has been sentenced for the crime of fraud or another crime arising from greediness of gain, cannot be allowed to act as a witness.

§. 593.

Whoever does not profess the christian religion, cannot bear witness to the last will of a christian.

§. 594.

An heir or legatee is not a capable witness in regard to the succession bequeathed to him; his or her spouse, his or her parents, children, brothers and sisters, and persons related in the same degree, and the paid inmates of the house are equally incàpable of acting as witnesses. The disposition must, in order that it may be valid, be signed by the testator in his own hand-writing; or be confirmed by three witnesses different from the persons mentioned.

§. 595.

If the testator leaves a succession to the person, who writes the last will, or his or her spouse, children, parents, brothers and sisters or persons related in the same degree; the disposition must be placed beyond doubt in the manner mentioned in the preceeding section.

§. 596.

Whatever is prescribed in regard to the impartiality and capability of the wittness, in order to place the person of the testator beyond doubt, is also to be applied to the judicial persons, before whom a last will is made.

§. 597.

For last dispositions, which are made during a voyage and in places, where the plague or other similar contagious epidemic diseases prevail, members of a religious order, women, and youths, who have completed their fourteenth year, are valid witnesses.

§. 598.

For such privileged last dispositions only two witnesses are required, one of whom is allowed to write the testament. When there is danger of contagion, it is not necessary, that both of them should be present at the same time.

§. 599.

Six months after the close of the voyage or of the epidemic disease the privileged declarations of the last will are out of force.

§. 600.

The privileges of military testaments are contained in the military laws.

§. 601.

If the testator has not observed one of the requisites prescribed here and not expressly relinquished the mere prudence, the declaration of the last will is invalid.

§. 602.

Hereditary contracts in respect to the whole inheritance or a part determined in regard to the whole of it, can validly be concluded only between spouses. The chapter treating of marriage-articles contains the dispositions in regard to this matter.

§. 603.

How far a gift in prospect of death is to be considered as a contract, or as a last will, is determined in the chapter treating of donations.

Chapter the tenth.

Of after-heirs and entailments.

§. 604.

Every testator can nominate an after-heir for the event, that the instituted heir does not obtain the inheritance; and in case the after-heir also does not obtain it, a second, and in a similar case a third, or even several after-heirs. This disposition is called a common substitution. The person nominated the first in turn becomes the heir.

§. 605.

If the testator from the two definite cases, that the nominated heir cannot be heir, or that he will not be heir, has only mentioned one, the other case is excluded.

§. 606.

The charges imposed on the heir are to be extended also to the after-heir, who takes his place, as far as they are not limited to the person of the heir by the express will, or the nature of the circumstances.

§. 607.

If the co-heirs alone have been mutually nominated after-heirs; it is to be supposed, that the testator wished to extend the proportion, in which they have been instituted, also to the substitution. But if some one is nominated as after-heir, who does not belong to the co-heirs, the share of the inheritance, which becomes free, falls to all of them in equal parts.

§. 608.

The testator can bind his heir, that he must surrender the inheritance, which he has entered upon, after his death or in

other definite cases, to a second heir nominated. This disposition is called an entailed substitution *(substitutio fideicommissaria)*. The entailed substitution comprehends taciturnly the common substitution.

§. 609.

Parents also can nominate an heir or after-heir for their children, only in regard to the property, which they leave to their children, and that even in case, the latter are not able to make a will.

§. 610.

If the testator has forbidden the heir, to make a will in regard to the succession, it is an entailed substitution, and the heir must preserve the succession for his legal heirs. The prohibition of the alienation of the thing does not exclude the right of disposing of it by a last will.

§. 611.

The rank, in which the heirs nominated in an entailed substitution are to follow one another, is not at all limited, if they are all contemporaries of the testator; they can extend to the third and fourth heir and still further.

§. 612.

If they are not contemporaries, but such after-heirs, which have not yet been born at the time of the testament being made; the entailed substitution can extend in regard to sums of money and other movable things to the second degree. In respect to immovable estates it is only valid in the first degree; still in determining the degrees only the after-heir is reckoned, who has obtained the possession of the inheritance.

§. 613.

Till the case of the entailed substitution takes place, the instituted heir has the limited right of property with the rights and obligations of a usufructuary.

§. 614.

If a substitution is expressed in a doubtful manner, it is to be interpreted in such a way, that the liberty of the heir to dispose of the property is limited as little as possible.

§. 615.

The common substitution expires as soon, as the instituted heir has accepted the inheritance. The entailed substitution expires, when none of the nominated after-heirs exist any longer, or when the case, for which it has been established, ceases.

§. 616.

Especially the entailed substitution made for a madman (§§. 608 and 609) loses its validity, when it is proved, that he was in the full possession of his senses at the time of his last disposition; or when the tribunal has granted him the free administration of his property on account of having recovered the use of his understanding; and the substitution is not revived again, although he has been placed again under a curator on account of a relapse, and has not made a last disposition in the meantime.

§. 617.

The substitution made by a testator for his child at the time, that it still had no descendants, expires, when the latter has left descendants capable of inheriting.

§. 618.

An entailment (family-entailment) is a disposition, by virtue of which property is declared as an unalienable estate for all future members, or at least for several members of a lineage.

§. 619.

The entailment is in general either a primogeniture, or a majorat (*majoratus*), or a seniority (*senioratus*); according as the founder of it has favoured with the succession, either the first-

born of the elder line; or the next of the family according to the degree, but among several equally near, the elder according to his years; or lastly without regard to the line, the eldest of the family.

§. 620.

In case of doubt the primogeniture is to be presumed rather as a majorat or seniorat; or the majorat again rather as a seniorat.

§. 621.

In the primogeniture a younger line only attains the entailment after the expiration of the elder line, so that the brother of the last possessor must give way to the sons, grand-children, great grand-children and more distant descendants of the latter.

§. 622.

The founder can also entirely invert the order of the succession, and call to the succession the last-born of the elder line or the youngest of all the lines; or in general the one, who is the next in degree, either to the founder of the entailment, the first acquirer, or the last possessor.

§. 623.

If the founder has not definitely expressed his will in reference to it, more regard is to be had for the last possessor, than for the founder of the entailment and the first acquirer. If several persons of an equal degree exist, the greater number of years is decisive.

§. 624.

If the founder disposes, that the entailment is always to fall to the next of the family; it is understood to be the one, who according to the common legal succession is the next of the male posterity. Among several equally near, the enjoyment of the entailment is divided, if the contrary is not clear from the disposition.

§. 625.

If some one has founded besides the entailment for the first; born line, a second or several entailments for the lines born later; the possessor of the first entailment and his posterity acquires only then the possession of another entailment, when no successors called to the entailment exist in the other lines, and the entailments remain only so long united in one person, till two or more lines originate again.

§. 626.

The female posterity has, as a rule, no claim to entailments. But if the founder has expressly ordained, that the entailment after the extinction of the male progeny is to pass over to the female lines; this takes place according to the order prescribed for the male successors; still the male heirs of that line, which has acquired the possession of the entailment, have the preference over the female heirs.

§. 627.

No entailment can be established without the consent of the legislative power. When its erection takes place, a proper, certified inventory of all the articles belonging to the entailment is to be drawn up, and placed in judicial custody. This inventory serves as a direction in every change of the possession, and in the separation of the entailment from the free property. The tribunal has to care according to the especial provisions for the security of the entailment.

§. 628.

The founder of the entailment has the right to revoke the institution of the entailment, as long as no one has acquired a right by the delivery, or by a contract; and the will is considered as revoked, if a legitimate male heir, who is not included in the disposition for the entailment, is born to the testator.

§. 629.

The right of property in the fortune under entailment is divided between all expectants, and the possessor of the entailment

for the time being. The former have the right of lord paramount alone; but the latter also the usufructuary property.

§. 630.

The right of lord paramount authorizes the expectants of the entailment, to demand that the bonds belonging to the entailment are deposited in the hands of the tribunal; to give notice to the tribunal of a bad administration of the estates under entailment; to propose a curator of the entailment in order to represent both the entailment and the posterity; in general to take all the necessary measures for the security of the substance.

§. 631.

The possessor of the entailment has all the rights and obligations of a usufructuary proprietor. The whole of the produce of the estate under entailment, and of the increase, but not the substance, belongs to him. On the other hand he has to bear all the charges. He is not answerable for a diminution of the substance, which has occurred without any fault on his part.

§. 632.

A possessor of an entailment can, it is true, renounce his right for himself, but in no case for the posterity, even, if it does not exist. If he mortgages the produce of the entailment, or even the estate itself under entailment; the mortgage is only good for that part of the produce, which he is justified in collecting, but not for the estate under entailment, or for the share of the produce, which belongs to the successor.

§. 633.

The possessor of the entailment can under the restriction afterwards given change the immovable estate under entailment into a capital; he can exchange parcels of land for other parcels of land; or parcel them out for a suitable rent, or give them up on hereditary lease.

§. 634.

For these alterations he requires the approbation of the ordinary tribunal. The latter must take the advice of all the known expectants; or when they are minors or absent, the advice of their curators; then the advice of the curator of the entailment and the posterity; consider the importance of the motives; and especially in granting the parcelling out of the parcels of land take care, that the measure provided in the political ordinances is observed. The equivalent stipulated for, is to be invested as a capital belonging to the entailment.

§. 635.

The possessor of the entailment can load the property under entailment with debts to the extent of one third of it; or, if it consists in capital, he can raise a third part of it. For this purpose he does not require the consent of the expectants or curators, but only the approbation of the ordinary tribunal.

§. 636.

In this third part all the charges bearing on the property under entailment, under whatever name they may be, are to be comprised in such a manner, that two thirds remain perfectly free.

§. 637.

The value of the property under entailment, when it is to be exchanged or loaded with debts, is to be determined by judicial valuation; but, if it is to be turned into money, it is to be determined by public auction.

§. 638.

The repayments of a debt bearing on an entailment are to be determined in such a manner, that five percent of the debt must be discharged yearly. A prolongation of the term is only to be permitted for important reasons.

§. 639.

If the possessor of the entailment wishes to raise again for his

use a sum from the repayments already made; he must in order to discharge it, pay besides five percent yearly.

§. 640.

The successor in the entailment is only bound to pay the debts of his predecessor contracted with judicial consent; he is only answerable for the repayments, which have fallen due for the discharge, as far as they cannot be effected from the free inheritable property of the predecessor.

§. 641.

If the predecessor has incurred considerable expense for preserving the entailment, or for important improvements in regard to it, for which expense he would have been justified in loading the property under entailment with debts; the expense must be replaced. The successors are however for this purpose justified in loading a third-part of the property under entailment with debts. The repayments are to be made in the manner provided in §. 638.

§. 642.

A creditor of the entailment cannot demand the payment of a debt, bearing on the entailment and even contracted with judicial consent, from the substance; but only from the income arising from it.

§. 643.

The produce of the last year is divided between the heirs of the predecessor and the successor in the entailment, in the same manner, as between the usufructuary and the proprietor (§. 519).

§. 644.

The entailment can be dissolved, if no posterity called to the entailment is to be presumed. But for the dissolution of the tie of entailment, together with the consent of the usufructuary proprietor and all expectants, who are to be summoned by an edict, the advice of the curator of the posterity and the judicial consent is required

§. 645.

The entailment ceases, if it is ruined, or if all the lines named in the document of foundation, have died without any hope of posterity. In the latter case the right of the lord paramount is united with the usufructuary property and the possessor can dispose over the entailment at will.

§. 646.

The foundations, by which the income of capital, parcels of land or rights are destined for establishments of public utility, for instance for ecclesiastical benefices, schools, hospitals or almshouses, or for the maintenance of certain persons, for all future times, distinguish themselves from the substitutions and entailments. The political ordinances contain the provisions in regard to foundations.

Chapter the eleventh.

Of legacies.

§. 647.

For the validity of a legacy (§. 535) it is necessary, that it is bequeathed by a capable testator to a person, who is capable of inheriting, and by a valid declaration of last will.

§. 648.

The testator can also bequeath to one or several co-heirs a pre-legacy (*praetegatum*); in regard to it they are only to be considered as legatees.

§. 649.

As a rule the legacies are burdened upon all the heirs according to their share of the inheritance, even in case the thing belonging to one co-heir has been bequeathed. It depends however upon the testator, whether he wishes to charge especially a co-heir, or also a legatee with the payment of the legacy.

§. 650.

A legatee cannot get rid of the complete fulfilment of the further legacy charged upon him for the reason, that it exceeds the value of the legacy bequeathed to him. But if he does not accept the legacy, the person, to whom it falls, must accept the commission, or abandon the legacy, which has fallen to him, to the legatee, to whom it is assigned.

§. 651.

A testator, who has bequeathed a legacy to a certain class of persons, for instance: relatives, servants, or poor persons, can

assign to the heir, or to a third person the distribution, as to which of these persons, and what, each of them has to receive. If the testator has not determined any thing in regard to it, the choice is left to the heir.

§. 652.

The testator can order a common or entailed substitution in a legacy; the provisions given in the former chapter are to be applied to them.

§. 653.

Every thing, that is in common circulation, things, rights, works and other acts, which have a value, can be bequeathed as a legacy.

§. 654.

If things are bequeathed, which, it is true, are in common circulation, but which the legatee for his person is not capable of possessing, he must be compensated for the common value.

§. 655.

Words in legacies also, are to be considered according to their usual meaning; unless it is proved, that the testator was accustomed to connect with certain expressions a particular sense peculiar to himself; or that the legacy would otherwise be without effect.

§. 656.

If the testator has bequeathed one or several things of a certain kind, but without nearer specification, and if several such things exist in the property left, the heir has the choice. But he must choose an article, which the legatee can make use of. If the legatee is allowed to take, or choose one of the several things; he can also choose the best.

§. 657.

If the testator has bequeathed one or several things of a certain kind expressly only from his property, and such things

are not to be found in the property left, the legacy loses its effect. If they are not to be found in the number indicated; the legatee must content himself with the things, which are extant.

§. 658.

If the testator does not expressly bequeath one or several things of a certain kind from his property, and such things are not found in the property left; the heir must procure them for the legatee of a quality suited to the station in life, and the exigency of the same. The legacy of a sum of money compels the heir to pay the same without taking into consideration, whether ready money exists or not in the property left.

§. 659.

The testator can leave even to a third person the choice, which of several things the legatee is to have. If this person refuses to make the choice, or if he has died before the choice has taken place; the tribunal fixes the legacy with regard to the position in life and the exigency of the legatee. This judicial determination also takes place in case, the legatee has died before the choice left to him has been made.

§. 660.

The legacy of a fixed thing, if it is repeated in one or in several dispositions, cannot be demanded by the legatee at the same time in nature and in value. Other legacies, although they consist of a thing of the same description, or of the same amount, are due to the legatee as often as they have been repeated.

§. 661.

The legacy is without effect, when the article bequeathed was already at the time of the last disposition the property of the legatee. If he has acquired it later; the common value is to be paid to him. But if he has received it from the testator himself and especially gratuitously, the legacy is to be considered as anulled.

§. 662.

The legacy of a thing belonging to another, which is not the property either of the testator, or the heir or legatee, who is charged to deliver it to a third person, is without effect. If the persons mentioned are entitled to a share or claim on the thing; the legacy is limited only to this claim or share. If the thing bequeathed is mortgaged or encumbered; the receiver takes upon himself also the charges resting upon it. But, if the testator expressly disposes, that a fixed thing belonging to another is to be bought and delivered to the legatee, the proprietor on the contrary will not alienate it for the price, at which it has been valued, this price is to be paid to the legatee.

§. 663.

The bequest of a demand, which the testator has on the legatee, binds the heir, to return the bond or to deliver to the legatee a document freeing him from the debt and the arrears, of interest.

§. 664.

If the testator bequeaths to some one a demand, which he has on a third person, the heir must give up the demand to the legatee together with the arrears of interest and the interest, that may further accrue.

§. 665.

The bequest of the debt, which the testator has to pay to the legatee, has the effect, that the heir must acknowledg the debt determinately expressed by the testator, or proved by the legatee, and must settle it without regard to the conditions or terms contained in the bond, at latest within the period determined for the settlement of the other legacies. This acknowledgement however cannot be prejudicial to the creditors of the testator, which would be exposed to danger.

§. 666.

The remission of the debt refers only to the present debt and not at the same time to the debts, which have arisen after

the bequest has been made. If the disposition making the bequest contains a remission of the right of pledge or the guarantee; hence it does not follow, that the debt also has been remitted. If the terms of payment have been prolonged; still the interest must continue to be paid.

§. 667.

If the testator owes a sum of money to a person and bequeaths an equal sum to him, it is not to be supposed, that he intended to discharge the debt by means of the legacy. The heir pays in this case the sum twice, once as a debt and then as a legacy.

§. 668.

Under the legacy of all out-standing demands, the demands founded on the public stocks, and the capital encumbering an immovable estate, or demands arising from real rights are not comprehended.

§. 669.

The dowry can be bequeathed either to free the husband from the repayment of it, or in order to bind the heir, to restore to the wife the sum or thing brought as a dowry, without proof and without deducting the expense applied to it. The provisions given for other bequeathed demands are also applicable here.

§. 670.

If the testator bequeaths an undetermined dowry to a third female person, one understands by it without taking into consideration any property she may possess, such a dowry as the father of this person would have been bound to deliver up to her according to his station in life and supposing he possessed moderate property.

§. 671.

If parents bequeath a dowry to daughters, it is, so far as it is not expressly declared to be a prelegacy, included in the legal or testamentary share of inheritance.

§. 672.

The legacy of maintenance comprehends food, clothing, lodging and the other requirements, and that is, for one's whole life, as well as the necessary instruction. All this is also to be understood under education. The education ceases with the majority. Under board, food and drinkables for one's whole life are to be understood.

§. 673.

The extent of the legacies mentioned in the preceding section, should it not be apparent from the expressly or taciturnly declared will of the testator, or from his will, which is to be inferred from the support previously given, must be determined according to the station in life, which is peculiar to the legatee, or which he has been prepared for from the maintenance he has enjoyed.

§. 674.

Under furniture (*Mobilien, Meubeln*) are to be understood only the utensils necessary for the respectable use of the lodging, under domestic furniture (*Hausrath, Einrichtung*) at the same time the utensils necessary for the housekeeping. The instruments for carrying on the trade are not included in it without a more distinct declaration.

§. 675.

If a repository, which does not exist of itself, but is only a part of a whole, has been bequeathed to some one, it is supposed as a rule, that only such articles have been bequeathed, which are to be found in the repository on the decease of the testator and for the preservation of which the repository is determined from its nature, or has generally been employed by the testator.

§. 676.

But if the repository is on the contrary a movable one, or at least a thing existing in itself, the legatee has only a claim to the repository, and not to the things itcontainin. ed.

§. 677.

If a cupboard, a case, or a drawer is bequeathed with all the things, they contain; gold and silver, jewellery and ready money, even bonds signed by the legatee in favour of the testator, are also reckoned to them. Other bonds or documents, on which demands and rights of the testator are founded, are only then reckoned to them, when nothing else is found in the repository. To a legacy consisting of fluids belong also the vessels destined for removing them.

§. 678.

Under jewels are, as a rule, understood only precious stones and real pearls; under jewellery the false stones also and the trinkets made of gold or silver, or covered with it, which serve to decorate the person; and under finery one understands such things, which besides jewellery, trinkets and articles of dress are used to decorate the person.

§. 679.

The legacy of gold or silver comprehends the manufactured and unmanufactured, but still not minted gold, and silver, nor that, which forms a part or a decoration of another article belonging to the succession f. i. a watch or snuff-box. Linen is not reckoned to clothing, and lace is not reckoned to linen, but to finery. Under equipage are to be understood the carriages and draught-horses together with the harness belonging to them, which are destined for the convenience of the testator, but not riding-horses and the riding-equipage.

§. 680.

To ready money belong also those public stocks, which in ordinary circulation represent the place of ready money.

§. 681.

Under the word: children, when the testator favours the children of another, only the sons and daughters are included;

but, when he favours his own children, the descendants also, who take their places, and who were conceived at the time of the decease of the testator, are to be included.

§. 682.

A legacy left to the relations without any further determination, falls to those, who are the next relations according to the legal succession, and the direction given above in §. 559 in regard to the partition of an inheritance among such persons, who are to be considered as one person, is also to be applied to legacies.

§. 683.

If the testator has left a legacy to his domestics and has only denoted them by their position as servants; it is supposed, that those, who at the time of his decease are in his service, are to receive it. Still in this, as well as in the other cases, the presumption can be removed by contrary stronger motives of presumption.

§. 684.

The legatee acquires as a rule (§. 699) immediately after the death of the testator a right to the legacy for himself and his successors. But the right of property to the thing bequeathed, can only be acquired according to the provisions given for the acquisition of property in the fifth chapter.

§. 685.

The legacy of single articles belonging to the succession and the rights referring to them, small rewards to the domestics and pious legacies can be demanded immediately; but other legacies only after a year from the death of the testator.

§. 686.

If a single article belonging to the succession is bequeathed as a legacy, the running interest from the time of the death of the testator, the produce, which has arisen, and every other ac-

cession are due to the legatee. He bears on the contrary all the burdens encumbering the legacy and even the loss, when it is diminished or entirely destroyed without any fault on the part of another.

§. 687.

If a sum of money, which is to be paid in periodical terms, as yearly, monthly and so on, is bequeathed to some one; the legatee acquires a right to the whole sum to be paid for this term, even if he has only survived the commencement of the term. Still the amount can only be demanded after the expiration of the term. The first term commences with the day, on which the testator died.

§. 688.

In all cases, in which a creditor is justified in demanding security from a debtor, a legatee can also require security for his legacy. In what manner the intabulation of a legacy, in order to establish a real right, must take place, has been provided above in §. 437.

§. 689.

A legacy, which the legatee cannot, or will not accept, falls to the person substituted (§. 652). If there is no substituted person, and the whole legacy has been left to several persons undivided or expressly in equal shares; the share, which one of them does not receive, accrues to the others in the same manner as the inheritance to the co-heirs. Except the two cases mentioned here, the legacy, which has become vacant, remains in the mass of property to be divided among the heirs.

§. 690.

If the whole succession is exhausted by legacies; the heir has nothing further to demand than compensation of the expenses incurred by him for the good of the mass and a suitable reward for his trouble. If he will not administer the succession himself, he must apply for the appointment of a curator.

§. 691.

If all the legatees cannot be satisfied out of the succession, the legacy of maintenance is to be paid before all the others, and the maintenance is due to the legatee from the day, on which the inheritance has fallen to the heir.

§. 692.

If the succession is not sufficient to pay the debts, other obligatory expenses and to settle all the legacies; the legatees suffer a proportionate deduction. The heir therefore is so long, as such danger prevails, not bound to pay the legacies without security.

§. 693.

But in case the legatees have already received the legacies, the deduction is determined according to the value, which the legacy had at the time of receiving it, and the produce drawn from it. Still the legatee even after having received the legacy, is always at liberty to return, in order to avoid the contribution, to the succession the legacy or the above mentioned value and the profits drawn; in regard to the ameliorations and deteriorations he is treated as a bona fide possessor.

§. 694.

The contributions, which a testator has ordered in the testament according to the political ordinances for the support of almshouses, hospitals and hospitals for invalids, and for public instruction are not to be considered as legacies; they are a duty imposed by the state, must be paid even by the legal heirs, and cannot be considered according to the principles of private law, but only according to the political ordinances.

Chapter the twelfth.

Of the mode of restricting and annulling the last will.

§. 695.

The testator can restrict his disposition by means of a condition, of a term, by an order or a declared intention. He can also modify his testament or codicil, or annul it entirely.

§. 696.

A condition is called any thing that occurs, upon which a right has been made to depend. The condition is an affirmative or a negative one, according as it refers to the event, or non-event of that, which is to occur. It is deferring, if the right bequeathed only acquires its force after the condition has been fulfilled; resolutive, when the right bequeathed ceases at the moment the condition comes into esse.

§. 697.

Perfectly unintelligible conditions are to be considered as not added.

§. 698.

The disposition, by which a right is granted to some one under a deferring and impossible condition, is invalid, although the fulfilment only became impossible afterwards, and the impossibility had been known to the testator. A resolutive and impossible condition is considered as not added. All this is to be applied also to the unallowed conditions.

§. 699.

If the conditions are possible and allowed, the right depending upon them can only be acquired by their exact fulfilment,

they may depend upon chance, on the will of the favoured heir, legatee or a third person.

§. 700.

The condition, that the heir or the legatee is not to marry, even after having attained his majority, is to be considered as not added Only a widower or a widow must fulfil the condition, when he or she has one or more children. The condition, that the heir or legatee is not to marry a certain person, can be validly imposed.

§. 701.

If the condition ordained in the declaration of the last will has already come into esse during the life of the testator, the execution of it must only then be repeated after the death of the testator, when the condition consists in an act of the heir or legatee, which can be repeated by him.

§. 702.

A condition imposed on the heir or legatee is, without the expressed declaration of the testator, not to be extended to the heir or legatee substituted by the testator.

§. 703.

In order to acquire a succession bequeathed under a deferring condition, it is necessary, that the person favoured survives the fulfilment of the condition, and that he is capable of inheriting at the time of its fulfilment.

§. 704.

If it is uncertain, whether the moment, in respect to which the testator has limited the right bequeathed, will come or not, this restriction is to be considered as a condition.

§. 705.

If the moment is of such a kind, that it must come, the right bequeathed is, the same as other unconditional rights, trans-

ferred also to the heirs of the person favoured, and the delivery only is postponed till the period fixed.

§. 706.

If it were apparent, that the time determined in the last disposition can never come, the fixing of this time is to be considered the same as the addition of an impossible condition. Only, in case the testator has probably made a mistake merely in calculating the time, the moment is to be determined according to the probable will of the testator.

§. 707.

As long as the right of the heir or legatee remains postponed on account of a condition not yet fulfilled, or of a moment, which has not yet arrived, the same rights and obligations as in the case of an entailed substitution take place in regard to the provisional possession and enjoyment of the succession or legacy; in the first case between the legal and the instituted heir, and in the second case between the heir and legatee.

§. 708.

Whoever receives an inheritance or a legacy under a negative or resolutive condition; or only for a certain period, has in reference to the person, to whom the inheritance or the legacy falls, when the condition or the moment fixed comes into esse, the same rights and obligations, which belong to an heir or legatee in reference to the entailed substitute (§. 613).

§. 709.

If the testator has bequeathed a succession in imposing a certain order upon some one, this order is to be considered as a resolutive condition, so that the succession is to be forfeited (§. 696) by the nonfulfilment of the order.

§. 710.

In case the order cannot be precisely fulfilled, one must at least endeavour to fulfil it, as far as possible. If this also cannot

take place, the person charged with the order still retains the succession bequeathed, as far as the contrary is not apparent from the will of the testator. Whoever has made himself incapable of fulfilling the order, loses the succession bequeathed to him.

§. 711.

If the testator has, it is true, expressed the purpose, for which he has determined the succession, but has not made it a duty, the person favoured cannot be bound to apply the succession to this purpose.

§. 712.

The disposition, by which the testator imposes on his heir an impossible or unallowed act, with the addition, that he is to pay a legacy to a third person in case he does not execute the order, is invalid.

§. 713.

A testament made previously is annulled by a testament made later, not only in regard to the nomination of the heir, but also in regard to the other dispositions; unless the testator does not distinctly declare in the testament made later, that the anterior testament is to remain in force entirely, or in part. This provision holds good even, when in the posterior testament the heir is nominated only to a part of the succession. The remaining part does not fall to the persons instituted in the anterior testament, but to the legal heirs.

§. 714.

By a posterior codicil, several of which can exist at the same time, previous legacies or codicils are only annulled, so far as they are in contradiction with the posterior codicil.

§. 715.

If it cannot be determined, which testament or codicil has been made later; both of them hold good, as far as they can

exist at the same time, and the provisions established in the chapter of the community of property are to be applied.

§. 716.

The addition made in a testament or codicil, that every posterior disposition in general, or every disposition not designated with a certain mark, is to be null and void, does not, it is true, prevent the testator from modifying his last will; but not his posterior will, but his previous will is supposed to be valid, when he does not expressly annul in his posterior disposition the general or especial addition above mentioned.

§. 717.

If the testator wishes to annul his disposition without making a new one; he must revoke it expressly, either by word of mouth, or in writing; or destroy the document.

§. 718.

The revoke can only validly be made in a state, in which one is capable of declaring a last will. A judicially declared prodigal can validly revoke his last will.

§. 719.

A revoke by word of mouth of a judicial or extra-judicial last disposition requires so many and such witnesses, as are necessary for the validity of a testament made by word of mouth; but a revoke in writing, a declaration in the hand-writing of the testator and signed by him, or at least a declaration signed by him and the witnesses required for a testament in writing.

§. 720.

A disposition of the testator, by which he forbids the heir or legatee, under the threatened withdrawal of an advantage to contest the last will, is never to have effect in case only the authenticity or the construction of the disposition is contested.

§. 721.

Whoever makes a cut through his signature in his testament or codicil; whoever strikes out such a signature, or effaces the whole contents of it, annuls the testament or codicil. If among several coinciding documents only one has been destroyed; one cannot infer a revoke from it.

§. 722.

If the above mentioned violations to the document only take place by chance; or if the document has been lost; the last will does not lose its effect; unless it can be proved by the evidence fixed in the law for procedure, that an accident took place, and unless the contents of the document is proved in the manner, in which a last disposition by word of mouth must be proved.

§. 723.

If a testator has destroyed a posterior disposition, but has left intact a previous disposition in writing, the anterior disposition in writing obtains force again. A previous disposition by word of mouth does not come into force by it.

§. 724.

A legacy is considered to be revoked, when the testator has called in and cashed the demand bequeathed, when he has alienated the thing bequeathed to some one and not received it back again, or when he has changed it into another thing in such a manner, that it loses its former form and its former denomination.

§. 725.

But, if the debtor has paid the demand of his own accord, if the alienation of the legacy took place from a judicial order, if the thing has been changed without the consent of the testator, the legacy remains in force.

§. 726.

If neither an heir, nor a substituted heir, will, or can accept the succession; the right of inheritance falls to the legal heirs. But the latter are bound to execute the other dispositions of the testator. If they also renounce the inheritance; the legatees are to be considered proportionately as heirs.

Chapter the thirteenth.

Of the legal succession.

§. 727.

If the deceased has not left behind him a valid declaration of the last will; if he has not disposed in it of the whole of his property; if he has not properly favoured the persons, to whom he was bound to leave a share of the inheritance on the ground of the law, or when the instituted heirs cannot or will not accept the inheritance; then the legal succession takes place entirely or in part.

§. 728.

In want of a valid declaration of the last will the entire succession of the deceased falls to the legal heirs. But if a valid declaration of the last will exists, they receive that part of the succession, which is not bequeathed to any one in it.

§. 729.

If a person, to whom the testator on the ground of the law was bound to leave a share of the succession, has been curtailed by a declaration of the last will; he can appeal to the provision of the law and judicially demand the share of the succession due to him according to the following chapter.

§. 730.

Legal heirs are first of all those, who are related to the testator by means of legitimate birth in the next line. The lines of relationship are determined in the following manner.

§. 731.

To the first line belong those, who are united under the testator as their stem, namely his children and their descendants.

To the second line belong the testator's father and mother together with those, who are united with him under the same father and mother, namely his brothers and sisters and their descendants.

To the third line belong the grandfather and mother together with the brothers and sisters of his parents and their descendants.

To the fourth line belong the testator's first great grandfather and mother together with their descendants.

To the fifth line belong the testator's second great grandfather and mother together with those, who descend from them.

To the sixth line belong the testator's third great grandfather and mother together with those, who are descended from them.

§. 732.

If the testator has legitimate children of the first degree, the whole inheritance falls to them; they may be of the male or female sex; they may have been born during the life-time of the testator or after his death. Several children divide the inheritance according to their number in equal parts. Grandchildren of still living children and great grandchildren of still living grandchildren have no right to the succession.

§. 733.

If a child of the testator has died before him, and if there are one or several grandchildren descending from the deceased child; the share, which would have been due to him, falls either to this surviving grandchild entirely, or to several grandchildren in equal shares. If one of these grandchildren has likewise died and has left great grandchildren; the share of the deceased grandchild is to be equally divided in the same manner among the great grandchildren. If there are still more distant descendants of the testator; the division is to be made proportionately, according to the provision just given.

§. 734.

An inheritance is in this manner not only then divided, when grandchildren of deceased children concur with still living

children, or more distant descendants with nearer descendants of the testator; but even then, when the inheritance is merely to be divided between grandchildren of different children; or between great grand children of different grandchildren. Therefore, there may be many or few, the grandchildren left behind by every child, and the great grandchildren left behind by every grandchild, can receive neither more nor less, than the deceased child or the deceased grandchild would have received, if they had remained alive.

§. 735.

If there is no one, who descends from the testator himself, the inheritance falls to those, who are related to him in the second line, namely to his parents and their descendants. If both his parents are still living, the whole inheritance belongs to them in equal parts. If one of these parents has died, his or her children or descendants left behind enter on his right, and the half, which would have belonged to the deceased parent of the testator, is to be divided among his or her children or descendants, according to those principles, which have been established in §§. 732 to 734 in regard to the division of the inheritance between the children and more distant descendants of the testator.

§. 736.

If both the parents of the testator have died, the half of the inheritance, which would have fallen to the father, is to be divided according to §§. 732 to 734 among his children and their descendants, whom he has left behind; but the other half, which would have fallen to the mother, among her children and their descendants. If these parents have left no other children than those begotten by them in common, or their descendants, they divide both halves equally between them. But if besides these chidren there exist other children, which have been begotten by the father, or the mother, or from the one and the other in another marriage, the children begotten in common by the father and the mother, or their descendants, receive both in regard to the paternal and ma-

ternal half the share due to them, equally with the unilateral brothers and sisters.

§. 737.

If one of the deceased parents of the testator has not left either children or descendants, the whole inheritance falls to the other still living parent. If this party is no longer living, the whole inheritance is divided among his or her children and descendants, according to the principles already mentioned.

§. 738.

If the parents of the testator have died without descendants the inheritance falls to the third line; namely to the testator's grandfather and mother and their descendants. The inheritance is then divided in two equal parts. The one half belongs to the parents of the father and their descendants; the other half to the parents of the mother and their descendants.

§. 739.

Each of these halves is divided equally between the grandfather and grandmother of the one and the other side, if they are both still living. If one of the grandfathers or the grandmothers, or both of them on the one or the other side have died, the half, which has fallen to this side, is divided between the children and descendants of these grandfathers and grandmothers, according to those principles, by which the whole inheritance is to be divided in the second line between the children and descendants of the testator's parents (§§. 735 to 737).

§. 740.

If both the grandfathers and grandmothers on the paternal and maternal side have died and there are no descendants either of the grandfather or of the grandmother on this side; the whole inheritance falls to the still living grandfather and grandmother on the other side, or after their death, to the children and descendants, they have left behind.

§. 741.

After the entire extinction of the third line the legal succession passes over to the fourth line. To this line belong the parents of the paternal grandfather and their descendants; the parents of the paternal grandmother with their descendants; the parents of the maternal grandfather with their descendants; and the parents of the maternal grandmother with their descendants.

§. 742.

If there are relations of all these four stems; the inheritance is divided into four equal parts between them and each part again is subdivided among the persons belonging to every stem, according to the same principles, by which a whole inheritance is legally divided between the testator's parents and between their descendants.

§. 743.

If one of the four stems belonging to this line is already extinct; its share does not fall to the three remaining stems; but if the extinct stem belongs to the paternal side, the half of the inheritance falls to the other stem on the paternal side; and if the extinct stem belongs to the maternal side; the half of the inheritance falls likewise to the other stem on the maternal side. But if both stems on the paternal or maternal side are extinct, the whole inheritance falls to the two stems on the other side, and if one is already extinct on this side, to the only stem still remaining on this side.

§. 744.

If no relation of the fourth line is still living, the inheritance falls to the fifth line; namely to the testator's second great grandfather and mother and their descendants. To this line belong the stem of the paternal grandfather and grandmother of the paternal grandfather; the stem of the maternal grandfather and grandmother of the paternal grandfather; the stem of the paternal grandfather and grandmother of the paternal grand-

father, the stem of the maternal grandfather and grandmother of the paternal grandfather; the stem of the paternal grandfather and grandmother of the paternal grandmother; the stem of the maternal grandfather and grandmother of the paternal grandmother; the stem of the paternal grandfather and grandmother of the maternal grandfather; the stem of the maternal grandfather and grandmother of the maternal grandfather; the stem of the paternal grandfather and grandmother of the maternal grandmother; and the stem of the maternal grandfather and grandmother of the maternal grandmother.

§. 745.

Each of these eight stems has the equal right of inheritance with the others; and if there are relations of each stem, the inheritance is divided between them in eight equal shares, and each share is subdivided again among the persons belonging to this stem, according to the directions provided for the previous lines.

§. 746.

If one of these eight stems is extinct; that, which would have belonged to the paternal grandfather and grandmother of a grandfather or a grandmother, falls to the stem of the maternal grandfather and grandmother of this grandfather or this grandmother; and that, which would have been due to the maternal grandfather and grandmother of a grandfather or a grandmother, falls to the stem of the paternal grandfather and grandmother of this grandfather or this grandmother.

§. 747.

If both stems of a grandfather or a grandmother are extinct; the shares, which belong to the paternal side of the testator, remain with the still remaining stems on the paternal side; and the shares, which belong to the maternal side of the testator, remain with the still remaining stems on the maternal side. But if of all four stems on the paternal side; or of all four stems on the maternal side no relation exists any longer; the stems still living on the other side, receive the whole inheritance.

§. 748.

If finally the fifth line is also quite extinct; the legal succession belongs to the sixth; namely to the testator's third great grandfather and grandmother and their descendants. To this line belong sixteen stems, namely the stems of those parents, from which the stem-parents of the fifth line have descended. If relations of each of these stems are living; the inheritance is divided into sixteen equal stem-shares and each stem-share is again subdivided among the relations belonging to this stem, according to the principles already mentioned.

§. 749.

If no relations are still living of some of these stems, their shares fall to those stems, which according to the provision of §§. 743 and 746 are in the nearest connection with the stems already extinct. If relations belonging to one single stem alone exist; the whole inheritance is due to them.

§. 750.

If some one is related to the testator on more than one side; he enjoys on each side the right of inheritance, which is due to him considered especially as a relation on this side (§. 736).

§. 751.

The right of inheritance in regard to a free inheritable property is limited to these six lines of the legitimate relationship. More distant relations of the testator are excluded from the legal succession.

§. 752.

Children not born in marriage and which have become legitimate by the subsequent marriage of their parents, as well as those, to whom the especial favour of §. 160 belongs, although an impediment to the marriage of their parents existed, enjoy under the restrictions contained in this §. 160 and in §. 161, even in regard to the legal succession the rights of legitimate children.

§. 753.

A legal right of inheritance only then belongs in regard to the paternal succession, to an illegitimate child, which has been declared legitimate by the favour of the Legislator, when it has been declared legitimate at the request of the father, that it may enjoy equal rights with the legitimate children in the free inheritable property.

§. 754.

Illegitimate children have in regard to the mother, as far as the legal succession in the free inheritable property is concerned, equal rights with the legitimate children. No legal right of inheritance belongs to the illegitimate children in regard to the succession of the father and the paternal relations, and further in regard to the succession of the parents, grandfather and grandmother and other relations of the mother.

§. 755.

Adoptive children have an equal right with the legitimate children, as far as concerns the legal succession in the free inheritable property of the person, who has adopted them. No right of inheritance belongs to them in regard to the relations of the adopter, or his or her spouse, without whose consent the adoption has taken place. They maintain however the legal right of inheritance in the property of their natural parents and relations (§. 183).

§. 756.

With regard to the succession of illegitimate children, which have become legitimate, or have been especially favoured by the law, the parents have the same mutual right, which has been granted to the children with regard to the succession of their parents (§§. 752 to 754). The right of succession to the property of a child, which has remained illegitimate, belongs only to the mother; the father, all the grandfathers and grandmothers and other relations of the child are excluded from it. The adoptive parents have also no legal right of inheritance to the succession

of the adoptive child; it falls to his relations according to the legal mode of succession.

§. 757.

The surviving spouse of the testator has without distinction, whether he possesses property of his own or not, as long as he lives, the enjoyment of an equal share of the inheritance with every child, when there are three or more children; but of the fourth part of the inheritance, when there are fewer than three children. The property in this part is reserved for the children.

§. 758.

If there is no child, but another legal heir, the surviving spouse receives the unlimited property in the fourth part of the succession. Still in this case, as well as in the case mentioned in §. 757, every thing is reckoned to the hereditary share, which belongs to the surviving spouse from the property of the deceased spouse by virtue of the marriage-articles, of a hereditary contract or a last disposition.

§. 759.

But if neither a relation of the testator belonging to one of the six lines mentioned above, nor another heir appointed by the §§. 752 to 756 exists, the whole inheritance falls to the spouse. Still a spouse, who has been divorced in consequence of his or her own fault, has no claim either to the inheritance of his or her spouse, or to a share of this inheritance.

§. 760.

If the spouse is also no longer alive; the succession is confiscated as heirless property, either by the fiscus or by those persons, who according to the political ordinances are justified in confiscating heirless estates.

§. 761.

The deviations from the legal succession established in this chapter, in regard to the estates of peasants, and the succession of ecclesiastical persons, are contained in the political laws.

Chapter the fourteenth.

Of the legitimate portion (portio legitima) and of the deductions to be made from the legitimate portion, or from the hereditary share.

§. 762.

The persons, whom the testator is obliged to favour in his last disposition with a part of the inheritance, are his children; and in case of their being none, his parents.

§. 763.

According to the general rule, the denomination: children, includes also the grandchildren and the great grandchildren; and the denomination: parents, all the grand parents. There is no distinction to be made here between the male and female sex; between the legitimate and the illegitimate birth, provided, that for these persons the right and the order of the legal succession would take place.

§. 764.

The part of the inheritance, which these persons are entitled to claim, is called legitimate portion; they themselves are with respect to it, called legitimate heirs.

§. 765.

The law allots to each child, as his legitimate portion, the half of what he would have obtained according to the legal succession.

§. 766.

Each legitimate heir in the ascending line, can as his legitimate portion claim the third part of what he would have obtained according to the legal succession.

§. 767.

Whoever has renounced the right of inheriting; whoever is, according to the provisions contained in the eighth chapter, excluded from the right of inheriting; or has been lawfully disinherited by the testator; has no claim to a legitimate portion, and is, in making the calculation considered as if he did not exist.

§. 768.

A child can be disinherited:

1. when he has become an apostate from Christendom;

2. when he has left the testator in distress without assistance;

3. when he has been sentenced for a crime to imprisonment for life, or for twenty years;

4. when he constantly leads a mode of life contrary to public morality.

§. 769.

The parents can also for the same reasons be excluded from the legitimate portion; and especially, when they have entirely neglected the education ot the child.

§. 770.

The legitimate portion can besides be withdrawn from a legitimate heir in general, by means of a disposition of last will on account of such acts, which according to §§. 540 to 542 make an heir unworthy of the right of inheriting.

§. 771.

The reason of disinherison must in any case, whether it has been expressed by the testator or not, be proved by the heir and it must be founded on the words and the sense of the law.

§. 772.

The disinherison is only annulled by an express revoke, which has been declared in the legal form.

§. 773.

When in case a legitimate heir being much indebted or dissipated, the just apprehension prevails, that the legitimate portion due to him, would escape entirely or for the greatest part his children, the legitimate portion can be withdrawn from him by the testator, but only under the condition, that it is bestowed upon the children of the legitimate heir.

§. 774.

The legitimate portion can be left in the form of a hereditary share or a legacy, even without expressly denominating it the legitimate portion. But it must remain entirely free for the legitimate heir. Every condition or charge, which would limit it, is invalid. When the legitimate heir is favoured with a greater share of the inheritance; it (the condition or the charge) can only be applied to the part, which exceeds the legitimate portion.

§. 775.

A legitimate heir, who has been disinherited without the conditions contained in §§. 768 to 773, can claim the entire legitimate portion due to him, and when he has been curtailed in the net amount of the legitimate portion, its redintegration.

§. 776.

When among several children, whose existence was known to the testator, one has been entirely passed over in silence; he can also claim only the legitimate portion.

§. 777.

But if it can be proved by circumstances, that the omission of one child among several children, is only to be attributed to the fact, that the testator had no knowledge of its existence, the omitted person is not bound to be satisfied with the legitimate portion; but can claim the portion of the inheritance, which falls to the legitimate heir, who has been the least favoured; in case however, the only still existing legitimate heir has been

nominated, or all the other legitimate heirs have been instituted to equal shares, he can claim an equal share.

§. 778.

When the testator has only one legitimate heir and he passes over him in silence on account of the error above mentioned, or if a childless testator receives only after the declaration of his last will a legitimate heir, for which legitimate heir no provision was made, in this case only the legacies left to public institutions, the legacies for the reward of services rendered, or left for pious intentions, are proportionately paid in an amount, which does exceed the fourth part of the net assets, but all other dispositions of the last will are invalidated. They come however into force again, when the legitimate heir has died before the testator.

§. 779.

When a child dies before the testator and leaves descendants; those descendants passed over in silence take, with respect to the right of inheritance, the place of the child.

§. 780.

The descendants of a child, which has been expressly disinherited in the last will, but which died before the testator, are only justified in claiming the legitimate portion.

§. 781.

If a legitimate heir in the ascending line has been passed over in silence; he can in every case demand merely the legitimate portion out of the assets.

§. 782.

If the heir can prove, that a legitimate heir passed over in silence has been guilty of one of the motives for disinheriting, mentioned in §§. 768 to 770; the omission is to be considered as a taciturn legal disinheritance.

§. 783.

In all cases, in which the hereditary share or the legitimate portion due to a legitimate heir has not been allotted to him at all, or not completely, both the instituted heirs and the legatees must contribute proportionately to its complete payment.

§. 784.

In order to be able to calculate correctly the legitimate portion, all the movable and immovable things belonging to the assets, all the rights and demands, which the testator was authorised to transfer freely to his heirs, every thing even, which an heir or legatee is indebted to the assets; must be accurately described and properly valued. The legitimate heirs are at liberty to be present at the valuation and to make their remarks with respect to it. They cannot demand a public auction for the purpose of ascertaining the real value of the articles belonging to the assets.

§. 785.

Debts and other burdens, which encumbered the property during the life-time of the testator, are deducted from the assets.

§. 786.

The legitimate portion is calculated without regard to legacies and other burdens arising from the last will. Till the actual assignation of the assets, they are, with regard to the profits and the losses, to be considered as a property, which is proportionately common to the principal and legitimate heirs.

§. 787.

Every thing, which the legitimate heirs actually receive out of the assets, by virtue of legacies or other dispositions of the testator, is taken into calculation in determining their legitimate portion.

§. 788.

Whatever the testator has given to his daughter or female grandchild as a dowry during his life-time; whatever he has given to his son or grandson for an outfit, or expressly in order to enable him to accept an appointment; or undertake any kind of business; for whatever he has employed for the payment of the debts of a child, who has attained its majority, is calculated in the legitimate portion.

§. 789.

An advance can be calculated in the legitimate portion of the parents only, when it has not been given in order to furnish the legal support (§. 154), nor from mere generosity.

§. 790.

In the succession of children on the ground of a last will the calculation only takes place, when it has been expressly ordered by the testator. On the contrary in the legal succession a child must allow, that, whatever he or she has received from the testator during his life-time, for the purposes mentioned above (§. 788), be calculated to his or her account. In the hereditary share of a grand-child is to be calculated not only, what he himself has received in a direct manner, but also, what his parents, whom he represents, have received in such a way.

§. 791.

Whatever the parents have bestowed upon a child with the exception of the cases mentioned, is, when the parents have not expressly stipulated the compensation, to be considered as a donation and not taken into account.

§. 792.

The parents can even in the case of the legal succession expressly exempt a child from the consequences of the account. But if the necessary education and provision for the other children could not be covered either from their own property, or from

the property of the parents; the child must allow, that every thing it has received beforehand for the purposes mentioned in §. 788, must be taken into account in proportion as is necessary for the education and provision of the brothers and sisters.

§. 793.

Every thing, which has been received, is calculated in the hereditary share in such a manner, that each child receives the same amount even before the partition takes place. If the assets are not sufficient for this purpose; the child, which was favoured beforehand, can, it is true, claim no hereditary share, but cannot also be compelled to a restitution.

§. 794.

When the thing received did not consist of ready money, but of other movable or immovable things, the value of the latter is to be taken into account according to the period of the reception, the value of the former on the contrary according to the period of the falling in of the succession.

§. 795.

A legitimate heir, who has even been legally excluded from his legitimate portion, must still receive the necessary maintenance.

§. 796.

A spouse has, it is true, no right to a legitimate portion; but, when no provision has been stipulated for the case of his or her surviving, and as long as he or she does not enter into a second marriage, he or she is entitled to demand the respectable maintenance, which fails. A spouse, who has been separated from a fault on his or her part, has no claim to it.

Chapter the fifteenth.

Of the taking possession of the inheritance.

§. 797.

No one dare take possession of an inheritance wilfully. The right of inheritance must be inquired into before the tribunal, and the handing over of the assets, that is to say, the delivery for its legal possession, must be obtained from the tribunal.

§. 798.

The special provisions existing in regard to judicial proceedings, determine, how far the tribunal, in case some one should die, is bound to proceed ex-officio, and what delay and precautions are to be observed in settling the affairs of the succession. In this code is laid down, what the heir, or he, who has otherwise a claim to the assets, is compelled to do, in order to obtain the possession of that, which is due to him.

§. 799.

Whoever wishes to take possession of a succession, must prove before the tribunal his legal title, whether it has fallen to him from a last disposition, from a valid hereditary contract or from the disposition of the law, and expressly declare, that he will accept the succession.

§. 800.

The entrance on the succession or the declaration, by which a person gives notice, that he claims a succession, must at the same time contain the addition, whether it takes place unreservedly or with the reserve of the legal benefit of the inventory.

§. 801.

The consequence of an unreserved entrance on the succession is, that the heir must make himself liable to all the creditors of the testator for their demands, and all the legatees for their legacies, even when the assets are not sufficient to satisfy them.

§. 802.

If the inheritance is accepted with the reserve of the legal benefit of the inventory, the inventory is to be immediately drawn up by the tribunal, at the expense of the assets. Such an heir is only answerable to the creditors and legatees so far as the succession suffices for their demands, and for any demands, which he himself may have without regard to his right of inheritance.

§. 803.

The testator cannot withdraw from the heir the reserve of this legal benefit, nor forbid the drawing up of an inventory. Even a renunciation, which has taken place in regard to it in a hereditary contract between spouses, has no effect.

§. 804.

The drawing up of an inventory can also be demanded by him, to whom a legitimate portion is due.

§. 805.

Whoever can administer his rights himself, is at liberty to enter upon the inheritance unconditionally, or with the reserve of the above mentioned legal benefit, or even to refuse it. Trustees and curators have to observe the provisions given at the proper place (§. 233).

§. 806.

The heir cannot revoke again his judicial declaration to accept the inheritance, nor alter the declaration given unconditionally, and reserve to himself the legal benefit of the inventory.

§. 807.

If among several co-heirs some of them declare themselves as heirs unconditionally; but others or even only one among them declares himself as heir with the reserve of the legal benefit mentioned; an inventory is to be drawn up and the declaration of the heir limited to this reserve, is to form the basis of the judical proceedings concerning the succession. In this, as well as in all cases, in which an inventory is to be drawn up, he also, who has made un unconditional declaration as heir, enjoys the legal benefit of the inventory as long as the inheritance has not yet been delivered to him.

§. 808.

If some one has been instituted as heir, to whom without a declaration of last will the right of inheritance would even have been due entirely or in part; he is not justified in appealing to the legal right of inheritance and frustrating in this manner the disposition of the last will. He must either enter upon the inheritance on the ground of the last will, or must refuse it entirely. But persons, to whom a legitimate portion is due, can refuse the inheritance with the reserve of their legitimate portion.

§. 809.

If the heir dies before he has entered upon or refused the inheritance, which has fallen to him; his heirs, if the testator has not excluded them, or has not instituted other after-heirs, enter into the right either to accept or refuse the inheritance (§. 537).

§. 810.

If the heir in entering upon the inheritance proves his right of inheritance sufficiently, the management and use of the assets is to be left to him.

§. 811.

The tribunal does not provide further for the security or payment of the creditors of the testator, than they themselves

demand. But the creditors are not bound to wait for a declaration of the heir. They can bring in their claims against the assets, and demand, that a curator be appointed, to represent the assets, against whom they can carry out their demands.

§. 812.

If a creditor of the succession, a legatee, or a legitimate heir apprehends, that his demand incurs any danger in consequence of the assets being confounded with the property of the heir; he can require, before the assets are delivered into the possession of the heir, that the inheritance be separated from the property of the heir, that it be placed in the custody of the tribunal, or administered by a curator, his claim to it noted down and settled. But in such a case the heir, although he may have declared himself as heir unconditionally, is no longer answerable from his own property.

§. 813.

The heir or the appointed curator of the assets is at liberty, in order to ascertain the amount ot the debts, to apply for the issuing of an edict, by which all the creditors are summoned to give notice and prove their demands within a delay suitable to the circumstances, and to refrain from satisfying the creditors, till the delay has expired.

§. 814.

The effect of this judicial summons is, that the creditors, who have not given notice of their demands within the delay fixed, have, unless they possess a right of pledge, no further claim on the succession, if it has been exhausted by the payment of the debts, which have been announced.

§. 815.

It the heir omits the precaution of the judicial summons granted to him; or if he satisfies immediately some of the creditors, who have announced themselves, without having any regard to the right of the others, and if some of the creditors remain

unpaid in consequence of the insufficiency of the assets; he is answerable to them with his whole property, notwithstanding he has conditionally declared himself as heir, and his responsibility extends so far, as they would have received payment, if the assets had been applied according to the legal manner for satisfying the creditors.

§. 816.

If the testator has nominated an executor of his last will; it depends on his pleasure, whether he will take upon himself this function. But if he has accepted it; he is bound either to carry out himself the dispositions of the testator as a man in power, or to urge the tardy heir to the execution of them.

§. 817.

If no executor of the last will has been nominated; or if the person nominated does not take upon himself this function; the heir is himself bound to fulfil the will of the testator, as far as possible, or to secure its fulfilment and to prove to the tribunal, that he has done so. In regard to definite legatees he has only to prove, that he has informed them of the legacies, which have fallen to them (§. 688).

§. 818.

The political ordinances contain the special provisions in regard to what duties the heir has to pay, before he can obtain the possession of the inheritance, and in case, his testator was bound to give accounts to the fiscus, what he has to prove in regard to this circumstance.

§. 819.

As soon as the legal heir has been acknowledged by the tribunal in consequence of his declaration as heir, and as soon as he has fulfilled his obligations, the inheritance is delivered to him and the proceedings closed. The heir has besides, in order to effect the transfer of the property in immovable things, to fulfil the provision of §. 436.

§. 820.

Several heirs, who have accepted a common inheritance without the legal benefit of the inventory, are answerable all for one and one for all, to all the creditors of the inheritance and legatees, even after the delivery has taken place. But in their relation to one another they are bound to contribute according to the proportion of their hereditary share.

§. 821.

If the heirs, to whom the succession has fallen in common, have made use of the legal benefit of the inventory; they must before the delivery be answerable to the creditors of the inheritance and legatees according to §. 550. After the delivery every one is answerable even for the charges, which do not exceed the assets, only in proportion to his hereditary share.

§. 822.

Creditors of the heir can, it is true, place an inhibition, a distraint or a prenotation on the assets, which have fallen to him, even before the succession has been delivered to him. Such a security however cannot be granted otherwise, than with the expressed reserve, that it shall not be prejudicial to the claims, which may occur in the course of the proceedings, and shall only be effective from the time of the delivery of the succession obtained.

§. 823.

Even after the delivery of the succession obtained, he, who takes possession of it, can be complained against for the cession or division of the inheritance by the person, who maintains, that he has a better or equal right of inheritance. The property of separate articles belonging to the succession is not prosecuted with the complaint for inheritance, but the complaint for property.

§. 824.

If the defendant is ordained to cede the whole succession or only a part of it, the claims for the restoration of the fruits drawn

by the possessor, or for the compensation of the expenses applied to the assets by the defendant, are to be judged of according to those principles, which in general have been established in the chapter treating of the possession in regard to the bona fide and the mala fide possessor. A third bona fide possessor is answerable to no one for the articles belonging to the succession acquired in the meantime.

Chapter the sixteenth.

Of joint property and other real rights in common.

§. 825.

A community of property or other real rights exists as often, as the property in the same thing, or one and the same right belongs to several persons undivided. The community is founded on a chance occurrence; on a law; on a declaration of the last will; or on a contract.

§. 826.

The rights and obligations of the participators receive their nearer determination according to the difference of the sources, from which a community arises. The twenty-seventh chapter contains the special provisions in regard to a community of goods arising from a contract.

§. 827.

Whoever claims a share of a thing in common, must prove his right, if it is disputed by the other participators.

§. 828.

As long as all participators agree with one another, they represent only one person, and have the right to dispose of the thing in common according to their pleasure. The instant, they do not agree, no participator can undertake an alteration in the thing in common, by which he would dispose over the share of the other.

§. 829.

Each participator is complete proprietor of his share. He can pledge, bequeath or otherwise alienate (§. 361) his share or

the produce of it at his pleasure, and independently, as far as he does not violate the rights of his participants.

§. 830.

Each participator is justified in demanding the delivery of the account, and the division of the produce. He can also, as a rule, demand the dissolution of the community; but not at an unsuitable time or to the disadvantage of the others. He must therefore submit to a delay suitable to the circumstance, which is hardly avoidable.

§. 831.

If a participator has bound himself to a continuation of the community, he cannot, it is true, retire before the expiration of the time; but this obligation ceases like other obligations, and does not extend to the heirs, if the heirs themselves have not consented to it.

§. 832.

The disposition of a third person, by which a thing is destined for a community, must likewise, it is true, be observed by the first participators, but not by their heirs. An obligation for a perpetual community cannot exist.

§. 833.

The possession and the administration of the thing in common belongs to all the participators collectively. The majority of the votes, which must not be calculated according to the persons, but according to the proportion of their shares, decides in affairs, which concern only the ordinary administration and use of the principal fund.

§. 834.

But in case of important alterations, which are proposed for the preservation or better use of the principal fund, the persons out-voted can demand security for future damage; or, if this is refused, they can demand the permission to retire from the community.

§. 835.

If they do not wish to retire; or if the retirement were to take place at an inconvenient time; the drawing of lots, an umpire, or if they cannot unanimously agree in regard to it, the judge has to decide, whether the alteration is to take place unconditionally, or under security, or not. These modes of decision are also applied, when the votes of the members are equal.

§. 836.

If an administrator is to be appointed for the things in common; the majority of the votes decide as to his election, and if no majority exists, the judge.

§. 837.

The administrator of the thing in common is considered as a man in power. On the one side he is bound to deliver a proper account; but on the other side he is justified in deducting all the expenses, which have been made advantageously. This holds good also in case, a participator administers a thing in common without the authority of the other participators.

§. 838.

If the administration is left to several persons; the majority of the votes among them also decides.

§. 839.

The produce and charges, which are common to all, are determined according to the proportion of the shares. In case of doubt each share is to be considered as equal; whoever maintains the contrary, must prove it.

§. 840.

In the ordinary mode of proceeding the produce obtained is to be divided in natura. But if this mode of division cannot be carried out; each of the participators is justified in urging a pub-

lic auction. The amount produced is paid proportionately to the participators.

§. 841.

A majority of the votes does not decide in case of division of the thing in common, which is to take place after the dissolution of the community. The division must be carried out to the satisfaction of every participator in the thing. If they cannot agree; the drawing of lots, or an umpire, or if they cannot agree unanimously in regard to the one or the other of these modes of decision, the judge has to decide.

§. 842.

An umpire or the judge decides also, whether in the case of the division of parcels of land or buildings, a participator requires an easement for the use of his share, and under what condition it is to be granted to him.

§. 843.

If a thing in common cannot be divided at all, or cannot be divided without a considerable diminution of its value; it is, supposing, even that only one participator demands it, to be sold by public auction and the produce to be divided among the participators.

§. 844.

Easements, landmarks and the documents necessary for the common use are not capable of being divided. The land-easements are of use to all the participators. The documents are, if there is no impediment to it, deposited with the eldest participator. The other participators receive legalized copies of them at their own expense.

§. 845.

When parcels of land are divided, the mutual frontiers must be marked in a distinct and immutable manner by posts, landmarks or pales, according to the difference of the situation. Rivers, mountains and high-roads are natural frontiers. In order

to avoid fraud and error, crosses, coats of arms, numbers or other signs are to be cut in the stones, posts or pales, which really serve as marks, or these signs are to be placed in the ground under them.

§. 846.

Documents are to be drawn up in regard to the division, which took place. A participator of an immovable thing only receives a real right to his share, when the document drawn up in regard to it, is entered in the public books (§. 436).

§. 847.

The mere division of a thing in common, of whatever description, cannot cause any damage to a third person; all the rights of pledge, easement and other real rights belonging to him are to be exercised after the division as well as before the division. Personal rights also, which a third person has against a community, still possess their former force notwithstanding the retirement of a participator, which has taken place.

§. 848.

In the same manner a person, who is indebted to a community, cannot make the payement to single participators. Such debts must be paid to the whole community, or to the person, who represents it regularly.

§. 849.

Whatever has been prescribed till now in regard to the community in general, is also applicable to the rights and things belonging to a family, taken as a community, f. i. foundations, entailments etc.

§. 850.

When landmarks have, from whatever circumstances, been injured in such a degree, that they could become quite indiscernible, each participator is authorized in demanding a renewal of the frontiers by mutual consent. The neighbours interested are

to be summoned for the purpose of this business, the frontiers to be precisely described, and the expenses to be incurred by all of them in proportion to their boundary-lines.

§. 851.

If the frontiers have really become indiscernible, or if a dispute arises on the occasion of the rectification of the boundary; the tribunal has to protect above all, the last state of possession. Whoever considers, that he is injured by it, can produce the vouchers belonging to him with regard to his right of possession, of property, or another right, according to the regulations given (§. 347).

§. 852.

The most important legal means for the rectification of the boundary are: the measurement and the description, or even the design of the ground under dispute, then the public books and other documents referring to it; last of all, the statements of witnesses acquainted with the matter, and the opinion given by the experts after an inspection.

§. 853.

If none of the parties proves an exclusive right of possession or property; the tribunal divides the space in dispute in proportion to the peacable possession, which formerly existed. But if the state of possession is doubtful; the space in dispute is, with the cooperation of experts, divided between the parties in proportion to the land in possession, from which the claim arises, and the fixing of the boundary then takes place.

§. 854.

Furrows, fences, hedges, planking, walls, private brooks, canals, places and other similar partitions, which are to be found between neighbouring parcels of ground, are to be considered as property in common; when coats of arms, superscriptions or inscriptions, or other signs, or other evidence do not prove the contrary.

§. 855.

Every participator can make use of a wall in common, on his side to the half of the thickness, and can also make false-doors and cupboards in places, where none exist on the opposite side. Still a building dare not be endangered by a chimney, hearth, or other constructions, and the neighbour dare not be prevented using his share in any way.

§. 856.

All co-proprietors contribute proportionately to the preservation of such partitions in common. Where two partitions exist; or the property is divided, each proprietor bears the expenses of the preservation of that, which belongs to him alone.

§. 857.

If the situation of a partition is of such a kind, that the bricks, laths, or stones project or slope only on one side; or if the props, pillars, posts, supports are placed in the ground only on one side; in case of doubt the undivided property of the partition belongs to this side, unless the contrary is apparent from a weight placed upon it on both sides, from the joining, from other marks or other proofs. That person also is considered the exclusive possessor of a wall, who undisputedly possesses a wall of the equal height and thickness, which runs in the same direction.

§. 858.

The exclusive possessor is not bound, as a rule, to rebuild or restore his wall or planking, which has fallen down; he must only then keep it in a good state, if damage were to be apprehended for his neighbour from the existence of an opening. But every proprietor is bound to provide on the right side of his principal entrance for the necessary enclosure of the space belonging to him, and the partition of it from the space belonging to others.

Second Part.

Second Section.

Of the personal rights to things.

Chapter the seventeenth.

Of Contracts in general.

§. 859.

The personal rights to things, by which one person is bound to some extent to another, are founded either on a law direct; or on a contract; or on damage suffered.

§. 860.

The cases, in which a personal right to things is granted to some one by the law itself, are indicated in the proper places. The thirthieth chapter treats of the right of compensation for damage.

§. 861.

Whoever declares, that he will cede his right to some one, that is, that he will allow him something, give something, that he will do something for him, or that he will intermit something on his account, makes a promise; but if the other accepts the promise validly, a contract is formed by the coinciding will of both parties.

As long as the negociations last and the promise is not yet given, or has not been accepted either beforehand or afterwards, no contract exists.

§. 862.

If no term has been stipulated for accepting the promise; a verbal promise must be accepted without delay. With regard to a promise in writing it depends, whether both parties are in the same place or not. In the first case the acceptation must take place within twenty-four hours; but in the second case within the term, which is required for answering twice, and it must be made known to the promising party; otherwise the promise has no longer any effect. The promise cannot be revoked before the expiration of the term fixed.

§. 863.

One can declare one's will not only expressly by words and signs generally adopted, but also tacitly by such acts, which in consideration of all circumstances admit no reasonable ground for doubt.

§. 864.

Contracts are binding unilaterally or bilaterally, according as one party only promises something and the other accepts it; or both parties cede rights to one another and accept the same mutually. The former are therefore concluded without an equivalent, but the others are concluded with an equivalent.

§. 865.

Whoever has not the use of his reason, as well as a child under seven years of age, is incapable of making or accepting a promise. Other persons on the contrary, who are dependent on a father, guardian or curator can, it is true, accept a promise made only for their advantage; but, when they take upon themselves a burden connected with it, or promise something themselves, the validity of the contract depends, according to the prescriptions given in the third and fourth chapter of the first part, as a rule, upon the consent of their representative, or at the same time of the tribunal. Till this consent has been given, the other party cannot retire, but demand a suitable term for declaration.

§. 866.

Whoever pretends in a fraudulent manner, that he is able to conclude contracts, and in doing so deceives another, who cannot so easily make enquiries about it, is bound to give compensation.

§. 867.

It is to be understood from its constitution and the political laws (§. 290) that, whatever is demanded for the validity of a contract with a community under the peculiar protection of the public administration (§. 27), or its single members and representatives.

§. 868.

The criminal law in reference to crimes determines, how far a criminal can conclude a valid contract.

§. 869.

The consent to a contract must be declared freely, seriously, determinedly and comprehensively. Is the declaration not comprehensible; quite undetermined; or if the acceptance is made under other conditions, than those, under which the promise was given; no contract takes place. Whoever, in order to obtain an advantage over another, makes use of indistinct expressions, or undertakes a delusive act, must give compensation.

§. 870.

Whoever has been compelled to a contract by the accepting party from illegal and founded fear, is not bound to keep it. The judge must decide from the circumstances, whether the fear was founded (§. 55).

§. 871.

When the one party has been deceived by the other party by false allegations, and the error concerns the principal matter or an essential qualification of the same, upon which the intention was principally directed and declared; no obligation arises for the party deceived.

§. 872.

When the error does not concern the principal matter, nor an essential qualification of it, but an accidental circumstance; the contract still remains valid, as far as both parties have consented to the principal object and have not declared the accidental circumstance as the chief intention; but a suitable compensation is to be given by the author of the error to the person deceived.

§. 873.

The same principles are to be applied also to the error in the person of him, to whom a promise has been made; as far as if the error had not taken place, the contract would not have been concluded at all, or certainly not in such a manner.

§. 874.

At all events he, who has brought about a contract by fraud or illegal fear, must give compensation for the evil consequences.

§. 875.

If the promising party has been compelled to conclude a contract, either by a third person from illegal and grounded fear; or has been misled by false assertions; the contract is valid. Only in case, that the accepting party participated in the illegal act of the third person, or must evidently have known it, he is to be treated according to §§. 870—874 in the same manner as, if he himself had placed the other party in fear or error.

§. 876.

If the promising party himself and alone is the cause of his error, of whatever description it may be, still the contract remains in full force; unless the error, which prevailed, must evidently have been apparent to the accepting party from the circumstances.

§. 877.

Whoever demands the annulment of a contract for the want

of consent, must on the other hand return every thing, that he has received to his advantage in consequence of such a contract.

§. 878.

Contracts can be concluded in regard to every thing, which is an object of commerce. Whatever cannot be accomplished; whatever is perfectly impossible or unallowed, cannnot be the object of a valid contract. Whoever deceives another by promises of this description; whoever injures him in guilty ignorance; or obtains a profit from his damage, remains answerable for it.

§. 879.

Besides the contracts already mentioned in the proper place, the following contracts are above all null:

1ly if something is stipulated for the negociation of a marriage-contract;

2ly when a surgeon or a physician of any description stipulates for a certain remuneration from the sick person for undertaking the cure; or

3ly when a lawyer stipulates for such a renumeration for undertaking a lawsuit; or obtains by purchase the object of a lawsuit entrusted to him;

4ly when an inheritance or a legacy, which one hopes for from a third person, is alienated during the life-time of the same.

§. 880.

If the object, in regard to which a contract has been concluded, is withdrawn from commerce before the delivery of the same; it is the same as if the contract had not been concluded.

§. 881.

Except the cases determined by the laws, no one can, it is true, make or accept a promise for another. If some one has promised his intercession to a third person, or what is more, has guaranteed the result; he must fulfil the obligation, he has entered into, according to the degree of his promise.

§. 882.

If impossible and possible things have at the same time been promised, the possible ones must be fulfilled; unless the parties concluding the contract have not made the expressed condition, that no point in the contract can be separated from the other.

§. 883.

A contract can be made by word of mouth or in writing; before the tribunal or without the interference of it; with, or without witnesses. This difference in the form makes no difference with regard to the obligation except in cases determined by the law.

§. 884.

If the parties have agreed expressly to a contract in writing, it is not considered as concluded, till the signature of the parties is affixed. The sealing is also in this case not essentially required.

§. 885.

If, it is true, no formal document, but still a memorandum has been drawn up in regard to the principal points and has been signed by the parties, even such a memorandum establishes those rights and obligations, which are expressed in it.

§. 886.

Whoever is unable to write, or is incapable of writing on account of some bodily defect, must apply for the assistance of two witnesses, one of whom signs his name, and affixes his usual mark.

§. 887.

If a document has been drawn up in regard to a contract; the pretended stipulations by word of mouth, which are said to have been made at the same time, but which do not agree with the document, or contain new additions, are not to be taken into consideration.

§. 888.

When two or more persons promise some one the same right to a thing, or accept it from him; the demand as well as the debt is divided according to the principles of the community of property.

§. 889.

With the exception determined in the law, among several co-debtors of a dividable thing, each of them is only answerable for his share, and in the same manner among several participators of a dividable thing, each must content himself with the share, which is due to him.

§. 890.

If on the contrary, undividable things are in question, a creditor can, when he is the only one, demand the same from every co-debtor. But if there are several creditors and only one debtor; he is not bound to deliver the thing without security to a single co-creditor; he can insist on an arrangement of all the co-creditors, or demand, that the thing be placed in judicial custody.

§. 891.

If several persons promise one and the same whole, solidarily, in such a manner, that one binds himself expressly for all and all for one; each separate person is liable for the whole. It depends then upon the creditor, whether he will demand the whole from all or from several of the co-debtors, or according to portions chosen by him, or whether he will demand it from a single debtor. This choice is reserved to him even after the complaint has begun, when he desists from it; and when he is satisfied only in part by one or the other of the co debtors, he can demand, what remains, from the rest of the co-debtors.

§. 892.

If on the contrary one person has promised several persons the same whole, and these persons have been expressly autho-

rized to demand it solidarily; the debtor must pay the whole to the creditor, who first applies to him for it.

§. 893.

As soon as a co-debtor has paid the whole to the creditor, the latter dare not demand any thing more from the rest of the co-debtors; and as soon as a co-creditor has been entirely satisfied by the debtor, the rest of the co-creditors have no longer any claim.

§. 894.

A co-debtor can in stipulating with the creditor for more onerous conditions, cause no prejudice to the other co-debtors, and the indulgence or discharge, which a co-debtor has obtained for his person, has no effect on the others.

§. 895.

It is to be determined according to the especial legal relations existing between the co-creditors, how far among several co-creditors, who have received the solidary promise of the same whole, the one, who has obtained for himself the whole claim, is liable to the other creditors. If such a relation does not exist; the one is not answerable to the others.

§. 896.

A co-debtor, who is solidarily engaged, and who has paid the whole debt from his own property, is authorized in demanding compensation from the others, even when no cession of the claim has taken place, and in equal parts, if no other particular relation exists between them. If one of them was incapable of binding himself, or if he is unable to fulfil his obligation; such a share, which is deficient, must likewise be taken upon themselves by all the persons indebted. The discharge obtained by one of the co-debtors cannot be prejudicial to the others with regard to the claim for compensation (§ 894).

§. 897.

With regard to the conditions stipulated in contracts the same provisions, which have been given for conditions added to declarations of the last will, are to be observed.

§. 898.

Stipulations under such conditions, which are considered as not having been affixed to a last will, are invalid.

§. 899.

If the condition prescribed in a contract has already happened, before the contract has been concluded; it must after the conclusion of the contract only then be repeated, when it consists in an act of the person, who is to acquire the right, and can be repeated by him.

§. 900.

A right promised under a deferring condition also passes over to the heirs.

§. 901.

If the parties have expressly made as a condition the motive or the object of their consent; the motive or the object is to be considered as another condition. Except in this case such remarks have no influence on the validity of onerous contracts. But for those, which are not onerous, the prescriptions given for the last dispositions are to be applied.

§. 902.

Contracts must be executed at the time, at the place and in the manner, which has been stipulated by the parties.

According to the law 24 hours are considered one day, 30 days one month, and 365 days one year.

§. 903.

A right, the acquiring of which is fixed for a certain day, is acquired with the commencement of the day. But for the ful-

filment of an obligation, the person, who is bound, can avail himself of the whole of the day fixed.

§. 904.

If no certain time has been determined for the fulfilment of the contract; it can be demanded immediately, that is to say, without any unnecessary delay. If the person bound has reserved the time of fulfilment at his free will; one must either await his death and address one's-self to the heirs; or when it is a question of a merely personal, not inheritable duty, the time of fulfilment must be fixed by the judge according to equity. The latter proceeding also takes place, when the person bound has promised the fulfilment according to possibility or feasibility. In regard to the rest the prescriptions, which have been given above (§§. 704–706) in reference to the determination of the time affixed to last dispositions, must also be applied here.

§. 905.

When the place, where the contract is to be fulfilled, cannot be determined either from the agreement, or from the nature or object of the business; immovable things are to be delivered at the place, where they lie; but movable things at the place, where the promise has been made. In regard to the measure, the weight, and the sorts of money, the place of deliverance is decisive.

§. 906.

If the promise can be fulfilled in several ways; the person bound has the choice; but he cannot secede for himself alone from the choice once made.

§. 907.

If a contract is expressly concluded with the reserve of the choice, and the same is frustrated by the accidental destruction of one or several things, among which the choice was to have been made; the party, who has the choice, is no longer bound by the contract. But if a fault on the part of the person bound,

occurs, he must stand good to the one, who is entitled to it, for the frustration of the choice.

§. 908.

Whatever is given beforehand at the conclusion of a contract, is, with the exception of an especial agreement, to be considered only as a proof of the conclusion, or as a guarantee for the fulfilment of the contract, and is called earnest-money. If the contract is not fulfilled from the fault of one party; the innocent party can keep the earnest-money, which he has received, or demand back double the amount of the earnest-money given by him. If however he will not content himself with it, he can urge the fulfilment, or if this is no longer possible, compensation.

§. 909.

When on the conclusion of a contract an amount is determined, which the one or the other party is bound to pay in case he wishes to secede from the contract before its fulfilment; the contract is concluded on the payment of a forfeit. In this case the contract is either to be fulfilled, or the forfeit must be paid. Whoever has fulfilled a contract, entirely, or only in part, or has accepted, what has been given by the other party without fulfilling the contract entirely, but in order to fulfil it, cannot himself any longer secede even on paying the forfeit.

§. 910.

If earnest-money is given and at the same time the right of seceding from the contract, without determining a particular forfeit, is stipulated; the earnest-money represents the forfeit. In case of seceding the giver therefore loses the earnest-money, or the receiver must return double the amount.

§. 911.

Whoever is prevented fulfilling the contract not merely by chance, but from his own fault, must likewise pay the forfeit.

§. 912.

The creditor is authorized at times to demand of his debtor, besides the principal debt accessory perquisites also. They consist in what has accrued to the principal thing, and in its fruits; in the stipulated interest or in the interest to be paid in consequence of the delay; or in compensation for the damage caused to the other, because the obligation was not duly fulfilled; lastly in the amount, which one party has stipulated for himself, if this case should occur.

§. 913.

It has been determined in the first and fourth chapters of the second part, how far the claim to the accession or to the fruits is connected with a real right On account of a merely personal right the person entitled has no claim to perquisites. How far this right belongs to the creditor, is to be conceived partly from the peculiar kinds and stipulations of the contracts; partly from the chapter treating of the right of bonification of the damage and the profit, which has escaped.

§. 914.

The general rules with regard to the interpretation of the laws, mentioned in the first part (§. 6), are applicable also to contracts. A doubtful contract especially is to be interpreted in such a manner, that it may contain no contradiction and that it may have effect.

§. 915.

In unilaterally binding contracts it is to be presumed in case of doubt, that the person bound intended to take upon himself the lighter rather, than the heavier charge; in bilaterally binding contracts an indistinct declaration is interpreted to the prejudice of the person, who has made use of the same (§. 869).

§. 916.

If a business of a certain kind is stipulated only for semblance; it is to be judged of according to those legal prescrip-

tions, according to which it must be judged of for the reason of its real qualification.

§. 917.

The manner, in which the obligations arising from contracts cease, will be determined in treating of every contract especially and in the chapter, which treats of the removal of the obligations in general.

§. 918.

All rights and obligations arising from contracts pass over to the heirs of the contracting parties; unless they depend on mere personal relations and capacities; or unless the heirs have been excluded by the contents of the contract itself, or by the law. A promise, which has not yet been accepted, does not pass over to the heirs, even if only one party dies during the delay conceded for consideration (§. 862).

§. 919.

If one party has not fulfilled the contract at all; or not at the proper time; at the proper place; or in the manner stipulated; the other party is, with the exception of the cases determined by the law, or of an expressed reserve, not entitled to demand the annullation of the contract, but only its strict fulfilment and compensation.

§. 920.

After the complete fulfilment of the contract the parties can no longer secede, even supposing they are mutually agreed; but they must conclude a new contract, which is considered a second transaction.

§. 921.

In an onerous contract either things with things; or acts, in which the omissions are also included, with acts; or finally things with acts, and acts with things are recompensed (§. 864).

§. 922.

If some one cedes a thing to another in an onerous manner,

he guarantees, that it has the qualities expressly stipulated, or commonly supposed to exist in it, and that it can be used and applied according to the nature of the transaction or the convention agreed upon.

§. 923.

Whoever therefore attributes qualities to the thing, which it has not, and which expressly or from the nature of the transaction have been taciturnly stipulated; whoever conceals unusual defects in it or charges bearing upon it; whoever alienates a thing, which no longer exists, or the property of another as his own; whoever falsely states that the thing is fit for a certain purpose; or that it is also free from the usual defects and charges; becomes, when the contrary is apparent, answerable.

§. 924.

If an animal becomes ill or dies within twenty-four hours after it has been taken possession of, it is to be supposed, that it was ill, before it was delivered.

§. 925.

The same presumption is in force:

1. If one discovers within a week the measles in swine, and the small-pox or the scurvy in sheep; or if in the latter, the lung and leech-worms are discovered within two months;

2. if in oxen the strangles is discovered within thirty days after the delivery;

3. if in horses and beasts of burden the suspicious strangles, or the glanders, or even broken-wind is discovered within fifteen days after the delivery; or if the staggers, the worm restiveness, incurable blindness or moon-blindness is discovered within thirty days.

§. 926.

But the person, who receives such a beast, can only have recourse to this legal presumption (§§. 924 and 925), when he givesnotice directly of the defect, which he has discovered, to

the person, who has delivered it or to the warranter; or gives notice in his absence to the tribunal of the place or to experts, and causes an examination.

§. 927.

If the receiver neglects this precaution, he is bound to prove, that the animal was already defective before the conclusion of the contract. But the person delivering is in any case allowed to prove, that the censured defect only occured after the delivery.

§. 928.

If the defects of a thing are apparent; or if the charges inherent on a thing are to be found in the public books; no guarantee takes place, except an expressed promise had been given, that the thing was free from all defects and charges (§. 443). In any case one must guarantee debts and arrears, which inhere to the thing.

§. 929.

Whoever knowingly accepts a thing belonging to a third person, has no more claim to a guarantee than the person, who has expressly renounced it.

§. 930.

When things are delivered in the lump, that is to say, as they stand and lie, without the number, measure and weight; the person delivering is not answerable for the defects discovered in them, except a quality falsely pretended or stipulated for by the receiver is wanting.

§. 931.

When the possessor intends to make use of the guarantee on account of a claim made on the thing by a third person; he must inform his predecessor of it, and demand the intervention (defence) according to the provision of the law of proceedings. By neglecting this demand he does not lose, it is true, the right to compensation; but his predecessor can oppose him all the ex-

ceptions, which have not been carried out against the third person, and he can in doing so free himself from the compensation in so far as it is pronounced, that these exceptions would have caused another decision with regard to the third person, if a proper use had been made of them.

§. 932.

If the defect, on which the garantee is founded, is of a description, that it can no longer be removed and that it prevents the common use of the thing, the injured person can demand the entire dissolution of the contract; if on the contrary, what is wanting, for instance in measure or weight, can be added, he can only demand this addition; but in both cases he can also demand compensation for the further damage and, as far as the other party has acted mala fide, even for the profit, which has not occurred to him.

§. 933.

Whoever intends to demand the guarantee, must make good his right, when it concerns immovable things, within three years; but if it concerns movable ones, within six months, otherwise the right has expired.

§. 934.

If in a bilaterally binding transaction one party has not even received from the other party the half, of what he has given to the latter, reckoning the common value; the law grants the injured party the right to demand the dissolution of the contract and the restitution to the former state. The other party however is authorized to maintain the transaction, when he is ready to replace the deficiency according to the common value. The disproportion of the value is to be determined according to the moment, at which the transaction was concluded.

§. 935.

This legal remedy does not take place: when some one has expressly renounced it, or has declared, that he will accept the

thing at an extraordinary valuation from a peculiar predilection; when he, although knowing the real value, has notwithstanding consented to the disproportionate valuation; further, when it is to be presumed from the relations, in which the persons stand to one another, that they intended to conclude a mixed contract, consisting of an onerous and a gratuitous one; when the real value can no longer be ascertained; lastly, when the thing has been sold by the tribunal at public auction.

§. 936.

The agreement to conclude a contract at a future time, is only then obligatory, when both the time of the conclusion, as well as the essential parts of the contract have been agreed upon, and the circumstances have not altered in the meantime in such a manner, that the object expressly fixed or apparent from the circumstances would be frustrated by the alteration, or the confidence of the one or the other party is lost. In general one must urge the execution of such promises at furthest within a year after the moment agreed to; otherwise the right has ceased.

§. 937.

General, or indefinite renouncements of objections against he validity of a contract, are of no effect.

Chapter the eighteenth.

Of donations.

§. 938.

A contract, by which a thing is given to some one gratuitously, is called a donation.

§. 939.

Whoever renounces an expected right, or a right, that has really fallen to him, or a doubtful right, without ceding it properly to another, or without releasing the person obliged with his consent from the obligation, is not to be considered as a donor.

§. 940.

It does not alter the character of a donation, when it has been made out of gratitude; or in consideration of the merits of the person receiving the gift; or as an especial reward to him; only he must not have had a right to demand it by way of complaint beforehand.

§. 941.

If the person receiving the donation has had a right to demand the reward by a complaint, either because it was already agreed upon between the parties, or because it was prescribed by the law; the transaction ceases to be a donation and is to be considered as an onerous contract.

§. 942.

If donations are agreed upon beforehand in such a manner, that the donor must receive a donation in return; no true donation arises with regard to the whole; but only with regard to the value exceeded.

§. 943.

No right of complaint arises to the person accepting the donation, from a donation concluded only by word of mouth without the real delivery. This right must be founded on a document in writing.

§. 944.

An unlimited proprietor can grant, in observing the legal dispositions, even his whole actual property. But a contract, by which the future property is granted, exists only so far as it does not exceed the half of this property.

§. 945.

Whoever knowingly bestows the property of another, and conceals this circumstance from the person, who accepts it, is answerable for the detrimental consequences.

§. 946.

In general it is not allowed to revoke donations.

§. 947.

If the donor falls afterwards into such indigence, that he requires the necessary means of maintenance; he is authorized to demand from the receiver yearly the legal interest of the thing bestowed, as far as the bestowed thing or the value of it still exists, and as far as the necessary maintenance is required by him, unless the receiver himself finds himself in equally indigent circumstances. Among several receivers of gifts the one, who has first received the donation, is only bound so far as the quotas of the latter receivers are not sufficient for the maintenance.

§. 948.

If the person, who has received the gift, is guilty of grave ingratitude towards his benefactor, the donation can be revoked. Under grave ingratitude is to be understood injury to the body, violation of honour, of liberty or of property, which is of such a

description, that the violator can be proceeded against ex officio, or at the request of the person injured, according to the criminal law.

§. 949.

Ingratitude makes the ungrateful person for himself a mala fide possessor, and even gives the heirs of the injured person a right to revoke the donation by means of complaint, which can be instituted against the heirs of the violator also, in case the donor has not pardoned the ingratitude, and there is still something remaining of the gift in nature or value.

§. 950.

Whoever is bound to provide for some one's maintenance, cannot violate the right of this person by a donation to a third person. The person prejudiced in such a way is authorized to complain against the receiver of the gift, for the completion of that, which the donor is no longer able to furnish him with. If there are several receivers of a gift, the disposition mentioned above (§. 947) is to be applied.

§. 951.

Whoever at the time of the donation has descendents, to whom he is bound to leave a legitimate portion, can make no donation to their prejudice, which exceeds the half of his property. If he has exceeded this proportion, and these descendents can prove after his death, that his net assets do not amount to the half of the property, he had at the time of the donation; they can demand a proportionate repayment from the receiver ot the surplus illegally received.

§. 952.

If the receiver no longer possesses the thing bestowed, or its value; he is only answerable so far as he has parted with it in a mala fide manner.

§. 953.

Under the same (§. 952) restriction those gifts also can be

demanded back again, by which creditors have been injured, who existed at the time of the donation. Creditors, whose demands are of a more recent date than the donation, can only then avail themselves of this right, when it can be proved, that the receiver had fraudulently agreed.

§. 954.

Supposing children have been born to a childless donor after the conclusion of the donation, neither he, nor the children born afterwards have the right to revoke the donation. But both he and the child born afterwards, can in case of necessity avail themselves of the above mentioned right to the legal interest of the thing bestowed (§. 947), both against the receiver or against his heirs.

§. 955.

If the donor has promised the receiver some assistance at certain periods, no right, or obligation accrues to the heirs of either of the parties; unless it has been otherwise expressly stipulated in the contract of donation.

§. 956.

A donation, the fulfilment of which is to take place only after the death of the donor, is valid as a legacy, when the formalities prescribed are observed. It is only to be considered as a contract, when the receiver has accepted it, the donor has expressly renounced the right to revoke it, and a document in writing in regard to it has been delivered to the receiver.

Chapter the nineteenth.

Of the contract of custody.

§. 957.

When some one takes into his custody a thing belonging to another; a contract of custody arises. The promise accepted to take into his custody the property of another, which has not yet been delivered, binds, it is true, the party promising; but still no contract of custody exists.

§. 958.

He, who receives a thing into his custody, does not by this contract acquire either property, or possession, or the right of use to it; he is only the holder with the obligation to secure the thing entrusted to him from injury.

§. 959.

If the use is allowed to the depository at his request, or from the voluntary offer of the deponent; the contract ceases to be a contract of custody; in the first case immediately after the consent, but in the second case from the moment, that the offer has been accepted, or that use has actually been made of the thing deposited. It is changed with regard to consumable things, into a loan, with regard to inconsumable things, into a contract of lending, and the right and obligations arising from these contracts take place.

§. 960.

Movable and immovable things can be given into custody. But if the depositary is at the same time charged with another

business referring to the thing entrusted to him, he is to be considered as a man in power.

§. 961.

The principal duty of the depositary is to preserve the thing entrusted to him carefully during the time fixed, and to return it after the expiration of the time to the deponent in just the same state, in which he received it and with all the increase.

§. 962.

The depositary must return the thing to the deponent at his request even before the expiration of the time, and can only demand compensation for the damage, which may have been caused to him by it. He can on the contrary not return the thing entrusted to him before the expiration of the time, unless an unforeseen circumstance has prevented his keeping the thing with safety and without disadvantage to himself.

§. 963.

If the time of custody has not been fixed expressly, or cannot be concluded in another way from the circumstances, the custody can be recalled at wish.

§. 964.

The depositary is answerable to the deponent for the damage caused by the omission of the care incumbent upon him, but not for an accident; even when he could have saved the thing entrusted to him, by the sacrifice of his own, which was not so precious as the thing entrusted to him.

§. 965.

But if the depositary has made use of the thing deposited with him; if he has unnecessarily and without the permission of the deponent, placed it in the custody of a third person; or has deferred returning it, and the thing suffers injury, to which it

would not have been exposed with the deponent; he cannot allege an accident, and the injury is to be imputed to him.

§. 966.

If things have been deposited under lock and key, or under seal, and afterwards the lock or seal has been violated: the deponent, on maintaining a deficiency, is to be admitted to confirm on oath his damage according to the directions of the law of procedure, as far as it is probable according to his position in life, business, property and other circumstances; unless the depositary could prove, that the violation of the lock or seal has taken place without any fault on his part. The same rule is to be applied, when all the things deposited in such a manner are lost.

§. 967.

The deponent is bound to replace the depositary the damage caused in a culpable manner, and the expenses incurred for the preservation of the thing under his charge, or for the increase of the still existing produce. If the depositary has sacrificed in case of necessity his own things in order to save the thing deposited; he can demand a suitable compensation. But the mutual demands of the depositary and deponent in regard to a movable thing can only be brought before the tribunal within thirty days from the time of the restitution of the thing.

§. 968.

If a litigious thing is given into the custody of somebody by the parties disputing or by the tribunal; the depositary is called sequestrator. The rights and obligations of the sequestrator are to be judged of according to the principles here established.

§. 969.

A reward can only then be demanded for the custody, when it has been stipulated expressly, or taciturnly according to the station in life of the depositary.

§. 970.

Landlords, masters of ships or carriers stand good the same as a depositary (§. 1316) for things, which have been entrusted to them or their servants, by travellers, or which they have received as freight.

Chapter the twentieth.

Of the contract for lending.

§. 971.

A contract for lending is made, when a thing, which is not consumed by the common use made of it, is delivered to some one merely for gratuitous use during a definite time. The contract, by which one promises to lend a thing to some one without delivering it, is, it is true, binding, but still not a contract for lending.

§. 972.

The borrower acquires the right to the ordinary or the more concise use of the thing. After the expiration of the time he is bound to return exactly the same thing.

§. 973.

When no time has been fixed for the return, but the intention of the use has been determined; the borrower is bound not to defer the use and to return the thing as soon as possible.

§. 974.

In case the term and the intention of the use has not been determined; no real contract exists, but a non-obligatory „precarium“ and the lender can at his pleasure demand back the thing borrowed.

§. 975.

In a dispute as to the term of use, the borrower must prove his right to the longer term of use.

§. 976.

Even when the thing lent has become indispensable to the lender himself, before the term has expired, and before the use has ceased; he has without expressed agreement no right to demand the return of the thing before the expiration of the term.

§. 977.

The borrower is, it is true, in general authorized to return the thing borrowed even before the period fixed: but should the anticipated return inconvenience the lender; it cannot take place contrary to his wish.

§. 978.

If the borrower has employed the thing lent otherwise, than was agreed upon, or has permitted voluntarily a third person to make use of the same; he is answerable to the lender and the latter is also authorized to demand the immediate return of the thing.

§. 979.

Should the thing borrowed be damaged or entirely destroyed; the borrower must, the same as the person, who has the custody of a thing (§. 965), replace not only the damage caused first of all by his culpability, but also the casual injury, which he has occasioned by an illegal act.

§. 980.

If the borrower pays the value for an article borrowed, which has been lost, he is, if it is found again, not authorized to retain the same for himself, in contradiction to the will of the proprietor, when the latter is disposed to return the amount received.

§. 981.

The borrower is himself bound to defray the expenses commonly connected with the use. The extraordinary expenses for the preservation he is bound, it is true, to advance in the meantime, as far as he can or will not give up the thing to the lender

for his own management; still he is to be reimbursed for the expenses the same as a bona fide possessor.

§. 982.

If the lender has not mentioned within thirty days after receiving the article lent, the abuse made of it or the excessive wear and tear; or if the lender has not given any notice within the same period after the restitution of the extraordinary expenses spent on the thing; the complaint ceases.

Chapter the twenty first.

Of the contract for loans.

§. 983.

If consumable things are delivered to some one on the condition, that he can, it is true, dispose of them at his will; but must return after a certain time just as much of the same sort and quality; a contract for loan arises. It is not to be confounded with the contract to grant in future a loan, although it is likewise obligatory (§. 936).

§. 984.

A loan is granted either in money or in other consumable things, and with or without interest. In the former case it is also called contract for interest.

§. 985.

A money-loan can be contracted for in coin, or paper-money, or in public bonds.

§. 986.

The special provisions given in regard to this matter determine, how far a loan in general can be contracted for in coin, and in what currency such a loan or a loan in paper-money is to be returned.

§. 987.

If a lender has stipulated for the payment in the peculiar kind of coin given by him; the repayment must be effected in the same coin.

§. 988.

The lender must bear any loss and have the advantage of any profit arising from legal changes in the coin, which do not alter the interior value of it. He receives the payment in the fixed sort of coin given by him f. i. 1000 imperial ducats or 3000 twenty-kreuzer pieces, without having any regard as to whether their exterior value has been increased or diminished in the meantime. But, should the interior value be altered, the payment is to be effected in proportion to the interior value, which the species of coin given had at the time, the loan was contracted.

§. 989.

If at the time of repayment such sorts of coin are no longer in circulation in the state; the debtor must repay the creditor in coin as similar as possible, and in such quantity and description, that the creditor receives the interior value, of what he has given, and this interior value must be calculated according to the time of the loan being contracted.

§. 990.

Loans can be validly concluded in public bonds in such a manner, that the amortisation of the debt can be effected with a perfecty similar bond to the one, in which the loan consisted, or the amount can be repaid according to the value, which the bond had at the time of the loan being concluded.

§. 991.

If instead of money a private bond or goods have been given; the debtor is only bound to return undamaged either the bond or the goods received; or to make good to the creditor any damage, which is to be proved by him.

§. 992.

In loans, which are not concluded for money, but for other consumable articles, it makes no difference, when they have in

the meantime risen or fallen in value, supposing only, that the restitution has been stipulated for in the same sort, quality and quantity.

§. 993.

If the lender stipulates in whatever kind of loan, expressly or taciturnly for more, than he has given, either in regard to the sort, quality or quantity; the contract can only be valid as far, as the allowed conventional interest is not exceeded by it.

§. 994.

By a contract every one in case a mortgage has been given, can stipulate for five percent per annum, without a mortgage for six percent per annum. This scale of the allowed conventional interest is also to be understood, when interest, it is true, has been stipulated for, but the rate has not been determined.

§. 995.

When interest is due to some one on the ground of the law, without an expressed stipulation; four percent per annum is to be paid as the legal interest, and six percent per annum between authorized merchants and manufacturers, in case of a debt arising from real commercial business.

§. 996.

If, besides the determination of the place and the time for payment of the capital and interest, under whatever form and denomination other accessory obligations have been stipulated for in favour of the lender; or if accessory advantages have been stipulated for by the lender, either for himself or for others; these stipulations are invalid as far as the scale of the allowed conventional interest is altogether exceeded.

§. 997.

The interest is commonly to be paid on the repayment of the capital, or yearly, if the contract has been concluded for several years, and nothing has been agreed upon in it with regard

to the terms for paying the interest. It can only be deducted for at most half a year in advance. The interest deducted in advance exceeding this amount is, from the day of the deduction, to be deducted from the capital.

§. 998.

It is on no account allowed to take interest on interest; still arrears of interest of two years, or a still longer period, can be assigned in consequence of an agreement as a new capital.

§. 999.

The interest for loans in money is to be paid in the same currency as the capital itself.

§. 1000.

The usury-law especially existing determines, how usury committed with regard to the capital or the allowed rate of interest is to be treated.

§. 1001.

That a bond may fully prove the contract for a loan concluded, it must fairly and distinctly contain the name of the real lender or creditor as well as the name of the real borrower or debtor; the object and amount of the loan; and if it is given in money, the description; as well as all the conditions referring to the repayment of the capital itself and the interest, if any is to be paid. The law of procedure determines the exterior form required for a bond, in order that it may supply full proof.

Chapter the twenty second.

Of the authorization and other modes of managing a business.

§. 1002.

The contract, by which some one takes upon himself to manage in the name of another a business entrusted to him, is called contract of authorization.

§. 1003.

Persons, who are publicly appointed to manage a certain business, are bound, in case they receive an order referring to it, to declare without delay expressly to the person giving the order, whether they accept the order or not; if they neglect this, they are answerable to the person giving the order for the damage caused by the neglect.

§. 1004.

If a recompense is stipulated for the management of the business of another, either expressly, or taciturnly according to the position in life of the man in power; the contract belongs to onerous contracts, but otherwise to gratuitous.

§. 1005.

Contracts of authorization can be concluded either by word of mouth or in writing. The document delivered in reference to such a contract by the person empowering, to the person empowered, is called a power of attorney.

§. 1006.

There are general and special powers of attorney, according to the circumstance, whether some one is entrusted with the ma-

nagement of all, or only some definite business. The special powers of attorney can in general have for object only judicial, or only extra-judicial business; or isolated affairs of the one or the other description.

§. 1007.

Powers of attorney are given either with unlimited or with limited liberty to act. By the former the person empowered is authorized to manage the business to the best of his knowledge and conscience; but by the latter the limits, how far and in what manner he is to manage the business, are prescribed.

§. 1008.

The following transactions require a special power of attorney purporting the description of the business: when things are to be alienated in the name of another, or received onerously; when debts are to be contracted, or loans granted; when money or money's worth is to be received; when lawsuits are to be instituted; when oaths are to be imposed, accepted or adjured, or arrangements are to be made. But when an inheritance is to be accepted or refused unconditionally; deeds of partnership to be contracted; donations made; the right given to choose an umpire, or rights renounced gratuitously; a special power of attorney, purporting the isolated business, is required. General, even unlimited powers of attorney are only sufficient in these cases, when the nature of the business has been expressed in the power of attorney.

§. 1009.

The person empowered is bound to carry out zealously and honestly the business according to his promise and the power of attorney received, and to give up all the profit arising from the business to the person empowering him. Although he has only a limited power of attorney, he is justified in applying all the means, which are necessarily connected with the nature of the business, or agree with the declared intention of the person empowering. But should he exceed the limits of the power of attorney, he is answerable for the consequences.

§. 1010.

If the person empowered charges a third person unnecessarily with the business; he alone is answerable for the result. But if the appointment of a representative is expressly permitted in the power of attorney, or is unavoidable from the circumstances; he is only answerable for a fault committed in the choice of the person.

§. 1011.

If several persons empowered are charged at the same time with a business, the cooperation of all of them is necessary for the validity of the business and for creating an obligation on the part of the person empowering; if the full authority has not been expressly committed in the power of attorney to one or several of them.

§. 1012.

The man in power is bound to compensate the constituent for any damage caused by his fault, and to produce the accounts occurring in the business as often as they are required by the latter.

§. 1013.

Men in power are not authorized, except in the case contained in §. 1004, to demand a recompense for their trouble. They are not permitted to accept presents from a third person without the consent of the constituent, in regard to the management of the business. The presents received are confiscated in favour of the fund for the poor.

§. 1014.

The constituent is bound to compensate the man in power for all the necessary or useful expenses incurred by him in carrying on the business, even if no result has been obtained, and to give him at his request a suitable advance in ready money, in order to defray the expenses; he must further reimburse all the damage arising from his fault or connected with the execution of his order.

§. 1015.

If the damage, which the man in power suffers in carrying on the business, is accidental; he can, in case he took upon himself the management of the business gratuitously, demand such an amount, as would have been due to him in case of an oneous contract in order to recompense him for the trouble according to the highest estimate.

§. 1016.

If the man in power exceeds the limits of his power of attorney; the constituent is only bound as far as he ratifies the business or takes possession of the profit arising from the business.

§. 1017.

In as far as the man in power represents the constituent according to the contents of the power of attorney, he can acquire rights for him and impose obligations on him. If he has therefore concluded a contract with a third person within the limits of the open power of attorney; the rights and obligations established by it belong to the constituent and the third person, but not to the man in power. The secret power of attorney given to the man in power has no influence on the rights of the third person.

§. 1018.

Even in case the constituent has appointed such a man in power, who is incapable to contract obligations for himself, the business concluded within the limits of the power of attorney is binding both for the constituent and the third person.

§. 1019.

If the man in power has received and accepted the order to let a third person have an advantage; the third person acquires the right as soon as he has been informed of it by the constituent or the man in power to claim it by means of complaint, either from the one or the other.

§. 1020.

The constituent is at liberty to revoke the power of attorney according to his wish; still he must not only reimburse the man in power for the expenses he has incurred in the meantime and the damage he may otherwise have suffered; but pay him also a part of the recompense suitable to the trouble. This also takes place, when the fulfilment of the business has been prevented by accident.

§. 1021.

The man in power can also give warning in regard to the power of attorney, which he has accepted. But if he does so before the completion of the business, which he has been especially charged with, or which he has commenced on the ground of the general power of attorney; he must, as far as no unforeseen and unavoidable impediment has occured, replace all the damage, which has arisen from it.

§. 1022.

As a rule the power of attorney is annulled in consequence of the death, either of the constituent or the man in power. But, should the business commenced not permit an interruption without evident disadvantage to the heirs, or if the power of attorney includes even the case of death of the constituent; the man in power has the right and the obligation to fulfil the business.

§. 1023.

Powers of attorney given and received by a corporation are annulled in consequence of the dissolution of the community.

§. 1024.

Should the constituent become bankrupt; all the acts, which the man in power has undertaken in the name of the bankrupt after the publication of the bankruptcy, have no legal force. In the same manner the decree of bankruptcy delivered in regard to the man in power annuls in itself the power of attorney given to him.

§. 1025.

If the power of attorney is annulled by revoke, by giving warning or by the death of the constituent or the man in power; still the business, which admits of no delay, must be continued as long as the man in power or his heirs have made no other provision, or could not reasonably have made some provision.

§. 1026.

The contracts concluded with a third person, to whom the annulment of the power of attorney was unknown without his fault, are also binding, and the constituent can only retrieve his loss from the man in power, who has concealed the annulment.

§. 1027.

The prescriptions contained in this chapter are also applicable to the proprietors of a trade, of a ship, of a shop or other business, who entrust the administration to a manager, to a navigator, to a shopman or other men in power.

§. 1028.

The rights of such a manager are to be judged of especially from the document of their appointment, the same as among merchants from the properly published authorization to make use of the signature (firm).

§. 1029.

If the power of attorney has not been given in writing; its extent is to be judged of according to the object and nature of the business. Whoever has entrusted another with an administration, is presumed also to have given him the power to do every thing, that the administration itself demands, and what is generally connected with it (§. 1009).

§. 1030.

If the proprietor of a shop or a business permits his servant or apprentice to sell goods in the shop or out of it; it is suppos-

ed, that they are authorized to receive payment and to give receipts.

§. 1031.

But the authority to sell goods in the name of the proprietor does not extend itself to the right to buy goods in his name; carriers are also not permitted to receive the value of the goods entrusted to them, nor to borrow money on them, if it has not been expressly determined in the bills of lading.

§. 1032.

Masters and heads of families are not bound to pay for any thing their servants or other persons belonging to the household have borrowed in their names. The borrower must in such cases prove, that he has received the order to do so.

§. 1033.

But if a proper memorandum-book (note-book) exists between the person borrowing and the person giving credit, in which the articles given on credit are noted; it is to be presumed, that the bearer of this book is empowered to receive the goods on credit.

§. 1034.

The right of guardians and comittees to administer the business of the persons entrusted to their care, is founded on the order of the tribunal, by which they have been appointed. The father and the husband are authorized by the law to represent the child and the wife. The prescriptions in regard to the matter are to be found in the proper places.

§. 1035.

Whoever has not received the authority, either by an expressed or taciturn contract, either from the tribunal, or from the law, is not permitted as a rule to interfere in the business of another. If he has arrogated such an interference; he is answerable for all the consequences.

§. 1036.

Whoever manages the business of another, in order to prevent imminent damage, although he was not called upon to do so, is entitled to demand compensation for the necessary and properly incurred expense from the person, whose business he has managed; even if his endeavours have remained fruitless without his fault (§. 403).

§. 1037.

Whoever will undertake the business of another, merely to promote the profit of another, must apply for the consent of the other. If the manager of the business has, it is true, neglected this prescription, but managed the business at his expense to the evident, preponderating advantage of the other; the latter must reimburse him the expenses he has incurred for it.

§. 1038.

But if the preponderating advantage is not evident, or if the manager has undertaken voluntarily such important alterations in a thing belonging to another, that it becomes useless to the other for the purpose, for which the latter has employed it till now, he is not bound to give any compensation; he can on the contrary demand, that the manager restore the thing at his own expense, or if that is not possible, give him full indemnity.

§. 1039.

Whoever has taken upon himself the business of another without mandate, must continue it to its completion and deliver an exact account of it the same as a man in power.

§. 1040.

Whoever arrogates a business of another against the validly declared wish of the proprietor, or prevents the authorized man in power by such an interference from managing the business; is not only answerable for the damage, which has arisen from it,

and the profit lost, but loses also the expense he has had, in as far as it cannot be returned in kind.

§. 1041.

If a thing has been applied to the benefit of another without the management of a business; the proprietor can demand it back in kind, or if this can no longer take place, the value, which it had at the time of its application, although the advantage has been consecutively frustrated.

§. 1042.

Whoever incurs an expense for another, which the latter according to the law would have been obliged to incur himself, is entitled to demand compensation.

§. 1043.

Whoever has sacrificed his property in case of necessity, in order to prevent greater damage to himself and others; is to be indemnified proportionately by all those, who have derived an advantage from it. The more detailed application of this disposition in regard to sea-risks, is an object of the maritime laws.

§. 1044.

The repartition of damages caused by war is determined by the political authorities according to the special dispositions.

Chapter the twenty-third.

Contracts of exchange.

§. 1045.

Exchange is a contract, by which one thing is given for another. The actual delivery is not necessary for the conclusion, but only for the fulfilment of the contract of exchange, and the acquisition of the property.

§. 1046.

Money is not an article of the contract of exchange; still gold and silver can be exchanged in the quality of goods, and even as coin, as far as they are only to be changed for other kinds of coin, namely gold for silver-coin, smaller for larger sorts.

§. 1047.

Persons changing are, by virtue of the contract, bound, to deliver and accept for the free possession the things exchanged, according to the agreement, with their parts and all the accessions, at the right time, at the proper place and in the same state, in which they were at the time the contract was concluded. Whoever omits fulfilling his obligation, is answerable to the other for the damage and the profit, which is lost.

§. 1048.

If a time has been stipulated, at which the delivery is to take place, and if in the meantime the exchanged individual thing has been withdrawn from commerce by prohibition, or has by chance been destroyed entirely or to an amount exceeding the

half of its value; the exchange is to be considered as not having been concluded.

§. 1049.

Other deteriorations of the thing, which have taken place by chance in the meantime, and charges are to be borne by the possessor. Still if things have been agreed for in the lump; the receiver must bear the accidental destruction of separate pieces, supposing in this way the value of the whole has not been altered to the extent of more than one half.

§. 1050.

The produce of the exchanged thing belongs to the possessor till the stipulated moment of delivery. From this moment the produce as well as the accessions belong to the receiver, although the thing has not yet been delivered.

§. 1051.

If no time has been stipulated for the delivery of the individual thing, and if no fault can be imputed to either party; the above mentioned dispositions concerning the risk and produce (§§. 1048—1050) are to be applied to the moment of the delivery itself; unless the parties have come to some other arrangement.

§. 1052.

Whoever will insist on the delivery, must have fulfilled his obligation, or be ready to carry it out.

Chapter the twenty-fourth.

Of contracts for selling.

§. 1053.

By the contract for selling, a thing is delivered to another for a fixed sum of money. It is like the exchange, a title to the acquisition of property. The acquisition only takes place upon the delivery of the article sold. Till the moment of delivery the seller retains the right of property.

§. 1054.

It is to be determined according to the rules for contracts in general, how the consent of the buyer and seller must be qualified, and what things can be bought and sold. The selling-price must consist of ready money and dare not be either undetermined, or contrary to law.

§. 1055.

If a thing is alienated partly for money, partly for another thing; the contract is, according as the sum of money amounts to more or less than the common value of the thing given, to be reckoned to the sale or exchange, and if it is equal to the value of the thing, to the sale.

§. 1056.

Buyer and seller can also leave the fixing of the price to a third person agreed upon. If it is not fixed by the latter within the stipulated time; or if in case, no time has been stipulated, one party wishes to retire before the price has been fixed; the contract for selling is to be regarded as not concluded.

§. 1057.

If the fixing of the price is left to several persons; the majority of the votes decide. If there is such a difference in the votes, that the price is not even fixed by the real majority of the votes; the sale is regarded as not concluded.

§. 1058.

The price stipulated in a former alienation can also be applied for the purpose of determining the price. If the ordinary market-price has been adopted as a basis, the middle market-price of the place, where and the time, at which the contract is to be fulfilled, is to be accepted.

§. 1059.

If there exists a set price for goods, the higher price is illegal and the buyer can demand compensation before the political authorities for every violation, however slight.

§. 1060.

Except in this case, the sale can only be disputed both by the buyer and seller for violation exceeding the half (§§. 934 and 935). This complaint also takes place, when the determination of the selling-price has been left to a third person.

§. 1061.

The seller is bound to preserve the thing carefully till the time of the delivery; and to deliver it to the buyer according to the provisions, which have been given above (§. 1047) in cases of exchange.

§. 1062.

The buyer on the contrary is bound to accept the thing immediately, or at the time agreed upon, but at the same time to pay down the price in ready money; otherwise the seller is justified in refusing the delivery of the thing to him.

§. 1063.

If the thing is delivered to the buyer by the seller, without receiving the selling-price; the thing is sold on credit, and the property in it passes over immediately to the buyer.

§. 1064.

In regard to the danger and the fruits of a thing, which, it is true, has been bought, but not yet delivered, the same provisions given for the contract of exchange (§§. 1048– 1051) are in force.

§. 1065.

If things are bought, which are still in expectation; the provisions given in the chapter concerning transactions depending on chance are to be applied.

§. 1066.

In all cases arising from a sale, which are not expressly decided in the law, the provisions established in the chapters treating of contracts in general, and of the contract of exchange especially, are to be applied.

§. 1067.

Peculiar kinds, or additional contracts of a contract for selling, are: the proviso of the redemption, of the reselling, of the forestalment; the sale with the proviso of a better purchaser; and the order for selling.

§. 1068.

The right to recover a thing again, which has been sold, is called the right of redemption. If this right has been conceded to the seller in general and without a more precise determination, on the one part the thing, which has been sold, must be returned in a not more deteriorated state; but on the other part the selling-price, which has been given, must be returned and the fruits, which have accrued in the meantime from the money and the thing, mutually compensate each other.

§. 1069.

If the buyer has improved the thing bought, at his own expense; or has incurred extraordinary expenses for its maintenance, the compensation is due to him the same as a bona fide possessor; but he is also answerable, when the value has been altered or the restitution has been frustrated from his fault.

§. 1070.

The proviso of the redemption only takes place in regard to immovable things and the seller is only entitled to this right during his life-time. He cannot cede his right either to his heirs, or to another, and can only avail himself of it to the disadvantage of a third person, when it is registered in the public books.

§. 1071.

The right stipulated by the buyer to resell the thing again to the seller, is subjected to the same restrictions; and the provisions given for the redemption are to be applied to it. But if the stipulation, the object of which is the reselling or redemption, is simulated and really employed, in order to conceal a mortgage or a loan, the provision contained in §. 916 is to be applied.

§. 1072.

Whoever sells a thing under the condition, that the buyer in case he wishes to sell it again, must offer it to the previous possessor for purchase, has the right of the forestalment.

§. 1073.

The right of preemption is in general a personal right. It can in regard to immovable estates be changed into a real one by registration in the public books.

§. 1074.

The right of preemption cannot be ceded to a third person, nor transferred to the heirs of the person, to whom the right belongs.

§. 1075.

The person, who has this right, must actually pay the price agreed upon for movable things within twenty four hours; but for immovable ones within thirty days after they have been offered to him. After the expiration of this time the right of preemption ceases.

§. 1076.

The right of preemption with regard to things charged with this right, has in case of a judicial public auction no other effect, than, that the person, who has the right and is registered in the public books, must be especially summoned to the sale.

§. 1077.

The person, who has the right of preemption, must, except another agreement has been come to, pay the full price, which has been offered by a third person. If he cannot fulfil the accessory conditions offered besides the usual selling price and if they cannot be equalized by a price fixed in the way of valuation; the right of preemption cannot be made use of.

§. 1078.

The right of preemption can, without an especial agreement, not be extended to other kinds of alienation.

§. 1079.

If the possessor has not offered the reemption to the authorized person, he is answerable to him for any damage. In case of a real right of preemption the thing alienated can be demanded from the third person, and the latter is treated according to the qualification of his bona or mala fide possession.

§. 1080.

On the sale on trial, the thing sold does not become the property of the buyer, till the price has been paid. The buyer is to be considered during the probation-time as a borrower; but after the expiration of this time the purchase is to be considered un-

conditionally concluded, and the buyer the proprietor of the thing purchased.

§. 1081.

If the buyer has paid the price for the thing accepted, the property in it belongs immediately to him; but he can recede from the purchase before the expiration of the probation-time.

§. 1082.

If the probation-time has not been fixed by agreement; it is assumed to be three days for movable things; but one year for immovable things.

§. 1083.

If the contract for selling is stipulated with the proviso, that the seller in case a more advantageous buyer should appear within a fixed time, is authorized to give him the preference; supposing that the thing sold has not been delivered, the effect of the contract is deferred till the realization of the condition.

§. 1084.

If the thing sold has been delivered, the contract for selling is concluded; but it is dissolved again by the realization of the condition. When no time has been expressly fixed, the term assumed for the sale on trial is presumed.

§. 1085.

The seller has to decide, if the new buyer is more advantageous. He can give the preference to the second buyer, even when the first has offered to pay more. In case of the dissolution of the contract the benefits derived from the thing and the money, are put one against the other. In regard to the improvements or deteriorations the buyer is treated the same as a bona fide possessor.

§. 1086.

If some one delivers his movable thing to another, in order to sell it for a fixed price under the condition, that the receiver is to deliver to him, within a fixed time, either the stipulated

selling-price or return the thing; he is not authorized in demanding back the thing before the expiration of the time; but the receiver must pay the stipulated selling-price after the time has expired.

§. 1087.

During the time stipulated the person delivering remains the proprietor. The receiver is answerable to him for the damage caused by his fault and on returning the thing, he is only entitled to demand compensation for such expenses, which have produced some advantage to the delivering person.

§. 1088.

If the thing is immovable, or the price, or the term for payment has not been determined, the receiver is to be considered as a man in power. In no case the thing entrusted for sale can be demanded back from the third person, who has acquired it from the receiver in a bona fide manner (§. 367).

§. 1089.

In general, even in case of judicial sales the prescriptions given for contracts and especially for contracts of exchange and for selling take place; unless particular ordinances are contained in this law or in the law for procedure.

Chapter the twenty-fifth.

Of contracts for hiring, for hereditary tenement and copyhold.

§. 1090.

The contract, by which some one receives the use of an inconsumable thing, for a certain time and for a fixed price, is called in general a contract for hiring.

§. 1091.

The contract for hiring is called deed of conveyance, when the thing hired can be used without being worked; but lease, when it can only be used with application and trouble. If in a contract things of the first and second description are hired at the same time; the contract is to be judged of according to the quality of the principal thing.

§. 1092.

Deeds of conveyance and leases can be concluded for the same things and in the same manner as contracts for selling. The rent, when no other arrangement has been made, is to be paid the same as the selling-price.

§. 1093.

The proprietor can let both his movable and immovable things, as well as his rights; but the case may also arise, that he hires the use of his own thing, when it is due to a third person.

§. 1094.

If the contracting parties have agreed as to the essential matters of the hiring, namely in regard to the thing and the price;

the contract is fully concluded and the use of the thing is regarded as bought.

§. 1095.

If the contract for hiring is entered in the public books; the right of the person hiring is to be considered as a real right, which the consecutive possessor must submit to for the remaining time.

§. 1096.

The lessees and lessors are bound to deliver and to maintain the property, which is farmed or let, in a serviceable state at their own expense and not disturb the tenants in the stipulated use or enjoyment. The farmer has himself to bear the usual repairs of the farm buildings only so far, as they can be covered with the materials of the estate and the services, which he is justified in demanding according to the qualification of the estate, but the other repairs he must give notice of to the lessor, that he may provide for them.

§. 1097.

If the tenant has incurred necessary or useful expense, which properly belonged to the lessee or lessor, for the property farmed or let, he is to be considered as a manager of a business without mandate (§. 1036): but he must demand judicially the compensation at furthest within six months after the return of the property farmed or let, otherwise the complaint ceases.

§. 1098.

Tenants and farmers are authorized to use and employ the things farmed and let for the time fixed, according to the contract, or to give them in second-hand hire or under-tenure, when it can take place without any disadvantage to the proprietor, or has not been expressly forbidden in the contract.

§. 1099.

In case of letting the lessee bears all charges and duties,

In real contracts for farming, when they take place in the lump, the farmer takes upon himself all the charges with the exception of the registered mortgages; but if the contract for farming has been concluded according to an estimate, he bears those charges, which have been deducted from the income, or must be paid merely from the produce, and not from the ground itself.

§. 1100.

Except in the case of an especial stipulation, the rent is to be paid half-yearly, when a thing has been hired for one or several years; if, on the contrary, for a shorter period, at the expiration of the term.

§. 1101.

For the security of the house-or farm-rent the lessee of a lodging has the right of pledge on the furniture and movable things placed in the lodging and belonging to the tenant or subtenant, or entrusted to them by a third person (§. 367), which are still found in it at the time of the complaint. The subtenant is answerable in proportion to his rent; but without being able to object to a payment made beforehand to the principal tenant. The lessor of landed-property on the other hand has the right of pledge on the cattle, which may be on the estate farmed, and the agricultural utensils and the corn, which is still to be found on it.

§. 1102.

The lessee and lessor can, it is true, stipulate for the payment in advance of the house or farm-rent. But if the tenant has paid more than one term in advance; he can only set it against the creditors, who have been entered later, in case it has been entered in the public books.

§. 1103.

If the proprietor cedes his estate under the condition, that the receiver is to carry on the farm and give the proprietor a part in proportion to the whole advantage f. i. a third part, or

the half of the produce; no farming-contract, but a contract of partnership arises, which is to be considered according to the rules given in regard to it.

§. 1104.

When a thing, which is hired, cannot be employed or made use of in consequence of extraordinary accidents, namely fire, war, or epidemic disease, on account of great inundations, hail-storms, or in consequence of a complete failure of the crop; neither house nor farm-rent is to be paid.

§. 1105.

If the use of the thing hired is only partly with-drawn from the tenant; he must also be exempted from a proportional part of the rent. A remission of the rent of the farm can be demanded by the farmer, when the produce of an estate farmed only for one year has been reduced to more than half the usual produce in consequence of extraordinary occurrences. The lessor is bound to remit as much, as is wanting in the farm-rent from this diminution.

§. 1106.

If the tenant has taken upon himself all the dangers indefinitely, the devastation caused by fire, or inundation and hailstorms is to be understood. Other extraordinary misfortunes are not to be supported by him. But if he binds himself expressly to bear all other extraordinary misfortunes, it is notwithstanding not supposed, that he intends to be answerable also for the accidental destruction of the whole thing farmed.

§. 1107.

If the use or enjoyment of the thing hired has not been frustrated, in consequence of any injury or other unserviceableness, which has occured to it; but from a hindrance or misfortune, which has happened in the person of the tenant; or if the corn had been separated from the ground at the time of the injury; the adverse

occurrence must be borne by the tenant alone. He is still bound to pay the rent.

§. 1108.

If the farmer maintains, that he is entitled to demand the remission of the whole farm-rent or a part of it, either in virtue of the contract or the law; he must without loss of time give notice to the lessor of the misfortune, which has happened, and cause the facts to be ascertained, if they are not notorious, either judicially or at least by two expert men; without this precaution his application will not be listened to.

§. 1109.

After the termination of the hiring-contract the tenant is bound to return the thing according to the inventory, which may have been drawn up, or in the state, in which he has received it; but landed property farmed, with reference to the season, at which the lease has expired, in the usual agricultural state of cultivation. Neither the objection of the right of compensation, nor even the objection of the former right of property can protect him from returning it.

§. 1110.

If no inventory has been drawn up with the contract for letting and hiring, the same presumption as in the case of usufruct (§. 518) takes place.

§. 1111.

If the thing hired or farmed is damaged or worn away by misuse, lessees and lessors are answerable not only for their own, but the subtenant's fault; but not for an accident. Still the lessee and lessor must demand compensation judicially on the ground of this responsibility at latest within one year after the thing let or farmed has been returned; otherwise the right ceases.

§. 1112.

The contract for letting and farming is dissolved of itself,

when the thing let or farmed is ruined. If this takes place from the fault of one party, the other is entitled to compensation; if it takes place by accident, neither of the parties is answerable to the other for it.

§. 1113.

The contract for letting and farming ceases also at the expiration of the time, which has been agreed upon expressly or taciturnly, either in calculating the rent according to a certain period, as for instance in so called daily, weekly or monthly rooms, or with regard to the declared intention of the tenant, or apparent from the circumstances.

§. 1114.

The contract for letting and farming can be renewed not only expressly, but taciturnly. If in the contract a previous notice to leave has been stipulated; the contract is taciturnly renewed by the omission of the proper notice. If no notice has been agreed upon, a taciturn renewal takes place, when the tenant continues to employ or use the thing after the expiration of the time, for which it was let or farmed, and the lessee or lessor makes no objection to it.

§. 1115.

The taciturn renewal of the contract for letting or farming takes place under the same conditions, under which it was formerly concluded. But it extends in farming only to a year; supposing however, the ordinary fruits can only be enjoyed at a later period, the renewal is extended to so long a time, as is necessary, in order to be able once to obtain the fruits. Hirings, for which one is accustomed to pay the rent only after the expiration of one year or half a year, are taciturnly renewed for halt a year; but all shorter hirings for the period, which was formerly fixed in the contract for letting and farming. For repeated renewals the same rule, which is prescribed here for the first renewal, is applicable.

§. 1116.

In as far as the duration of a contract for letting or hiring has not been determined either expressly or taciturnly, or by particular stipulations, he, who wishes to dissolve the contract, must give six months notice to the other in case a lease has been contracted; in case an immovable thing has been let, a fortnight's notice; and for a movable thing, twenty-four hours notice before the delivery is to take place.

§. 1117.

The tenant is authorized to give up the contract, even before the expiration of the time agreed upon expressly or taciturnly, when the thing let or hired has become unserviceable for ordinary use on account of its defective state; when an important part of the thing let or farmed is withdrawn, or has become unserviceable by accident for a longer time; or when the lessor or lessee maintain it no longer in a serviceable state.

§. 1118.

The lessee or lessor can on his part demand the previous dissolution of the contract, when the tenant makes an essentially injurious use of the thing; when, after he has been admonished, he delays the payment of the rent in such a manner, that at the expiration of the term he has not fully paid the arrears of rent; or when a building, which has been let, must be rebuilt. The tenant is not bound to permit a more useful construction, when it is to his disadvantage, but he must allow the necessary repairs.

§. 1119.

Should the lessee have known the necessity of the new construction at the time the contract was concluded; or has the necessity for the repairs, which would require a longer time, arisen from the neglect of less important repairs; a suitable compensation must be given to the tenant for the use, which has escaped him.

§. 1120.

If the proprietor has alienated and delivered to another the thing let or farmed; the tenant must give way to the new possessor after the proper notice, if his right has not been registered in the public books (§. 1095). But he is justified in demanding full compensation from the lessee or lessor in regard to the damage suffered and to the profit, which has escaped him.

§. 1121.

In case of necessary judicial alienation the tenant must give way to the new buyer, even when his right is registered as a real right. Only in regard to the compensation the right of preference is reserved to him.

§. 1122.

The contract, by which the „dominium utile" of an estate is delivered to some one as hereditary property under the condition, that he will remunerate the yearly fruits with a yearly fee determined in proportion to the produce, consisting either in money, in fruit or also in proportionate services, is called a hereditary fee-farm-contract (locatio conductio hereditaria).

§. 1123.

When an unimportant fee is paid by the possessor only in acknowledgement of the right to the estate; the estate is called copyhold (praedium emphyteuticum) and the contract concluded in regard to it a copyhold-contract (contractus emphyteuseos).

§. 1124.

In a case of doubt, whether the „dominium utile" is an hereditary fee-farm or a copyhold, the yearly fee and other obligations are to be taken into consideration. If the amount is out of all proportion to the clear yearly produce; the „dominium utile" is a copyhold; but if a proportion can be presumed taking into consideration the old times and that the ground has been taken

possession of in a waste state; it is an hereditary fee-farm (§. 359).

§. 1125.

If a property is divided in such a manner, that the substance of the ground together with the use of the lower plain belongs as an hereditary thing to one party, but only the use of the upper-surface to the other party; the yearly fee to be paid by the latter possessor is called ground-rent.

§. 1126.

The divided property in an immovable thing can in the same manner as the entire property („dominium plenum") not be acquired without entry in the public books or registers. A valid title establishes only a personal right against the person obliged, but no real right against a third person (§. 431).

§. 1127.

The rights of the lord paramount and of the „dominus utilis" agree in general so far, that each party can dispose of his share as far as the rights of the other are not injured by it (§. 363).

§. 1128.

The one as well as the other is authorized to take judicial proceedings in regard to his share, to mortgage it, and to alienate it by an act among living persons or by declaration of his last will. Whoever maintains a limitation, must prove it by the proper documents, by so called bills of feoffment or bond.

§. 1129.

The lord paramount is especially authorized to forbid the dominus utilis not only the diminution of the thing he has in use; but also all alterations, by which the exercise of his rights can be frustrated or rendered difficult.

§. 1130.

He can therefore demand, that the dominus utilis provides

for the preservation and culture of the ground. If he neglects the fulfilment of these duties notwithstanding the warning given; or is unable to bear the burdens charged on the ground, the lord paramount can urge the delivery of the estate to other fee-farmers or copyholders.

§. 1131.

The most important right of the lessor of the fee-farm and copyhold consists in receiving the yearly fee and other dues agreed upon. They can under no pretext be raised, and in no case received from the moveables, which do not belong to the ground, nor from other moveable things.

§. 1132.

The yearly fee must be paid during the first half of the month of November unless something else has been stipulated, or prescribed by the provincial laws.

§. 1133.

An incomplete proprietor is not as a rule answerable to the other for accident: but if a fee-farmer has been prevented using his fee-farm from inundations, war, or epidemic disease; a suitable diminution of the fee must be conceded to him for the period he was deprived of the use.

§. 1134.

A copyholder has no claim to a similar diminution; he must as long as a part of the copyhold exists, pay in full the stipulated fee.

§. 1135.

If the copyholder has not paid the fee at the time stipulated; the lessor of the copyhold can demand, that the produce be distrained and that he shall be compensated out of it.

§. 1136.

The lessor of a fee-farm has with regard to the fee, which

remains in arrear for more than a year, and in order to settle the arrears, the choice to demand either the distraint of the produce or the judicial sale of the fee-farm-estate.

§. 1137.

The lord paramount is bound to intercede for the dominus utilis in regard to the dominium utile, which he has received direct from him, and when the usufruct is again united with the substance, to compensate him or his successor for the improvements made, the same as another bona fide possessor and to answer for the correctness of the public books and registers, which he keeps in regard to his fee-farm and copyhold-estates.

§. 1138.

The lord paramount is not answerable for other burdens charged by the dominus utilis and not entered in the public books. In general the dominus utilis cannot cede more right to another than he himself possesses. The right of the one ceases therefore with the right of the other.

§. 1139.

The rights and obligations of the dominus utilis correspond in general with the obligations and rights of the lord paramount already laid down.

§. 1140.

The dominus utilis does not require the consent of the lord paramount for alienation; still he is bound to make him acquainted with the name of the successor, in order that he may judge, whether he is able to administer the estate and to bear the burdens charged upon it. The lord paramount has no claim to the right of preemption or entering up.

§. 1141.

But if the lord paramount has expressly reserved to himself this consent and these rights; he must declare himself within

thirty days after the proper notice has been given to him. After the expiration of this term his consent is considered as given, Without availing himself of the right of preemption or entering up he can only refuse his consent on account of apparent danger to the substance and the rights connected with it.

§. 1142.

The fee, which the lord paramount has at times to demand of a new dominus utilis, is called, when the change takes place during the life-time, quit rent; but, when it takes place on account of death, mortuarium. Both of them are also called fees for mutation. The constitution of the country, the public books and documents or a peaceable possession of thirty years determines, whether and how these rights are founded.

§. 1143.

A proportionate part of a treasure found (§. 399) is also due to the dominus utilis. He is even authorized to diminish the substance, if he can prove to the lord paramount, that the use of the ground cannot otherwise take place (§. 1129).

§. 1144.

The dominus utilis bears all the ordinary and extraordinary burdens charged on the estate; he pays the duties, tithes, and other taxes particularly registered. The lord paramount is answerable for the burdens, which have reference to the rent.

§. 1145.

Every new dominus utilis is bound as a rule to procure for himself from the lord paramount an accreditive or a document proving the renewed dominium utile.

§. 1146.

One can ascertain from the constitution of every province and the political provisions, in what relations the domini utiles still stand towards the lords paramount and what rights and ob-

ligations in particular exist between the proprietors of an estate and the persons subject to them.

§. 1147.

Whoever pays nothing but ground-rent, can only claim the use of the surface, namely trees, plants and buildings, and of a part of any treasure found on the same. Treasures buried and other under-ground produce belong to the lord paramount alone.

§. 1148.

Whatever has been determined with regard to the cessation of the full property (§. 444), is in general applicable also to the divided property.

§. 1149.

Fee-farm- and copyhold-estates pass over to all the heirs, who have not been expressly excluded. If the dominus utilis has no legal successor; the dominium utile is united with the right of the lord paramount over the property. Still the lord paramount, if he will make use of this right, must settle all the debts of the dominus utilis, which cannot be paid from other property. The political ordinances determine how far a lord paramount is bound to let to others the estate, which has reverted to him.

§. 1150.

The dominium utile is not lost by the destruction of the plants, trees and buildings. As long as any part of the ground remains, the possessor, supposing he pays his fee, can cover it with new plants, trees and buildings.

Chapter the twenty-sixth.

Of onerous contracts having for their object the services of another.

§. 1151.

When some one takes upon himself a service; or binds himself to the performance of a work for a certain reward in money; a contract for the hire of services arises.

§. 1152.

As soon as some one has ordered certain labour or work; it is also presumed, that he has consented to a suitable reward. If the reward has not been fixed, either by agreement, or by law; the judge has to determine it.

§. 1153.

The committer is authorized to secede from the contract, if important defects exist, which make the work unfit for use, or are contrary to the expressed stipulation. If he will not do this; or if the defects are neither important, nor contrary to the expressed stipulation; he can demand either the improvement, or a suitable compensation and can retain for this purpose a proportionate part of the reward.

§. 1154.

If the person, who has received the order, does not, in consequence of a fault on his part, fulfil his promise within the stipulated time, the committer is no longer bound to accept the thing ordered; he can also demand compensation for damage, which has

arisen from it. But should the committer delay in the payment of the reward; he is also bound to compensate fully the person charged with the order.

§. 1155.

A suitable compensation is also due to the person, who has received the order for services and works, which have not been performed, if he was ready to perform the business and was prevented doing so by the fault of the committer or by an accident, which has happened on his part, or if he has in general been injured by loss of time.

§. 1156.

The reward is, as a rule, due after the completion of the work. But if the labour is performed in certain divisions of time, or of the work; or if expenses are connected with it, which the person charged with the order has not taken upon himself; the latter is justified in demanding a part of the reward, which is in proportion to the service or the work done, and compensation for the expenses made before the work is completed, or the labour entirely carried out.

§. 1157.

If the material prepared for the completion of a work, or the work itself has been destroyed entirely or partly by mere accident; the owner of the material or the work must bear the loss. But if the committer has delivered a material, which was evidently unfit for suitable working; the workman is answerable for the damage, when the work for this reason is defective and he has not warned the committer.

§. 1158.

When a doubt exists, whether the order for a certain work is to be considered as a contract for selling or a contract for the hiring of work, it is to be presumed, that he, who delivers the material for it, has ordered the workman. But if the workman has delivered the material; a contract for selling is presumed.

§. 1159.

If other accessory contracts are connected with the contract for the hiring of work; the legal prescriptions suitable to every one of them must be observed.

§. 1160.

Workmen, who have been engaged for a certain time or till the completion of a certain work, cannot without a legal reason give up the work, nor be dismissed before the expiration of the time and before the work is completed. If the work is interrupted; each party is answerable for his fault, but neither of them for accident.

§. 1161.

The workman ordered or the foreman can only under urgent circumstances entrust the business imposed upon him to another, and even in this case he is answerable for a fault in the choice of the person.

§. 1162.

A contract for hiring labour in regard to works, in which one is accustomed to take into consideration the particular dexterity of the person, is dissolved by the death of the workman and the heirs can only demand the price of the useful material prepared and a part of the remuneration in proportion to the value of the work performed. If the committer of a work dies; his heirs are bound to continue the contract or to give compensation to the person charged with the work.

§. 1163.

The provisions given here are also applicable to lawyers, physicians, and surgeons, factors, provisors, artists, contractors and other persons, who have expressly or taciturnly stipulated for a salary, an appointment or otherwise a reward for their trouble, as far as no especial provisions exist in regard to the matter.

§. 1164.

An author gives by the contract in regard to the publication

of a manuscript the right to some one to multiply it by printing and to sell it. The author renounces in doing so the right to deliver the same work to another person for publication.

§. 1165.

The author is bound to deliver the work according to the stipulation, and the publisher to pay the remuneration agreed upon immediately after the work has been delivered.

§. 1166.

When the work has not been delivered by the author at the time fixed, or in the stipulated manner, the publisher can secede from the agreement, and, when the delivery does not take place from the fault of the author, demand compensation.

§. 1167.

When the number of copies has been fixed; the publisher must obtain the consent of the author for every new edition, and come to a new arrangement in regard to the conditions.

§. 1168.

When the author will cause a new edition with alterations in the contents of the work; a new contract is likewise to be concluded in regard to it. But before the edition is sold, the author is only then entitled to a new edition, when he is ready to give the publisher a suitable compensation in regard to the copies, that he may have in stock.

§. 1169.

The rights of the author in regard to a new impression or edition do not pass over to his heirs.

§. 1170.

If an author undertakes the composition of a work according to a plan given to him by the publisher; he can only claim the remuneration agreed upon. The publisher has for the future the entire free right of publication.

§. 1171.

These provisions are also applicable to maps, topographical drawings and musical compositions. The restriction in regard to pirated editions are contained in the political laws.

§. 1172.

The rights and duties between masters and servants are contained in the especial provisions existing in regard to them.

§. 1173.

The contracts, by which a thing or an act is promised for an act taken upon himself by some one, are to be judged of according to the rules established with regard to the onerous contracts in general, and especially according to the rules established in this chapter.

§. 1174.

Whatever some one has given knowingly in order to effect an impossible or forbidden act, he cannot demand back again. The political ordinances determine how far the Fiscus is justified in confiscating it. But if something has been given, in order to prevent a forbidden act, to the person, who intended to commit this act; a reclamation of the thing given is admissible.

Chapter the twenty-seventh.

Of the contract establishing a community of goods.

§. 1175.

In a contract, by which two or more persons agree to unite their services alone, or even their things for common benefit, a company for common gain is concluded.

§. 1176.

The company is different and the rights of the company more or less extended, according as the members of a company dedicate for the community only single things or sums; or an entire sort of things f. i. all goods, all fruits, all immoveable estates, or finally their whole fortune without any exception.

§. 1177.

If a deed of partnership comprehends the whole property; still only the actual property is understood by it. Should however the future property also be included; one understands by it only that, which has been earned, not inherited; except in case both had been expressly stipulated.

§. 1178.

Deeds of partnership, which refer only to the actual, or only to the future property, are invalid, when the property brought in by the one and the other party has not been properly described and recorded.

§. 1179.

The especial commercial and political laws determine how the deed of partnership among merchants is to be concluded, entered in the proper registers, and be made publicly known. When only separate affairs are carried on in common; it is sufficient, when the deed concluded in regard to them is apparent in the commercial books.

§. 1180.

The contract, the object of which is a community of the entire, both actual and future property, which generally is only concluded between spouses, is to be judged of according to the provisions given on the matter in the chapter treating of marriage-articles. These provisions refer to other kinds of community of goods founded on contract.

§. 1181.

The deed of partnership belongs, it is true, to the titles for acquiring ownership; but the acquisition itself, and the community of goods or things is only brought about by the delivery of the same.

§. 1182.

Every thing, that has been expressly determined for carrying on the common business, forms the capital or the capital-stock of the company. The rest, which every member possesses, is to be considered as a separate property.

§. 1183.

When money, consumable, or inconsumable things, which have been valued in money, are brought in; not only the profit arising from them, but also the capital-stock are to be considered as common property in regard to the members, who have contributed to it. Whoever promises to give up his services for the common use, has, it is true, a claim to the profit, but not to the capital-stock (§. 1192).

§. 1184.

Every member is bound, except in case of an especial agreement, to contribute an equal share to the common capital-stock.

§. 1185.

All the members as a rule are bound to cooperate equally for the common advantage, without regard to their greater or smaller share.

§. 1186.

No member is authorized to entrust the cooperation to a third person; or to receive some one into the company; or to undertake an accessory business injurious to the company.

§. 1187.

The duties of the members are more precisely determined by the deed. Whoever has bound himself only to work, is not bound to contribute any thing. Whoever has promised only a contribution in money or something else, has neither the obligation nor the right to cooperate in another manner for the common gain.

§. 1188.

In regard to the deliberation and decision as to the affairs of the company, when no other agreement exists, the provisions given in the chapter of the community of property are to be applied (§§. 833—842).

§. 1189.

The members cannot be compelled to contribute more than they have bound themselves to do. But if from altered circumstances the attainment of the common object is not possible without an augmentation of the contribution; the member refusing to contribute can retire or be compelled to retire.

§. 1190.

If the carrying on of the business is entrusted to one or se-

veral of the members; they are to be considered as men in power. The provisions above mentioned (§§. 833—842) are likewise to be applied to their deliberations and decisions in regard to the affairs of the company.

§. 1191.

Every member is answerable for the injury caused to the company by his fault. This injury is not to be compensated by means of the profit, which he has otherwise procured to the company. But if a member has, by a new business undertaken voluntarily, caused on the one side injury, and on the other side profit to the company; a proportionate compensation must take place.

§. 1192.

The property, which remains above the capital-stock after deducting all the expenses and the losses suffered, is the profit. The capital-stock itself remains the property of those, who have contributed to it; except the value of the work should have been added to the capital and every thing had been declared common property.

§. 1193.

The profit is divided in proportion to the contribution of capital, and the services rendered by all the members counterbalance one another. If one or several members only give their services, or besides the contribution of capital perform works also; the equivalent for the trouble is, if no agreement exists, and the partners cannot agree among themselves, to be determined by the tribunal having regard to the importance of the business, the trouble employed and the advantage procured.

§. 1194.

If the profit does not consist in money, but other descriptions of produce; the division takes place according to the provision contained in the chapter of the community of property (§§. 840—843).

§. 1195.

The company can grant a member for his eminent qualities or services a larger profit, than was due to him according to his share; such exceptions however dare not degenerate into illegal agreements or retrenchments.

§. 1196.

Such an illegal agreement is the contract, by which some one secures himself on the one hand against all danger of loss for the capital brought in, both in regard to the capital and the interest, and frees himself from all cooperation; but still on the other hand stipulates a profit exceeding the legal conventional interest.

§. 1197.

If the company has lost entirely or in part the capital, which was brought in; the loss is divided in the same proportion as the profit would have been divided in a contrary case. Whoever has brought in no capital, loses his services.

§. 1198.

The members, to whom the administration is entrusted, are bound to keep and deposit proper accounts in regard to the common capital-stock and the receipts and expenses belonging to it.

§. 1199.

The final account and partition of the profit or loss cannot be demanded before the conclusion of the business. But when affairs are carried on, which last several years and are intended to give a yearly profit; the members can, when the principal business does not suffer from it, demand both a yearly account as well as a yearly partition of the profit. Every member can besides at all times examine the accounts at his own expense.

§. 1200.

Whoever is satisfied with the mere production of the ba-

lance, or has renounced his right to demand an account, can, when he proves fraud only in one part of the administration, urge a complete account for the past as well as for all future cases.

§. 1201.

No obligation is contracted by the company towards a third person without the express or taciturn legal consent of its members, or their men in power. For merchants, the published authorization given to one or several members, to manage the firm, namely, to sign all documents and writings in the name of the company, comprehends in itself a general power of attorney (§. 1028).

§. 1202.

A member, who is only interested with a part of his property in the company, can possess property separated from the common property, which he is justified in disposing of at his pleasure. Rights and obligations belonging to a third person in regard to his relation to the company, must therefore be distinguished from the rights and obligations belonging to him in his relation to single members.

§. 1203.

Whatever therefore some one has to demand or pay to a single member, and not from or to the company, he can also only demand from or pay to the single member, and not the company. In the same way every member has in regard to the claims or debts of the company only a right or obligation to payment, as far as his share is concerned; except in the case, which is supposed for merchants, that all for one and one for all have promised or accepted something.

§. 1204.

The sleeping partners of a commercial company, namely such as have lent a part of the capital for profit and loss, but have not been notified as members, are in no case answerable

with more than the capital lent. The members, whose names have been published, are answerable with their whole property.

§. 1205.

The company is dissolved of itself, when the business undertaken is completed; or can no longer be continued; when the whole of the common capital-stock has been destroyed; or when the time fixed for the duration of the company has expired.

§. 1206.

The rights and obligations in regard to the company do not as a rule pass over to the heirs of one of the members. Still the latter are authorized, if the company is not continued with them, to demand the accounts up to the death of the testator and have them settled. But in a contrary case they are also bound to deliver accounts and settle them.

§. 1207.

If the company consists only of two persons; it is dissolved by the death of the one. If it consists of several; it is to be presumed, that the other members will still continue the company among themselves. This presumption is also applicable to the heirs of merchants in general.

§. 1208.

If the deed of partnership concluded by persons, who are not merchants, is expressly contracted for their heirs; the latter are, when they accept the inheritance, bound to comply with the will of the testator; but this will does not extend to the heirs of the heirs; it can still less establish a perpetual company (§. 832).

§. 1209.

If the heir is not able to fulfil the services, which the deceased has taken upon himself; he must submit to a proportionate reduction of his share of the profit calculated.

§. 1210.

If a member does not fulfil the essential conditions of the contract; if he becomes bankrupt; if he is judicially declared a prodigal, or in general is placed under a curator; if he loses by committing a crime the confidence reposed in him; he can be excluded from the company before the expiration of the time.

§. 1211.

One can give notice, in order to dissolve the deed of partnership, before the expiration of the time, when the member, on whom the management of the business principally depended, has died or seceded.

§. 1212.

If the period for the duration of the company has neither been expressly determined, nor can be determined from the nature of the business; every member can give notice in order to dissolve the contract according to his will; only it dare not take place deceitfully or at an improper time (§. 830).

§. 1213.

The effects of an exclusion or warning, which, it is true, has been disputed, but afterwards declared legal, are to be judged of according to the day, on which they took place.

§. 1214.

The dissolution of a commercial company; the reception and the retirement of its public members must as well as its constitution be made publicly known. From this publication the extent and the duration of the powers is to be judged of.

§. 1215.

On the division of the property belonging to the company, which is to take place on its dissolution, besides the regulations mentioned above the same provisions are to be observed, which

have been established in the chapter concerning the community of property with regard to the partition of a common thing in general.

§. 1216.

The dispositions contained in this chapter are applicable also to commercial companies; as far as no particular provisions exist in regard to them.

Chapter the twenty-eighth.

Of marriage-articles.

§. 1217.

Marriage-articles are called those contracts, which are concluded with a view to a matrimonial union in regard to the property, and their object is especially: the dowry; the jointure; the gift on the morning after the nuptial day; the community of goods; the administration and usufruct of the property; the hereditary succession or the life-long usufruct of the property intended for a case of death and the widow's settlement.

§. 1218.

Under dowry one understands the property, which is delivered or secured to the husband by the wife or by a third person for her, in order to lighten the expense connected with the matrimonial union.

§. 1219.

If the bride possesses property of her own and is of age; it depends on her and the bridegroom, how they agree with one another in regard to the dowry and other mutual gifts. But if the bride is still a minor; the contract must be concluded by the father or guardian, with the consent of the pupillar tribunal.

§. 1220.

If the bride does not possess sufficient property of her own for a suitable dowry; the parents or grandfather and grandmother are bound in the same order, as they are obliged to maintain and

provide for the children, to give the daughters or female grandchildren on their marriage a dowry suitable to their position in life and property, or to contribute proportionately to it (§§. 141 and 143). An illegitimate daughter can demand a dowry only from her mother.

§. 1221.

If the parents or grandfather and grandmother allege their inability to constitute a suitable dowry; the tribunal must at the request of the persons intending to marry, enquire into the circumstances, but without a strict examination into the state of the property, and according to the result of the enquiry fix a suitable dowry, or release the parents and grandfather and grandmother from the obligation to furnish it.

§. 1222.

If a daughter was married without the knowledge or against the will of her parents, and the tribunal finds the cause of the disapproval founded; the parents are even in case, they afterwards approve of the marriage, not bound to give her a dowry.

§. 1223.

If a daughter has already received her dowry and lost it, although without any fault on her part, she is no longer justified in demanding a new dowry even in case of a se ond marriage.

§. 1224.

If there is a doubt, whether the dowry has been given from the property of the parents or bride, the latter is presumed. But if the parents have already paid the dowry to their daughter being a minor, without the consent of the pupillar tribunal; it is supposed, that the parents have done so from their own property.

§. 1225.

If the husband has not stipulated a dowry before the conclusion of the marriage; he is not justified in demanding one.

The delivery of the dowry stipulated can, when no other term has been fixed, be demanded immediately after the conclusion of the marriage.

§. 1226.

When the husband has become bankrupt; his confirmation given, before the bankruptcy took place, in writing, or by word of mouth, that he has received the dowry, can be used as a proof against every one. But if the confirmation was only given after the bankruptcy took place; it cannot be used as evidence against the creditors.

§. 1227.

Every thing, which can be alienated and used, is fitted for a dowry. As long as the matrimonial union continues, the usufruct of the dowry and of every thing, that accrues to it, belongs to the husband. If the dowry consists of ready money, of active debts, which have been ceded, or of consumable things, the entire property in them belongs to him.

§. 1228.

If the dowry consists in immovable goods, in rights or utensils, which can be used without an alteration of the substance; the wife is considered the proprietress, and the husband the usufructuary of them so long, as it is proved, that the husband has taken upon himself the dowry for a certain price and has only bound himself to return the amount in money.

§. 1229.

According to the law the dowry reverts after the death of the husband to his wife, and if she dies before him, to her heirs. If it is intended to exclude either her, or her heirs from it; it must be expressly determined. Whoever constitutes the dowry voluntarily, can make it a condition, that after the death of the husband it reverts to him.

§. 1230.

Whatever the bridegroom or a third person constitutes in

favour of the bride, in order to increase the dowry, is called jointure. The wife, it is true, has no profit from it during the marriage; but when she survives her husband, the free property belongs to her even without an especial agreement, although the dowry has not been assigned to the husband in case he should survive.

§. 1231.

Neither the bridegroom, nor his parents are bound to constitute a jointure. But in the same manner, in which the parents of the bride are bound to constitute a dowry for her, the parents of the bridegroom are also bound to give him an outfit suitable to their property (§§. 1220—1223).

§. 1232.

The present, which the husband promises to give his wife on the first morning, is called gift on the morning after the nuptial day. If such a gift has been promised; it is presumed in case of doubt, that it has already been delivered within the first three years of the marriage.

§. 1233.

The matrimonial union alone does not establish a community of goods between the spouses. For that purpose an especial contract is required, the extent and juridical form of which is to be considered according to §§. 1177 and 1178 of the preceding chapter.

§. 1234.

The community of goods between spouses is as a rule only understood for the case of death. It gives the one spouse the right to the half of that, which after the death of the other spouse still remains from the goods, which have been mutually declared as common goods.

§. 1235.

In case of a community, which refers to the whole property, all the debts without exception are to be deducted before the

division; but in a community, which has for its object merely the present, or merely the future property, only those debts are to be deducted, which have been employed for the benefit of the common good.

§. 1236.

If one spouse possesses an immovable estate and the right of the other spouse in regard to the community is entered in the public books; the latter obtains by this entry a real right to the half of the substance of the estate, by means of which the one spouse cannot dispose over this half; but he does not obtain any claim to the produce during the marriage in consequence of the entry. After the death of the spouse the surviving party obtains immediately the free property over his share. Still such an entry cannot be prejudicial to the creditors, who have been previously registered on the estate.

§. 1237.

If spouses have not come to any particular arrangement in regard to the application of their property, each spouse maintains his former right of property, and the other has no claim to that, which each party acquires during the marriage, or receives in whatever manner. In a case of doubt it is supposed, that the acquisition is due to the husband.

§. 1238.

As long as the wife has not opposed, the legal presumption prevails, that she has entrusted her husband as her legal representative with the administration of her free property.

§. 1239.

The husband is, it is true, in regard to such an administration generally considered as another empowered administrator; still he is only answerable for the capital-stock or capital. He is not bound to give an account of the produce drawn during his administration, unless it has been expressly stipulated; on the contrary it is to be presumed, that the account is settled up to the day the administration ceased.

§. 1240.

The wife is also not bound to give an account of the usufruct, which she has ceded to her husband, but has enjoyed herself during the marriage; but the spouses are at liberty to suspend such administrations, which have been agreed to taciturnly.

§. 1241.

In urgent cases, or when the danger of a disadvantage exists, the administration of the property can be taken from the husband, even when it has been expressly and for ever granted to him. On the contrary he is also authorized to put a stop to the disorderly housekeeping of his wife, and have her even declared a prodigal under the legal provisions.

§. 1242.

A widow's settlement is called, what is alotted to a wife for her maintenance in case of her becoming a widow. This is due to the widow immediately after her husband's death and must always be paid to her three months in advance.

§. 1243.

The widow is entitled to demand the usual maintenance from the inheritance for six weeks after her husband's death, and if she is pregnant, till the expiration of six weeks after her confinement. But as long as she enjoys this maintenance, she can draw no widow's settlement.

§. 1244.

If the widow marries again; she loses her right to the widow's settlement.

§. 1245.

Whoever delivers the dowry, is justified in demanding a suitable security from the persons who receive it, on the delivery or consecutively, when danger occurs. Guardians and curators of a bride under guardianship cannot, without the consent of the

tutelar tribunal dispense with the security for the dowry, and likewise for the jointure stipulated and the widow's settlement.

§. 1246.

The validity or invalidity of donations between spouses is to be judged of according to the law existing in general for donations.

§. 1247.

Whatever a husband has given to his wife in jewellery, precious stones, and other precious articles for ornament, is, in case of doubt, not to be considered as lent, but given as a present. But if one betrothed party promises or makes a present of something to the other, or if even a third person promises or makes a present of something to the one or the other party in regard to the future marriage; the donation can be revoked, when the marriage does not take place without any fault on the part of the donator.

§. 1248.

The spouses are allowed to institute each other mutually a heirs in one and the same last will, or even to nominate other persons as heirs. Even such a testament is revocable; but from the revoke of the one party a revoke of the other party cannot be inferred (§. 583).

§. 1249.

An hereditary contract, by which the future inheritance, or a part of it, is promised, and the promise accepted, can also be concluded between spouses (§. 602). It is however necessary for the validity of such a contract, that it is made in writing with all the requisites of a testament in writing.

§. 1250.

A spouse under guardianship can, it is true, accept an inheritance promised, which is not detrimental to him or to her; but the disposition over his or her own inheritance can, without the consent of the tribunal, only have effect as far as it is a valid testament.

§. 1251.

Whatever has been said of the conditions in contracts in general, must also be applied to hereditary contracts between spouses.

§. 1252.

An hereditary contract, even when it is inscribed in the public books, does not prevent the spouse from disposing over his or her property at his or her pleasure, as long as he or she lives. The right, which arises from it, supposes the death of the testator; the heir nominated in the contract can, if he does not survive the testator, neither cede his right to another, nor demand security on account of the future inheritance.

§. 1253.

A spouse on concluding an hereditary contract cannot entirely renounce the right to make a last will. A clear fourth part, which cannot be made liable either for the legitimate portion due to some one, nor for another debt remains by virtue of the law always reserved for free last dispositions. If the testator has not disposed of it; still it does not devolve to the heir nominated in the contract, although the whole inheritance had been promised, only to the legal heirs.

§. 1254.

The hereditary contract cannot be revoked to the prejudice of the other spouse, with whom it has been concluded; but it can be invalidated only according to the provision of the law. The rights of the legitimate heirs are reserved to them in the same manner as against another last disposition.

§. 1255.

If a spouse concedes to the other the usufruct of his or her property for the case of his or her surviving; he or she is not restricted by it in the free disposition by acts among living persons; the right of usufruct (§§. 509—520) refers only to the property left as a free inheritable property.

§. 1256.

But if the usufruct of an immovable estate is entered with the consent of the bestower in the public books; it can no longer be restricted in regard to this estate.

§. 1257.

In case the surviving party marries again, or wishes to cede the usufruct to another, the children of the deceased spouse have the right to demand, that the same shall be delivered to them on payment of a suitable sum yearly.

§. 1258.

A spouse, who claims the usufruct of the whole inheritance of the other spouse, or a part of it, has no right to demand the share alotted to him or her by the law in consequence of the legal succession (§§. 757—759).

§. 1259.

The equalization of property of children, that is a contract, by which children of different marriages are to obtain equal rights in the inheritance, has no legal effect.

§. 1260.

If the husband has been declared bankrupt during his lifetime; the wife cannot, it is true, avail herself against the creditors of the right of demanding the restitution of the dowry and the delivery of the jointure, but only security in case the marriage should be dissolved. She is besides entitled to claim the enjoyment of the widow's maintenance from the time of the declaration of bankruptcy, and if none has been stipulated, the enjoyment of the dowry. This claim of the enjoyment of either the one or the other, is not admissible, when it is proved, that the wife was the cause of the decay of the husband's pecuniary circumstances.

§. 1261.

If the wife is declared bankrupt with her property; the marriage-articles remain unchanged.

§. 1262.

If a community of goods is stipulated between the spouses; it ceases by the declaration of bankruptcy of either the one or the other spouse, and the property common to both of them is divided as in case of death.

§. 1263.

When the spouses agree to live divorced, it depends also upon their agreement, which is always to be concluded at once (§§. 103—105) whether they wish their marriage-articles to continue, or in what manner they wish to alter them.

§. 1264.

But if the divorce has been pronounced by judicial sentence, and if it is found, that neither of the parties, or that each party has caused the divorce by his or her fault, the one or the other spouse can demand, that the marriage-articles shall be declared annulled; the tribunal is always bound to try to come to an arrangement in regard to it (§. 108). If one party is innocent, he or she is free to demand the continuation or annulment of the marriage-articles, or the suitable maintenance according to circumstances.

§. 1265.

If a marriage is declared invalid; the marriage-articles are also annulled, the property returns as far, as it exists, to the former state. But the party in fault is bound to give compensation to the innocent party (§. 102).

§. 1266.

If the dissolution of the marriage (§§. 115 and 133) is granted at the request of both spouses on account of their insur-

mountable disinclination; the marriage-articles cease for both parties as far as no arrangement has been made in regard to them (§. 117). But if the dissolution of the marriage is pronounced by sentence, full compensation is not only due to the innocent party, but also every thing, that has been stipulated in the marriage-articles in case of his or her surviving, and this must take place from the moment of the dissolution being pronounced. The property, in regard to which the community of goods has existed, is divided as in case of death, and the right arising from an hereditary contract is reserved to the innocent party for the case of death. A spouse, whose marriage has been dissolved, even although he or she were innocent, cannot claim the legal succession (§§. 757—759).

Chapter the twenty-ninth.

Of the contracts depending on chance.

§. 1267.

A contract, by which the hope of a still uncertain advantage is promised and accepted, is a contract depending on chance. It belongs, according to the circumstance, whether something is promised as an equivalent or not, to the onerous or gratuitous contracts.

§. 1268.

In contracts depending on chance the legal remedy on account of injury for more than the half of the value does not take place.

§. 1269.

Contracts depending on chance are: the bet; gaming and the drawing of lots; all contracts of buying or other contracts in regard to rights hoped for, or in regard to future, still uncertain things; further the annuities; companies for maintenance; finally assurance and bottomry contracts.

§. 1270.

A bet arises, if with regard to an event still unknown to both parties, a certain price is stipulated between them for the one, whose assertion coincides with the result. If the winnig party was certain of the result and kept it secret from the other party; he is guilty of deceit and the bet is invalid. But the losing, party who was aware beforehand of the result, is to be considered as a donator.

§. 1271.

Fair bets and bets, which are otherwise allowed, are so far binding, as the stipulated price is not only promised; but really paid or deposited. Judicially the price cannot be demanded.

§. 1272.

Every game is a sort of bet. The rights determined for bets are also applicable for games. What games are forbidden in general, or for peculiar classes; how persons, who carry on forbidden games, and those, who connive at them, are to be punished, is determined by the political laws.

§. 1273.

The drawing of lots, the object of which is a bet or a game between private persons, is judged of according to the provisions given for bets and games. But if a partition, a choice, or a dispute is to be decided by lot; the rights arising from other contracts are to be applied here.

§. 1274.

State-lotteries are not to be judged ot according to the quality of a bet and the game; but according to the plans published on every occasion with regard to them.

§. 1275.

Whoever promises a proportionate price for a determined measure of some future produce, concludes an ordinary contract for buying.

§. 1276.

Whoever buys the future produce of a thing in the lump; or whoever buys the hope of the same for a certain price, concludes a contract depending on chance; he bears the risk of the expectation entirely frustrated; but all the ordinary advantages attained are also due to him.

§. 1277.

The share in a mine, is called adventure in a mine. The purchase of such an adventure belongs to the contracts depending on chance. The seller is only answerable for the accuracy of the adventure and the buyer is bound to act according to the laws in reference to mining.

§. 1278.

The purchaser of an inheritance, which has been taken possession of from the seller, or of an inheritance, which has at least fallen to him, not only enters upon the rights; but also upon the obligations of the seller as heir, as far as they are not merely personal. Therefore if no inventory has been taken as basis for the purchase, the purchase of an inheritance is also a business depending on chance.

§. 1279.

The purchaser of an inheritance has no claim to things, which are due from the inheritance to the seller, not in his position as heir, but for another reason, for instance as pre-legacy, as entail, as substitution, as a debt, and which would have been due to him even without the right of inheritance. On the other hand he keeps every thing, which accrues to the inheritance itself, either in consequence of the want of a legatee, or of a co-heir, or in whatever other manner, as far as the seller would have had a claim to it.

§. 1280.

Every thing, that the heir has received from the right of inheritance, as f. i. fruits and demands received, is altogether reckoned to the stock; every thing on the contrary of his own, which he has employed for the purpose of taking possession of the inheritance, or for the benefit of the inheritance, is to be deducted from the stock. To this belong: the debts paid; the legacies already delivered, taxes and judicial taxes; and if it has not otherwise been expressly agreed, the funeral expenses also.

§. 1281.

As far as the seller has administered the inheritance before the delivery, he is answerable to the buyer for it the same as another manager of a business.

§. 1282.

But the creditors of the inheritance and legatees can have recourse for satisfaction both to the buyer of the inheritance as well as the heir himself. Their rights as well, as those of the debtors of the inheritance, are not altered by the sale of the inheritance, and the taking possession of the inheritance by the one is also valid for the other.

§. 1283.

If on selling the inheritance an inventory has been taken as a basis, the seller is answerable for the same. If the purchase has taken place without such an inventory, he is answerable for the correctness of his right of inheritance, as he has declared it to be, and for all the injury caused to the purchaser by his fault.

§. 1284.

If one promises some one for money, or for a thing valued for money, a certain yearly payment during the life-time of a certain person; it is a life-rent-contract.

§. 1285.

The duration of the life-rent can depend on the life of the one or the other party, or even of a third person. In case of doubt it is to be paid quarterly in advance; and ceases in every case with the life of the person, on whose head it depends.

§. 1286.

Neither the creditors, nor the children of the person, who stipulates a life-rent, are authorized in annulling the contract. Still the former are entitled to seek satisfaction from the annui-

ties; but the latter are entitled to demand the deposit of a dispensable part of the rent, in order to secure for themselves the maintenance, which is due to them according to the law.

§. 1287.

The contract, by which a common fund for sustenance is founded by means of deposited money for the members, their wives or orphans, is to be judged of according to the nature and object of such an institution, and the conditions fixed in regard to it.

§. 1288.

If some one takes upon himself the risk of damage, which could fall upon another without his fault, and promises to give him the compensation agreed to for a certain price; an insurance-contract arises. The insurer is in consequence of it answerable for the accidental damage, and the person insured for the price agreed upon.

§. 1289.

The usual object of this contract are goods, which are conveyed by water or by land. But other things also, for instance, houses and parcels of land can be insured against fire, water and other risks.

§. 1290.

If the accidental damage, for which the compensation has been insured, takes place, the person insured is bound, when no insurmountable hindrance intervenes, or nothing else has been agreed to, to give notice of it to the insurer within three days, if both are in the same place, but otherwise during the term, which has been fixed for giving notice, that the promise made to an absent person has been accepted (§. 862). If he neglects giving notice; if he cannot prove the accident; or if the insurer can prove, that the damage has arisen from the fault of the person insured; the latter has no claim to the sum insured.

§. 1291.

If the destruction of the thing was already known to the

person insured at the time of the conclusion of the contract; or the safety of the same to the insurer, the contract is invalid.

§. 1292.

The determinations in regard to insurances for sea-risks; as well as the provisions in regard to bottomry-contract are a subject of the maritime laws.

Chapter the Thirtieth.

Of the right of compensation and satisfaction.

§. 1293.

Damage is called every detriment, which has been caused to any one in property, rights, or his person. The loss of profit, which some one has to expect according to the usual course of things, differs from it.

§. 1294.

The damage arises either from an illegal act, or illegal omission of another; or from an accident. The illegal injury is caused either wilfully or unwilfully. But the wilful injury is founded partly on a wicked intention, when the damage has been caused knowingly and purposely; partly from an oversight, when it is caused from guilty ignorance, or from want of the proper attention, or the proper application. Both are called a fault.

§. 1295.

Every one is justified in demanding from the person causing the injury, compensation for the damage, which has been caused by his fault; the damage may either have been caused by the infringement of a contracted duty, or without regard to a contract.

§. 1296.

In case of doubt the presumption prevails, that the damage has arisen without any fault on the part of another.

§. 1297.

But it is also presumed, that every one, who possesses the use of his understanding, is capable of such a degree of diligence

and attention, which can be applied, when one possesses common capacities. Whoever in undertaking such acts, by which an injury to the rights of another arises, omits this degree of diligence or attention, is guilty of an oversight.

§. 1298.

Whoever asserts, that he has been prevented from the fulfilment of a contracted or legal obligation without any fault on his part, is bound to prove it.

§. 1299.

Whoever professes publicly an appointment, an art, a trade or craft; or whoever without necessity takes voluntarily upon himself a business, the carrying out of which demands peculiar knowledge or extraordinary diligence, shows by it, that he considers, he possesses the necessary diligence and the necessary extraordinary knowledge; he must stand good for the want of it. But if the person, who entrusted the business to him, has known of his inexperience; or could know it in applying the usual attention, the latter is at the same time guilty of an oversight.

§. 1300.

A skilful man is even then answerable, when he gives, on receiving a fee, in affairs of his art or science prejudicial advice from oversight. Besides this case a person giving the advice is only answerable for the damage, which he has knowingly caused to the other by giving the advice.

§. 1301.

For damage illegally caused several persons can become answerable having contributed to it in common, in a direct or indirect way, by misleading, by threatening, commanding, assisting, concealing and so on; or even only by omitting the special obligation to prevent the evil.

§. 1302.

In such a case, when the damage is founded in an over-

sight and the participation can be determined, every one is only answerable for the damage caused by his oversight. But if the damage has been caused purposely; or if the participation of single persons in the damage cannot be determined; all are answerable for one, and one for all; still the one, who has replaced the damage, has the right to demand the restitution from the others.

§. 1303.

How far several co-debtors have to answer for the mere neglect of the fulfilment of their obligation, is to be judged of from the nature of the contract.

§. 1304.

In case an injury takes place, a fault on the part of the damaged person occurs at the same time; he bears the damage proportionately with the person, who has caused the damage; and when the proportion cannot be determined, in equal parts.

§. 1305.

Whoever makes use of his right within the legal limits, is not answerable for the disadvantage arising from it to another.

§. 1306.

The damage, which some one has caused without fault or by an involuntary act, he is not bound as a rule to replace.

§. 1307.

But if some one has himself caused by his own fault a transitory confusion of his senses; the damage caused during this confusion is to be attributed to his fault. This also is applicable to a third person, who has caused by his own fault this state of the person causing the damage.

§. 1308.

When madmen, or idiots, or children cause an injury to some

one, who has himself occasioned it by whatever fault; he can demand no compensation.

§. 1309.

Except this case the compensation is due to him from those, to whom the damage can be attributed on account of the neglect of surveillance over such persons entrusted to them.

§. 1310.

If the person injured cannot obtain the compensation in such a manner; the judge has to grant either the whole compensation, or a just part of it, taking into consideration the circumstance, whether the person, who has caused the injury, notwithstanding he is generally not master of his reason, is nevertheless in fault in the special case; or whether the damaged person has omitted the defence out of consideration for the person causing the damage; or lastly with regard to the property of the person causing the damage and the person damaged.

§. 1311.

Mere incident falls upon the one, in whose property or person it occurs. But if some one has occasioned the incident by a fault; if he has transgressed a law, which endeavours to prevent incidental injuries; or has mixed himself unnecessarily in the business of another; he is answerable for all the disadvantage, which would not have occured without it.

§. 1312.

Whoever has done any one a service in case of necessity, the damage, which he has not prevented, is not imputed to him; unless he has prevented by his fault another from doing so, who would have done still more. But also in this case he can reckon the profit, which he has evidently produced, against the damage caused.

§. 1313.

For the illegal acts of another, in which some one has not

participated, he is, as a rule, not answerable. Even in cases, for which the laws determine the contrary, the indemnification from the person in fault is reserved to him.

§. 1314.

If some one takes a person into his service without a certificate; or knowingly retains in his service a person, who is dangerous from his or her bodily or mental qualification, or harbours a known criminal, he is answerable to the landlord and the co-inhabitants of the house for the indemnification of the damage caused by the dangerous qualification of these persons.

§. 1315.

In the same manner he, who has knowingly appointed such a dangerous person; or who has appointed an incapable person to a business, is answerable for the damage, which a third person has suffered by it.

§. 1316.

Landlords, navigators, carriers are answerable for the damage, which their own servants or the servants appointed by them cause to the things entrusted to them, to the prejudice of a traveller residing in their house, or on board their ship, or in the loading (§. 970).

§. 1317.

The peculiar provisions determine how far public institutions established for forwarding persons and goods take upon themselves a responsibility for the damage.

§. 1318.

If some one is damaged by the falling down of a thing dangerously placed or hung up; or by throwing, or pouring something out of a lodging, the person, from whose lodging the thing has been thrown or poured, or from which it has fallen, is answerable for the damage.

§. 1319.

On account of the probable danger, that a sign-board, a vessel or other things hung up or placed over a frequented place, might fall and injure the passers-by, no one is authorized to bring a judicial complaint; but every one is on account of the general security authorized to give notice of the danger to the political authority.

§. 1320.

If some one is injured by an animal; he who has driven it, who has excited it, or has neglected to guard it, is answerable for it. If no one can be convicted of a fault of this sort; the injury is to be considered as an accident.

§. 1321.

Whoever finds cattle, which belong to other people, on his ground, is not therefore justified in killing them. He can drive them away with suitable violence, or if he has suffered injury from them, he can exercise the right of private distraint over as many head of cattle, as are sufficient to compensate him. Still he must come to an arrangement with the proprietor within a week, or bring his complaint before the judge; but in a contrary case he must return the distrained cattle.

§. 1322.

The distrained cattle must also be returned, if the proprietor gives another suitable guarantee.

§. 1323.

In order to give compensation for damage caused, everything must be replaced in the former state, or, if this is not possible, the price, at which it has been valued, must be indemnified. If the object of the compensation is only the damage suffered, it is really called an indemnification; but if it extends also to the profit, which has escaped, and the annulling of the offence caused, it is called full satisfaction.

§. 1324.

In case of damage caused from a malicious intention, or from striking negligence, the person injured is authorized to demand full satisfaction; but in other cases only the real indemnification. According to this in cases, where the general expression compensation occurs in the law, it is to be judged, what sort of compensation is to be given.

§. 1325.

Whoever injures some one bodily, bears the expenses of the cure of the person injured; compensates him for the gain, which has escaped him, or if the person injured becomes incapable of earning a livelihood, for the future gain, which will escape him; and pays him besides at his request a suitable smart-money according to the circumstances stated.

§. 1326.

If the person injured has been deformed by the ill-treatment, this circumstance must, especially if the person belongs to the femal sex, so far be taken into consideration, as the better success in life may have been prevented by it.

§. 1327.

If death occurs from bodily injury; not only all the expenses; but also the surviving wife and children of the person killed must be compensated for what they have lost by it.

§. 1328.

Whoever seduces a woman and begets a child by her, pays the expenses of the confinement and the childbed; and fulfils all the other duties of the father determined in the third chapter of the first part. The criminal code contains in what cases seduction is to be punished at the same time as a crime or as a heavy transgression of the policelaws.

§. 1329.

Whoever deprives some one of his liberty by forcible abduction, by private imprisonment, or wilfully by an illegal arrest, is bound to procure the person injured his former liberty and to render him full satisfaction. If he cannot procure him his liberty again; he must give his wife and children compensation the same as in the case of killing.

§. 1330.

If a real injury or loss of profit has been caused to some one by insults; he is justified in demanding indemnification or full satisfaction.

§. 1331.

If some one is injured in his property purposely, or by the striking negligence of another; he is justified in demanding also the profit lost, and if the damage has been caused by means of an act forbidden by a criminal law, or from wantonness and mischievous joy, the value of the particular predilection.

§. 1332.

The damage, which has been caused from a less degree of inattention or negligence, is to be replaced according to the common worth, which the thing had at the time the injury took place.

§. 1333.

The damage, which a debtor has caused to his creditor by delaying the payment stipulated of the capital indebted, is indemnified by the interest determined by the law (§. 995).

§. 1334.

A delay is charged to a debtor in general, if he does not keep the day of payment determined by the law or by the contract; or if in case the term of payment has not been fixed, he has not come to an arrangement with the creditor after the day of the admonition given judicially or extra-judicially.

§. 1335.

If the creditor has without a judicial admonition allowed the interest to accumulate to the amount of the capital; the right to demand further interest from the capital ceases. But from the day of the complaint being made interest can again be demanded.

§. 1336.

The contracting parties can come to a peculiar agreement, that in case the promise has not been fulfilled at all, or not at the proper time, or too late, instead of the damage to be replaced, a fixed sum of money or other amount is to be paid (§. 912). Still in loans the amount, which the judge decrees on account of the payment delayed, cannot exceed the highest legal interest. In other cases the amount of compensation agreed upon, if it is proved by the debtor to be immoderate, is to be moderated by the judge, in case of need, after having heard experts. The payment of the amount of compensation agreed upon does not free one from the fulfilment of the contract, except in case of a special agreement.

§. 1337.

The obligation to give compensation for the damage and the profit lost, or to pay the amount of compensation agreed upon is inherent on the property and passes over to the heirs.

§. 1338.

The right to demand compensation must as a rule the same as every other private right, be brought before the ordinary judge. If the person causing the injury has at the same time infringed a criminal law, the punishment inflicted falls upon him also. But the procedure in regard to the indemnification belongs even in this case to the civil tribunal, as far as the criminal court or the political authority are not charged with it by the criminal law.

§. 1339.

Bodily injuries, illegal offences against the liberty of the per-

son and insults, are according to the circumstances inquired into and punished either as crimes by the criminal court, or as heavy transgressions against the police-laws, and by the political authority as offences, if they do not belong to any of these classes.

§. 1340.

These authorities must in case the compensation can be determined immediately, pronounce sentence directly in regard to it, according to the provisions contained in this chapter. But, when the compensation cannot be determined immediately, it must in general be expressed in the sentence, that it is reserved to the person injured to seek compensation in the judicial way. This way is reserved in criminal cases also to the person injured, and in other cases to both parties, when they will not be satisfied with the compensation fixed by the criminal court.

§. 1341.

Against the fault of a judge one complains to the higher authority. The latter inquires into and decides the complaint ex officio.

Third Part

of the Civil Code.

Of the dispositions, which are common to the rights of persons, and to the rights to things.

Chapter the first.

Of the confirmation of rights and obligations.

§. 1342.

Rights of persons as well as rights to things, and the obligations arising there-from can be confirmed, altered, and annulled in the same manner.

§. 1343.

The legal modes of confirming and strengthening a right, by which a new right is conferred to the obligee, are: the intervention of a third person for the debtor, and the pawning.

§. 1344.

A third person can make himself in three ways answerable in favour of the creditor, for the debtor: firstly, when he takes upon himself the whole debt with the consent of the creditor; then, when he takes part in the obligation as a co-debtor; finally, when he takes upon himself the payment of the creditor in case the first debtor should not fulfil his obligation.

§. 1345.

If some one takes upon himself, with the consent of the creditor, the whole debt of another, no confirmation, but an alteration of the obligation takes place, which is treated of in the following chapter.

§. 1346.

Whoever takes upon himself the payment of the creditor in case the first debtor does not fulfil his obligation, is called a surety (bail), and the agreement concluded by the latter and the creditor a guarantee-contract. In such a case the first debtor remains still the principal debtor and the surety is answerable only as an after-debtor.

§. 1347.

If some one takes upon himself an obligation as co-debtor, and without the stipulation in favour of a surety; a community of several co-debtors arises, the legal consequences of which are to be judged of according to the provisions given in the chapter of contracts in general (§§. 888 to 896).

§. 1348.

Whoever promises compensation to the surety in case he should suffer damage in consequence of his guarantee, is called compensation-surety.

§. 1349.

Every person, without distinction of sex, who has the free administration of his or her property, can take upon him- or herself obligations belonging to another.

§. 1350.

A guarantee can be given not only for sums and things, but also for allowed acts and omissions in regard to the advantage or disadvantage, which may arise from them for the person, in favour of whom the guarantee was given.

§. 1351.

Obligations, which have not legally existed, or have already been annulled, cannot be taken upon one's self, nor confirmed.

§. 1352.

Whoever stands guarantee for a person, who according to his or her personal qualification cannot take an obligation upon him- or herself, is bound the same as a solidarily indebted co-debtor (§. 896), although this qualification was unknown to him.

§. 1353.

The guarantee cannot be extended further, than the surety has expressly declared. Whoever is guarantee for capital, subject to interest, is only answerable for those arrears of interest, which the creditor was not yet authorized in demanding.

§. 1354.

The surety cannot make use of the exception, on the ground of which the debtor is according to the provision of the law authorized to reserve a part of his property for his maintenance.

§. 1355.

The surety can as a rule only be complained against, when the principal debtor has not fulfilled his obligation in consequence of the judicial or extra-judicial admonition of the creditor.

§. 1356.

The surety can, notwithstanding he has expressly guaranteed only in case the principal debtor is insolvent, be complained against before the principal debtor, when the principal debtor has become bankrupt, or when his residence is unknown at the time the payment should be made, and when no negligence can be imputed to the creditor.

§. 1357.

Whoever has made himself answerable as surety and payer,

is answerable for the whole debt the same as a solidarily indebted co-debtor; the creditor is at liberty to complain first of all against the principal debtor or the surety, or both of them at the same time (§. 891).

§. 1358.

Whoever settles the debt of another, enters into the rights of the creditor and is authorized in demanding the compensation for the debt paid from the debtor. The satisfied creditor is bound for this purpose to deliver to the payer all existing legal proofs and securities.

§. 1359.

If several persons have become sureties for the same and the whole amount; every one of them is answerable for the whole amount. But if one of them has settled the whole debt; he has the same right to demand compensation from the others as the co-debtor.

§. 1360.

If the creditor, before the guarantee has been given, or at the time of the guarantee being given, has received besides the guarantee a pledge from the principal debtor, or from a third person; he is, it is true, at liberty to complain against the surety according to the order (§. 1355), but he is not authorized in abandoning the pledge to the prejudice of the latter.

§. 1361.

When the surety or payer has satisfied the creditor without having come to an understanding with the principal debtor; the latter can make use of every objection against them, which he could have employed against the creditor.

§. 1362.

The surety can only demand compensation from the compensation-surety, when the damage has not been caused by his own fault.

§. 1363.

The obligation of the surety ceases proportionately with the obligation of the debtor. When the surety has only bound himself for a definite time; he is also only answerable for this time. The release of a co-surety is, it is true, of service to the latter against the creditor; but not against the other co-sureties (§. 896).

§. 1364.

The surety is not released from the guarantee by the expiration of the time, within which the debtor ought to have paid, even if the creditor has not urged the payment; but he is authorized in demanding security from the debtor, when he has given the guarantee with his consent. The creditor is also only answerable to the surety, when the latter suffers damage in obtaining compensation on account of the negligence of the creditor in forcing the payment of the debt.

§. 1365.

If the well-founded apprehension arises, that the debtor will become insolvent, or that he will abscond from the hereditary provinces, for which this code is binding, the surety is entitled to demand a guarantee from the debtor for the debt, for which he has made himself liable.

§. 1366.

If the business, for which a person has made himself liable as surety, is brought to an end, the final account and the annullation of the warranty can be demanded.

§. 1367.

If the guarantee-contract is not confirmed either by means of a mortgage, or of a pledge, it expires within three years after the death of the surety, when the creditor has omitted to demand in the meantime judicially or extra-judicially from the heir the payment of the debt, which has fallen due.

§. 1368.

The contract, by means of which the debtor, or another person for him, really consigns to a creditor the right of pledge over a thing, consequently delivers to him the movable pledge, or constitutes a mortgage in his favour on an immovable thing, is called pledge-contract. The contract, by which the promise to deliver a pledge is given, is still not a pledge-contract.

§. 1369.

The dispositions given for contracts in general are also applicable to the pledge-contract; it is a bilaterally binding contract. The holder of a pledge must duly preserve and restore it to the pledgor as soon as the latter settles his debt. With regard to a mortgage the satisfied creditor must give the pledgor the means to obtain the cancelling of the obligation from the mortgage-registers. The rights and obligations of the pledgor and pledgee, which are connected with the possession of the pledge, are laid down in the sixth chapter of the second part.

§. 1370.

The pledgee is bound to give the pledgor an assurance-receipt and to describe therein the distinguishing marks of the pledge. The essential conditions of the pledge-contract can also be reproduced in the assurance-receipt.

§. 1371.

All stipulations and accessory agreements, which are contrary to the nature of the pledge-contract and to the contract for loans, are null and void. Stipulations of this kind are: that the pledge has to fall to the creditor after the obligation has fallen due; that the creditor may alienate the pledge at his pleasure or for a price, which has been fixed beforehand; or that he may keep it for himself; that the debtor can never redeem the pledge; or that he cannot mortgage further an immovable thing; or that the creditor is not allowed to demand the alienation of the pledge, after the obligation has fallen due.

§. 1372.

The accessory agreement, that the usufruct of the pledged thing belongs to the creditor, is without legal effect. If only the use of a moveable thing pledged is conceded to the creditor (§. 459); this use must take place in a manner, which is not prejudicial to the debtor.

§. 1373.

Whoever is bound to give security, must fulfil this obligation in giving a pledge or in constituting a mortgage. Only in case he is not able to give a pledge, suitable sureties are accepted.

§. 1374.

No one is bound to accept a thing, which is to serve as security, for an amount, which exceeds in houses the half, but in landed property and in moveable things two thirds of the value, which has been fixed by valuation. Whoever possesses suitable property and can be complained against in the province, is a suitable surety.

Chapter the second.

Of the alteration of rights and obligations.

§. 1375.

It depends upon the will of the creditor and the debtor, whether they alter their reciprocal free rights and obligations. The alteration can take place with, or without the intervention of a third person, that is to say of a new creditor, or of a new debtor.

§. 1376.

The alteration without the intervention of a third person takes place, when the legal title or the principal object of a claim is altered, consequently, when the former obligation becomes a new one.

§. 1377.

Such an alteration is called innovation (novation). By means of this contract the former principal obligation ceases, and the new one commences at the same time.

§. 1378.

The rights of guarantee, of pledge and other rights connected with the former principal obligation are annulled by the innovation, unless the interested parties have stipulated the contrary by means of a special agreement.

§. 1379.

The more precise stipulations, where, when, and how an obligation already existing is to be fulfilled, and other accessory

stipulations, by which no alteration is agreed to in regard to the principal object or legal title, in the same manner as the mere delivery of a new bond, or of another document referring to it are not to be considered as innovations. Such an alteration in the accessory stipulations can also not impose a new charge on a third person, whose concurrence has not been applied for. In case of doubt the former obligation is not considered as annulled as far as it can properly exist at the same time with the new one.

§. 1380.

An innovation, by which rights in dispute, or doubtful rights are determined in such a way, that each party binds himself mutually to give, to do, or to omit something, is called a composition. The composition belongs to the bilaterally binding contracts and is to be judged of according to the same principles as the latter.

§. 1381.

Whoever remits the obliged person, with his consent, an undisputed, or a doubtful right, without claiming an equivalent for it, makes a present (§. 939).

§. 1382.

There are doubtful cases, which dare not be settled by means of a composition. The disputes, which have arisen between spouses in regard to the validity of their marriage, belong to them. Such disputes can only be decided by the tribunal appointed by the law.

§. 1383.

No composition is admissible as to the contents of a disposition of last will, if it has not yet been published. The wager, which has arisen in regard to it, is to be judged of according to the principles established for contracts depending on chance.

§. 1384.

Compositions as to infringements of the law are only admissible in regard to the private indemnification; the enquiry and

punishment provided by the law can only then be avoided by a composition, when the infringements are of such a kind, that the authority is bound to proceed only on the request of the parties.

§. 1385.

An error can only invalidate a composition so far as it concerns the essentials of the person or of the object.

§. 1386.

A composition made bona fide cannot be disputed on the ground of a violation over the half of the value.

§. 1387.

In the same manner newly found documents, even, if they prove the complete want of a right on the side of one party, cannot invalidate a composition, which has been entered into bona fide.

§. 1388.

An evident miscalculation or a mistake, which occured in the conclusion of a composition in summing up or in subtracting, is not prejudicial to either of the contracting parties.

§. 1389.

A composition, which has been concluded in regard to a special dispute, does not extend to other cases. Even general compositions, which refer to all disputes without any distinction, are not applicable to rights, which have been intentionally concealed, or which the arranging parties could not have imagined.

§. 1390.

Sureties and pledges, which have been granted for the security of the whole right in dispute, are also liable for the part, which has been fixed by the composition. Still the surety as well as a third pledgor, who has not assented to the composition, reserves all the objections against the creditor, which could have been opposed to the demand, if no composition had been concluded.

§. 1391.

The contract, by which parties appoint an umpire for the decision of rights in dispute, is regulated in the law for procedure.

§. 1392.

When a demand is transferred by one person to another, and is accepted by the latter; an innovation of the right with the intervention of a new creditor arises. Such an act is called cession, and it can be concluded with or without an equivalent.

§. 1393.

All alienable rights are an object of cession. Rights, which are inherent to the person, and which consequently cease with his or her death, cannot be ceded. Bonds on the bearer are already ceded by the delivery, and do not require, besides the possession, any other proof of the cession.

§. 1394.

The rights of the receiver are, in respect to the demand ceded, identical with the rights of the transferror.

§. 1395.

By the cession a new obligation arises only between the transferror (cedens) and the receiver of the demand (cessionarius); but not between the latter and the agreed debtor (cessus). Consequently the debtor is so long, as the cessionary is not made known to him, authorized in paying the first creditor, or settling the matter in another way with him.

§. 1396.

The debtor is no longer able to do so, as soon as the cessionary is made known to him; but he is at liberty to allege his objections against the demand. When he has acknowledged the demand as just towards the bona fide cessionary; he is bound to satisfy him as his creditor.

§. 1397.

Whoever cedes a demand without an equivalent, consequently makes a present of it, is not further liable for it. But if an onerous cession takes place; the transferror is liable towards the cessionary both for the justness of the demand and for the possibility of recovering it, but in no case for more, than he has received from the cessionary.

§. 1398.

As far as the cessionary could inform himself from the public mortgage-registers, whether the demand is recoverable or not; no compensation is due to him from the circumstance, that it is irrecoverable. The transferror is also not liable for a demand, which was recoverable at the time of the cession, and has become irrecoverable from mere chance or from an inadvertance on the part of the cessionary.

§. 1399.

The cessionary commits an inadvertance of this kind, when he has not recalled the demand at the time, it could be recalled, or if he does not enforce its payment after it fell due; when he grants a respite to the debtor; when he neglects procuring the feasible security at the suitable time; or when he omits to urge the judicial execution.

§. 1400.

An innovation of the obligation can arise from the intervention of a new debtor, when the debtor offers a third person as payer instead of himself, and when he assigns the creditor to this third person.

§. 1401.

When the assigned creditor (assignatarius) agrees with the third person, who has been substituted as payer (assignate) (assignatus), and accepts him instead of the constituent debtor (assignans), and the assignate gives his consent; the assignment is

perfect, the assigned creditor can, as a rule (§§. 1406 and 1407), no longer make any claim against the constituent debtor.

§. 1402.

As long as this threefold consent does not exist, the assignment is imperfect, and is only effective for those parties, who have agreed with one another.

§. 1403.

When the constituent has charged a third person, who is not at all indebted to him, with the payment, the latter is at liberty to accept or refuse the assignment. If he refuses it, no new obligation arises; when he accepts it, a contract for authorization arises between him and the constituent, but still no contract with the creditor assigned.

§. 1404.

The constituent can revoke an assignment, which has not yet been accepted by the creditor assigned. In this case the assignate is no longer authorized to pay the creditor assigned on the ground of the power of attorney.

§. 1405.

If the creditor assigned does not accept the assignment, or if it is refused by the assignate, or if it cannot be shown to the latter on account of his absence; the creditor assigned must without delay give notice to the constituent; in default thereof he is answerable to the constituent for the prejudicial consequences.

§. 1406.

If the creditor assigned and the assignate have accepted the assignment, but if the latter does not pay at the proper time; the constituent is on that account answerable to the creditor assigned under the same restrictions, which the transferror is liable to the cessionary for the justness and the recovery of the demand (§§. 1397 and 1399).

§. 1407.

But if the creditor assigned has declared, he will accept the assignate as exclusive payer, and if he has done so expressly, or taciturnly in giving a discharge to the former debtor, or in delivering to him the bond; the constituent is released from all liability towards him.

§. 1408.

If the constituent charges his debtor as assignate with the payment only as far as the latter was indebted to him, and has directed the creditor (assignatarius) to receive the payment; the assignment stands good for the creditor directed as a cession and between him and the assignate the same legal relation arises, which exists between the receiver of a demand and the accepted debtor, to whom the cessionary has been made known.

§. 1409.

When the assignate, notwithstanding such an assignment, which includes at the same time a cession, refuses the payment without reason, or when the assignate delays after having promised payment to the creditor assigned, he is answerable for the consequences. But if on the contrary he has made the payment, which he has taken upon himself, in the proper manner, and to a larger amount, than he was indebted to the constituent; he is justified in demanding compensation from the latter (§. 1014).

§. 1410.

Tradesmen are bound in regard to assignments to follow the special provisions existing for them.

Chapter the third.

Of the annullation of rights and obligations.

§. 1411.

Rights and obligations stand in such connexion, that the expiration of the right causes the expiration of the obligation, and the expiration of the latter, the expiration of the right.

§. 1412.

The obligation is chiefly dissolved by payment, that is by the execution of what a person is bound to perform (§. 469).

§. 1413.

The creditor cannot be compelled to accept any thing against his will, but what he is entitled to claim; nor the debtor to perform something else, than he is bound to perform. This holds good also for the time, the place and the manner, in which the obligation is to be fulfilled.

§. 1414.

If something else has been given instead of payment in consequence of an agreement between the creditor and debtor; or because the payment itself has become impossible, the act is to be considered as an onerous transaction.

§. 1415.

The creditor is not bound to accept the payment of a debt

in part, or on account. But when different items are to be settled; the one is to be considered as settled, which the debtor with the consent of the creditor has expressly declared himself willing to settle.

§. 1416.

If there is a doubt as to the intention of the debtor, or if it is contested by the creditor; first of all the interest, then the capital, but of several capitals the one, which has already been called in, or which at least has fallen due, and after this the one which is the most onerous for the debtor, is to be set off.

§. 1417.

If the term for payment has not been fixed at all, the obligation to settle the debt arises only from the day, on which the calling in takes place (§. 904).

§. 1418.

In certain cases the time allowed for payment is fixed from the nature of the matter. Aliments are paid for a month at least in advance. If the person provided for dies during this time; his heirs are not bound to restore any thing, that has been paid in advance.

§. 1419.

If the creditor has delayed accepting the payment, the prejudicial consequences fall upon him.

§. 1420.

If the place and the manner, in which the execution of an obligation ought to take place, is not determined; the provisions given above (§. 905) are to be applied. The debtor is only bound to make the payments, which are not due out of a contract, at his place of domicile.

§. 1421.

Even a person, who is otherwise incapable of administering

his or her property, can legally settle a just debt and a debt, which has fallen due, and free themselves from their obligation. But if he or she has settled a still uncertain debt, or a debt, which has not yet fallen due; his or her guardian or curator is authorized in demanding back any thing that has been paid.

§. 1422.

If a third person can and will pay instead of the debtor, with his consent, according to the obligation contracted; the creditor is bound to accept the payment and to cede his right to the payer; still the creditor in this case, except a case of fraud, is not answerable for the justness and recovery of the demand.

§. 1423.

The payment can as a rule (§. 462) not be forced upon the creditor by a third person without the consent of the debtor. But if he accepts it; the payer is authorized in demanding, even after the payment has taken place, the cession of the right, which belonged to the creditor.

§. 1424.

The debt must be paid to the creditor or to his representative, who is capable of receiving it, or to him, whom the tribunal has acknowledged as the proprietor of the demand. If some one has paid something to a person, who is not himself able to administer his property, he is bound to pay again so far as, what he has paid, does not really exist, or has not been employed for the benefit of the receiver.

§. 1425.

If a debt cannot be paid, because the creditor is unknown, absent, or not satisfied with what has been offered, or from other important reasons; the debtor is entitled to deposit the thing, which is to be paid, with the tribunal; or, if it cannot be deposited, to apply to the tribunal to take it into their custody. Both these

acts, when they have been undertaken legally, and have been made known to the creditor, free the debtor from his obligation and the risk of the thing paid devolves on the creditor.

§. 1426.

The payer is in all cases authorized in demanding from the person satisfied a receipt, that is to say a certificate in writing, that the obligation has been fulfilled. The name of the debtor and creditor must be mentioned in the receipt, as well as the place, the time, and the object of the debt settled, and it must be signed by the creditor or by his man in power.

§. 1427.

A receipt stating, that the capital has been paid, founds the presumption, that the interest of it has likewise been paid.

§. 1428.

If the creditor possesses a bond of the debtor; he is bound not only to deliver a receipt, but also to return the bond, or to allow the payment in part, if any has been made, to be noted on the bond itself. The bond returned without a receipt founds for the debtor, the legal presumption of the payment made; but it does not exclude the proof of the contrary. If the bond, which is to be returned, has been lost, the payer is authorized in demanding security, or in depositing the amount judicially, and in demanding that the creditor obtains the amortisation of the bond according to the law of procedure.

§. 1429.

A receipt, which the creditor has delivered to the debtor for a settled debt of a more recent date, does not prove, it is true, that other items of an older date have been paid; but when it concerns certain rates, rents or such payments, which are to be paid on account of the same title and at a fixed time, as the

interest in money, ground-rents, house-rents, or the interest of capital; it is to be presumed, that he, who can produce a receipt for the last term, which has fallen due, has also settled those, which had fallen due previously.

§. 1430.

In the same manner it is to be presumed in regard to tradesmen and artificers, who are accustomed to close the accounts with their customers at certain periods, that their previous accounts have been settled, when they have delivered a receipt for a later period.

§. 1431.

If a thing or an act, which was not due, has been performed for some one by mistake, even if it were an erroneous opinion in regard to a right; in the first case, the thing can as a rule be demanded back, but in the second case a reward can be demanded, which is in proportion to the advantage procured.

§. 1432.

Still payments of a prescriptive debt, or of a debt, which is null and void only in consequence of the want of formalities, or which according to the law cannot be enforced by a complaint, cannot be demanded back the same as the payment made by a person, who knew, that he was not bound to pay it.

§. 1433.

This provision (§. 1432) can however not be applied in case a person under guardianship or another person, who cannot freely dispose of his or her property, has made the payment.

§. 1434.

The return of what has been paid, can also be demanded, when the debt is in whatever manner uncertain; or when it depends upon the fulfilment of a condition, which was added. Still the payment of a just and unconditional debt cannot be demand-

ed back for the reason, that the time allowed for payment has not yet come.

§. 1435.

Any one, who gave things, which have been delivered as a real debt, can demand them back from the receiver, when the legal ground for keeping them has ceased.

§. 1436.

If some one was bound to give only one of two things according to his pleasure, and has by mistake given both the things, it depends upon him to demand back either the one or the other.

§. 1437.

The receiver of a payment, which was not due, is considered as a bona fide or a mala fide possessor according as he knew, or was at least bound to presume from the circumstances the mistake of the payer, or not.

§. 1438.

When demands coincide with one another, which are just, analogous and so qualified, that a thing, which is due to the one in his qualification as creditor, can also be paid by him in his qualification as debtor to the other; a mutual compensation of the obligations arises in so far as the demands clear one another, and in this manner the mutual settlement is effected.

§. 1439.

The compensation does not take place between a just demand and a demand, which is not just, nor between a demand, which has already fallen due and a demand, which has not yet fallen due. The law of procedure determines how far the compensation with a bankrupt's estate is admissible.

§. 1440.

In the same manner demands, the object of which are heterogeneous, or definite and indefinite things, cannot be put one

against the other. Things, which have been wilfully withdrawn, borrowed or taken into custody, are in general no object of compensation.

§. 1441.

A debtor cannot charge his creditor with things, which the latter must pay to a third person, and the third person to the debtor. Even a sum, which a person has to receive from a public treasury, cannot be compensated with the sum, which he is bound to pay to another public treasury.

§. 1442.

If a demand has been transferred by degrees to several persons; the debtor can, it is true, compensate the demand, which he had at the time of the transfer against the first transferee, as well as the demand, which belongs to him against the last transferee; but not that, which belonged to him against one of the intermedial transferees.

§. 1443.

The exception of the compensation can with regard to a demand registered in the public books only then be opposed to a cessionary, when the counter-demand is likewise registered and at the same place as the first demand, or when it has been made known to the cessionary at the time he accepted the cession.

§. 1444.

In all cases, in which the creditor is authorized in foregoing his right, he can also divest himself of it for the benefit of the debtor and in doing so annul the obligation of the latter.

§. 1445.

As often as the right is in whatever manner united with the obligation in one person, both cease; except when the creditor is still at liberty to apply for a separation of his right

(§§. 802 and 812), or when relations of a perfectly different nature take place. Consequently the rights of the creditor of a succession, of the co-heirs or legatees are not altered, when the debtor takes upon himself the assets of the creditor, and the rights of the creditor are not altered, when the debtor becomes the heir of the surety.

§. 1446.

Rights and obligations, which are entered in the public books, are not annulled by this junction in one person as long as they have not been struck out of the public books (§§. 469 and 526).

§. 1447.

The accidental and entire destruction of a certain thing annuls every obligation, even the obligation to replace its value. This principle holds good also in those cases, in which the fulfilment of the obligation or the payment of a debt is impossible from another accident. But in any case the debtor is bound to return or restore, the same as a bona fide possessor, every thing, which he has received in order to fulfil the obligation, but he must do it in such a manner, that he does not obtain any profit from the damage of another.

§. 1448.

From the death of some one only those rights and obligations expire, which are restricted to the person, or which have reference to entirely personal acts of the deceased.

§. 1449.

Rights and obligations expire also from the lapse of the time, for which they have been restricted by virtue of a last will, a contract, a judicial sentence, or the law. It is determined in the following chapter, in what manner they expire by the prescription allowed by the law.

§. 1450.

The civil laws, according to which illegal acts and transactions can be immediately disputed, when no prescription stands in the way, do not admit any restitution to the former state (restitutio in integrum). The law of procedure treats of the cases of restitution to the former state, which belong to the judicial proceedings.

Chapter the fourth.

Of the prescription and usucaption.

§. 1451.

The prescription is the loss of a right, which has not been exercised during the time fixed by the law.

§. 1452.

If the prescriptive right devolves at the same time upon another person on the ground of his legal possession; it is called a right gained by usucaption, and the mode of acquisition, usucaption.

§. 1453.

Every one, who is otherwise able to acquire, can also acquire property or other rights by usucaption.

§. 1454.

The prescription and usucaption can take place against all private persons, who are themselves capable of making use of their rights. It is only admissible under the following restrictions (§§. 1494, 1472 and 1475) against persons under guardianship or curators; against churches, communities and other juridical bodies, against administrators of the public property and against those, who are absent without any fault on their part.

§. 1455.

Whatever can be acquired, can also be acquired by usucaption. But things, which one cannot possess on the ground of

their essential qualification, or according to the laws; moreover things and rights, which are absolutely unalienable, are not objects of usucaption.

§. 1456.

From this reason, rights, which belong only to the head of the state as such f. i. the right to collect duties, to coin, to impose duties, and other rights of sovereignty (regales) cannot be acquired by usucaption, and the obligations corresponding to these rights cannot fall under the prescription.

§. 1457.

Other rights belonging, but not exclusively reserved to the head of the state f. i. the right to forests, to the chase, to fisheries and so on, can, it is true, in general be acquired by usucaption by other citizens of the state, but only after a longer time, than the ordinary period fixed (§. 1472).

§. 1458.

The rights of a spouse, a father, a child and other personal rights are not objects of usucaption. Still those, who in a bona fide manner make use of such rights, can avail themselves of their innocent ignorance in order to maintain and make use provisionally of their pretended rights.

§. 1459.

The rights of a person in regard to his acts and to his property f. i. the right to buy goods here or there, to make use of his meadows or water, are not subject to the prescription, unless according to the expressed disposition of the law the omission of the usage, which lasted during a certain time, produces the loss of them. But if one person has inhibited the other the exercise of such a right, or has prevented his making use of it; the possession of the right of inhibition begins on the part of the one against the liberty of the other persons from the moment, at which the latter have ceded the inhibition or the

hinderance, and if all other requirements take place at the same time, the prescription or usucaption is effected by it (§§. 313 and 351).

§. 1460.

The usucaption requires together with the capability of the person and the object, that some one really possesses the thing or the right, which is to be acquired in such a way; that his possession is legitimate, bona fide and not spurious, and that it is continued during the whole time fixed by the law (§§. 309, 316, 326 and 345).

§. 1461.

Every possession, which is grounded on such a title, which would have been sufficient for the acquisition of the property, when the latter had belonged to the deliverer, is a legitimate one and sufficient for the usucaption. Such titles are f. i. the legacy, the donation, contracts for loans, for selling and buying, the contract of exchange, the payment and so on.

§. 1462.

Things pledged, lent, given into custody, or for usufruct can for want of a legal title never be acquired by creditors, borrowers, depositaries or usufructuaries, by means of usucaption. Their heirs represent the testators and have no greater title than the latter. A third legitimate possessor alone can avail himself of the time for usucaption.

§. 1463.

The possession must be a bona fide one. Still the mala fides of the former possessor does not prevent a bona fide successor or heir from beginning the usucaption from the day of his possession (§. 1493).

§. 1464.

The possession besides dare not be spurious. If some one has seized a thing with force or fraud, or sneaks secretly into

the possession, or possesses a thing only by way of entreaty; neither he himself nor his heirs can acquire it by means of usucaption.

§. 1465.

The lapse of the time prescribed in the law is also required for the usucaption and prescription. Except the period fixed by the law for some special cases, the time required for the usucaption and prescription in all other cases is determined here in general. In regard to it the diversity of the rights and things as well as the diversity of persons is decisive.

§. 1466.

The right of property, the object of which is a movable thing, is by means of usucaption acquired after a legal possession of three years.

§. 1467.

The person, in whose name immovable things are registered in the public books, acquires likewise the full right to them by usucaption against all contradiction after the expiration of three years. The limits of the usucaption are to be judged of according to the possession registered.

§. 1468.

Where regular public books have not yet been introduced, and the acquisition of immovable things is to be proved by judicial acts or other documents, or when the thing is not registered in the name of the person, who exercises the rights of possession in regard to it, the usucaption is only completed after thirty years.

§. 1469.

Easements or other special rights, which are made use of on the landed property of another, the same as the right of property are acquired after the expiration of three years by usucaption by the person, in whose name they are registered in the public books.

§. 1470.

Where regular public books do not yet exist, or when such a right is not registered in them, the bona fide possessor can acquire it by usucaption only after the expiration of thirty years.

§. 1471.

In regard to rights, which can seldom be exercised f. i. the right to confer a prebend, or to demand from some one a contribution for the repairs of a bridge, the person, who maintains the usucaption, must besides the expiration of thirty years, at the same time prove, that the case for the exercise of the right has occured at least three times during this period, and that he has exercised this right each time.

§. 1472.

The common and ordinary time of usucaption is, in so far as the prescription is admissible (§§. 287, 289, 1456 and 1457), not sufficient against the fiscus, that is against the administrators of the domains and the property of the state, it is likewise not sufficient against the administrators of the property of the church, communities and other authorized corporations. The possession of movable as well as the possession of immovable things, or of the easements and other rights, which are made use of in them, must be continued during six years, when these rights are registered in the public books in the name of the possessor. Rights of such a kind, which are not registered in the name of the possessor, and all other rights can be acquired against the fiscus and the privileged persons here enumerated, only by means of fourty years' possession.

§. 1473.

The person, who is in community with a person privileged in regard to the time for prescription, can claim the same benefit. Benefits of a longer time for prescription can also be applied to the relation, in which they stand in regard to other and in this point likewise privileged persons.

§. 1474.

The qualification of a family-entailment, of a fee-farm and copyhold-estate is only lost in consequence of a free possession of fourty years.

§. 1475.

The residence of the proprietor in another province to that, in which the thing is, stands so far in the way of the ordinary usucaption and prescription, as the time of an arbitrary and innocent absence is only calculated as half, consequently a year only for six months. Still absence for only a short period, which did not last a whole year without interruption, is not to be taken into consideration, and in general the time is never to be extended to more than thirty years together. Culpable absence enjoys no exception from the ordinary time of prescription.

§. 1476.

The person also, who has purchased a movable thing immediately from a spurious or a mala fide possessor, or who cannot mention his predecessor, must await the expiration of double the ordinary period for usucaption, which otherwise would have been sufficient.

§. 1477.

Whoever establishes the usucaption in proving the expiration of thirty or fourty years, is not bound to allege the legal title. But the mala fide possession proved against him excludes the usucaption even after the expiration of this extended period.

§. 1478.

As far as every usucaption includes a prescription, both are completed with their requirements at one and the same period. But for the prescription properly speaking the mere non-use during thirty years of a right, which otherwise would have been used, is sufficient.

§. 1479.

All rights therefore against a third person, they may be en-

tered in the public books or not, expire as a rule at latest by the non-use during thirty years, or in consequence of silence, which has been observed for so long time.

§. 1480.

Claims of arrears of yearly duties, interest, rent or services expire after three years; the right itself becomes prescriptive by a non-use during thirty years.

§. 1481.

The obligations, which arise from the laws concerning family-relations and in general from the laws regulating personal rights f. i. the obligation to provide children the indispensable maintenance, as well as the obligations, which correspond to the above (§. 1459) mentioned right do dispose freely over one's property f. i. the obligation to permit the division of a thing in common, or the rectification of the frontiers, can never become prescriptive.

§. 1482.

In the same manner the person, who was entitled to exercise a right to the landed property of another, with regard to the whole or in different ways according to his pleasure, is not limited in his right merely for the reason, that he has exercised it only in regard to a part of the landed property, or only in a certain manner; but the limitation must be effected by the acquisition of the right to inhibit or to hinder the exercise of the right (§. 351). This is also applicable to the case, if some one made use of his right till now only against certain members of a community, although he could avail himself of his right against all members of it.

§. 1483.

As long as the pledgee possesses the pledge, the omitted exercise of his right of pledge cannot be opposed to him and the right of pledge cannot become prescriptive. The right of the debtor to redeem his pledge, remains also imprescriptible. But

as far as the demand exceeds the value of the pledge, it can in the meantime expire by prescription.

§. 1484.

For the prescription of such rights, which can but seldom be used, it is required, that during the thirty years' prescription three occasions to exercise such a right have not been made use of (§. 1471).

§. 1485.

In regard to the privileged persons mentioned in §. 1472 forty years are required for the prescription as well as for the usucaption.

§. 1486.

The general rule, that a right from not being exercised expires only after the lapse of thirty or forty years, is only applicable to those cases, for which the law has not fixed a shorter period (§. 1464).

§. 1487.

The right to invalidate a declaration of the last will; to demand the legitimate portion or its completion, to revoke a donation on the ground of the ingratitude of the person, who has received the gift; to invalidate an onerous contract on account of the violation to more than half the value, or to dispute the partition of an estate in common; and the claim on the ground of a fear or the mistake, which took place in a contract, when the other party was not guilty of fraud, must be carried out within three years. After the expiration of this time they are prescriptive.

§. 1488.

The right of easement becomes prescriptive in consequence of the non-use, when the obligor opposes the exercise of the easement, and the obligee does not carry out his right during three consecutive years.

§. 1489.

Every complaint for compensation ceases after three years from the time, at which the damage has become known to the person injured. If the damage has not become known to him, or if it has arisen from a crime, the right of complaint becomes prescriptive only after the expiration of thirty years.

§. 1490.

Actions for insults, which merely consist in affronts caused by words, writings or gestures, can no longer be raised after the expiration of a year. But if the insult has been caused by violence; the right to complain for compensation lasts three years.

§. 1491.

Some rights are limited by the law to a still shorter period. The dispositions concerning them are to be found, where these rights are treated of.

§. 1492.

The exchange regulation determines how long a bill of exchange enjoys the privilege alotted to it.

§. 1493.

Whoever takes upon himself, in a bona fide manner, a thing from a legitimate and bona fide possessor, is authorized as successor to calculate the time of usucaption of his predecessor (§. 1463). This holds good also for the time of prescription. In case of an usucaption of thirty or forty years this calculation is admissible also without a legal title, and in case of the prescription, properly speaking, even without bona fides or innocent ignorance.

§. 1494.

The time of usucaption or prescription cannot commence against such persons, who from a defect of their mental powers are not themselves capable of administering their rights, against

persons under guardianship, mad persons, or idiots, so far as no legal representatives are appointed for these persons. The time of usucaption or prescription, which has already commenced, is continued; but it can in no way be completed before the expiration of two years after the impediments have been removed.

§. 1495.

The usucaption and prescription cannot commence or be continued between spouses, then between children or persons under guardianship, and their parents or guardians, so long as the former are in matrimonial union and the latter under the authority of their parents or guardians.

§. 1496.

The absence caused by civil or military service, or the entire cessation of the administration of justice f. i. in time of pest or war, stops not only the beginning, but also, so long as this impediment lasts, the continuation of the usucaption or prescription.

§. 1497.

The usucaption as well as the prescription is interrupted, when the person, who will avail himself of it, has before the expiration of the time of prescription, either expressly or taciturnly acknowledged the right of the other; or when he has been complained against by the obligee and when the complaint has been properly prosecuted. But if the complaint has, by means of a judgement valid in law, been declared inadmissible, the prescription is not considered as interrupted.

§. 1498.

Whoever has gained a right or a thing by means of usucaption, can apply to the tribunal against the former proprietor for the adjudication of the property, and have the right adjudicated entered in the public books, so far as it forms an object of the same.

§. 1499.

In the same manner the obligor can after the expiration of the prescription obtain the cancelling of his obligation, which was entered in the public books, or the disanulment of the right, which previously belonged to the obligee and of the documents delivered in regard to it.

§. 1500.

The right gained by means of usucaption or prescription can however not be prejudicial to a person, who trusting in the public books has purchased a thing or a right, before the right gained by means of usucaption or prescription has been entered in the public books.

§. 1501.

The prescription is not ex officio to be taken into consideration, when the pa_ties do not allege it as an exception.

§. 1502.

It is not allowed to renounce the prescription beforehand, or to stipulate for a longer term for prescription than that, which has been provided by the law.

Printed by Charles Winternitz & C. Vienna.