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THE MODERN LAW OF BANKING
BANKS AND THEIR DEPOSITORS
BANK OFFICERS
BANK COLLECTIONS
THE NATIONAL BANK ACT AND ITS JUDICIAL INTERPRETATION

Putnam's Handy Law Book

Putnam's Handy Law Book for the Layman

By

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FOREWORD

What useful purpose can this book serve? Most of the laws under which we live are kept, not from knowing them, but because the good sense of individuals leads them along legal ways. Yet in many cases their good sense fails to discover the right way. Thus, the receiver of a check on a bank must present it within a reasonable time after receiving it, and if he keeps it longer the risk of loss, should the bank fail, is his own. What is this reasonable time? One man says three days, another a week, another a month. So one's common sense fails to establish a definite reasonable time. It is needful to have the time fixed, and the law therefore has established a reasonable time. There are many cases like this in which one's common sense fails to furnish a correct, yet needful guide.

This little book contains many of the legal principles that are in most frequent use, as readers will learn who carefully read it. Again, if they do not always find an answer to their questions, it is believed that in many cases they will find enough law of a general nature from which they can safely solve their questions. They are therefore besought to do something more than merely consult this book for the purpose of finding ready and complete answers to their questions, to read it and become familiar with its contents.

Besides the law presented here the reader should learn to be cautious, and not trust too much his own judgment when no rule can be found for his guidance. Many a person has written his own will, as he has a right to do, and after giving a legacy to a relative or friend has nullified the gift by having the legatee, through the testator's ignorance, sign as a witness. The writer knew a railway president who had the temerity to draw the writing containing an important contract between his railroad and another, and who, by unintentionally putting a comma in the wrong place, made his road instead of the other responsible for large losses. If this book shall make the reader cautious concerning the legality of his undertakings, it will be worth to him many times its price.

A.S.B.

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Putnam's Handy Law Book for the Layman

Explanation of Terms.—At the outset the explanation of a few terms, often used, may be helpful to the reader. Among these are the terms statute and common law. Statute law or statutes mean the laws enacted by the state legislature and by the federal congress. Common law means the decisions made by the state and federal courts. These decisions may relate to the interpretation and application of statutes, or to the application of former decisions or precedents, or to the qualification and application of them, or to the making and application of new rules or principles where none exist that are needed to decide the case in hand.

It is a rule of the most general application that legal decisions are precedents which are to be followed in other cases of the same character. The decisions of the highest court in each state must be followed by the lower courts, but no courts in any state are obliged to follow the decisions of the courts in any other state. The courts in every state must also follow the decisions of the federal courts in all matters of a national character. Thus if a federal court decides the meaning or interpretation of a federal statute, a state court must follow the interpretation in a case requiring the application of that statute.

[2]

Again, common law decisions are not binding on the courts that make them like statutes or legislative commands. A decision may be modified or set aside when it is regarded as no longer applicable to the present condition of things. It may also be set aside or changed by legislative action. The common law is therefore always slowly changing like the ocean and is never at rest.

The common law forms much the largest part of the great body of law under which we live. This book is a collection chiefly of common law principles; a few statutes are interwoven here and there to complete the subjects presented.

The distinction also between civil and criminal law requires explanation. Nearly all criminal law is founded on statutes, in other words the statutes, state and federal, define nearly all legal crimes known to society. It is therefore true that the field of crime is not fixed, is in truth always changing. Thus formerly if a man bought goods on credit of another on the statement that he was worth fifty thousand dollars and the seller afterward learned that he was not worth fifty cents, the seller could sue the buyer to recover the value of the goods and for any additional loss, but could do no more. Many, perhaps all the states, now declare by statute that such an act is a crime, and the offender can be prosecuted by the state and fined or imprisoned or both. And the wrongdoer may still be sued in a civil action for the loss to the seller as before.

All crimes are prosecuted by the officers of the state chosen or appointed for that purpose. Again, as in the case mentioned, the wrongful act has a double aspect. An individual who has been wronged may proceed against the wrongdoer to recover his loss; the state also has been [3] wronged and may also proceed against him. A good illustration is a bank defaulter. The bank may proceed through a court of law to recover the money lost by him, or from those who have promised to make the bank good should he wrongfully take anything; the state may also proceed against him as a criminal for breaking a statute that forbids him from doing such a thing. Furthermore, should the bank, as often happens, agree to accept a sum from the defaulter and not trouble him further, the agreement would be no bar to an action by the state against him.

The terms law and equity are frequently used in the law books and require explanation. Formerly there was no such term as equity in the common law. It came to be used as a supplement to the law to indicate ways of doing things unknown to the law, which ought to be done. Thus if a man threatened to fill up your well because it stood, as he claimed, on his land, you had no preventive remedy at law. You could use some force to prevent him, you could not kill him, or put out his eyes, or treat him roughly. The law only gave you the right to proceed against him to recover money damages for the legal injury. A court of equity has a preventive remedy. If one threatens to fill up your well you can petition or pray the court to order that he shall refrain until there has been a legal hearing to determine whether he has any right to do so and the court will order him to desist until it has heard the case, and will enforce its order with a fine or penalty should he disobey.

The term equity contains a larger element of justice than law; and the courts often say that an act is just or equitable, meaning that an act which is just or equitable may not always be a legal [4] act. Equity therefore is a broader term, and is in constant use in legal proceedings.

Another word frequently used in this book is action. When a person has wronged another, for example, has not paid a promissory note that is due, and the wronged party wishes to collect it through the courts, he brings an action, so called, against the wrongdoer for that purpose. Sometimes the word suit is used. Suit, or case in court, is a common expression.

Finally something should be said about courts of law. Every state has three kinds or classes of courts. First a court in which suits are brought and tried relating to small matters, the recovery of money, for example, for one or two hundred dollars or less, also for small petty criminal offenses. Next is a higher court in which suits for all larger matters are begun and tried, as well as appeals from the lower court. Lastly is a third court of review, usually called the supreme court, composed in most of the states of five, or more often, seven judges, who review the decisions of the court below whenever application is made founded on erroneous matters, the wrongful admission of, or refusal to admit, evidence and the like, and their decisions form the great body of the common law.

The federal government also has three courts corresponding somewhat to the courts established by the states. First is a court existing in every state called the district court, while some states, like New York, are divided into several districts. An appeal lies from its decision to the court of appeals consisting of three judges. There are nine of these courts, one for each circuit into which the United States is divided. Lastly appeals may be taken from their decisions [5] and also from the decisions of the supreme courts of the states to the supreme court of the United States consisting of nine judges. An appeal does not lie in every case decided by a state court or by the federal courts of appeal; only such cases as the highest court shall decide after application, made in proper form, may be appealed and heard by that tribunal.

We have already explained the term equity. Formerly there were courts to try and decide equity cases. England still maintains such courts and a few exist in the United States; New Jersey and Delaware are two of these states. The chief official of the court is called a chancellor, the others vice chancellors. Instead of an action, as in a court of law, the preliminary proceeding is called a petition or bill, and while in substance it is similar to an action or complaint, used in a court of law, the form is quite different. The modern tendency of the law, considered in the most general way, is to fuse law and equity, and to endow law judges with equity powers. For further explanation see *Legal Remedies and Equitable Remedies*.

Adopted Child.—Children are sometimes adopted. By doing so the natural parents lose all personal rights and are relieved from all legal duties. The adopted parents acquire the right to the adopted child's custody and control, to his services and earnings, and they must maintain and educate him. In some states he becomes the heir of the adopted parent like a natural child, with

some limitations. Who can inherit an adopted child's property is not clearly settled. He can also inherit from his natural parent and kindred as if he had not been adopted. In Massachusetts the courts hold that an adopted child will take like a natural child under a residuary clause in an adopted father's will giving all the property not otherwise devised to his child or children. See *Parent and Child*. [6]

Agency.—Much of the business of our day is done by agents or persons who represent others. The most general division is into general and special agents. A general agent is one who has authority to act for his principal or person he represents in all matters, quite as the principal himself could do; or in some of his matters. Thus if a principal had a farm he might have a general agent to act as his farmer; if he owned a mill, another general agent who had charge of it. If he had two mills, he might have a general agent for each, and so on.

A special agent is authorized to do a specific thing, to sell a home, buy a horse, or effect some particular end or purpose. While this distinction is plain enough in many cases, in others the lines run so close together that it is difficult to decide whether one is a general or special agent.

Whenever one acts as a general agent he is supposed to have all the authority that general agents possess who thus act for their principals, unless the person who is dealing with him knows of the restriction on his authority. Suppose one goes to the office of a general insurance agent to get insurance on his home. A policy is taken and afterwards the house burns up. The company declines to pay because the agent made a lower rate than was authorized by his company. The insured however knew nothing about the restriction, and supposed that the agent had the same authority as other insurance agents have concerning rates. The company would be obliged to pay. But if the insured knew that restrictions had been put on the agent and that he was violating them in giving him the lower rate, the company would not be liable. [7]

One who deals with a special agent must find out what authority he possesses; therefore more care is needful in dealing with a special than with a general agent. His authority must be strictly pursued. Thus it is said that a person dealing with him "acts at his own peril," is "put upon inquiry," "is chargeable with notice of the extent of his authority," "it is his duty to ascertain," "he is bound to inquire," "and if he does not he must suffer the consequences."

In some cases the law creates an agency. Thus an unpaid vendor of goods sometimes has authority to sell them, so has a pledgee of goods outside the authority conferred by the contract pledging them. A married woman whose husband does not supply her has a limited power to buy necessaries on her husband's credit, which prevails notwithstanding any objection he may make. A minor sometimes has the same power.

A person can act as an agent for another who cannot act for himself. Minors therefore can thus act. Besides individuals, corporations often act for others.

The authority of an agent may be given in writing, a power of attorney so called, or he may act, and often does, without written authority, especially a general agent. To this rule there is one well understood exception. If an agent is required in executing his authority to sign a deed or other writing, especially a sealed writing, his authority must also be equally great. In executing a deed therefore his authority must be in writing under seal, and when the deed is recorded, the agent's written authority should also be recorded; this is the usual practice. If this is not done, some person who afterward wished to purchase the land might object because the recorded title was defective. [8]

A particular usage or custom also affects an agent's powers. If the principal confers on him authority to transact business of a well-defined nature, bounded by well-defined usage and customs, the law presumes the agency was created with reference to them. This protection affects agents and third persons alike, the latter therefore who act in good faith in such dealings are protected against secret limitations of which they had no notice.

An agent has no authority to purchase his principal's property. To do this, in a sense, would be to purchase of himself. The temptation to do this is sometimes very great, too great for him to withstand, and so he resorts to a crooked method for accomplishing his end. He sells the property to another party who afterward sells it back to him. The worst violators of this principle have been railway receivers, who have taken advantage of their position to get control of the property entrusted to them at a sum much less than its real value. Such sales can be set aside by proper legal procedure. By the modern rule they are not void but are voidable, that is, can be set aside if the creditors or other interested parties wish to do so.

Whenever therefore one deals with a general agent and his authority is disputed, unless there be restrictions known to the person dealing with him, the liability of his principal turns on the answer to the general question, what authority do general agents like himself have. This is simply a question of fact, to be determined like every other question of fact by the court in which the controversy is pending. [9]

Another way of rendering a principal liable for the act of his agent is by ratifying it. Suppose A professed to be the agent of B in building a house for C, and built it so badly that C sued B to recover damages, whose defense was, that A was not his agent. Suppose, however, that B accepted payment for the house, this would be a ratification of A's authority to act for B even if he did not have proper authority in the beginning. Suppose A had authority to sell goods for B but not to collect payment, and someone should pay him and he ran off with the money, could his principal still collect the money of the buyer of the goods? This is a hard case, and has happened

many times. The buyer usually is required to pay the second time. But if B, notwithstanding his direction to his agent not to collect payment, should receive it such conduct would operate as a ratification.

Whether the authorized act arises from a contract or from a wrong or tort, whoever with knowledge of all the facts adopts it as his own, or knowingly appropriates the benefits, which another has assumed to do in his behalf, will be deemed to have assumed responsibility for the act. Of course, such action does not render an act valid that was invalid before; its character in this respect is not changed by anything the ratifier may do.

Can a forgery be ratified? The right of the state to pursue the forger cannot be defeated by its ratification, but so far as the act may be regarded merely as the act of an unauthorized agent, it may be ratified like any other. Mechem says that if at the time of signing, the person doing so purported to act as agent, the act might be ratified.

Again, a principal cannot accept part of an agent's act and reject the remainder. The [10] acceptance or rejection must be complete.

In appointing an agent the principal has in mind the qualifications of the person appointed, he cannot therefore without his principal's consent, designate or substitute another person for himself. This rule though does not prevent him from employing other persons for a minor service. Indeed, in many cases a general agency requires the employment of many persons to execute the business. How far one may go in thus employing others to execute the details, and how much ought to be done by the general agent himself, depends on the nature of the business. The inquiry would be one of fact, to what extent is a general agent in his particular business expected or assumed to do the things himself.

One rule to guide an agent is this: when the act to be done is purely mechanical or ministerial, requiring no direction or personal skill, an agent may appoint a subagent. Thus an agent who is appointed to execute a promissory note, or to sign a subscription agreement, or to execute a deed, may appoint another to do these things. Likewise an agent who is authorized to sell real estate with discretionary power to fix the price and other terms, may employ a subagent to look up a purchaser, or to show the land to one who is desirous of purchasing.

When a person is really acting as an agent, but this is not known by the persons with whom he is doing business, he is liable to them as if he were the principal. It often happens for various reasons that agents do not disclose their principals. Suppose a dealer finds out that the agent presumably acting for himself was, in truth, acting for another, could the real principal be held [11] responsible and the agent escape, or could both be held? The answer is, after discovering the real principal, both can be held, or either of them. The failure of an agent to disclose his agency will not make him individually liable if the other party knew that he was dealing with a principal with whom he had had dealings through the agent's predecessor. Notice of the agency to one member of a firm is not sufficient notice to the firm to release the agent from personal responsibility in subsequent transactions with another member who did not know and was not informed of the agency. Again, the liability must be determined by the conditions existing at the time of the contract, his subsequent disclosure will not relieve the agent. Finally, while the agent may be held in such a case, the principal also is liable, except on instruments negotiable and under seal, on the discovery of his relationship as principal.

While secret instructions to an agent that are unknown to persons dealing with him do not bind them, the principal is liable for any acts within the scope of his agent's authority connected with the business conducted by his agent for him. Some very difficult questions arise in applying this rule. A car conductor is instructed to treat passengers civilly and to use no harsh means with them, save in extreme cases. How far may a conductor go with a disorderly passenger? Very likely he would be justified in putting him off; suppose the conductor was angry and administered hard and needless kicks in the operation? His principal surely would not be liable, though the conductor doubtless would be. Suppose in buying a railway ticket the agent loses his temper and calls you a liar and a thief, you would have an action against him for slander, unless you [12] happened to be one, but you would have no action against his principal for the company did not employ him to slander its patrons; to do this was clearly not in the scope of his employment.

An agent must not act for both parties in any transaction unless this is understood by both of them. Nor can an agent receive any personal profit from a transaction. Whatever profit there may be should be given to the principal. Thus if an agent is authorized to buy a piece of property for his principal and buys it for himself, or hides the transaction under the name of another, the principal, after discovering what his agent has done, can proceed to obtain the property.

An agent must be faithful and exercise reasonable skill and diligence. Money belonging to the principal should be deposited in the principal's name, or, if in the agent's name, his agency should be added; otherwise if the bank failed the agent would be responsible for the loss. Again, if the agent deposited the money in his own name the true owner could proceed against the bank to recover it.

A principal is liable for the statements and representations of his agent that have been expressly authorized. He is also liable even for false and fraudulent representations made in the course of the agent's employment, especially those resulting in a contract from which the principal reaped a benefit. Even though the statements may not have been expressly authorized, such authority may be implied by law because they are the natural and ordinary incidents of the agent's position. Thus the position of a business manager often calls for a great variety of acts, orders, notices, and the like, and statements made while performing them are regarded as within [13]

the line of his duty.

An agency may end at a fixed time, or when the particular object for creating it has been accomplished, or by agreement of the parties. In many cases an agency is created for an indefinite period, and in these either party can terminate it whenever he desires. There are some limitations to this principle. Neither party can wantonly sever the relation at the loss of the other; and if one of them did he would be liable for the damage sustained by the other. Likewise if the agent has an interest of his own in the undertaking the principal cannot terminate it before its completion without the agent's consent. Such a rule is needful for his security. The bankruptcy of a business agent operates as a revocation of his authority, but not when the act to be done is of a personal nature like the execution of a deed.

If the principal becomes insane and unable to exercise an intelligent direction of his business, his condition operates as a revocation or suspension for the time being of his agent's authority. If on recovering, he manifests no will to terminate his agent's authority, it may be considered as a mere suspension, and his assent to acts done during the suspension may be inferred from his forbearing to express dissent when they come to his knowledge. Likewise an agent's insanity terminates or suspends the agency for the time being unless he has an interest of his own in the matter. Partial derangement or monomania will not have that effect unless the mania relates to the agency, or destroys the agent's ability to perform it.

Again, the marriage of a principal in some cases, unless a statute has changed the common law, will revoke the power previously given, especially when its execution will defeat or impair rights [14] acquired by marriage. Thus should a man give a power of attorney to another to sell his homestead, but before effecting a sale the principal should marry, his marriage would revoke the power. By marrying the wife acquires an interest in the property which cannot be taken away from her without her consent by joining in a deed of conveyance with her husband. Likewise the marriage of a woman would operate to revoke a power of attorney previously given by her whenever its execution would defeat the rights acquired by her husband. An agent's marriage usually will not affect the continuance of his agency.

When an agency is terminated it is often needful for the principal to notify all customers for his protection, otherwise they might continue to do business with the agent, supposing he was thus acting, and involve him perhaps in heavy loss. This rule applies especially to partnerships, each member of which is an agent with general authority to do the kind of business in which it is engaged.

If the authority of an agent in writing is revoked, but is still left with him and is shown to a third person who, having no knowledge of the revocation, makes a contract with him, the principal will be held for its execution.

Another rule of law may be given. The law assumes that any knowledge acquired by an agent concerning his principal's business, will be communicated to his principal, who is bound thereby. This rule though is often difficult to apply. Thus, if a cashier of a bank should learn that a note was defective, which was afterward discounted by his bank, it would be regarded as having knowledge of the defect, because it was the cashier's duty to inform the proper officials before [15] they discounted it.

The death of either agent or principal terminates the agency except in cases of personal interest. And when an agent has appointed a substitute or subagent without direct authority, and for his own convenience, the agent's death annuls the authority of the subagent or substitute, even though the agent was given the right of substitution. But if the subagent's authority is derived directly from the principal, it is not affected by the agent's death.

Agreement to Purchase Land.—An agreement to purchase land must be in writing to be valid. Oral or parol agreements may be made to do many things, but everywhere the law makes an exception of agreements relating to land purchases. A statute that is quite similar in the states requires this agreement to be in writing and signed by the party against whom it is to be enforced. Thus if the seller wishes to enforce such an agreement, he must produce a writing signed by the purchaser; if the latter wishes to hold the seller, he must do the same thing. The better way is to have the writing signed by both parties.

How complete must the writing be? It need not mention the sum to be paid for the land; it can be signed with a lead pencil: a stamp signature will suffice. The entire agreement need not be on one piece of paper. If it can be made out from written correspondence between the two parties this will be enough.

To this rule of law are some exceptions. Therefore if an oral agreement for the sale of land is followed by putting the buyer into possession, the law will compel the seller to give him a deed. [16] The proceeding would consist of a petition addressed to a court of equity, which would inquire into the facts, and if they were true, would compel the seller to give the purchaser a deed of the land. The reason for making this exception is, the purchaser would be a trespasser had he no right to be there: to justify his possession the law permits him to prove, if he can, his purchase of the land; and if he has bought it, of course he ought to have a deed of his title.

Once, a purchaser who made an oral agreement and paid part of the purchase money could compel the seller to give him a deed, and many still think such action is sufficient to bind the bargain. This is no longer the law. The practice gave rise to much fraud: A would assert that he gave money to B to pay for land when in truth it was given for some other purpose. So the courts

abandoned the rule founded on the part payment of the purchase price. A can however get back his money.

An option to purchase land, contained in an agreement to sell, must be exercised within a reasonable time, if none is fixed in the agreement. See *Deed*.

Auctioneer.—An auctioneer, employed by a person to sell his property, is primarily the owner's agent only, and he remains his exclusive agent to the moment when he accepts the purchaser's bid and knocks down the property to him. On accepting the bid the auctioneer is deemed to be the agent of the purchaser also, so far as is needful to complete the sale; he may therefore bind the purchaser by entering his name to the sale and by signing the memorandum [17] thereof. His signing is sufficient to satisfy the Statute of Frauds in any state conferring on an agent authority to make and contract for the sale of real and personal property without requiring his authority to be in writing. His agency may begin before the time of the sale and continue after it. Again, the entry of the purchaser's name must be made by the auctioneer or his clerk immediately on the acceptance of the bid and the striking down of the property at the place of sale. It cannot be made afterward. The auctioneer at the sale is the agent of the purchaser who by the act of bidding calls on him or his clerk to put down his name as the purchaser. In such case there is little danger of fraud. If the auctioneer could afterward do this he might change the name, substitute another, and so perpetrate a fraud.

A sale by auction is complete by the Sales Act when the auctioneer announces its completion by the fall of the hammer, or in other customary manner. Until such announcement is made, any bidder may retract his bid; and the auctioneer may withdraw the goods from sale unless the auction has been announced to be without reserve.

Authority may be conferred on an auctioneer in the same manner as on any other agent for the sale of similar property, verbally or in writing. Even to make a contract for the sale of real estate, oral authority to the auctioneer is sufficient, in the absence of a statute to the contrary.

Authority to sell property does not of itself imply authority to sell it at auction, and the purchaser therefore who has notice of the agent's authority or knowledge sufficient to put him on inquiry, acquires no title to the property thus purchased. If goods are sent to an auction room to [18] sell, this is deemed sufficient evidence of authority to sell them in that manner and to protect whoever buys them.

As an auctioneer is ordinarily a special agent, the purchaser is supposed to know the terms and conditions imposed by the seller on the agent. The seller or owner therefore is not bound by any terms stated by the auctioneer differing from those given to him. If the owner has imposed no terms on him, then he has the implied authority usually existing in such cases.

An auctioneer has authority to accept the bid most favorable to the seller when the sale is made without reserve and to strike down the property to the purchaser. He cannot therefore consistently with his duty to his principal refuse to accept bids, unless the bidder is irresponsible or refuses to comply with the terms of the sale. He is justified in rejecting the bids of insane persons, minors, drunken persons, trustees of the property, and perhaps in some cases of married women.

An auctioneer cannot transfer his duty to another. This rule does not prevent him from employing others to do incidental things connected with the keeping and the moving of the property. He cannot sell on credit contrary to his instructions or custom; nor would he be secure in following custom if instructed to do otherwise. After the bid has been accepted the bidder has no authority to withdraw it without the owner's consent, nor can he be permitted to do so by the auctioneer. Nor can he sell at private sale if his instruction is to sell publicly, nor can he justify himself even if he acted in good faith and sold the property for more than the minimum price fixed by the owners. Nor can he sell the property to himself, nor authorize any other person to [19] bid and purchase for him either directly or indirectly. It is impossible with good faith to combine the inconsistent capacities of seller and buyer, crier and bidder, in one and the same transaction.

He has no authority to warrant the quality of property sold except custom or authority is expressly given to him. Nor is he an insurer of the safety of the goods entrusted to him for sale; he must however use ordinary and reasonable care in keeping them. Lastly, an auctioneer should disclose his principal and contract in his name. If one bought property therefore supposing it belonged to A, when in fact it belonged to B, through any manipulation of the auctioneer, the bidder would not be bound.

Automobile.—The members of the public have a right to use the public avenues for the purpose of travel and of transporting property: nor has the driver of horses any right in the road superior to the right of the driver of an automobile. Each has the same rights, and each is equally restricted in exercising them by the corresponding rights of the other.

Again, the public ways are not confined to the original use of them, nor to horses and ordinary carriages. "The use to which the public thoroughfare may be put comprehends all modern means of carrying including the electric street railroad and automobile." It has been declared that the fact that motor vehicles may be novel and unusual in appearance and for that reason are likely to frighten horses which are unaccustomed to see them, is no reason why the courts should adopt the view of prohibiting such machines.

The general rule is that all travelers have equal rights to use the highways. An automobile [20]

therefore has the same rights and no more than those of a footman.

The mere fact that automobiles are run by motor power, and may be operated at a dangerous and high rate of speed, gives them no superior rights on the highway over other vehicles, any more so than would the driving of a race horse give the driver superior rights on the highway over his less fortunate neighbor who is pursuing his journey behind a slower horse.

There is no authority or power in the state to exclude non-resident motorists from the public ways, nor have the states power to place greater restrictions or burdens on non-resident automobilists than those imposed on their own citizens.

A license to operate an automobile is merely a privilege. It does not constitute a contract, consequently it does not necessarily pass to a purchaser of the vehicle, and may, for a good reason, be revoked. Moreover the charge imposed for the privilege of operating a motor on the highway is not generally considered a tax, only a mere license or privilege fee.

An automobile may be hired from the owner. This is called in law a bailment. The bailor is not responsible generally for any negligence of the hirer in operating the car. Nor is the rule changed should the hirer be an unskilled person, unless he was an immature child or clearly lacking in mental capacity, or was intoxicated. Where the owner of an automobile delivered it to another by agreement, who was to pay the purchase price from the money derived from its use, and thereafter had complete control of the machine, his negligence could not be charged to the seller.

Again, where an automobile is hired and the chauffeur is also furnished by the owner, who pays [21] him for operating the car, and the hirer has no authority over him except to direct his ways of going, the chauffeur is regarded as the servant of the owner. He, therefore, and not the hirer is responsible for the negligence of the chauffeur. Of course, the rule would be changed if the hirer assumed the management of the car: then the hirer alone would be liable for the chauffeur's negligence.

A party who hires an automobile from another is bound to take only ordinary care of it and is not responsible for damage whenever ordinary prudence has been exercised while the car was in his custody. If lost through theft, or is injured as a result of violence, the hirer is only answerable when these consequences were clearly the result of his own imprudence or negligence. The hirer though must account for the loss or injury. Having done this, the proof of negligence or want of care is thrown on the bailor.

If the hirer should sell the automobile without authority to a third party, the owner or bailor may bring an action against even an innocent purchaser who believed that the hirer had the title and power to sell.

There is an implied obligation on the hirer's part to use the car only for the purpose and in the manner for which it was hired. And if it is used in a different way and for a longer time, the hirer may be responsible for a loss even though this was inevitable.

Suppose the hirer misuses the car, what can the owner do? He can repossess himself, if this can be done peaceably, otherwise he must bring an action for the purpose. As the hirer acquires a qualified title to the property, he can maintain an action against all persons except the owner, [22] and even against him so far as the contract of letting may set forth the relations between them.

When an owner or hirer undertakes to convey a passenger to a specified place and, while on the way, the car breaks down, if it cannot be properly mended at the time and the owner or hirer is able to furnish another, the law requires him to do so and thus fulfil his contract.

"The owner of a motor vehicle," says Huddy, "is of course entitled to compensation for the use of the machine. If a definite sum is not stated in the contract between the parties, there arises an implied undertaking that the hirer shall pay a reasonable amount. One who uses another's automobile without consent or knowledge of the owner, may be liable to pay a reasonable hire therefor. In case the hirer is a corporation, there may arise the question whether the agent of the company making the contract has authority to bind the company. Where a machine is hired for joy riding on Sunday, it has been held that the contract is illegal and the hirer cannot recover for the use of the automobile."

The speed of automobiles along the public highways may be regulated by law. A municipality may forbid the use of some kinds of motor vehicles on certain streets, but it cannot broadly exclude all of them from all the streets. The rules regulating travel on highways in this country are called, "the law of the road." The object of these rules is to prevent collisions and other accidents, which would be likely to occur if no regulations existed.

A pedestrian who is about to cross a street may rely on the law of the road that vehicles will approach on the proper side of the street. This rule however does not apply to travelers walking [23] along a rural highway. Huddy says: "When overtaking or meeting such a person, it is the duty of both the pedestrian and the driver of the machine to exercise ordinary care to avoid a collision, but no rule is, as a general proposition, definitely prescribed as to which side of the pedestrian the passage shall be made."

The law of the road requiring vehicles to pass each other on the right, contrary to the English custom, has been reënforced in many or all the states by statutory enactments, and applies also to automobiles. When, therefore, two vehicles meet and collide on a public highway, which is wide enough for them to pass with safety, the traveler on the wrong side of the road is responsible for the injury sustained by the other. But a traveler is not justified in getting his machine on the right-hand side of the road and then proceeding regardless of other travelers; on the contrary, the duty of exercising reasonable care to avoid injuries to others still continues.

Not only must each one pass to the right, but each must pass on his own side of the center line of the highway, or wrought part of the road. And when the road is covered with snow, travelers who meet must turn to the right of the traveled part of the road as it then appears, regardless of what would be the traveled part when the snow is gone. After passing the rear of the forward vehicle an automobilist must exercise reasonable care in turning back toward the right into the center of the highway, and if he turns too soon he may be liable for damages caused by striking or frightening the horses. "If two vehicles meet in the street, it is the duty of each of them, as seasonably as he can, to get each on his own right-hand side of the traveled way of the street." [24]

The rights of travelers along intersecting streets are equal, and each must exercise ordinary care to avoid injury to the other. An automobilist nearing an intersection should run at proper speed, have his car under reasonable control, and along the right-hand side of the street. If two travelers approach the street crossing at the same time neither is justified in assuming that the other will stop to let him pass. When one vehicle reaches the intersection directly in advance of the other, he is generally accorded the right of way, and the other should delay his progress to enable the other to pass in safety.

The driver of an automobile may be charged with negligence if, without warning to a vehicle approaching from the rear, he turns or backs his machine and causes a collision. Indeed, it is negligence for a chauffeur to back his machine on a city street or public highway without looking backward; and especially if one backs his car on a street car track without looking for street cars.

If an obstruction exists on the right-hand side of a highway, the driver of a car may be justified in passing to the other side, and in driving along that side until he has passed the obstacle. Under such circumstances he has a right to be on the left side temporarily; and if he exercises the proper degree of care while there, is not liable for injuries arising from a collision with another traveler. But if the obstruction is merely temporary, it may be the duty of the driver to wait for the removal and not to pass on the wrong side of the highway.

An automobilist must exercise reasonable or ordinary care to avoid injury to other persons using the highway. What this is depends on many circumstances, and each case to some extent is decided by its own facts. Consequently thousands of cases have already arisen, and doubtless they will still multiply as long as automobiles are used and their users are negligent. [25]

The competency of the driver is one of the unending questions. Of course he should be physically fit, not subject to sudden attacks of dizziness, possessing sufficient strength and proper eyesight and a sober non-excitable disposition. It is said, that a chauffeur is not incompetent who requires glasses. But he certainly would be if his eyesight was poor and could not be aided by the use of them.

The driver must at all times have his car under reasonable control so that he can stop in time to avoid injury. He must keep a reasonably careful lookout for other travelers in order to avoid collision; also for defects in the highway. If by reason of weather conditions, lights or other obstructions, he is unable to see ahead of him, he should stop his car. If there be no facilities for stopping for the night, a driver is not negligent should he proceed through the fog.

Passing to the liability of the owner of a car for the acts of his chauffeur, the general rule is, he is then liable when the chauffeur is acting within the scope of his owner's business. When the owner himself is riding in the car there is less difficulty in fixing the liability, but when the chauffeur uses the car without the owner's consent, he is not liable for the conduct of the driver. And this is especially so in using a car contrary to the owner's instructions and for the chauffeur's pleasure; or in using it for his own business with the owner's consent. And the same rule generally prevails whenever a member of a family uses his parent's car without his knowledge and consent, and especially when forbidden. But the parent is liable for the running of a car with his knowledge by a member of his family and for the convenience or pleasure of other members. See *Chauffeur*; *Garage Keeper*. [26]

Bailor and Bailee.—To create this relation the property must be delivered to the bailee. Though a minor cannot make such a contract, yet if property comes into his possession he must exercise proper care of it. Should he hire a horse and kill the animal by rash driving, he would be liable for its value. A corporation may act as bailor or bailee, and an agent acting therefor would render the corporation liable unless he acted beyond the scope of his authority.

Suppose one picks up a pocketbook, does he become the owner? Is he a bailee? Yes, and must make an honest, intelligent effort to find the owner; if failing to do so, then he may retain it as his own, meanwhile his right as finder is perfect as against all others. Should the true owner appear, whatever right the finder may have against him for recompense for the care and expense in keeping and preserving the property, his status as finder does not give him any lien unless the owner has offered a reward to whoever will restore the property. To this extent a lien thereon is thereby created.

The statutes generally provide what a person must do who has found lost property. Suppose a person appears who claims to be the owner of the thing found, what shall the finder do in the way of submitting it to his inspection? In one of the recent cases the court decided that it was a question of fact and not of law whether the finder of lost property had given a fair and reasonable opportunity for its identification before restoring it, and whether the claimant should have been given an opportunity to inspect it in order to decide whether it belonged to him. [27]

The finder does not take title to every article found and out of the possession of its true owner.

To have even a qualified ownership the thing must be lost, and this does not happen unless possession has been lost casually and involuntarily so that the mind has no recourse to the event. A thing voluntarily laid down and forgotten is not lost within the meaning of the rule giving the finder title to lost property; and the owner of a shop, bank or other place where the thing has been left is the proper custodian rather than the person who was the discoverer.

If a lost article is found on the surface of the ground, or the floor of a shop, in the public parlor of a hotel, or near a table at an open-air place of amusement, or in the car of a railroad it becomes, except as against the loser, the property of the finder, who appropriates it regardless of the place where it was found. Once a boat was found adrift and the finder made the needful repairs to keep it from sinking, yet the owner was mean enough to refuse to pay for them. The court compelled him to make good the amount to the finder.

The law regards the possession of an article which is lost as being that of the legal owner who was previously in possession, until the article is taken into the actual possession of the finder. If the finder does not know who the owner is and there is no clue to the ownership, there is no larceny although the finder takes the goods for himself and converts them to his own use. If the finder knows who the owner is or has a reasonable clue to the ownership, which he disregards, [28] he is guilty of larceny.

Another class of cases must be noticed. Very often articles are delivered to another to have work done on them, hides to be tanned, or raw materials to be worked up into fabrics. Can a creditor of the bailee pounce on tanned hides or completed fabrics as belonging to him and take them in satisfaction of his debt? Both parties have in truth an interest in the goods, and in general it may be said that the bailor cannot thus be deprived of his interest and may follow the goods and recover them or their value.

If they are destroyed while executing the agreement, who must lose? If the bailee is not negligent or otherwise at fault, and the loss happened by internal defect or inevitable accident, the bailor would be the loser. And if workmen had been employed thereon, the bailor would also be obligated to pay for their labor.

To what extent can a bailee limit his liability by agreement? A bailee who was a cold storage keeper, stated in his receipt "all damage to property is at the owner's risk." This limitation related, so a court decided, to loss resulting from the nature of the things stored. A bailee received some cheese and gave a receipt slating that it was to be kept at the owner's risk of loss from water. It was injured from the dripping of water from overhead pipes. The bailee was, notwithstanding his receipt, held liable.

A bailor need not always be the owner of the thing bailed. He may be a lessee, agent, or having such possession and control as would justify him in thus acting. He should give the bailee notice of all the faults in the thing bailed that would expose him to danger or loss in keeping it. For [29] example, if it were a kicking horse, he should warn the bailee to keep away from his legs.

The courts have been often troubled about the degree of care required of bailees, as it differs under varying circumstances. A bank that permits a depositor to keep a box of jewelry or silver in its vault for his accommodation, while absent from home and without receiving any compensation therefor, is not required to exercise the same degree of care as a safe deposit company whose chief business is to do such things and is paid for its service. Nevertheless a bank must exercise reasonable care, such care as is used in keeping its own things.

Suppose your package is stolen by the cashier or paying teller, is the bank responsible? That depends. If the bank knows or suspected the official was living a gay life, it ought not to keep him, and most banks would not. It is the better legal opinion, that a bank ought not to keep a president, cashier or other active official who is speculating in stocks, for the temptation to take securities not belonging to them has been too great in many cases for them to withstand. On the other hand if a long-trusted official, against whom no cause for suspicion had arisen, should steal a package from the safe, the bank would not be responsible for the loss any more than if it had been stolen by an outsider. The bank did not employ him to steal, but to perform the ordinary banking duties.

A bailee is usually a keeper only. But the nature of the property may require something more to be done. If he is entrusted with a milch cow, he must have her milked, or with cattle in the winter time which require to be served with food, he must supply it, otherwise they would starve. If he is [30] keeping a horse which is taken sick, proper treatment should be given.

When the period of bailment is ended, the thing bailed must be returned. If it consisted of a flock of sheep, cattle and the like, all accessions must also be delivered. In many cases the bailee is not required to return the specific property, but other property of the same kind and quality. Thus if one delivers wheat for safekeeping, which is put in an elevator, the contract is fulfilled by delivering other wheat of similar kind and quality; or, if the wheat is to be made into flour, by delivering the proper amount of the same quality as the specific wheat bailed. A bailee has a lien for his service and proper expenditures in caring for and preserving the thing bailed, but not for any other debt the bailor may owe him. And if the bailee is a finder who has bestowed labor on the article found in good faith, the same rule applies.

Agisters and livery-stable men have no lien at common law, like carriers for keeping the animals entrusted to them because they are under no obligation to take them into their keeping. In Pennsylvania a different rule was long ago declared, and has ever since been maintained. As he can agree on terms, he may make such as are agreeable to both parties. Elsewhere he can impose his own terms, and may demand his pay in advance, or create, by contract, a lien if he

pleases. A person who is hired as a groom to a horse for a specified time and at a fixed price, has no lien on the horse for his service, but has a lien for feed, keeping and shoeing, which should have been furnished by the owner. A contract to do this is not necessary to create the lien, it [31] arises as if the horse had been left for keep and care without saying more.

Bankruptcy.—Before the enactment of the federal Bankruptcy Act of 1898, every state had a bankruptcy act of its own, which was generally called an insolvency law. The federal act has superseded these by virtue of the power granted to congress in the federal constitution "to establish uniform laws on the subject of bankruptcies throughout the United States."

The United States district courts in the several states are made courts of bankruptcy and have power to adjudge all persons bankrupt who have their principal places of business, residence and domicile within their respective districts; and jurisdiction also over others who simply have property within their jurisdiction.

Any person who owes debts, or business corporation, may become a voluntary bankrupt. So may an alien. He may also become an involuntary bankrupt if he has had his principal place of business here, or has been domiciled within the jurisdiction of the court for the preceding six months, or has property within its jurisdiction. Some corporations are still denied voluntary action, as well as minors and insane persons.

Who may become an involuntary bankrupt? Any person, except a wage-earner, or farmer, any unincorporated company, and any corporation engaged principally in manufacturing, trading, printing, publishing, or mercantile pursuits, owing debts to the amount of one thousand dollars. What is a manufacturing corporation, within the meaning of the law, is not even yet fully known. A corporation engaged principally in smelting ores is one; and a mining corporation, whose [32] principal business is to buy and sell ores, is deemed a trading corporation and may become an involuntary bankrupt.

Next we may inquire, what are acts of bankruptcy? One of them is an admission of a person's inability to pay his debts. And this may be done by a corporation through its properly organized officers. Another act of bankruptcy is to convey, transfer, conceal or remove property with the intention to defraud creditors. And by concealment is meant the separation of some tangible thing like money from the debtor's estate, and secrete it from those who have a right to seize it for payment of their debts. The transfers of property covered by the act are those which the common law regards as fraudulent. If, for example, at the time of the transfer of his property one is so much indebted that it will embarrass him in paying his debts, the transfer will be deemed fraudulent; but a voluntary transfer, made by one who is free from debt, cannot be impeached by subsequent creditors. The intention to hinder, delay or defraud creditors is a question of fact to be ascertained by proper judicial inquiry.

A general assignment for the benefit of creditors is an act of bankruptcy. Likewise a general assignment for the benefit of creditors made by the majority of the board of directors and of the stockholders is an act of bankruptcy. A petition for the appointment of a receiver of a corporation under a state statute is not an assignment for the benefit of creditors and therefore is not an act of bankruptcy.

Another act of bankruptcy is to suffer or permit, when one is insolvent, any creditor to acquire a preference through legal proceedings. The term preference includes not only a transfer of property, but also the payment of money within four months from the time of filing his petition in [33] bankruptcy. It is immaterial to whom the transfer is made if the purpose be to prefer one creditor to another. Like a fraudulent transfer the intent to prefer must be proved, though this may sometimes be presumed, as when the necessary consequence of a transfer or payment made by an insolvent debtor is to liquidate the debt of one creditor to the entire or partial exclusion of others.

Passing to the filing of the petition a voluntary petitioner should file his petition in the court of bankruptcy in the judicial district where he has principally resided for the preceding six months. When there is no estate and no claim has been proved and no trustee has been appointed, a bankrupt may withdraw his petition on paying the costs and expenses. The petition must be accompanied by a schedule of the petitioner's property, showing its kind and amount, location, money value, and a list of his creditors and their residences when known, the amount due to them, the security they have, and a claim to legal exemptions, if having any. After filing a voluntary petition the judge makes an adjudication. He may do this ex parte, that is without notice to creditors.

A petition may be filed against a person who is insolvent and has committed an act of bankruptcy within four months after such action. Three or more creditors who have provable claims amounting to five hundred dollars in excess of securities held against a debtor may file the petition, or if all the creditors are less than twelve, then one of them may file the petition provided the debtor owes him the above stated amount. Creditors holding claims which are secured, or have priority, must not be considered in determining the number of creditors and the [34] amount of claims for instituting involuntary proceedings. The petition should state the names and residences of the petitioning creditors, also that of the bankrupt, his principal place of business, the nature of it, his act of bankruptcy, that it occurred within four months of the filing of the petition, and that the amount of the claims against him exceed five hundred dollars. The petition must be signed and properly verified, and may be afterward amended for cause in the interest of justice. On the filing of the petition a writ of subpœna is issued addressed to the bankrupt

commanding him to appear before the court at the place and on the day mentioned to answer the petition. The next step, after serving the petition, is for the bankrupt to file his answer. Meanwhile his property may be seized by a marshal or receiver on proof that he is neglecting it or that it is deteriorating.

Within ten days after one has been judicially declared to be a bankrupt, he must file in court a schedule of his property, including a list of his creditors and the security held by them. Then follows the first meeting of the bankrupt's creditors, within thirty days after the adjudication. The judge or referee must be present at this meeting, also the bankrupt if required by the court. Before proceeding with other business the referee may allow or disallow the claims of creditors presented at the meeting, and may publicly examine the bankrupt, or he may be examined at the instance of any creditor. At this meeting the creditors may elect a trustee.

Subsequent meetings may be held at any time and place by all the creditors whose claims have been allowed by written consent: the court also may call a meeting whenever one fourth of those [35]
who have proved their claims file a written request to that effect.

Only a creditor who owns a demand or provable claim can vote at creditors' meetings. Nor can other creditors through filing objections to a claim prevent a bona fide claimant from voting. A creditor of an individual member of a bankrupt partnership cannot vote. Nor can creditors holding claims that are secured or that have priority vote only to a limited extent, so far as their claims are on the same basis as other creditors. To entitle secured and preferred creditors to vote at the first meeting on the whole of their claims, they must surrender their securities or priorities. If a portion of a creditor's debt is secured and a portion is unsecured, he may vote on the unsecured portion. An attorney, agent, or proxy may represent and vote at creditors' meetings, first presenting written authority, which must be filed with the referee. The referee who presides at the first meeting makes up or decides on its membership. Matters are decided at the meeting by a majority vote in number and amount of claims of all the creditors whose claims have been allowed and are present.

The next stage in bankruptcy proceedings is the proving and allowance of claims. Only such debts are provable as existed at the time of filing the petition. Every debt which may be recovered either at law or in equity may be proved in bankruptcy. A claim barred by the statute of limitations is not provable, nor is a contingent liability. On the other hand a debt founded on a contract express or implied may be proved, for example, damages arising from a breach of a contract prior to the adjudication in bankruptcy. Again, if there are agreements or covenants in a [36]
contract of a continuing character the bankrupt is still liable on them notwithstanding his discharge in bankruptcy. If the amount of a claim is unliquidated the act sets forth the mode of proceeding. Among other claims that may be proved are judgments, debts founded on an open account, and rents.

The claims of creditors who have received preferences are not allowed unless they surrender them. Thus money paid on account by an insolvent debtor must be surrendered before a claim for the balance due on the account can be proved. If proceedings are begun by the trustee to set aside a preferential transfer to a creditor who puts in a defense, he cannot thereafter surrender his preference and prove his claim. If a creditor in proving his debt fails to mention his security, if he has any, he will be deemed to have elected to prove his claim as unsecured.

Claims that have been allowed may be reconsidered for a sufficient reason and reallowed or rejected in whole or in part, as justice may require, at any time before the closing of the estate. The reëxamination may be had on the application of the trustee or of any creditor by the referee, witnesses may be called to give evidence, and the referee may expunge or reduce the claim or adhere to the original allowance.

The appointment of the trustee by the creditors at their first meeting is subject to the approval or disapproval of the referee or the judge. Should the creditors make no appointment the court appoints one. As soon as he has been appointed it is the duty of the referee to notify him in person or by mail of his appointment. If he fails to qualify or a vacancy occurs, the creditors have [37]
an opportunity to make another appointment. If a trustee accepts he must give a bond with sureties for the faithful performance of his duties. He may also be removed for cause after notice by the judge only. Should he die or be removed while serving, no suit that he was prosecuting or defending will abate but will be continued by his successor.

The trustee represents the bankrupt debtor as the custodian of all his property that is not exempt; also the creditors, and gathers all the bankrupt's property from every source and protects and disposes of it for the best interests of the creditors, and pays their claims. In short, he succeeds to all the interests of the bankrupt, is an officer of the court and subject to its orders and directions. He must deposit all moneys received in one of the designated depositories, can disburse money only by check or draft, and at the final meeting of the creditors must present a detailed statement of his administration of the estate. During the period of settlement he must make a report to the court in writing of the condition of the estate, the money on hand, and other details within the first month after his appointment, and bi-monthly thereafter unless the court orders otherwise.

The federal Bankruptcy Act prescribes what property passes to the trustee and also what is exempt. Whatever property on which a levy could have been made by judicial process against the bankrupt passes to the trustee. On the other hand, the income given to a legatee for life under a will providing it shall not be subject to the claims of creditors does not pass to the trustee. If the bankrupt has an insurance policy with a cash surrender value payable to himself or personal representatives he may pay or secure this sum to the trustee and continue to hold the policy. And [38]

a policy of insurance payable to the wife, children, or other kin of the bankrupt is no part of the estate and does not pass to the trustee.

After one month, and within a year from the adjudication of bankruptcy, the bankrupt may apply for a discharge. The petition must state concisely the orders of the court and the proceedings in his case. Creditors must have at least ten days' notice by mail of the petition, and then the judge hears the application for discharge, and considers the proofs in opposition by the parties in interest. Unless some creditor objects and specifies his ground of objection, the petition will be granted. The Bankruptcy Act states several reasons for refusing a discharge, especially when the bankrupt has concealed his property instead of making an honest, truthful statement respecting it, or has not kept proper books of account with the fraudulent intent to conceal his true financial condition and defraud his creditors.

Lastly a person may be punished by imprisonment for two years or less on conviction of having knowingly and fraudulently concealed, while a bankrupt or after his discharge, any property belonging to his estate as a bankrupt, or made a false oath in any bankruptcy proceeding, or made any false claim against his estate or used such a claim in making a composition with his creditors.

Beneficial Associations.—Beneficial associations possess a varied aspect, they are both social and business organizations. Often the members are bound together by secret obligations and pledges. Trades-unions have a double nature, they are created for both beneficial and business [39] purposes. Originally their beneficial character was the more important feature. Benefit societies may be purely voluntary associations or incorporated either by statute or charter.

The articles of association formed by the members are essentially an agreement among them by which they become bound to do specified things and incur liabilities. They thus establish a law for themselves somewhat like a charter of a corporation. They may adopt such rules as they like provided they are not contrary to the laws of the land. As the members, having made the rules, are presumed to know them, they are therefore bound by them.

The legal status of such associations, their right to sue and be sued, the liability of the members to the public for the debts of the association, though most important questions, are not as well settled as they might be. In many states statutes exist defining their right to sue and be sued, and their liability to creditors. Yet these statutes do not cover all cases. Generally persons who associate for charitable or benevolent purposes do not regard themselves in a legal sense as partners. Nevertheless in fixing their liability to creditors, dividing their property, and closing up their affairs, the courts often, though not always, treat their association as a partnership, and the members as partners. Thus the highest court in New York declared that an unincorporated lodge, which had been mis-managed, was not a partnership. The members sought to dissolve the lodge, and distribute its property. The court said there was no power to compel the payment of dues, and the rights of a member ceased after his failure to meet his annual subscription. On the other hand, the supreme court in the same state held that the members of a voluntary association were [40] liable to its creditors by common law principles. "Where such a body of men join themselves together for social intercourse and pleasure, and assume a name under which they commence to incur liabilities by opening an account, they become jointly liable for any indebtedness thus incurred, and if either of them wishes to avoid his personal responsibility by withdrawal from the body, it is his duty to notify the creditors of such withdrawal."

If one or more members order work to be done or purchase supplies, he or they are personally liable unless credit was given to the association.

What can the members do? They cannot change the purpose for which the association was formed without the consent of all, still less can the executive board convert the association into a corporation. No member has a proprietary interest in the property, nor right to a proportionate part while he is a member, or after his withdrawal. Should an association dissolve, then the members may divide its property among themselves.

Sometimes a quarrel springs up in one of these associations, the members divide, who shall have the property? The members of more than one church organization have fought this question, first among themselves, afterwards in the courts. Suppose a quarrel breaks out in a branch association and two parties are formed, which of them is entitled to the property? The party that adheres to the laws and usages of the general organization is regarded as the true association, and is therefore entitled to the enjoyment of the property. Though that party may be a minority of the faithful few, the members are enough to continue the organization.

Sometimes societies of a quasi religious character exist which persons join, surrendering their [41] property and receiving support. Suppose a member should leave, and afterwards sue to recover his property. This has been attempted, and usually ends in failure.

Are benefit societies charities? This question is important from the taxpayer's view, as charitable associations are taxed less than others or perhaps entirely relieved. An Indiana court has decided that a corporation which promises to pay a fixed sum as a benefit during a member's illness—he of course paying his dues—is not a purely benevolent organization, and therefore not exempt from taxation. Masonic lodges on the other hand, are generally regarded as charitable institutions. "The true test," says a judicial tribunal, "is to be found in the objects of the institution."

Again, a voluntary association may conduct in such a way as to create the impression or belief

that it is a corporation, and is forbidden from denying its corporate liability for an injury or loss to a third person. It is a familiar rule that a person who transacts business with a partnership in the partnership name may hold all the members liable as partners, though he did not know all their names. This rule has sometimes been applied to a voluntary association, making it responsible as a corporation.

The articles of association regulate the admission of members. A physician who applied for membership in a medical society was rejected because of unprofessional conduct. A code of medical ethics adopted by the society was declared to be binding only on the members, and therefore did not touch the conduct of one prior to his becoming a member of the society. If the membership of a society is confined to persons having the same occupation, a false [42] representation concerning one's occupation would be a good reason for his expulsion. In admitting a member, if no form of election has been prescribed, each candidate must be elected separately. This must also be done at a regular meeting or at one properly called for that purpose. A call therefore to transact any business that may be legally presented is not sufficient.

If a society requires a ceremony of initiation, is the election of a member so complete that he is entitled to benefits without proper initiation? In one of the cases the court said: "The entire system, its existence and objects, are based upon initiation. We think, there can be no membership without it, and no benefit, pecuniary or otherwise, without it."

Controversies concerning property rights of religious societies are generally decided by one of three rules: (1) "was the property a fund which is in question devoted to the express terms of the gift, grant or sale by which it was acquired, to the support of any specific religious doctrine or belief or was it acquired for the general use of the society for religious purposes with no other limitation; (2) is the society which owned it of the strictly independent or congregational form of church government, owing no submission to any organization outside of the congregation; (3) or is it one of a number of such societies, united to form a more general body of churches, with ecclesiastical control in the general association over the members and societies of which it is composed."

Many benefit societies provide for the payment of money to their sick members. The rules providing for the payment of these may be changed at any time as the constitution or articles of association of a society may prescribe. Consequently an amendment may be made diminishing [43] the weekly allowance to a member who is sick, and also the time of allowing it. Of course in applying for the benefits a member must follow the modes prescribed.

The power to expel members is incident to every society or association unless organized primarily for gain. Gainful corporations have no such power unless it has been granted by their charter or by statute. The revision of the list of members by dropping names is equivalent to the expulsion of those whose names are dropped, and by a majority vote or larger one as the rules of the society may require. Nor can the power of expulsion be transferred from the general body to a committee or officer. The power to expel must be exercised in good faith, not arbitrarily or maliciously, and its sentence is conclusive like that of a judicial tribunal. Nor will a court interfere with the decision of a society except: first, when the decision was contrary to natural justice and the member had no opportunity to explain the charge against him; secondly, when the rules of the association expelling him were not observed; thirdly, when its action against him was malicious. Nor will a court interfere because there have been irregularities in the proceedings, unless these were of a grave character.

The charges must be serious, a violation of a reasonable by-law is a sufficient charge. To obtain, by feigning a qualification which did not exist, membership in a trades-union is sufficient cause for expulsion; so is fraud in representing one's self in his application for membership when in fact he has an incurable disease. On the other hand, the following charges are not sufficient to justify expulsion or suspension: slander against the society, illegally drawing aid in time of [44] sickness, defrauding the society out of a small sum of money, villifying a member, disrespectful and contemptuous language to associates, saying the lodge would not pay and never intended to pay, ungentlemanly conduct. In harmony with a fundamental rule of law, a member who has once been acquitted cannot be tried again for the same offense.

As subordinate lodges of a benefit society are constituent parts of the superior governing body, there may be an expulsion from membership in a subordinate lodge for violating laws which generally caused expulsion from the society itself, and there may be a conditional expulsion or suspension. If an assessment is not paid at the fixed time, its non-payment, by the laws of the order, works a suspension, though a member may be restored by complying with the laws of the order.

An appeal by a member of a subordinate lodge from a vote of expulsion does not abate by his death while the appeal is pending. If, therefore, the judgment of the lodge is reversed, the beneficiary of the member is entitled to the benefits due on the member's death. A member who has been wrongfully expelled may be restored by a mandamus proceeding issued by a court. Before making the order the court will inquire into the facts and satisfy itself whether in expelling the applicant the society has properly acted in accord with its rules. Unless some rule or statute forbids, a member of a voluntary association may withdraw at any time. When doing so, however, he cannot avoid any obligations incurred by him to the association. On the other hand, it cannot, after his withdrawal, impose any other obligations on him.

It has often been attempted to hold the members of an association liable personally for a [45] promised benefit in time of sickness. Says Bacon: "It may be a question of construction in each particular case whether the members are personally liable or not. The better rule seems to be

that the members are not held personally liable."

An association cannot by its constitution or by-laws confer judicial powers on its officers to adjudge a forfeiture of property rights, or to deprive lodges or members of their property and give it to another, or to other members. To allow associations to do this is contrary to public policy. For the same reason an agreement to refer future controversies to arbitration cannot be enforced; it in effect deprives a party of his rights under the law. He may do this in a known case, this indeed is constantly done, but one cannot bar himself in advance from a resort to the courts for some future controversy of which he has no knowledge at the time of the agreement. This is a rule of law of the widest application.

Broker.—A broker, unlike an auctioneer, usually has no special property in the goods he is authorized to sell. Ordinarily also he must sell them in the name of the principal, and his sales are private. He receives a commission usually called brokerage. He can act only as the agent of the other party when the terms of the contract are settled and he is instructed to finish it. Brokers are of many kinds. They relate to bills and notes, stocks, shipping, insurance, real estate, pawned goods, merchandise, etc. A bill and note broker who does not disclose the principal's name is liable like other agents as a principal. He is also held to an implied authority, not only to sell, but that the signatures of all the parties thereon are genuine. Unless he indorses it he does [46] not warrant their solvency.

An insurance broker is ordinarily employed by the person seeking insurance, and is therefore unlike an insurance agent, who is a representative of an insurance company, and usually has the authority of a general agent. A delivery of a policy therefore, to an insurance broker, would be a delivery to his principal. He is a special agent. Unless employed generally to keep up his principal's insurance, he has no implied authority to return a policy to be cancelled, and notice to him that a policy had ceased, would not be notice to his principal.

An insurance broker must exercise reasonable care and diligence in selecting none but reliable companies, and in securing proper and sufficient policies to cover the risks placed to be covered by insurance; and if he selects companies which are then in good standing he would not be liable should they afterward become insolvent.

Merchandise brokers, unless factors, negotiate for the sale of merchandise without having possession or control of it. Like other agents they must serve faithfully and cannot act for both parties, seller and buyer, in the same transaction, without the knowledge and consent of both. In many transactions he does thus represent both by their express or implied authority, and therefore binding both when signing for them.

A real estate broker in the employ of his principal is bound to act for his principal alone, using his utmost good faith in his behalf. And a promise by one of the principals in an exchange of real estate, after the completion of the negotiations, to pay a commission to the other party's broker, to whom he owed nothing, is void for lack of a consideration.

To gain his commission a broker must produce a person who was ready, able and willing both [47] to accept and live up to the terms offered by the owner of the property. Nor can a property owner escape payment of a broker's commission by selling the land himself and at a price less than the limit put on the broker.

The business of a pawnbroker is legally regulated by statute, and the states usually require him to get a license. As the business may be prohibited, a municipality or other power may regulate and control his business. The rate of interest that he may charge is fixed by statute. The pawnee may lose his right by exacting unlawful interest. Nor has the pawnee the right to retain possession against the true owner of any article that has been pawned without his consent or authority. If the true owner has entrusted it to someone to sell, who, instead of selling, pawns it, the pawner is protected in taking it as security. The sale of pawned goods is usually regulated by statute. If none exists, and there is no agreement between the parties, the sale must be public after due notice of the time and place of sale. If there is any surplus, arising from the sale, he must pay it to the pawner, and not apply it on another debt that he may owe the pawnee. The pawner, or an assignee or purchaser of the pawn ticket may redeem it within the time fixed by law or agreement, or even beyond the agreed time if the pawnee has not exercised his right of sale. Subject to the pawnee's claim, the pawner has the same right over the article pawned as he had after pawning it, and may therefore sell and transfer his interest as before. Lastly the pawner is liable for any deficiency after the sale of the thing pawned, unless released by statute. See *Agency*.

Carrier.—Carriers are of two kinds, private and public. A private carrier may contract orally or [48] in writing, and must use such care in carrying the goods entrusted to him as a man of ordinary intelligence would of his own property. If he carries these gratuitously his obligation is still less, nevertheless he must even then take some care of them. Suppose he agreed to carry a package for another to the latter's home, and on the way, being weary or sleepy, should sit down by the wayside where people often pass and fall asleep and on awakening should find the package missing, would he be responsible? Authorities differ. Suppose the package was a very valuable one. A court might hold that the man who gave it to him was a fool for entrusting such a package voluntarily with him. Suppose however that he was a highly trustworthy man, well known throughout the neighborhood, then no fault could be imputed to either, and the owner would be obliged to bear the loss.

Common carriers are far more numerous and important. Receiving a reward they are required to exercise more care in the business. The old rule of the common law was very strict, but this has been greatly modified. A carrier may modify the rule by contract, and the bill of lading received by the shipper is regarded as one, and sets forth his liability. In a general way he can relieve himself from all liability except from his own negligence, and there are cases which hold that he can relieve himself even from that if the shipper, for the sake of having his goods carried at a lower price, is willing to relieve him, in other words is willing to assume all the risk himself.

A carrier can limit his liability for the loss of baggage entrusted to his care and when one receives a receipt describing the amount of the carrier's liability in the event of loss. Nor can he [49] hold the company on the plea of ignorance by declaring he has not read it, for it is his duty to read the receipt. Again, a carrier is thus liable only when a traveler's baggage is entrusted to his care; if therefore he keeps his grip or umbrella and on looking around makes the painful discovery that he has been relieved of them, he cannot look to the carrier for compensation.

The law requires carriers to carry all who pay their fare, and are in a sufficiently intelligent condition to take care of themselves. In like manner the law requires them to take all freight that may be offered, though it may make reasonable rules with regard to the time of receiving it, mode of packing, etc. A regulation therefore that furniture must be crated is reasonable, and a carrier may refuse to take it unless it is thus prepared for shipment. So also is a rule requiring glass to be boxed though the distance may be short for carrying it. A carrier may also object to carrying things out of season, potatoes or fruit for example in the winter in the northern states where there is great danger of freezing, unless the shipper assumes the risk. Vast quantities of perishable goods are carried, but usually under definite regulations and contracts. So, too, the shipper must declare the nature of the thing carried. Should he put diamonds in his trunk, he could not recover for their loss, for he has no business to carry such a valuable thing in that way. He must make known the contents for the carrier's protection. He cannot carry an explosive in secrecy. To attempt to do such a thing is a manifest wrong to the carrier.

A carrier has a lien or right to hold the freight until the charge for transporting it is paid, but if [50] it is delivered, the lien ceases and cannot be restored. If the carrier keeps it until the freight charge is paid discretion must be used, and unnecessary and unreasonable expense must not be incurred in so doing.

A different rule applies to carrying passengers than applies to freight, because the latter is under its complete control, while passengers are not. Nevertheless the law requires a high degree of care in carrying passengers, and is responsible in money damages should injury occur through the carrier's negligence. In many states statutes exist limiting the amount that a carrier must pay when life is lost through its negligence to five thousand dollars or other sum, while a much larger sum is often recovered for an injury, loss of a leg, arm or the like. From the carrier's point of view therefore it is often obliged to pay less for killing than for injuring people; this is one of the strange anomalies of the law.

When a passenger is injured and no agreement can be made with the carrier for compensation, a suit is the result and the chief question is one of fact, the extent of the injury, and the degree of negligence of the carrier. If, on the other hand, the passenger was in fault himself and contributed to the injury then the more general rule is he can recover nothing. In some states the courts attempt to ascertain the negligence of both parties, when both are at fault, and then award a verdict in favor of the one least in fault. This is a difficult rule to apply however just it may seem to be.

A passenger who stands on a platform or on the steps of a street car, when there is room inside, assumes all the risks himself. But if there is no room within and the conductor knows he is [51] outside, and permits him to ride, he is under the same protection as other passengers. An interurban car had stopped and A who was carrying two valises attempted to board it. The act of the conductor, who was on the rear platform, in reaching down and taking one of the valises amounted to an invitation to A to board the car. In signaling to the motorman to start the car when A was stepping to the vestibule from the lower step, thus causing the injury to him, was negligence for which the company was liable.

A sleeping car company operating in connection with ordinary trains is not a common carrier, nor an innkeeper as to the baggage of a passenger. Yet it is liable for ordinary negligence in protecting passengers from loss by theft. In a well-considered case the judge said: "Where a passenger does not deliver his property to a carrier, but retains the exclusive possession and control of it himself, the carrier is not liable in case of a loss, as for instance, where a passenger's pocket is picked, or his overcoat taken. A person asleep cannot retain manual possession or control of anything. The invitation to make use of the bed carries with it an invitation to sleep, and an implied agreement to take reasonable care of the guest's effects while he is in such a state that care upon his own part is impossible. I think it should keep a watch during the night, see to it that no unauthorized persons intrude themselves into the car, and take reasonable care to prevent thefts by occupants."

There is a distinction between the great express companies of the country and local express companies receiving baggage from travelers for transportation to their immediate destination. In the latter case there is nothing in the nature of the transaction or the custom of the trade which [52] should naturally lead the shipper to suppose that he was receiving and accepting the written evidence of a contract, and therefore he is not bound by the terms of the receipt received, unless there is other evidence that he assented thereto.

Though the United States is a common carrier for carrying mails, it cannot be held liable

because it is a branch of the government. Mail matter may be carried by private persons, but this is limited to special trips. By statute no person can establish any private express for carrying letters or packets by regular trips or at stated periods over any post route, or between towns, cities or other places where the mail is regularly carried.

A public officer in performing his duties is exempt from all liability. But a postmaster is liable to a person injured by his negligence or misconduct and for the acts of a clerk or deputy authorized by him. The assistant unless thus shielded must answer for his own misconduct. A rider or driver employed by a contractor for carrying the mails is an assistant in the business of the government. Although employed and paid, and liable to be discharged at pleasure by the contractor, the rider or driver is not engaged in his private service; he is employed in the public service and therefore the contractor is not liable for his conduct.

Chattel Mortgage.—A chattel mortgage is a conveyance of personal property, as distinguished from real property, to secure the debt of the lender or mortgagor. The essence of the agreement is, if the mortgagor does not repay the money as he has agreed to do, the mortgagee becomes the owner of the property. Until the mortgagor fails to execute his part of [53] the agreement, he retains possession of the property. By statutes that have been enacted everywhere, the mortgagee's interest, or conditional title in the property conveyed to him, is secure by recording the deed even though the mortgagor still retains possession.

The usual form of a chattel mortgage is a bill of sale with a conditional clause, stating the terms of the loan and that, on the mortgagor's failure to pay, the mortgagee may take possession of the property. Any persons who are competent to make a contract may make a chattel mortgage, and an agent may act for another as in many other cases. When thus acting his authority may be either verbal, or written, or may be shown by ratification. Persons also who have a common ownership in chattels, tenants in common or partners for example, may mortgage either their common or individual interests. A husband may give a chattel mortgage to his wife, and she in turn can give one to him. Likewise a corporation may make such a mortgage.

The law is broader in the way of permitting a minor, married woman, or corporation to be mortgagees when they cannot act as mortgagors of their property. Two or more creditors may join in such a mortgage to secure their separate debts. If the debt of one of them is fraudulent, his fraud, while rendering the mortgage fraudulent as to him, will not affect its validity as to the other.

How must the mortgaged property be described? With sufficient clearness to enable third persons to identify the property. The description must contain reasonable details and suggest inquiries which if followed will result in ascertaining the precise thing conveyed. A description of a baker's stock "stock on hand," would be too meager, so would be a description of "our books of [54] account, and accounts due and to become due," but cattle described by their age, sex and location will satisfy the law, though the cattle of other owners should form part of the same herd, when they can be ascertained by following out the inquiries suggested by the mortgage. Again, a description that is wholly false avoids the mortgage, but if it is false only in part, this may be rejected and the mortgage remain valid for the remainder.

More generally the nature of the chattels conveyed determine largely the character of the description. Thus animals may be described by weight, age, height, color and breed; vehicles by their style and manufacturer's name; furniture by piece or set; crops growing or to be grown by their location and year. A general claim of "all" articles in a stated place is regarded as sufficient. Oral evidence is admissible to aid the description in identifying the subject-matter of the mortgage, and to explain the meaning and extent of the terms of the description.

A mortgage may be given for a future advance of money. Nor need the mortgage state that it is thus given; and the fact may be proved orally. But when the right of third parties are affected, such a mortgage is not valid against them unless the specific sum that is to be secured is set forth. Likewise to render a mortgage secure against attaching creditors of the mortgagor, there must be a distinct statement of the condition or terms of the mortgage; in other words the creditors have a right to know what interest the mortgagee really has in the property that secures to him rights superior to their own. The rule should also be stated that where the rights of third parties are in issue, it must appear that the mortgagee acquired the mortgage before [55] they had any rights to the property.

The statutes require that chattel mortgages should be acknowledged and recorded. In some states the requirements are strict in respect to the disinterestedness of the official who takes the acknowledgment. An affidavit is another requirement. This must state several things, especially that the mortgage was given in good faith, and the nature and amount of the consideration.

What may be mortgaged? In general, any personal property that may be sold; many of the statutes define it. They cover a life insurance policy, corporation stock, railway rolling stock, seamen's wages, growing crops and trees, profits from the use of a steamboat, premiums earned by a horse, book accounts, leasehold interests, nursery stock, besides many other things. Whenever fixtures annexed to real estate retain the character of personal property they may be mortgaged. And when animals are mortgaged their natural increase are included. A mortgage made of an unfinished article will hold the article when finished if it can be identified.

By the common law nothing could be mortgaged that was not in existence at the time of the mortgage. By statute a mortgage may cover after-acquired property, and this statute has become very important especially with merchants, manufacturers, and others who are constantly

changing their stocks of goods.

When the mortgagor fails to pay his debt, the right of the mortgagee to proceed in taking the property is usually regulated by statute, except when the parties have agreed themselves and in conformity with statute. The rights of the mortgagee depend in many cases on the title, whether [56] that has passed to him by virtue of the mortgage, or whether it still remains conditionally in the mortgagor. Where the mortgagor still retains the title, a clause is often put into the mortgage to the effect that, should the mortgagor default in payment, the mortgagee may take possession of the property and sell it; and such a provision is valid and enforcible. Where the title is vested or transferred to the mortgagee by virtue of the mortgage, this is equivalent to giving him possession whenever he chooses to demand it. In other states the mortgagee's discretion is not so broad, before taking possession he must have reasonable grounds for believing himself insecure, that the mortgagor has done, or threatens to do, something that would impair the mortgagee's security.

Where the common law prevails and no statute has been enacted regulating the rights of parties, an important question is still unsettled in cases of a mortgage given on a stock of merchandise which permits the mortgagor to remain in possession and to sell the property mortgaged in the course of trade. Can he do this? In many states such a mortgage is regarded as fraudulent to creditors, in other states if such a mortgage is not, on proper judicial inquiry, proved to be a fraud, it will be upheld.

A provision in a mortgage that it shall cover after acquired property is regarded in some states as an executory agreement that it shall be held by the mortgagee as security; and the mortgagee may take possession of it, should the mortgagor fail to pay his debt, in accordance with his promise, before the rights of third persons have intervened. See *Mortgage*.

Chauffeur.—In many states minors are forbidden by statute to run automobiles. If therefore [57] the owner of a car permits a minor to drive his car, he may be held liable for the injuries resulting from the driver's negligence. Should a chauffeur's license not disclose physical disabilities the license is not void, nor is he a trespasser in operating the machine on the highway. Such a license though defective is valid until revoked by the proper authority.

If discharged before the expiration of the term of his employment, an employer is still liable for his chauffeur's pay unless he has been unwilling or unable to fulfill his contract. If, however, he has been prevented by sickness or similar disability, he can recover, not perhaps the amount stated in the contract, but the worth of his services during the period of serving his employer.

A chauffeur may recover damages from his employer for injuries received while operating his car. The basis of the action is his employer's negligence. If the engine "kicks back" while he is cranking the car, and the employer contributed to the result by moving the spark lever, he is liable. If he is injured while running a car from a defective brake of which he had knowledge, he cannot recover. But if the employer knew, and the chauffeur did not know that the brake was defective, he could recover if injured in consequence of it. The employer is under no duty to warn his chauffeur of obvious dangers, or instruct him in matters that he may be fairly supposed to understand. If a chauffeur is riding at the owner's request, who is driving the car, he may recover if injured by the negligence of the owner in running the machine. Under the Workmen's Compensation Laws a chauffeur who is injured while running his car beyond the speed limit prescribed by statute can recover nothing. Nor is he justified by the custom of other chauffeurs in [58] disregarding the rule. Lastly, if the owner of a car is injured, physically or financially, by reason of the wrongful conduct of his chauffeur, he has a remedy against him. See *Automobile*; *Garage Keeper*.

Check.—A check should be properly signed. A check signed by an individual with the word "agent," "treasurer," or other descriptive term, has sometimes been regarded as the check of the individual signer, and not that of a principal or company. The proper way is to sign the name of the principal or company, adding the name of the person by whom this is done, thus: "John Smith by John Doe, agent," or "The Atlas Co. by John King, Treasurer," or other official designation.

The statement will not accord with the view of many a reader, that a bank on which a check is drawn is under no legal agreement with the holder to pay it, whether the maker has a sufficient deposit or not. Consequently, should the bank refuse to pay, the holder has no cause of action against the bank. The agreement to pay is between the bank and the depositor, and if the bank fails to fulfill its agreement with him, he has a just cause for complaint. Sometimes a bank declines to pay supposing, through an error of bookkeeping perhaps, that the depositor has not money enough there to pay his check. In such a case, as the bank is in the wrong, if the depositor has suffered from loss of credit or in any other way from the bank's action, it must respond and make the loss good.

Suppose a person presents a check and the maker's deposit is not enough to pay the full amount, what can be done? Usually the bank declines to pay. Suppose the holder says he is [59] willing to give up the check and take the amount in the bank? There is no reason why the bank should not accede to his wishes. Suppose a bank should pay more than the amount on deposit through no fraud of the holder, from whom can it recover the amount? If the holder has been free from wrong in presenting the check, the bank cannot look to him, but to the drawer for repayment. If the maker of a check has no money in the bank, perhaps he may not be a depositor, he commits a fraud in making and giving his check to another, and the offense in many states is

deemed a crime: likewise a person who receives such a check knowing its true nature is equally deep in the wrong.

The law is very strict in its requirement of banks when paying the checks of customers. After a check has been delivered and has therefore passed beyond the maker's control, the law requires the greatest care on the part of a bank in paying it. The bank must be especially careful in examining the signature and the amount, and if the signature has been forged, or the amount changed, the bank is liable for an improper payment. Once an employer gave his trusted clerk a post-dated check, which he was to present on the day specified, and, after drawing the money, was to pay this to his employees. The clerk changed the date to an earlier one, drew the money, kept it and fled. The court said the bank should have detected the alteration. The bank contended that had the clerk waited until the proper day, and then drawn the money, it would not have been liable. The court said that was not the case presented, the clerk did not wait. Banks suffer, far more than the public knows, from the payment of raised checks, for it is quite impossible always [60] to detect them, yet banks are held liable therefor.

There are two rules relating to the payment of checks worth mentioning. One is, the maker of a check should use proper precaution in making it. He should write in a way that will not be likely to confuse the paying official. For instance, if in the above case the maker, intending to give a post-dated check, had written the date so imperfectly that the teller was misled, the bank would not have been liable for paying it, or for refusing to pay because there was not money enough in the bank at the time of presentation for payment. Some persons are very careless in making figures; when they are, they cannot look to the bank for the ill consequence of their own neglect.

Again, if a bank paid forged checks, for example, which were returned with other checks on the balancing of a depositor's book, and months, perhaps years afterward, the depositor discovered the forgeries or forged indorsements, he could, notwithstanding the lapse of time, demand of the bank the sums wrongfully paid. This was a great hardship to banks, and has been corrected in many states by statutes and by the courts in others. The rule now is, the depositor must, within a reasonable time after the return of his bank book, examine it, also his checks, and, if payments have been improperly made, demand immediate correction.

The holder of a check should demand payment within a reasonable time after he has received it. He may keep it longer if he pleases, but if he does, and the bank should fail, he cannot demand payment again from the maker of the check. He in effect says to the holder of the check when giving it to him, "present this check to the bank within the proper time and it will be paid, if you [61] keep it longer, you do it at your risk." What is a reasonable time? The law has fixed it. If the bank is in the town or city where the holder of the check dwells, he must present it the day he received it, or the next day. If it is drawn on a bank outside, the check must be forwarded for presentment at the latest on the day after it is received. With respect to the first class of checks therefore if the maker and receiver are both depositors of the same bank, the operation on the part of the bank consists simply in debiting one account and crediting another with the amount; if checks are drawn on another bank in the same city the receiver usually deposits them in his own bank and they are paid through the clearing house the next day.

A drawer may stop the payment of his check. And when he requests the bank to do so it must heed his instruction, and is liable if neglecting, though not always for the whole amount of the check. Suppose the check was given for a bill which the maker actually owed, yet for some reason, after giving the check, he did not wish to pay. If it was actually due and undisputed it would be hardly just to require the bank to pay the check over again to the holder, this would be too much. But for whatever injury the maker of the check may have sustained the bank must make good.

When a check has been certified by the bank on which it is drawn, the effect of the certification after the drawer has parted with it "is precisely as if the bank had paid the money upon that check instead of making a certificate of its being good." The check is charged up to the maker, or should be, and therefore as between him and the bank has been paid.

Citizen.—In modern usage this means a member of the body politic who owes allegiance to the [62] nation and is entitled to public protection. One may be a citizen of the United States without being a citizen of any state, for example, a citizen of the District of Columbia, or the territory of Alaska. Citizen-ship implies the duty of allegiance to the government, and the right of protection from it. A citizen of the United States who resides in a state owes a double allegiance, and can demand protection from each government. For the ordinary rights of person and property he looks to the state for protection. The rights for which he can seek the protection of the United States are only such as are established by the constitution and federal laws. For some purposes even a corporation may be included within the term citizen, for example the right to sue in the federal courts as a citizen of the incorporating state.

By the fourteenth amendment of the federal constitution, all persons born in the United States and subject to its jurisdiction are citizens of the United States. In 1855 Congress passed an act conferring citizenship on alien women who should marry American citizens. An American woman therefore who marries an alien takes the nationality of her husband. When her marital relation ends she may elect to retain her marital or her original citizenship. Since minor children follow the status of their parent, by the marriage of an alien widow to an American citizen, her children also become American citizens.

An alien may be naturalized. To do this he must have continuously resided in the United States

for five years before his application, and he must have appeared in court at least two years before, and there declared his intention to become a citizen of the United States and to renounce [63] allegiance to his former sovereign. He must prove by the oath of at least two persons his residence, also during that time that he has behaved as a man of good moral character and attached to the principles of the federal constitution. He must take an oath to support and defend the constitution and laws of the United States and renounce allegiance to any foreign prince. The naturalization of a person confers citizenship on his minor children if dwelling in the United States, also on his wife, unless she is of a race incapable of American citizenship.

The rights of aliens, from the very beginning of the American government, have been expanded by treaty provisions and by liberal legislation. In nearly all the states resident aliens were given the right to take title to land, whether by deed or by inheritance, to hold such real estate and to transfer it by law or by descent. In some states they were given the right to vote and hold office. And at common law they were entitled to purchase, own and sell personal property, engage in business and to make contracts and wills. By the fourteenth amendment to the federal constitution their rights and privileges have been further secured.

Aliens owe to the country in which they reside a temporary and limited allegiance, that is, an obligation to obey its laws and subject themselves to the jurisdiction of the courts. A non-resident alien is not within the terms of the fourteenth amendment, indeed it is doubtful if he can ask any aid or relief under the state or federal constitutions. A statute therefore imposing a higher inheritance tax on property passing to a non-resident alien than on his property if he resided here is valid. Non-resident aliens can acquire no rights incident to residence here except as permitted [64] by the federal government. This power may be exercised, either through treaties made by the president and senate, or through statutes enacted by congress. So congress has excluded not only diseased, criminal, pauper and anarchist immigrants, but also contract and Chinese laborers.

Contracts.—At the outset the various kinds of contracts should be explained so that the principles which apply to them may be better understood. One of the divisions is into simple contracts and specialties. A simple contract may be verbal or it may be in writing, but no seal is appended to the signatures of the parties. A specialty is in writing and a seal is added to the signature. A written contract may be a duplicate of another with a seal, yet the two belong to different classes and different rules of law apply to them as we shall learn.

Another classification is into executed and executory contracts. An executed contract, as the name implies, is completed, an executory contract is to be executed or completed. An unpaid promissory note is an executory contract, when paid it becomes an executed one.

Another classification is into express or implied contracts. An express contract is one actually made between two or more persons or parties; an implied contract is one that the law makes for the parties. Suppose a man worked a day for another at his request, and nothing was said about payment, the law would require him to pay a reasonable sum for his day's work. Another kind of contract technically called quasi contract differs somewhat from an implied contract and will be explained in another place.

To every contract there must be two or more parties, who have the legal right to make it. Not [65] every person therefore who wishes to make a contract can legally do so. Of those whose ability to contract are limited are minors or infants. The period of infancy is fixed by law, and is therefore a conventional, yet needful regulation. In most states infancy ends at the age of twenty-one, though some states fix a younger period, eighteen for women. A person becomes of age at the beginning of the day before his twenty-first birthday. The reason for this rule is, the law does not divide a day into a shorter period or time except when this is required in judicial proceedings. Another class of incapable contractors are married women. Their disability however has been largely removed by statutes in all the states, as we shall learn in another place.

Insane and drunken persons also are under disability to make contracts. By the old law a drunken man who made a contract was still liable, and required to fulfill as a penalty for his conduct. A more humane rule now prevails and he can be relieved, though like a minor, if he wishes to avoid a contract, he must return the thing purchased, in other words he can take no advantage of his act to the injury of the other contracting party. If however he has given a negotiable note that has passed into the possession of an innocent third person, who did not know of his drunkenness at the time of making it, he can be held for its payment. It is not quite so easy to state rules that apply to insane persons because their conditions vary so greatly. A person may be insane in some directions and yet his insanity may not be of a kind affecting his capacity to make at least some kind of contracts. Again, he may have lucid intervals during which he is [66] quite as capable of contracting as other persons. And again when an insane man has made a contract, the relief to which he is entitled depends on circumstances. In some cases he may repudiate it, a partial fulfillment only may be required.

The law has much to say about the consideration that is an element in every contract; in other words, there must be a cause, something to be gained by the parties in every contract to sustain it. If A should promise to give to B a house next week, and on the day fixed for transferring it A should change his mind, he could not be compelled to transfer it, for the promise would be without any consideration or thing coming from B. But if the house had been transferred, A could not afterwards repent of his act and demand its return. An executed gift therefore, free from all fraudulent surroundings, is valid: the donor of an executory gift is free to withhold its execution.

A consideration need bear no relation or adequacy to the other thing that is to be received. Nothing is more frequent than a one-sided contract, in which one party has gained far more than the other. If the law attempted to adjust these cases, many more courts would be needed than now exist.

We will briefly note the need of consideration in some classes of cases. First, a voluntary undertaking to work for another without compensation cannot be enforced. Under this head is the promise to pay the debt of another. Why should one do such a thing? Let us remember that should one make such a promise and keep it, the money could not be recovered back, that is quite another thing. Again, if A owed B a debt and delayed payment, and B should say to him, "if you will pay me half of it next week I will give up the rest," B would not be bound by his promise. [67] Suppose that B learning that A had ample means to pay, should sue him, A could not relieve himself from liability by offering to pay the amount A promised to take in settlement of the debt. But should B accept one half, in fulfillment of his promise, that would be the end of the matter.

Again should a bank defaulter make good the amount taken, and the directors, in consideration thereof, promise to take no steps towards his prosecution by the government, there would be no valid consideration to sustain the promise. The state would be just as free to prosecute him as before. Very often such criminals are not prosecuted after returning all or a part of their unlawfully taken money, nevertheless no settlement of this kind stands in the way of prosecution.

Suppose A agreed to work for B for a month and, after working a week, should leave him without good reason, can he recover for his week's work? If he can get anything, he cannot claim it under his contract for he has broken it and therefore a court could not enforce it. If he can recover anything it is on the implied contract which the law makes, the worth of his work after deducting the loss to his employer. Suppose the employer should prove that he had lost more by A's going away when he did than he had gained by his week's work, he could recover of B, for the rule works both ways. In some states he cannot recover anything, for, having broken his contract, he has no standing in court.

Suppose one signs his name to a subscription paper, calling for the payment of money, to build a church, for example, and the designated amount has been subscribed, can a subscriber refuse to pay? He cannot. Suppose he withdraws before the subscriptions have been completed, what [68] then? He can refuse. If a subscription has not been completed, death operates as a revocation and the subscriber's estate is not held for the amount. Sometimes a moral obligation to pay money is a good consideration for a promising to pay it. Thus if one owes another for a bill of goods, and the debt has ceased to be binding by lapse of time, yet he should afterwards promise to pay, he could be held on his promise because there was a good consideration for the debt. Lastly a contract may be modified by mutual agreement without another consideration.

Another element in a contract is mutuality, a meeting of minds in the same sense. In every contract there is an offer made by one party and an acceptance or refusal by the other. When an acceptance occurs, there is a meeting of minds, or an assent. Very often the parties do not understand each other, they acted hastily, ignorantly perhaps, their minds did not really meet in the same sense. In such cases there is no contract.

Generally the acceptance must be at the time of receiving the offer. If it is not, there is no meeting of minds, no assent. A person however may make an offer on time, this is common enough. When this is done the other party must furnish some kind of consideration to make the offer good for anything, otherwise the offerer can withdraw his offer whenever he pleases. Many an offeree has been disappointed by the action of the other party in withdrawing his offer, yet the offerer has been clearly within his rights in doing so when he has received no consideration for giving the other party time to think over his offer.

An eminent jurist has said "that an offer without more is an offer in the present to be accepted [69] or refused when made. There is no time which a jury may consider reasonable or otherwise for the other party to consider it, except by the agreement or concession of the party making it. Until it is accepted it may be withdrawn, though that be at the next instant after it is made, and a subsequent acceptance will be of no avail."

If no time is given, or no consideration for the time given, an offer therefore may be withdrawn as soon as made if not accepted. A person may suddenly think of something which leads him to withdraw his offer as soon as it is out of his mouth, and in doing so is within his rights, but if he does not, how long does his offer last? A reasonable time. What this is depends on many things, one of the questions like so many others in the law to which no definite answer can be given. An offer to sell some real estate was accepted five days afterward, this was held to be within a reasonable time. One can readily imagine cases in which five days would not be thus regarded, or even five hours.

When does assent occur in contracts made by correspondence? The rule is in nearly every state (Massachusetts being the chief exception) where an offeree has received an offer by letter and has put his acceptance in the postoffice, the minds of the parties have met and made a contract. The post-office is the agency of the offerer both to carry his offer and bring back the return. If the offeree should use a different agency, the telegraph for instance, to convey his acceptance, it would not be binding until the offerer had received and accepted it. Of course, an offerer by letter may withdraw his offer at any time. Suppose he should receive an acceptance by letter or [70] telegraph but deny it, and insist that no contract had been made. Then the controversy would turn on the proof. If the acceptance had been by letter, and the offeree could prove that the offeree had written and mailed it, the offeree's proof would be complete. If the offeree sent a telegram, then he would be obliged to prove the delivery of the dispatch. Suppose one should

mail a letter of acceptance, but before its receipt by the offerer, should send a telegram declining the offer which was received before the letter of acceptance? The acceptance would stand, for as there had been a meeting of minds when the letter was put into the postoffice, the offeree could not afterwards withdraw his offer. A person who makes an offer cannot turn it into an acceptance. An old uncle wrote to his nephew that he would give thirty dollars for his horse and added, "If I hear no more about the matter, I consider the horse is mine." The game did not work, for no man can both make and accept an offer at the same time, and that is what the foxy uncle tried to do.

Offers and rewards are often made through the newspapers. Thus the owner of a carbolic smoke ball offered to pay a specified sum to any one who suffered from influenza after using one of his smoke balls in accordance with directions if he was not cured. A person who failed to receive the benefit advertised recovered the reward. Two other cases may be mentioned that illustrate the uncertainty of the law. An excited farmer offered the following reward, "Harness stolen! Owner offers $100 to any one who will find the thief, and another $100 to prosecute him!" The farmer cooled off and declined to pay after the thief was caught and the court relieved him, declaring that his advertisement was not an offer to pay a reward, but simply an explosion of [71] wrath. In another case a man's house was burning, and he offered $5,000 to any one who would bring down his wife dead or alive. A brave fireman accomplished the feat. This offerer too cooled off and declined to pay, but he did not escape on the ground that this was only an explosion of affection, and was obliged to pay.

Lastly a contract dates from the time of acceptance, and is construed or interpreted by the law of the place where it was made. If it is to be performed in another place, then the parties must be governed by the law of that place in performing it.

A contract having been made, next follows its execution. When a contract is not executed, or not executed properly, the party injured usually may recover his loss. Sometimes the contract states what the offending or wrongful party must pay should he fail to execute it. Many questions have arisen from such agreements. Suppose a contractor agrees to build a home for another and to finish it within a fixed time, and, failing to do so, shall forfeit or pay to the other $5,000 as a penalty for his failure. One would think that if he failed to execute it the other party could demand the $5,000. But the courts have a way of their own in looking at things. Suppose the contractor's failure did not in fact result in any loss whatever to the other party? The courts in such a case are very reluctant to enforce the agreement. If there had been a loss, something like that amount, then the courts would compel him to pay. In other words, the most general rule is, notwithstanding such a clearly written agreement, the courts seek to do justice between the parties. Whenever the parties do not attempt to fix the damages themselves, should their contract not be fulfilled, then the amount that may be recovered depends on a great variety of [72] circumstances. Suppose a woman should go to a store to buy a piece of silk. She asks if the piece shown to her by the saleswoman is all silk, who makes an affirmative reply. The buyer knows much more about it than the saleswoman, which is often the case in buying things, and knows it is half cotton, can the buyer recover anything? Surely she has not been deceived. The seller may have tried to fool her but did not, and having failed, the buyer has no legal ground for an action. On the other hand, if the buyer was ignorant, knew nothing about silk and had been deceived by the seller, then she would have a clear case. This is one of the fundamentals in that large class of cases growing out of deceit. The party seeking redress, must have been deceived, and also injured by the deceit in order to recover. The remedies that may be employed whenever contracting parties have failed, or partly failed to fulfill their agreements or promises will be considered under other heads. See *Deceit*; *Drunkenness*; *Quasi Contract*.

Corporations.—There are many kinds of corporations. Those most generally known are business corporations; and though many of them are very large, legally they are private corporations. A railroad corporation, though performing a public service, nevertheless is a private corporation.

Public corporations are formed for governing the people and are often called municipal corporations. They are created or chartered by the legislatures of the states wherein they exist. Formerly, all private corporations in this country were granted charters by the legislative power, and many corporations are doing business by virtue of the authority thus granted to them. More [73] recently general statutes have been enacted whereby individuals may form such corporations without the aid of a legislature. Authority has been conferred on the courts, secretary of state, or other official to grant to individuals, who may apply for them, charters on complying with the requirements of these statutes. There are other kinds of corporations, religious, charitable and the like; only one other need be mentioned, to which the term quasi has been applied. These resemble corporations in some ways, and this is the reason for calling them quasi corporations. A county or school district is such a corporation. The supervisors of a county, or the trustees of a school district, can make contracts, own and manage real estate for their respective bodies, sue and be sued like the officers of other corporations.

By the general comity existing between the states corporations created in one state are permitted to carry on any lawful business in another, and to acquire, hold and transfer property there like individuals.

FORMATION OF CORPORATIONS.

Formerly charters were granted to corporations for a long term of years, or forever. The policy of the law has changed in this regard, and the duration of their existence is limited to a comparatively short period. The life of a national bank is only for twenty years; at the end of that period the charter is renewed, and the charters of the older national banks have been renewed several times. Perpetual charters are infrequently granted, and some of the older ones have been limited by legislative or judicial action. A private corporation had perpetual authority to build and [74] maintain a bridge across the Susquehanna River at Harrisburg, nor could any other company build one within the distance of ten miles above or below. Notwithstanding this clear and exclusive grant, another company was formed which attempted to build a bridge within a mile of the other. The old company tried to prevent by law the new company from building the bridge. The court said that "perpetual" did not mean literally perpetual, but a long time, that the old company had enjoyed its exclusive grant a long time, long enough, and that the new company was justified in its undertaking.

A corporation has no heirs like an individual; it continues through succession, one sells his interest or stock to another, and thus it lives to the end of its charter unless it fails or, through some other event, comes to an end. Suppose a stockholder buys all the stock of the other members, does the corporation still exist? It does for a limited time. How long? No court has answered this question. It depends on the particular case. The courts also say, that he can sell his stock to other individuals and thus practically revive a dying corporation. A stockholder who had bought all the stock of a corporation claimed that he should be taxed as a corporation, which was at a lower or favored rate than that paid by individuals. The court said the game would not work, that for the purposes of taxation the concern must be regarded as an individual. So the stockholder knew more after that decision than he did before.

CAPITAL.

Every private corporation has a capital composed usually of money, which is advanced or paid [75] by its members or shareholders. Among the reasons for forming corporations two may be stated. It is a way for collecting money from many sources needful for an enterprise; the many contributors are like the small streams that unite and create a great reservoir. The other reason is, the contributors are free from the liabilities that attach to every member of a partnership for its entire indebtedness. A stockholder may indeed, if his corporation does not succeed, lose a part or all of the capital he has contributed, but no more or only a fixed amount, as will be hereafter explained.

Almost anyone can subscribe for stock, with a few limitations. A minor cannot subscribe for stock, nor can his guardian act for him. Doubtless they do subscribe in some cases; the practical difficulties will be shown in another connection. A married woman cannot always subscribe, unless by virtue of a statute. What usually happens when she wishes to subscribe is to act through a friend, who, after the corporation is fully formed, transfers the stock to her. There is no legal stone in the way of such a course.

Sometimes fictitious subscriptions are made to induce others to subscribe for stock. Whenever the fraud is found out an innocent subscriber can do one of three things. If he has paid for his stock, he can bring an action to recover it; if he has not paid, he can refuse to do so, and set up the fraud as a defense. He can do another thing, accept the stock and sue for the damage he has sustained by the deceit that has been practiced on him. The discovery of a fictitious subscriber among the number, after all have subscribed, where his action in subscribing did not affect their action, will not justify them in not fulfilling their obligation to pay for their shares. [76]

The issuing of a share certificate is not an essential condition of ownership. It is merely evidence of it, like the deed of a piece of real estate. All the shareholders of a corporation are the owners whether any certificates are issued to them or not. Of course a stockholder desires to have his certificate for obvious reasons.

Whenever the capital stock of a company is increased, each shareholder has a right to his proportionate number of the new shares on fulfilling the terms on which they are issued before they can be offered to the public. Occasionally a clique seeks to get control of a corporation by the issue of new stock and taking it among themselves. They can be defeated for the courts carefully guard the rights of all stockholders to take their shares of new stock before it can be offered to, and taken by others.

Of late years private corporations have been issuing a kind of stock, called preferred, that must be explained. Formerly such stock was more like a loan of money to a company, and was issued primarily as the most feasible way of getting a fresh supply of money capital. The lenders or takers of the stock received a fixed per cent. on their money, which was paid before the common shareholders received anything. His preference or dividend was not guaranteed, but the probability of regular payment was so strong in most cases that his shares usually possessed a real value. Preferred shareholders are not liable for the debts of their corporations, and the right to vote at any meeting of the shareholders is sometimes given to them, though not always. The tendency of the day is to confer this right on them. Whether, when the amount of the preferred [77] stock is increased, the preferred shareholders are entitled to subscribe for their proportionate amount, like common shareholders, is an open question.

The authority of agents or commissioners to receive subscriptions is strictly regarded. They cannot refuse to receive a subscription made by a competent person, nor release a subscriber,

nor vary the terms of subscription to anyone.

A subscription for shares is a contract in writing and cannot be proved by oral evidence unless the original subscription paper has been lost. As the contract is an open one, any subscriber must inform himself of the legal consequences of subscribing, and cannot therefore refuse to execute it on the ground of ignorance or misunderstanding. Suppose an agent who was soliciting subscriptions, in reply to questions concerning the laws relating to the proposed company, should give incorrect answers to a subscriber, these would furnish no ground for refusing to pay, as he has promised to do, for he could have found out what the laws were without inquiring of the agent. This may seem a hard rule, yet it has a wide application. In one sense it is true that every person can find out the law for himself, the books are open, the statutes especially may be easily found, but how many know enough to find the laws in which they are interested?

Of course if a person has been deceived by an agent, if a fraud has been practised on him, he can avoid his contract. Thus a person who, unable to read a subscription paper, was induced to subscribe through misrepresentation of its contents, was not bound by it. If he wishes to act, he must lose no time after discovering the fraud that has been practiced on him. He cannot say, "I will abide by a company if successful, and will leave it if it fails." He must therefore decide at once either to continue his membership or withdraw. [78]

A company cannot purchase its own shares unless by charter or statute such action is clearly authorized. For, to do this is to reduce its assets or fund for paying its indebtedness, which the law will not permit to be done. If a company has no debts, a reduction in its capital made in an open manner in accordance with law, is legal. The tendency of the times everywhere is to increase the capitals of private corporations; reductions though are sometimes made to lessen especially the burden of taxation.

A corporation has no lien on its stock for the indebtedness of the owner unless conferred by charter or statute. Once such a lien could be established by usage or by-law under authority given to a corporation to regulate the transfer of its stock. The national banking law prohibits the creation of such liens, and the strong current of the law runs in this direction. But a bank can retain a dividend that has been declared to reduce the indebtedness of the owner to the bank for his stock.

LIABILITY OF SHAREHOLDERS.

The liability of the shareholders of a corporation is very unlike that of members of a partnership. It was the liability of each partner for all the debts of a concern that kept many persons from forming that relation. The shareholders of many corporations are liable only for the amount they have contributed and paid, or have agreed to pay. National bank shareholders are liable for another sum, equal to the par value of their stock, provided as much may be needed to pay its debts should the bank fail. Thus if a shareholder owned ten shares, having a par value of $100 a share, he might be required to pay, should the bank fail, $1,000 more provided as much was needed to pay its debts. In a few states shareholders are required to pay twice the amount of the par value of the stock if as much may be needed to pay its indebtedness. [79]

If a corporation fail, one or more persons are usually appointed by a court to settle its affairs, who are called receivers. Several years are sometimes required to settle the affairs of a corporation. First an inventory is made of its property, names of the debtors and creditors, and the amounts due from and to them, and as soon as its property can be converted into cash, dividends are declared and paid to the creditors; and this work is continued until there has been a disposition of all the property, and the amount received therefrom less the expense of the receivership, has been paid to the creditors. When the shareholders are required to pay more, as above explained, on the failure of their corporation, they are notified by the receiver how much and when they must pay. This requirement is based on an order from the court that appointed him, which, in turn, is based on information which he has furnished to the court of the amount that may be needed to pay the debts of the corporation. Several assessments may be ordered, but they never exceed in the aggregate more than the amount of liability fixed by law, the amount or twice the amount of the par value of the stock subscribed. Should shareholders decline to pay these assessments as ordered, the receiver sues them and obtains judgments, the proceeds of which are paid to the creditors.

MEETINGS. [80]

The power of a corporation vests or rests in its members. The charter and statutes provide that they shall meet, organize, elect officers, and adopt by-laws for the more detailed governing of the corporation. One of the most general principles pertaining to them is, the majority shall rule. This however may be modified by charter or statute. There are a few ancient charters which provide that, notwithstanding the quantity of stock a shareholder may own, he is entitled to only one vote. The writer knows of a case in which a shareholder bought nearly all the stock of a corporation and went to the annual meeting supposing that he could and would do as he pleased. On learning the unwelcome truth that he had only one vote like the others he quickly put on his hat and walked out.

The statutes usually prescribe how notice of the joint meeting shall be given. They are not

mandatory, but directory, hence if all the persons in a corporation should come together without any notice or call whatever, and accept the charter, and do any other thing needful to form the corporation, their action would be valid. Where the regulations of a corporation definitely fix the place, the day, and hour of the annual meeting at which the directors are to be elected, no further notice of the meeting to the stockholders is needed unless required by its charter or by-laws.

A case may arise in which other persons than those designated by statute may call a meeting. Suppose a statute prescribes that the persons named in the certificate of incorporation, or any three of them, may call a meeting of the shareholders, and before giving notice all of them had died? Then the meeting could be called by others. Again, authority to create a corporation may [81] fail through long delay in calling a meeting and organizing. Should the notices for the first meeting not be given as the law requires, it is nevertheless valid if the shareholders have notice and join in waiving the mailing of the required notices. Likewise a subscriber waives his notice of the first meeting when he afterwards offers to pay for his shares.

If the by-laws require that an annual meeting shall be held at a particular time, and those whose duty it is to call it, forget to do so, it may be held afterwards, and the officers elected and other business transacted would be as valid as if the meeting had been held at the proper time.

Should the officer who ought to call a meeting refuse to do so he may be compelled by law to call it. This proceeding is called a mandamus, and is issued at the instance or request of the shareholders.

"Besides annual meetings, corporations hold many stated or regular meetings at monthly or other times. Thus if a meeting of proprietors must be called by twelve of them, a call signed by eleven is defective. If a statute requires a committee of a society to sign the call, it cannot be signed by the clerk, nor by him for them. If the trustees of a corporation must issue the call, this cannot be done by the president. If exclusive authority to issue the call is vested in the directors, it cannot be exercised by the president and secretary. If the articles of association provide that meetings of shareholders may be called by the board of directors, or by any three shareholders, the president and cashier cannot issue a valid call. But if a board consists of three members and there is a vacancy, the other two may act and give the notice."

A well understood distinction exists between the calling of regular and special meetings. [82] Regular meetings are held in the way set forth in the charter and by-laws of a corporation; special meetings are called at irregular times on proper authority. A notice for a special meeting must state the object of it, and no other business can be transacted. On the other hand unless the regular meeting is of great importance no mention need be made of its object in the notice.

An authorized meeting may be adjourned from time to time without giving further notice, for it is only a continuation of the original meeting. Says an eminent judge: whether a meeting is continued without interruption for many days, or is adjourned from day to day, or from time to time, many days intervening, it is evident that it must be considered the same meeting.

A meeting may be legally held though one of its members is incapable, physically or mentally, from receiving notice. "The law cannot look into the capacity of the stockholders to transact business, but can only regard the capacity of the aggregate body when duly assembled." On the death of a stockholder, the purchaser, if the stock has been sold, should have it transferred, or give distinct notice to the company how notices of its meetings should be sent to him; if neglecting to do this, he cannot charge the corporation with neglect should it continue to send notices to the former address.

Two other points may be mentioned concerning notices. One is, they may be waived and this is often done. Many a question though arises, what action amounts to a waiver of notice. If each shareholder attends in person or by proxy and participates in the meeting, he cannot afterward question its legality because he received no notice of it. An improper notice may also be cured by [83] ratification. Thus if a secretary calls a meeting instead of the directors, and his action is properly ratified by them, the call is effective. More generally, the action of a meeting will be declared valid where it appears that every stockholder who did not participate in the meeting ratified its action afterwards. An election of trustees of a church may be valid even though the notice lacked the proper length of time and the names of the trustees whose seats became vacant at the election, if it was fairly conducted and all who had the right to vote were present. Likewise a stockholder who knows of the sale of his railroad, though not legally notified of the meeting which authorized its sale, and was not present, may be bound by its action through acquiescence. And a stockholder who, after receiving notice of a meeting called by the directors to consider their neglect of duty and who decides not to go, is not thereby prevented from taking action against them by the stockholders who did attend and authorized their unauthorized action. Lastly a stockholder who was present cannot complain that notice was not given to others; the objection is personal.

Next we may inquire, who can vote at such meetings? Unless prevented by charter, statute or by-law a stockholder may vote at any corporate meeting even though no certificate of stock has been issued to him. Nor does his indebtedness for his stock prevent him from voting. On the other hand if inspectors were not bound by the record of ownership in the company's books and went behind them to find out the real ownership of the company's stock, they would often have a grave task before them. Consequently in many, perhaps all of the states, only stockholders or [84] those holding proxies for them can vote at a general election. By statute the stock record of ownership is usually made the conclusive test of the right to vote. Stockholders who thus appear on the stock books at the date of a meeting are entitled to vote the stock.

A trustee is the legal owner of stock standing in his name and may vote the stock for all purposes; but a testator may impose limitations on his voting power. Should trustees under a will holding a majority of the stock of a corporation disagree, and one of them should be enjoined from voting it, a minority stockholder would be entitled to an injunction to restrain the other trustee from holding an election or voting the stock alone until the right to vote the stock had been legally decided.

A different rule applies to a naked trustee who holds the title to the stock without any real interest in it. He can indeed vote, but in the way directed by the beneficiary or real owner. In Colorado, by statute, perhaps in some other states, a person to whom stock has been issued as trustee without the knowledge of the owner, is not a bona fide stockholder and cannot vote.

An executor has the power to vote the stock of his testator. And if one of joint executors issues a proxy authorizing the vote of the stock belonging to the estate, and the other executor is present at the stockholders' meeting, the vote of the stock by the executor who is present is deemed a revocation of the proxy given by his co-executor. And if a will gives to one of three executors the power to vote the stock, and directs the other two to give him a proxy for that purpose, which they decline to do, a court will order the proxy to be given. And whenever stock is held by executors who are not united in voting it, they cannot vote at all. A foreign executor [85]
should present to the inspectors of election an exemplified copy of his letters of administration, and having done so may vote on the stock standing in the testator's name. An administrator has the right to vote stock belonging to the estate, even though it has not been transferred to him in the corporation's books.

A partner of a firm who owns stock in a corporation may represent the stock in all meetings. He may therefore receive and waive notice of them, vote when attending them, in short, participate in all matters. And on the death of a partner the surviving partner has the right to represent the partnership and vote on its stock.

Two other kinds of stockholders still require mention, sellers and purchasers of stock and pledgors and pledgees. Until a transfer is entered on the books of a corporation, "the transferee, as between himself and the company, has no right beyond that of having the transfer properly entered. Until that is done, the person in whose name the stock is entered on the books of the company is, as between himself and the company, the owner to all intents and purposes, and particularly for the purpose of an election."

Many questions have arisen between pledgors and pledgees about their rights to vote the pledged stock. Of course, whenever an agreement has been made by them this must be respected. In other cases, if the record remains unchanged, the pledgor can vote the stock. But if the pledgor has transferred his right to vote the stock, he cannot ask a court to restore his right to vote it until the purpose for which it was pledged has been satisfied. Again a pledgor who pledges his stock not in good faith as security for a loan, but to enable the pledgee to vote it and [86]
effect an unlawful purpose, cannot do this and so defeat a statute which provides that the real owner, the pledgor, may vote his stock.

Passing to the pledgee, whenever he is registered as owner of the stock on the company's books, its officers will not look behind these to ascertain whether he is the real owner or not when he is voting his stock. A court of equity though may do this, and enjoin a pledgee from voting the stock whenever the pledgor's rights would be affected. Should the pledgor acquiesce for years in the control of the stock by the pledgee, who is the record owner, and not inform the company of his ownership until the holding of a contested election, he would be too late to claim the right to vote. Finally when a certificate of stock has been assigned in blank as collateral security, which is often done, and never transferred to the pledgee on the books of the corporation, a memorandum only having been made on the stub of the certificate in the stock book, the pledgee is not a stockholder and cannot vote the stock. It may be added that notices of meetings should be sent to whoever has the right to vote the stock, to the pledgor if the stock still stands in his name, to the pledgee if the stock has been transferred to him and stands in his name.

DIRECTORS.

Shareholders manage their corporations through directors or trustees elected for that purpose. The business of some corporations is managed by trustees who are named in the charter and who fill vacancies in their number by electing others themselves, a self-perpetuating body. Many savings banks especially are thus organized and continued. From their number they usually [87]
select a smaller number to manage or direct its affairs.

The directors are always shareholders, unless the charter of a corporation permits the election of outsiders, a thing that rarely happens. The national banking act requires that every director shall own at least ten shares of stock, and many other corporations have similar requirements. The charter or statutes prescribe at least the minimum number that must be elected, but the maximum number is left to the stockholders themselves. A national bank must have five directors, not infrequently the board is composed of ten, fifteen, or even more. A director is chosen for some real service that he is likely or willing to perform. An individual may be chosen a bank director who may not be able to do much in directing the affairs of the bank, yet by reason of his wealth or business relations he may be able to attract business to the bank and thus greatly promote its prosperity.

He is elected by a majority of the votes of the shareholders. More recently the cumulative system of voting has come into general favor. By this system a voter may cast as many votes for each of the candidates as he holds shares of stock, or he may distribute or cumulate his votes on a smaller number. "Where the votes under such a system are cast and counted, the validity of the election must be determined precisely as in all other cases." Where the shareholders have failed, whether voting cumulatively or otherwise, to elect a quorum of the new board, at an annual meeting of stockholders, it is the privilege of the shareholders to ask for successive voting for directors to fill the board. The ruling of a chairman on one occasion, that because of a tie further [88] balloting could not proceed, and that the old board held over was arbitrary and illegal. A stockholder who has votes enough to elect himself and other directors by cumulating his shares in voting, but refrains from doing so in consequence of a verbal agreement among the stockholders that he shall be chosen president, which they fail to carry out, cannot obtain any satisfaction from a court. A court says in effect stockholders should not be trusted to make such agreements, and will not aid the tricked stockholder by ordering a new election. Probably he will be fooled only once.

Having elected directors, the management of a corporation is confided to them. What authority do they possess? This is defined by charter, statute, by-law, and custom. Says Morawetz: "The rule limiting the authority of the power of the majority to the general supervision of the affairs of the corporation is established for the protection of the individual shareholders, as well as for reasons of practical consequence." Directors also have wide discretion in delegating their authority. Their rights and limitations in this regard are also bounded by charter, by-laws and usage. Formerly bank directors loaned the money of their bank; this was their most important duty. Of late years, especially in the larger cities, this business has been largely delegated to a committee, chosen from their number, or to two or three officials of the bank. The directors continue to meet, very much as before and at their meetings the action of those who have been entrusted with power to lend the bank's money is ratified. More and more authority to direct or do the greater things in a corporation are concentrated in the hands of a smaller number of individuals. Time is ever becoming a more important element, a smaller number of men can act [89] more quickly than a larger number, and so business must be more and more concentrated to be done efficiently.

A director has no authority to act separately and independently. Only as a board, properly convened, does he represent his corporation. While this is the law, he can and does in fact often act singly, and his action becomes effective to bind his corporation by ratification. Such action plays a great part in the modern corporation.

Though a principal may at any time, as a general rule, revoke the authority he has given to an agent, this does not apply to the directors of corporations. Says Morawetz: "The majority of the board clearly have no power to expel an individual director, or to exclude him from inspecting the company's books and participating in its management, although they may believe him to be hostile to the interests of the association." A president or other official is chosen pursuant to the charter to serve for a year or other period, and is simply an agent in serving the corporation, he cannot be turned away like an ordinary agent. If he conducts fraudulently, he may be removed, but this is not an easy process as corporations long ago found out.

Directors in most cases receive no compensation though the practice is growing of rewarding them. Unless this is fixed by charter or by the stockholders they can get nothing, for they cannot legally vote salaries to themselves. A director who performs a different service, serves as an attorney, for example, may receive compensation for it. This is a salutary rule of the law, which the courts everywhere do not hesitate to enforce. By another rule, hardly less important, directors cannot bind their corporation by any contract made with themselves, or represent their [90] corporation in transactions wherein they have an interest. This is only another application of a rule of agency, that an agent cannot act at the same time for both parties. Yet there is increasing difficulty in applying this rule because the business of corporations has become so intermingled, and also the business of directors, directly or indirectly, with that of the corporations they represent. From this state of things has come another rule, that the transactions between directors and their corporations are not actually void but voidable, in other words if they are tainted with fraud, they can be set aside provided proper action is taken as soon as the fraud is discovered.

Suppose directors had defrauded their corporation, but the fraud was not discovered until several years afterward. Once it was held that they could shield themselves behind the Statute of Limitations (see *Statute of Limitations*) if the discovery of the fraud did not occur until after the Statute had become effective to protect them. This is no longer the law. Action however must be begun against them within the proper time after discovering the fraud, otherwise the Statute may be interposed as a bar to proceeding against them.

The complication of business has led to the adoption of another principle in managing corporations. A majority of the directors may lawfully act as opposed to the minority; in other words if a majority are not interested in a matter that concerns one or more of the minority directors, the interests of the corporation are supposed to be properly safeguarded. Yet an illustration discloses the dangerous character of this method of doing business. Suppose each director of a bank wished to obtain a loan of money from it. They could not legally make such loans, for no one would represent the bank. Suppose a single director made such an application, [91] that would be a proper thing for him to do and for them to grant, for the bank would be represented by all the directors except the applicant. Suppose it were agreed in advance that each would make an application at different meetings that should be favorably regarded, the

series of loans would be in fact only a single transaction in which the bank was not represented.

The knowledge of a director or other officer is imputed to, or regarded in the law as known by the bank on all matters relating to it. Thus if a director knew that a note was signed by a minor which was afterwards presented for discount at a directors' meeting at which this director was present, and he forgot to tell the directors what he knew and it was discounted, the bank would be regarded as having knowledge that the maker was a minor, who of course could not be held on the note. This principle has a very wide application, yet is very difficult to apply. The tendency of the law is to narrow the application of the rule, for directors do not in many cases impart their knowledge, either through forgetfulness or other cause, and it is not just to hold their corporation always for their unintentional neglect. Often they are busy men, have greater interests of their own, and do not remember the things they learn about matters relating to their corporation, and if it were always held as knowing as much as they do on all occasions, the way of a corporation would be fraught with a grave peril.

A proper distinction is made in the imputation of knowledge between that of a bank director for example who is engaged chiefly in some other business, and that of its president whose chief employment is the management of his bank. Suppose he should learn about a defective note [92] before it was presented for discount, the bank would be very properly charged with his knowledge, because it would be his clear duty to remember what he had learned and impart it to his fellow directors.

Directors sometimes go astray and cases are constantly arising to determine their liability. When a corporation has failed or passed a dividend nothing is more common than to accuse its directors of negligence, incompetence or fraud. The legal rule of liability is quite a different thing. Let us try to give this in the fewest words possible. The charters of corporations, or statutes that apply to directors, prescribe some definite things which they must do or not do, and if these are violated they are clearly liable. The directors of a bank are required to make a statement of its affairs to a government official at a stated period, and if they neglect to do it, or intentionally make a wrong and deceptive one, they are liable. By many statutes they are forbidden to make loans above a certain amount, or a fixed proportion of their bank's capital, and if they violate this plain law they are liable. In all other cases where by charter or statute a plain rule of duty is prescribed for directors, they are liable, should they disregard it.

Besides these clearly defined lines of duty are other lines of duty in which the proper course of action is not so clearly defined, indeed is largely discretionary. From the nature of the business of almost any kind of corporation, it is impossible to prescribe in detail the course of action directors must follow. Much must be left to their judgment. They must on all occasions be honest and free from fraud. This is one limitation. If they are guilty of doing things tainted or marked [93] with fraud, they are liable. Fraud may be of two kinds, omission and commission. If a director knew that his fellow directors were doing fraudulent things, and he kept away from directors' meetings because he did not wish to participate in their wrongdoing, or dared not go and try to stop them, or kept silent when he should have exposed them, he must suffer in the end as one of the number though entirely innocent of actual participation in the fraud. Many a director knowing or suspecting with good reason that his fellow directors were running the corporation in an illegal manner, has quietly sold out leaving the stockholders to find out afterwards and from some other source about the wrongdoing of their agents. In all such cases of omission of duty a director is held responsible for the wrongs of his associates.

Recently a court has declared that a director who desires to escape further responsibility by resigning his position must make sure that his resignation reaches the board. If therefore he should send it to the secretary, who failed to deliver it to the board, his resignation would not be effective and he would still be responsible like the other directors for whatever the board might do.

What acts are fraudulent are sometimes difficult to determine. Different courts interpret the same act sometimes in different ways. They do not differ so much on the application of the principle—for all acts of fraud, whether of omission or commission, directors are liable.

There is another series of acts for which they are liable, those of gross negligence. How gross must the act be? If it is so gross as to amount to a fraud, they are liable; if not so gross, if no fraud is found of any kind, nothing but negligence pure and simple, they are not liable at all. [94] Most courts though go further and declare that if they are guilty of gross negligence, even though the smell or taint of fraud is not perceptible, they are liable. What, then, is the nature of the acts that constitute gross negligence? These cannot be easily defined, they differ in each case; so each case stands by itself. This is the conclusion of the highest court in the land and which is followed by many others. The same case therefore may be regarded differently by different tribunals. Thus some directors were tried not long since for wrecking a national bank. The lower court decided that all the directors were guilty of gross negligence, on appeal the reviewing court decided that the president only was guilty of fraud and acquitted the others.

DIVIDENDS.

One of the most cheerful things a corporation can do is to declare a dividend, especially if it be a large one. Until a dividend is declared the profits of a corporation are simply its assets, do not belong to the stockholders, and should it become insolvent must be used to pay creditors. But if a dividend has been declared and the corporation afterwards becomes insolvent before paying it,

the stockholders may insist on its payment to them instead of paying it to the creditors.

Dividends must be paid from net profits. They can never be taken from the capital, for this would impair it and, if continued, result in the insolvency of the corporation. The laws everywhere forbid this, and, if violated, the directors are usually penalized. It is not an infrequent thing to declare a dividend that has not been earned in order to keep up the value of the stock, [95] and enable the directors and their friends to sell out before the true condition of things has become public. Such action is a palpable fraud which the law recognizes and for which the guilty ones must answer.

Nor can dividends be declared out of borrowed money, for this is no profit, though money may be temporarily borrowed for this purpose. A profit may have been actually made, which may not have been reduced to money, that will justify a corporation in borrowing to pay a dividend, assured that the loan will soon be repaid. But the rule or practice is hedged about with limitations. Thus the premiums received by an insurance company and interest on its capital stock constitute the fund from which dividends are paid. Unearned premiums that have been paid do not form a part of that fund, for, while the risk is still running, the company may be obliged to pay them out in settling losses.

The profits of coal and other mining corporations may be divided without making any deduction for decrease in the value of the mine from extracting minerals. The same principle applies to all corporations organized to operate wasting property like a mine or patent, though in thus dividing all its net profits and accumulating no surplus the value of the property is lessened. Except such cases, before a corporation can lawfully set apart its profit as a dividend, a sufficient sum must be set aside to represent the wear and tear for the purpose of creating a fund to renew and improve the property of the corporation.

Dividends illegally declared and paid, not based on profits may be recovered either by the corporation or by its representative for the benefit of creditors. The fact, says Clark, that the directors acted in good faith under a misconception of the amount of profits possessed by the [96] company or that were available for that purpose is immaterial. And if the capital stock of a company has been wrongfully paid away by the directors as dividends, it may be recovered by the creditors from anyone who is not an innocent receiver.

Whether a dividend shall be declared, and also the amount, are questions lying largely within the discretion of the directors. A company may earn a large net profit, yet the directors may think it should be used for improvements or kept for a future contingency in business, perhaps a time of business depression. Courts will not interfere in such cases. Corporations are sometimes organized with the well understood intention that the earnings shall be kept until a large surplus has been accumulated. On the other hand directors are not permitted to abuse their power; they must act in good faith. They cannot withhold dividends in order to depress the value of the property and buy its stock at a lower price.

Dividends must be distributed among the stockholders without unjust discrimination. "The dividends," said a court, "must be general on all the stock so that each stockholder will receive his proportionate share. The directors have no right to declare a dividend on any other principle. They cannot exclude any portion of the stockholders from an equal participation of the profits of the company." A stockholder cannot be deprived of his dividend because he purchased his stock a very short time before the action of the directors in declaring a dividend. On one occasion a person held bonds convertible into stock. Shortly after the conversion a dividend was declared. He was as much entitled to his dividend as any other stockholder. [97]

To whom should the dividend be paid? To the person whose name appears as owner on the books of the company. But if a company has notice of a transfer of stock, a dividend subsequently declared should be paid to the purchaser even though the transfer was not registered. In pledging stock it is a common practice to declare that the pledgee shall be entitled to the dividends that are declared. If nothing is said, and the stock has been transferred on the books of the company, the pledgee is entitled to the dividends following the general rule above mentioned.

A dividend may be payable in cash or property or a stock dividend may be made. Such a dividend, if the stock is issued only to the extent of the surplus profits, is not a violation of the prohibition against reducing or withdrawing the capital stock by distribution among the stockholders.

During recent years some important questions have arisen about dividends or income on stock given by will to the legatees or friends of the testator. Dividends that are declared after a grant or bequest, though earned before, go to the legatee as income. This is not the rule everywhere. In some states the surplus profits accumulated during the testator's life, though not divided until after his death, belong to the estate, while the dividends or income earned and declared after his death are paid to the legatee or beneficiary mentioned in the will. Again, a somewhat different rule applies to stock dividends. In some states these are regarded as an increase of capital and must be kept as a part of the estate; in other states such stock is regarded simply as another form of income and goes to the legatee like any other income flowing from the investment. The highest [98] federal court has declared that when a distribution of earnings is made by a corporation among its stockholders, the question whether such distribution is an apportionment of additional stock representing capital, or a division of profits and income, depends upon the substance and intent of the action of the corporation, as manifested by its vote or resolution; and ordinarily a dividend declared in stock is to be deemed capital, and a dividend in money is to be deemed income of each share.

A will bequeathed stock in a corporation in trust to pay the dividends as they accrued to a daughter of the testator during her lifetime. Stock dividends were declared by the corporation from time to time and after the death of the testator, and these accumulated earnings were invested by the company in permanent works. After the testator's death the corporation was authorized by statute to increase its capital stock. The dividends were held to be accretions to the capital, and the income only was payable to the daughter for life.

WRONGS.

Passing from the action of directors in declaring dividends, the wrongs done by corporations may be stated. As it is an impersonal, artificial thing, a corporation cannot possibly commit a wrong or tort like a natural person. For many years this conception of a corporation, that it could not commit many of the well-known wrongs, could not slander a person for example, led to perplexing consequences. Finally the principle was established that through its agents or servants a corporation could do wrong quite like an individual. Thus a corporation may be guilty [99] of malice, and may be punished for slander or libel, for a malicious prosecution, false representation, for trespass should its agents unlawfully enter on the land of another, for maintaining a nuisance and the like. A national bank is forbidden to certify the check of a depositor unless he has the amount of money stated in the check in the bank. And if this is done the certifying official and all others who participated with him in disregarding the law are made criminally liable, and on several occasions the law has been enforced.

Again, a corporation is liable for the negligence of its servants in performing their duties, and are constantly sued for their failures. A railroad company is sued for injuries to its passengers caused by the improper running of its trains; for its failure to carry and deliver freight in accordance with its obligations or agreements. Street railways are constantly sued by passengers who are injured through the negligence of its officials.

By statutes corporations are required to do many things and, if they fail, are liable for the consequences. These duties may be divided into two classes, those toward the public and those that affect their stockholders. Their public duties may again be divided into those that are imposed on them by statute, and a still larger number by the common law. As we have seen, stockholders confide necessarily the management of their corporation to directors, who in most cases must necessarily have a largely discretionary power, and who, in turn, must appoint other agents to execute the details of the corporate business. These not infrequently fail through incompetence or neglect to perform their duties properly, and consequently corporations are subjected to lawsuits in which redress is sought by the injured parties. Some of these wrongs for [100] which they are liable to the public have been mentioned, it would require too much space to mention all.

The injuries done to stockholders by their directors remain for consideration. Unless directors are restricted by action of the stockholders at a stockholders' meeting, they have the authority prescribed by charter and statute; outside these, their authority is largely discretionary, and must be so. If, therefore, stockholders are dissatisfied with their directors, as they often are, their remedy is to elect others at the end of their term of service. If at the time of choosing them, the annual meeting, none are chosen, the directors hold over until they are again elected, or others are chosen in their places. After they have been chosen, no stockholder can interfere in any way with their discretionary authority unless he has a clear case calling for judicial action. "Until a mistake," says Morawetz, "on the part of the directors, individual stockholders have no right to appeal to the courts to define the line of policy to be pursued by the company. The courts therefore are quite unanimous in sustaining the action of directors so long as they act within the discretionary authority given them."

Occasions happen when the removal of directors is essential to the welfare of a corporation. Suppose they are pursuing a course clearly ruinous to the company? In such a case the court will grant relief on the request of the stockholders whenever the corporation itself is unable or unwilling to do so. Primarily the corporation should proceed against the directors, for the wrong is a corporate one. In many cases the corporation is so completely in their control that the stockholders are unable to do anything through it. In such case they must act in the name of, and [101] in behalf of the company. And if they succeed in establishing their case, the courts will order the removal of the directors.

Sometimes the courts, instead of going so far, will enjoin them from doing wrongs that are feared. Suppose it is feared that directors will declare a dividend that has not been earned, the courts on proper proof would enjoin them from making it. Suppose it is feared they will issue more stock and divide all the shares among themselves instead of proportionately among all the stockholders as the law requires, in order to get control of the company, a court would not hesitate to restrain them.

Lastly may be considered a stockholder's rights to inspect the books of his company. This he may do at all proper times and for reasonable purposes. And if the right is refused the courts will aid him in making an inspection. What then is a proper purpose that justifies him in making the request? He cannot do so to satisfy some freak, or to annoy an official with whom he may be on bad terms. Nor can he do it to obtain information to be used for stock-jobbing purposes. Suppose he has reason for supposing that the books were falsified, that the stockholders were not receiving correct accounts of the expenditures and earnings of the company, a stockholder would

certainly have a right to make an examination, and could also employ an agent, attorney, or expert accountant to do this for him, for his ignorance of bookkeeping methods might debar him from making an efficient examination were the right confined exclusively to himself.

Curtesy.—A husband acquires an interest or estate in land belonging to his wife after her death. To be entitled to it, there must be a legal marriage. Even though it be unlawful, if not set [102] aside during her life, his interest in her estate cannot be defeated by afterwards declaring the marriage void. Curtesy does not extend to land nominally held by her, or as trustee. The wife must have had a child who might have inherited the estate. It is immaterial whether she acquired her estate before or after the birth of the child. As soon therefore as a child is born, his estate or interest begins and is perfected or consummated by her death, and may be taken at any time afterward for his debts. What may be the effect of a divorce is not well settled. In some states even though he is an innocent party, he forfeits his estate. This rule is founded on the idea that he is a voluntary party, and therefore need not have one; in other states his interest continues. As the husband's rights to such an estate have been abolished in many states, we refrain from adding more principles.

Deceit.—A seller is not liable for deceit when the knowledge, or way of obtaining it, is equally known by both parties. If one goes into a store to buy a bushel of apples that he has seen by the door and inquires the price and pays for them without making any inquiry concerning their quality, he cannot recover his money if half of them prove to be rotten unless the seller intentionally deceived him, for he might have inquired whether they were all like those on top and of good quality. But if the merchant should put fine ones on top in order to deceive a purchaser, he could recover for his loss. This rule has a wide application. Suppose a seller keeps his store dimly lighted intentionally so that the inferior quality of his goods cannot be discerned, and a person should thereby be deceived and injured, he would have a good cause of action [103] against the seller. Suppose a ship was decayed in places, and these were intentionally so concealed that they could not easily be seen by one who was examining with the intention of purchasing, and he was thereby misled, the seller would be liable for the loss to the purchaser. Of course, the prudent course is to obtain a warranty, or better still, whenever practicable, buy of one who has established a reputation for honest, fair dealing.

Suppose a man purchases a piece of land, generally supposed to be an ordinary farm, which contains, as he knows, a valuable coal mine, can the seller after the public knowledge of the mine, recover the land or a larger purchase price therefor? Has the purchaser deceived him? Did the law require the purchaser to make known his superior knowledge before purchasing? No, if it did, there would be no end to the confusion to which such a rule would lead. It is within ordinary experience that purchasers buy either knowing or supposing they will reap advantages from their contracts of which the seller is ignorant. There is no deception in this; but there is in withholding knowledge from the buyer of the quality or condition of a thing that affects its value, and which if known by him would probably prevent him from purchasing. Suppose a horse is blind in one eye and the prudent horse trader says nothing. Can the buyer recover? Ordinarily he could not, for he ought to have looked, and if he did not know enough to look, either he should have obtained a warranty, or have employed a competent agent to purchase for him. Suppose the old trader, skilled in his business, intentionally put his horse in the shadow so that the defective eye could [104] not be seen, then the seller would surely have his remedy against him. If he put his horse there accidentally he would not.

Is a wink a deception for which the winker must answer in the law? A hardened dealer once went near a large meeting of men with a wagon load of bottles containing cold tea. The thirsty crowd soon came around. "One dollar a piece," he announced with a wink. The wink was effective and the bottles were quickly sold. They were filled with cold tea, and the buyers sued for the deceit that had been practiced on them. They failed, the court said that a wink was not enough. Another court might have decided otherwise.

Deeds.—In selling and buying land several deeds are in use. The forms differ considerably in the different states. The most important of them is called a warranty deed, in which the seller not only conveys the title, but warrants or agrees to defend it against all attacks. Suppose A sells a piece of land by warranty deed to B, who makes the unwelcome discovery that a mortgage is existing thereon. He notifies A and asks him to clear the title. Suppose the mortgage has been paid, but the lender of the money, the mortgagee, forgot to give the proper deed to show that he had received payment. And suppose he was an ugly fellow who would not give the proper release. B could compel him to do so, and the expense must be borne by A because his deed of warranty required him to give a clear title.

In such a deed the grantor or seller agrees or covenants to do usually four or more specific things: first, he asserts that he has a right to convey the land at the time of the sale. Of course, if he has not, the agreement or covenant is at once broken and the buyer can proceed against him [105] to make the title good, or to recover damages if he cannot retain the premises. The second covenant or agreement is to the effect that the seller has both the quantity and quality of land mentioned in the deed. The third covenant is that there are no encumbrances on the land, that is, no mortgages, no rights of others to pass over it, or to take earth, water or other things from the land. The fourth covenant is for the quiet enjoyment of the land, which is the most general form of warranty. There may be other covenants, often there are, while the four mentioned may be,

and often are, modified.

Does such a warranty bind other persons than the warrantor, in other words are his heirs and persons to whom he may devise his lands also indefinitely bound by his warranty? The statutes in some states fix his liability. Where none exist the law limits the liability of parties to the amount of assets or property they have received from the warrantor; if they have received nothing they are not liable for anything.

A covenant to protect the buyer from encumbrances, claims, etc., does not always relieve him from the expense of a lawsuit. Suppose A claims a right of way over B's land and insists on using it. B brings his action of trespass against him and wins. He cannot sue his grantor or seller to recover the expense of the suit, for the latter would reply, "You have won your case which is proof that the title is good as warranted, and therefore you have no claim against me." If, on the other hand, A had won his case B would then have a good cause of action against his covenantor.

Another kind of deed used in selling land is called an indenture. This is signed by all the parties, and copies are usually made and delivered to all of them. This deed also contains [106] warrants or covenants like the one first described.

Another kind of deed is called a release or quit-claim. By this the grantor or party giving it conveys whatever interest he may have in the land. It is the deed always given by a mortgagee on the payment or discharge of his mortgage. It contains no warrants to do anything and therefore differs from a deed of warranty. Sometimes a person conveys a piece of land knowing that the title is defective which the purchaser, notwithstanding the defect, is willing to buy. The seller may safely give a quit-claim deed for he thereby sells only whatever interest he may have.

All the deeds above mentioned except an indenture, are signed only by the selling or granting party. They become effective by delivery. They are often called poll deeds.

Every grantor must append to his name a seal. Once a seal was of the utmost importance in the days of ignorance when persons knew not how to write and each person had a seal of his own. As distinctive seals have long since disappeared, seals have less significance than formerly, nevertheless many legal rules are founded on the distinction between sealed and unsealed instruments. Thus two written contracts may be exact duplicates except that one of them may have no seal. The law in most states regards the unsealed one as a mere oral or unwritten contract, to which are applied the same rules of evidence. The use of L.S., enclosed in brackets, thus [L.S.] is just as effective as a seal of wax or a wafer. In many states a corporation need not use its corporate seal, any other may be substituted. The federal rule especially requires the use [107] of the corporate seal and that it be affixed by someone who was properly authorized to do this.

By statute the names of two witnesses are required, and when omitted the deed is not only defective, but in some states at least is void. A witness need not write his name in the grantor's presence, if asked to sign in the proper place as a witness this will suffice.

A lease of land is also a deed differing from those mentioned in conveying the use of land for a fixed period and on varying terms.

A deed should be completed before delivering it, the same rule applies to most legal writings. Unimportant alterations may be made, and if any are made, the question may prove difficult, are they important or not. Of course if both parties agree to them, the validity of the deed is not impaired. Whenever they do appear, in some states the law presumes they were made before delivering the deed, but this is not the rule everywhere.

Who can make or execute a deed? A minor cannot make a legal deed, and if he attempts to do so he can avoid or set it aside after he becomes of age whenever he acts with reasonable promptitude. If he does not thus act, his delay will be regarded as a ratifying of his previous action. What action will have this effect is a fact to be proved whenever the controversy arises.

Usually a deed need not be read to the grantee, nor can he avoid it because he did not know the contents, except when fraud has been practised on him. To a blind or ignorant man a different rule applies. The deed should be read to him, and if this is not done, or if it is wrongly read to him, he can have it set aside in a proper legal proceeding.

Delivery is essential; to do this two things are required. The grantor must give up the deed and [108] the grantee must actually accept it, consequently the delivery of a deed after the grantor's death would not be valid. There must be an actual delivery by him, and though a deed may be completed in every other respect, it is not an effective deed. A deed therefore stolen from one's drawer and delivered to the grantee would not be valid, however innocent the grantee might be in receiving it. Many difficulties have arisen in applying this rule. When the question comes before a court, it seeks after the intention of the parties, and is guided by it when ascertained. If therefore a deed were lying on a table and the grantor should say to the grantee, take it, and he did so, the delivery would be complete; but if he should get it in a surreptitious way there would be no legal delivery. Suppose a deed were mailed to the grantee, or handed to another person to deliver to the grantee, this would be a good delivery.

As soon as the deed has been delivered, it should be taken to the recorder's office to be recorded. Every state has offices in the towns or counties for keeping a perfect copy of all deeds relating to the transfer of the lands within the limits of the town or county. The object of this is to protect purchasers, for, if this were not done, the owner of land might sell it to a purchaser a second time who knew nothing of the previous sale, and then someone would be the loser. To guard against such frauds the system of registration was established at an early day in American history. A purchaser therefore should take his deed at once to the proper recording office for

record, and this is regarded as notice to the world from the time of delivering the deed to the recorder, who makes a note thereon of the day and hour it was left with him. Suppose that some [109] creditor of the grantor, not knowing of the sale, should attach the land as the property of the grantor to secure a debt due to him, could he hold it as against the purchaser? Ordinarily the purchaser could still retain the land, and the same rule would apply between him and a second purchaser, though buying in good faith supposing the grantor was the real owner. In some states a statute protects the purchaser by giving him a fixed period of two or three months or more to record his deed. The safe rule is to leave the deed with the recorder as soon as possible after receiving it.

It is a general practice to do another thing with deeds, to make or take an acknowledgment of them, and in some states this must be done before they can be recorded. This consists on the part of the grantor going before a proper officer, often a notary public, justice of the peace, clerk of a court of record, commissioner of deeds, and making oath that he has duly executed the above deed. This oath appears in the form of a certificate at the bottom of the deed or appended thereto and is signed by the officer, who also attaches his official seal. When a deed has thus been acknowledged it can be used in a legal proceeding as evidence without requiring further proof of its execution. But if it had not been acknowledged, then a court would require some proof that the deed had been made and delivered before accepting it as proof of the fact.

When a married woman executes a deed the officer who took the acknowledgment of the deed must make an examination, apart from her husband, to ascertain whether or no her act was voluntary, and he must also record the fact. The acknowledgment should be made after the examination. A defective acknowledgment by a married woman is worthless, nor will any court [110] compel her to make another one. Should she make another deed, however, with a proper acknowledgment this would be legal.

The officials who take acknowledgments possess different authority, some can take them only of land situated in their respective states; others have authority to take acknowledgments of deeds of land in every state. In all the states are commissioners of deeds, so called, who are authorized to act outside their own state. Some persons who have an important conveyancing business have qualified themselves to thus act as commissioners for many states, and perform a highly useful service.

If a mistake has been made in a deed can it be corrected? The general rule is it can be amended in all cases of fraud, accident, or mistake. How can this be done? If the grantor is unwilling to do right, the purchaser can by a proper application to a court, or court of equity, ask for the correction of the deed or such other relief as justice requires. Suppose the grantor has declared in his deed that the land contains a hundred acres and a survey finds only fifty. This would be a palpable fraud and a court would, if requested, order the reconveyance of the land and return of the money. Suppose the deed covered no land at all belonging to the grantor, this would be a still greater fraud. Suppose the deed said one hundred acres more or less, and a survey found only fifty acres. The purchaser bought supposing that there was no such deficit, but perhaps a small one, what would a court do? Doubtless it would hold that the grantor tried to deceive the other party and would grant relief.

The land sold must be bounded or described. As land is increasing everywhere in value more [111] pains is taken in describing it, than formerly. Large tracts have been surveyed by the government and are indicated as sections, quarter sections, yet even these boundaries are sometimes imperfect, caused by incorrect surveys, whereby lands overlap, or otherwise have defective boundaries.

One of the well-known rules is, monuments control corners and distances. This is founded on much experience, for this shows that courses differ from variations in the compass, changes in the surface, etc. Though monuments may be moved intentionally or by natural causes, they can be more trusted in the long run of things.

The location of a monument is a question of fact. It is sometimes said that natural monuments possess higher value than artificial ones, this depends on the character of the artificial one. A large stone set in a secure place surely is a better boundary than a wayward stream whose course is changed by every freshet. In marking the public lands of the western territories by statute monuments must designate the corners of the tract. But when these are lost then corners and distances become the guide. Oral evidence may be admitted to establish the location of monuments, and even hearsay evidence may be used for the purpose.

In a city lot courses and distances play a larger part in fixing the boundaries, and are more carefully defined. Often the boundary is to the center of a dividing wall.

The boundary of land by a non-navigable stream is to the center; and if one owns on both sides of such a stream he is the owner also of the bed. But if land is bounded by the bank or shore of a stream, or by other words of clearly evident exclusion, the stream is excluded. The rule is [112] different that applies to a tidal navigable stream. In some states the boundary is high-water mark; in other states low-water. In both cases the riparian owner, so-called, may erect a wharf extending from his land subject to public control. The boundary of a natural pond or lake, either in its natural state or raised artificially, is low-water mark. Nor is the law changed by the conversion of a fresh water pond into a salt pond by the hand of man. The boundary to an artificial pond is through the center.

The title to the bed of all lakes, ponds, and navigable rivers to the ordinary high-water mark is vested in the states. Thus the people who live around them may enjoy the waters the same as

others enjoy tidal waters. Nor is the state title affected by any manipulation of the land above the surface of the water.

The same rules of law apply to land situated along public highways. If a deed should bound the land "by or along a highway," it would include the land to the center; only words of clearly intending exclusion have a different effect. If a deed should say "by the side" of a highway, it might be excluded and it might not, the courts do not agree. All agree that the intention of the parties should govern, but differ as to intention expressed in the words they have used. The law is full of such difficulties. If a highway is abandoned, the adjoining owners can extend their lines to the center, unless one of them can prove that he is entitled to more than one half.

In investigating the title to real estate it is the duty of an attorney employed for that purpose, says Justice Trenchard, "to make a painstaking examination of the records and to report all facts relating to the title. He is, therefore, liable for any injury that may result to his client from [113] negligence in the performance of his duties—that is, from a failure to exercise ordinary care and skill in discovering in the records and reporting all the deeds, mortgages, judgments, etc., that affect the title in respect to which he is employed."

Divisional Tree.—When the base of a tree is wholly on the land of one owner the whole tree belongs to him. An adjoining owner, however, may cut off at the divisional line such branches as over-hang his land without notice and without reference to the length of time they have been growing. To do this he cannot go on the land of his neighbor, but must stay on his own land. A different rule applies to a tree that stands on a divisional line and both owners have an interest therein.

Dower.—Dower is the interest that a wife has in her husband's land after his death, and consists, unless modified by statute, of the use of one third during her life. While both live her interest is so secured to her by law that he cannot sell and convey any of his land unless she unites with him in signing a proper deed of conveyance. In most states this interest or dower is paramount to the claims of her husband's creditors. But if there is any lien on the land at the time of his death, like a mortgage, she cannot claim a preference or priority over the mortgagee.

She can claim her dower in any land belonging to her husband which her children, if she had any, could have inherited as the heirs of their father. When her dower is in mortgaged land, she cannot get possession until the mortgage has been paid. Again, where land, wherein she has a [114] dower interest, must be sold, her right to the proceeds follows the sale. If her husband was not in possession of the land claimed by him before and after marriage, her dower will not become effective until gaining possession. If he were only the nominal and not the real possessor, her dower will not attach to the land, nor if he were in possession as trustee, the real ownership belonging to another.

A legal marriage is necessary to sustain a dower estate. Whenever a marriage can be set aside for some illegality, and is not, it will sustain her dower on his death. So, too, her dower may be lost or barred by a legal separation; if she should re-marry, or the divorce is set aside, her dower would revive. Her dower may also be lost should her husband legally part with his estate, or by any legal proceeding it should be taken away from him; thus, should another claim it and prove that he had the better title. In other words she loses her dower whenever her husband has no estate from which her dower can be carved out. It is true that an adverse claimant cannot give any title to her husband's land that would bar her right thereto. The reason for this rule is that, like a minor, her rights cannot be acquired against one who is unable by reason of age or other infirmity to protect himself.

The wife is entitled to have dower assigned to her immediately after her husband's death. Until this is done, she has the right of common law for the period of forty days, called quarantine, to reside in her husband's house, provided she does not marry during that time.

Dower may be assigned to her in two ways. One way is by direction of the court, which ascertains by proper evidence the extent, location and value of the husband's lands, and then [115] directs the sheriff to carry out its order in assigning to her a specific portion for her use during life. The other way is by agreement. In some states money is assigned to her instead of land as dower.

Dower may be barred by agreement made before marriage. These arrangements, marriage settlements, are becoming more frequent with the increase of wealth and complexities respecting the holding of property. Sometimes a testator provides for his widow in lieu of dower. In such a case she may accept the gift, or reject it and claim her dower rights. Suppose a testator should own a large amount of land, and in his will should give her only a small amount of money in lieu of dower. If eager to get the most possible, she would reject the gift of money and claim her dower rights. On the other hand, suppose he had but very little or no real estate, then she doubtless would accept the money gift, unless she could claim a still larger sum by virtue of some statute made to fit such cases.

Dower does not exist in crops or trees severed from the land, but does exist in mines and quarries belonging to the husband which were opened and worked during his life. If lands have been exchanged by the husband, she can elect in which she shall take her dower, but not in both. There can be no dower in a mere personal privilege, or in a revocable license pertaining to land. The widow of a partner is ordinarily entitled to dower in so much of the partnership land as is left

after the payment of the firm's debts and the adjustment of matters between the partners. But if an agreement among them that the land shall be considered as personal property for all purposes, then no dower therein can be claimed by the widow of any partner.

A wife can release her inchoate dower or future expectation of receiving it by joining in a [116] conveyance with her husband for that purpose. In order to make the election binding, it must be made with full knowledge on the widow's part of her husband's estate, and the relative value of her dower interest. The election is personal, and cannot be exercised by her representatives after her death, nor by creditors; and if insane, this cannot be done by any committee or guardian acting under the authority of a court.

An absolute divorce, even though for the husband's fault, divests the wife of dower, unless her right is saved by statute. Quite frequently, the statute provides that there shall be no dower in case of divorce for the wife's fault. Occasionally it is provided by statute that divorce for the husband's fault shall not bar dower; and sometimes a statute requires dower to be assigned immediately upon divorce without awaiting the husband's death. It may be added that the principles of the common law relating to dower have been largely modified by statute in all the states.

Drunkenness.—The courts are reluctant to recognize intoxication as an excuse either for committing a crime or for repudiating a contract, but if from long continued intemperate habits a man has become actually insane or incompetent, his actual mental condition will be recognized whatever may have produced it.

Again, in making a contract the other party could hardly deal with a man badly intoxicated without knowing his condition, consequently the element of fraud appears, and the contract may be declared invalid either for lack of contracting capacity on the part of the drunken man, or for fraud on the part of the other in taking advantage of his condition. His fraud would be still [117] greater if he had designedly caused the drunkenness of the other. Either objection, however, renders the contract voidable rather than void, and should an intoxicated party, after he became sober ratify his contract, or fail to repudiate it and restore the consideration, if any, within a reasonable time, he would become bound.

The courts are still more reluctant to admit intoxication as an excuse for criminal acts. The courts hold that one who voluntarily deprives himself of self-control must have intended the consequences, therefore it is everywhere held that one who voluntarily becomes intoxicated, although he did so with no purpose to commit a crime when intoxicated, cannot claim immunity from criminal responsibility, or even a mitigation of the penalty, though having no capacity to distinguish between right and wrong. And yet, like so many legal rules, there are some marked exceptions to this one. Thus, since burglary is the entering of a house with the intent to commit a felony therein, one who blunders into a strange house because he is too drunk to know where he is or what he is doing has not committed the crime of burglary. So one who carried off the property of another through drunken ignorance does not commit larceny, as there is no intent in such a case to convert the property to the taker's own use. Another application has been made in cases of assault with intent to kill a person.

Again, says Peck, "if one is visibly intoxicated, it is the duty of those who come in contact with him to take his condition into account, and their use of due care will be judged in view of that fact. Even if the drunken person and the other are both negligent, the sober party may be liable [118] under the doctrine of the last clear chance, if he fails to exercise toward the drunken man the degree of care which is evidently required to avoid injuring him. Especially is a common carrier, in dealing with a passenger who is on its car in an intoxicated condition, bound to take his helpless condition into account in removing him from the car or otherwise handling him, and not put him in a place of manifest danger to one in his condition."

It has also been held that the intoxication of one who uttered a slander may be admissible in mitigation of the damages, as utterances of a drunken man could not seriously impair the reputation of any one.

Equitable Remedies.—Elsewhere we have told how courts of law differ from courts of equity. In some states no separate courts exist, and wherever legal proceedings are established by a code or system of statute law, the form of complaint addressed to a court is quite the same in an equity case as in any other. But in states where code practice has not been established, the mode of setting forth one's grievance or wrong is by a bill or petition, ending with a prayer for relief. We will now briefly state some of the things for which relief in equity may be sought.

One of the most common things is to compel persons who refuse to perform their contracts to execute them. Suppose one has agreed in writing properly signed to sell his farm to another, but is unwilling to give him a deed. It may be that he can get more for his farm, or he has made the discovery since selling it that it is worth much more, is underlaid with coal or oil, or that a railway is soon to be built near it that will enhance its value. If he went to a law court, all that it [119] could do would be to compel the seller to give the purchaser such damages as he could prove he had sustained from the seller's failure to execute his agreement. But a court of equity can go further and compel the seller to give the purchaser a proper deed, the kind of deed mentioned in the agreement; or, if none was specified, the kind of deed usually given in such cases.

This remedy cannot be always sought whenever the seller fails to execute his contracts. The

important limitation is, when the law has an adequate remedy, and the injured person has no need of resorting to a court of equity. All the ordinary agricultural and manufactured products fall within this class, cotton, cattle, lumber, fruits, stock in trade and the like. But if a chattel has a sentimental value to the purchaser, a court of equity will decree that it must be delivered to him, because in such a case the damages would obviously be inadequate. The same rule applies to all articles of a unique or rare value that cannot be duplicated; also to patented or copyrighted things that cannot be procured in the open market.

Suppose one has purchased the stock of a bank or railroad company, which the seller refuses to deliver, has the buyer a legal remedy for damages, or an equitable remedy to compel the seller to deliver the stock, or has he the choice of remedies? The courts have divided on this question. The better rule is, if the stock can be readily bought in the open market, the buyer has only a law remedy to recover damages from the seller's failure to execute his contract; if the stock cannot be thus purchased, a money damage is not an adequate remedy, the purchaser wants the stock [120] and he can, through a court of equity, compel the seller to deliver it to him. As government bonds can always be bought in the open market, a court of equity will not decree the specific execution of a contract for the delivery of the actual bonds purchased.

If A has agreed to erect a building for B on his land and fails to do it, money damages are usually an adequate remedy, but if B cannot find any one else to do the work as well, or in as satisfactory manner, then a court of equity would compel A to fulfil his agreement. Likewise if a landlord has agreed to repair his tenant's premises and neglects, the legal remedy is usually more satisfactory than a specific execution of the agreement, because work done under compulsion is not likely to be as well done as that done voluntarily.

A contract to render personal services will not be enforced against a person who has agreed to perform them, for several reasons, one is that another person can be employed, another is that the thirteenth amendment to the federal constitution, forbidding involuntary servitude, cuts off the equitable remedy in such cases; of course the legal remedy for damages is still effective. A contract to give a mortgage to secure a loan of money may be enforced by the creditor, but a contract to lend money cannot be enforced by either party, because there is usually an open market for the lending and borrowing of money. Likewise a contract to form a partnership cannot be enforced, for, if it were, the unwilling partner could dissolve it and thus nullify the action of the court.

Where one sells out his business, whether commercial or professional, and agrees not to compete with the buyer, equity will compel the seller to observe his contract unless it was illegal [121] or an unreasonable restraint on trade. This limitation is important. Thus A, a dentist in Philadelphia, agreed with B, another dentist, not to practice in the city for ten years a certain method of extracting teeth. A continued to practice as before and B applied to a court of equity to enjoin him. He failed for the reason that no one ought to have a monopoly, so the court said, in any means or method for relieving human suffering, like the process in dispute. If an employee agrees not to divulge the trade secrets of his employer, equity will enforce the agreement, for damages given in a law court would be wholly inadequate.

Another class of cases must be mentioned relating to injuries to land. By the common law the only relief a landowner had against one who injured it in any way was an action of waste to recover money damages. A court of equity has power to issue a command to the person who threatens or attempts to commit injury ordering and directing him to desist from his purpose. This has been often used by the owners of land against their tenants who attempted to do things that would materially injure the property. This remedy is now often used to secure the owner and occupier of land in its proper use against those who attempt to commit a nuisance. While the occupier could recover damages if he sought the aid of a law court, equity will order the wrongdoer to abate the nuisance. Such a remedy is much more effective than the legal one, because damages that may be recovered relate only to a past offense, while the equitable one prevents it from happening or from its continuance.

Promises not to do some particular act on a piece of land are often made in deeds conveying them; they are called covenants. Equity will usually enforce these covenants, and will compel the [122] wrongdoer to undo what he has done provided that relief is sought promptly. Thus if a purchaser agrees not to build nearer the street than a stated line, he can be enjoined from disregarding it. A purchaser therefore who built two houses three feet beyond the agreed line was compelled to remove them.

The remedy in such a case is an injunction. It may be temporary or permanent. Quite often when one applies for an injunction, if the injury threatened is immediate, the court will immediately enjoin the party from proceeding and fix a time for a future hearing to decide whether the injunction shall be dissolved or made permanent. The time fixed for such a hearing is within the discretion of the court, and depends on the nature of the case. Usually the time is quite short, enough to enable the parties to collect the evidence relating to the controversy. The hearing is conducted very much like any other trial, witnesses appear, all the evidence is given, and is reviewed by contending counsel, after which the judge announces his decision. Some of the more noteworthy injunctions of recent days have been rendered against labor unions or their members who, having struck for higher wages, or other ends, have sought to picket the works of their employers and thus prevent them from employing other workers to take the places of the strikers. The unions contend that this is an improper use of the judicial power, whether it is or not no one will deny that it has been long exercised.

In the early days of administering the patent law injunctions were granted against infringers.

Judges soon grew more cautious when they learned that patents were sometimes erroneously granted, and that, on acquiring a fuller knowledge of the controversy, there had been no [123] infringement. The modern practice therefore is, unless the proof is very clear, to require a party who applies for an injunction to try his case first and establish his patent and then, if it has been infringed, an injunction will be issued.

Factor.—A factor receives and sells goods for a commission, is usually entrusted with their possession, and sells them in his own name. He has a special interest or property in them, and a lien thereon for advances in money that he may make to the owners. No formal mode of authorizing him to act is required, usually this is done by word only, and his authorized acts may be ratified by his principal. This authority is largely the outgrowth of usage. The authority of a factor to fix the terms of selling may be by agreement or by usage, like any other agent. Limitations fixed by the principal are ordinarily binding on the factor, and, so far as they are chargeable with notice of them, third persons also. Where goods are confided to a factor without instructions, authority to exercise a fair and reasonable discretion is implied. Unless restricted by his principal, or by contrary usage, he may sell goods on a reasonable term of credit. If he is restricted to cash sales only, or is not protected by usage in selling on credit, he cannot do so. Secret instructions would not affect the rights of a purchaser ignorant of them and relying on customary authority.

A factor is employed to sell goods, and not to barter or exchange them, and if he should do this his principal could recover them. He may insure the goods, but is not required to do so unless instructed or is required by usage, which plays a large part in this matter and must be observed [124] except as qualified by instructions.

He cannot compound or compromise a claim for the purchase price, or discharge the debt on payment of a part only, or submit a disputed claim for arbitration, or rescind a sale, or discharge a purchaser from any part of his obligation, or extend the time of payment, or make, accept or indorse negotiable paper contrary to instructions or usage, or sell the goods thus entrusted to him for sale to himself. See *Agency*.

Fire Insurance.—Insurance against loss by fire is now effected in companies organized for that purpose. Two kinds exist, stock and mutual. In mutual companies the persons insured act together to insure each other. The members of some of the largest mutual companies are manufacturing corporations. The more general mode of conducting them is to require each member to pay a premium in advance for the amount insured which, unless unusual losses occur, will be enough to pay all the losses for the year. If it is not all needed, the balance is returned to the parties who paid the premiums, or is credited to them for the following year. If the losses exceed the premiums thus paid in advance, then an assessment is made on each member to cover the deficiency. Generally the premium paid is more than enough to cover the losses, and a balance is returned or credited to the insured as above mentioned. As mutual companies do not take such risks as stock companies, the cost of insurance is less and therefore is carried in preference to insurance in stock companies, whenever it can be obtained.

There is another way for paying for losses in mutual companies. Instead of paying cash [125] premiums in advance, the insured gives a bond or note well secured that he will pay in cash whenever a call is made on him to cover the losses that have been incurred at the end of the year or other period. This method is in vogue in some sections, because still less money is required to keep property insured. Of course besides the money to pay losses another sum is required to pay the expense of management. It will be seen that the mutual plan is purely for protection against loss and no profit in the way of dividends is forthcoming, for the companies have no capital. It is true that some companies, instead of returning the unexpended premiums for losses retain them or a part of them and by so doing accumulate a surplus. Many companies, however, return all the contributions not expended for management or losses and have no surplus, or only a very small one.

Stock insurance companies proceed on a different principle. They are organized to make money, a capital is subscribed, the rates of insurance or premiums are fixed and after paying the expense of management and loss, the balance is paid to the stockholders in the way of dividends. The business is one of unusual hazard, and only a rich person, who can afford to lose his money, ought to invest in the stock of such companies. Their profits and losses vary greatly from year to year; and failures have been frequent. Nevertheless some companies have a fine record, enough to tempt them to continue notwithstanding their trying reverses.

As the contract of insurance is for an indemnity, the insured must have some interest in the property insured, otherwise the contract is a mere wager, which the law condemns. Moreover the [126] interest must continue and exist at the time of the loss. Who, therefore, has an insurable interest? A bailee, a carrier of goods, a consignee who has authority to sell them, a factor, pledgee, warehouseman, an assignee for the benefit of creditors, an executor or administrator, an attachment creditor, but not a general creditor, a landlord, tenant, mortgagee of real or personal property, a lienor, for example, the holder of a mechanic's lien, a receiver, residuary legatee or devisee, a trustee, vendees and vendors of real and personal property, the owner of stock in a corporation, any agent who has the care and management of his principal's property, besides many others. But a fire insurance policy may be assigned as collateral security with the company's consent, and continue valid though the assignee has no interest in the property. This rule therefore is fundamental, and if the interest of the insured in the property has been

extinguished after making his contract and prior to its loss by fire, he can get nothing from the company. Likewise the property must have been in existence at the time of making the contract, if it was not, the policy is void. Many stories are told of insuring ships after learning of their loss; such conduct is a palpable fraud.

An insurance policy is a contract, of which the policy is evidence. A standard policy has been prescribed in several states by statute: in other states the parties are still free to make such terms as they please. It is usual for companies to execute blank policies in due form to be filled out and delivered by their agents. Such policies are not valid until countersigned, unless the countersigning is waived.

When does the policy become valid or binding on the insured? Says a competent authority: "Where a policy has been duly executed in compliance with an application on the part of the [127] insured, so that the minds of the parties have fully met as to the terms and conditions of the contract, a manual delivery of the policy to the insured is not essential to render it binding on the company. If the contract has become binding by the issuance of the policy and the placing it in the hands of an agent for delivery, then the fact that such delivery is not actually made to the insured until after the loss has occurred, will not defeat recovery by the insured."

The premium usually must be paid at the time of issuing the policy, unless a different agreement is made concerning it. Credit may be given, and an agent generally has authority to do this. A valid payment may also be made in other means than money; a check or note may be given for it.

An insurance policy may be assigned, though it usually contains a clause that the consent of the insurer is needful. When the policy contains this clause and the insurer without valid reason refuses to consent to an assignment, "the assignee acquires the same right as though consent had been given."

Consent to an assignment may be given by the president of the company, without formal vote by the directors. It may also be given by the secretary or by any other agent duly authorized.

When can a policy be canceled? Unless this right is reserved in the contract, or given by statute, the insurer cannot cancel the contract without the consent of the insured. It often is reserved, and if exercised, this must be done before a loss occurs, and a cancellation made afterwards, though without knowledge of it, is void. The motive for making it is not important. If, as a condition of cancellation, the unearned portion of the premium is to be returned, the failure [128] to return it renders the cancellation worthless. Nor is this effective until notice has been given to the insured.

A court of equity will reform a contract of insurance on the ground of accident, fraud, and mistake. Oral evidence is admissible to prove the fraud or mistake; it must, however, be clear before a court will grant relief. If mistake is the ground for asking relief, the insured must not have been guilty in causing it, and must act promptly after his discovery. This rule does not prevent him from seeking relief when the agent of the insurer has been negligent. Furthermore it may be granted even after the happening of a loss.

Should there be a conflict between the written and printed portions of a policy, the written portion will be presumed to represent the intent of the parties. If, therefore, the printed portion excludes certain articles from the risk, and the written portion covers them, they are included. Conditions also written or printed on the margin or back of the policy are regarded as portions of it, and these too will control the printed portions. Besides, the written application is usually considered a part of the contract and the policy is construed or interpreted in connection with it. This is especially so where the proposals and conditions are attached to the policy. If the intent of the policy is not clear from the language used, the surrounding circumstances may be shown for the purpose of ascertaining the intent of the parties. The known usage of trade may also be taken into account in construing the language of a policy.

The language of the policy should be so construed as to cover the property within the intention of the parties, and support, if possible, the contract of indemnity. Mere clerical errors or mistakes [129] in describing it may be corrected even after it has been destroyed. The location is an essential element, and the policy will not be stretched to cover property not within the description. If a building is described this does not include separate structures used in connection with it, nor fixtures constituting no part of the structure. Unless expressly excepted, however, insurance covers those things which have been so annexed as to become a part of the realty but none others. The term store fixtures covers fittings, fixtures, furniture used in the course of trade, whether they are part of the realty or not. Likewise the term "stock" used in a mercantile business includes everything usually kept for sale, in that business, but nothing more; while household furniture includes all articles necessary and convenient for housekeeping. With respect to future additions these are covered by the policy unless it is so drawn as to show a clear intent to exclude them.

The risk usually begins with the date of the policy, unless it is effected by a preliminary contract. In such a case the risk begins from the date of the preliminary contract, and continues for the period fixed in the policy, or, if none has been fixed, for a reasonable time.

A misrepresentation voids a policy generally. It must not only be false in fact, but the insured must have known that it was false when making it in a substantial and material respect. The misstatement of an agent of the insured will have the same effect. Indeed, any fraud of the insured in procuring the policy has the effect of voiding it if the insurer chooses to do so. Of course, the wrongful facts or acts of the insured possess a varied character. His conduct in

concealing facts that ought to have been made known to the insurer may have that effect. Thus to conceal a fact of which the insured had knowledge, and which, if known by the insurer the risk probably would not have been taken, is a fraud rightly available to the insurer. [130]

The parties to an insurance contract may agree that the questions put by the insurer and the answers given by the insured shall become a warranty. This, as experience has shown, is a simpler way of effecting a policy of insurance. When this is done a misrepresentation constitutes a breach of warranty and the contract becomes void.

The modern policy provides that it shall be void if the insured "now has or shall hereafter make or procure any other contract of insurance, whether valid or not, on property covered in whole or in part by this policy." If the insured effects other insurance he must not forget to obtain consent of the insurer, and should he forget his good intention will not preserve his policy. Nor can the insured protect himself by canceling the prior policy if he breaks the condition. Nor does its expiration revive the subsequent policy. An overstatement of existing insurance under an express warranty will also violate the policy. While forgetfulness or good intention will not save the insured in such cases, insurance obtained by a third person without the knowledge of the insured on the same property will not endanger his rights under his policy.

If a fire occurs and a loss results, this may be total or partial. In every case of loss fire must be the proximate cause of the loss. What loss is covered by a policy has been the subject of frequent controversy. Damage by water used to extinguish a fire is usually covered; also damage to or loss of goods removed to prevent their destruction from fire in the insured or another building. [131] Likewise the loss caused by blowing up a building to check a fire, likewise damage from an explosion which is the direct result of a fire, "but an explosion due to the ignition of a match or spark of an explosive substance, no fire resulting, is not within the terms of an ordinary fire policy." The standard policies contain a clause relieving the insured from liability to pay for property stolen during the progress of a fire, or during the removal of property necessitated by fire.

An exception of liability from lightning, unless followed by fire, excludes recovery unless there is loss from burning, but it is quite common to insure against loss from lightning as well as fire.

Unless there is a stipulation in the policy the insurer is not relieved from liability by mere negligence or carelessness of the insured or his servants though directly contributing to the loss; on the other hand, the insured who does not take reasonable care to avoid loss from his negligence or that of his servants may defeat recovery under his policy. This rule is not easy of application, cases of clearly proved negligence are numerous, also cases free from negligence, a third class of a doubtful nature. The field of the law is open in every direction to these.

For a total loss the insurer is liable for the entire value of the property to the limit covered by the insurance. Thus the loss of a building is total though some of the walls remain standing, but not when the remnant can be restored. In some states the statutes provide that in case of total loss the insurer shall be liable for the full amount of insurance, and shall not be allowed to show that the property was of less value than the amount insured.

When the loss is partial the insurer is liable only for the amount of the loss, not exceeding the [132] insurance. The policy may limit the amount of recovery to the cost of restoring or replacing the property, and in such cases this is often done instead of paying the loss in money. If each of several classes or items is separately valued, thereby separating the liability for them, the recovery for any one class or item is limited to the damage to the same.

Lastly, in fixing the loss the distinction between open and valued policies must be explained. A fire policy is generally written in such a way that the liability of the insurer depends on the amount of the loss to be determined after the loss has occurred. When this is done, the valuation of the property in the application for a policy or in the policy, does not fix the liability of the insurer, even though the loss be total. This is called an open policy. On the other hand the loss may be fixed by a stipulation in the policy, and which binds the insurer to pay the whole sum insured in case of total loss. This is called a valued policy. A policy is regarded as an open one, unless it appears to have been the intention of the parties on a fair and reasonable construction of its terms, to value the loss and so fix by contract the amount that may be recovered.

Fixtures.—A fixture is something annexed to land either temporarily or permanently. Different rules apply to persons in different relations. The law favors removal by a tenant presuming that he does not put in things for the landlord's benefit, unless there is an agreement to that effect between them. On the other hand a different rule applies between the seller and purchaser of real estate. As between them the law presumes that the seller intended to keep the things affixed [133] to the house, especially ranges and the like. On the other hand a somewhat different rule applies between mortgagor and mortgagee. The former is favored, but not so much as the tenant. Suppose the mortgagor was a nurseryman, and the land was taken for the debt by the mortgagee, would it include the trees and shrubs that had been planted for sale? The courts have given an affirmative answer.

The facts that are of special value in finding out whether a thing is a fixture or not are: (1) the actual annexation of the article to the realty; (2) the immediate object or purpose of the annexation; (3) the adaptability for permanent or mere temporary use; (4) and whether the article can be removed without material injury to the property to which it is annexed. See *Lease*.

Garage Keeper.—The garage has been said to be the modern substitute for the ancient livery stable. A garage man who receives the automobile of another to keep or repair—a service for which the owner is to pay a compensation—is a bailee for hire. While this relation of bailor and bailee exists, the owner is not ordinarily responsible for the negligence of the garageman or his servants in the care or operation of the automobile.

A public garage is not a nuisance. Even the storage of gasoline in suitable tanks set down in the earth is not a nuisance. Yet the business may become a nuisance when conducted in some localities, or in an improper manner. The operation of a public garage may therefore be enjoined in a purely residential section within a short distance of large churches, a parochial school and houses. Likewise the odors, the noise, and the fire hazard, which are occasioned by the [134] construction and management of a garage, create a situation which justifies public regulation.

A garage keeper is generally allowed a lien on an automobile for storage and repairs. If no price has been fixed in advance, the garage keeper is entitled to recover of the owner the reasonable value of the services and materials furnished. When the automobile is brought to the garage by a chauffeur, the garage keeper should assure himself of the chauffeur's authority to order repairs, especially those of a permanent nature.

The garage keeper when storing a car for another for compensation must exercise reasonable care and prudence. If negligent he is liable for the damage. It is said that the liability of a garage keeper for hire is not affected by reason of the knowledge of the owner as to the place where the property is kept. Its acceptance by the garageman imposes on him the duty of exercising due care for its safety and protection. But he is not an insurer of the property; and therefore is not liable for loss by fire unless he has been negligent. Generally, in such a case the burden of proof is on the owner of the machine to show that the fire was caused by the negligence of the garageman. Sometimes one keeps a car for another for accommodation, receiving no compensation therefor. One who thus serves another is liable only for gross negligence.

The garage keeper must protect the property from theft. If he permits a machine to remain in an alley when it ought to have been inside his garage, he is liable. In one case a motorcyclist left his machine with a garage keeper to be kept over night, and also gave permission for its inspection by any one whom he might send around. A person appeared with a permit to inspect it [135] who, under the permission, stole it and rode away. The garage keeper was rightfully held not liable.

If a garage keeper or his servant negligently runs a machine left in his custody for storage or repairs, the garageman is liable for the damage resulting to the owner. At the expiration of the bailment he must deliver the machine to the owner or person authorized by him to receive it, and is liable if neglecting or refusing. He is also liable if delaying unreasonably to make repairs, or for making them unskillfully. Lastly, if the car is driven by the garageman's servant while the bailment continues, the bailee, and not the owner, is responsible for any injury done to a third person by the servant's negligence. Of course, if the driver was acting outside the scope of his authority, and was using the car for personal purposes, neither the garageman nor the owner would be responsible for whatever happened. See *Automobile: Chauffeur*.

Homestead.—A legal homestead is the home or residence of a family land owner, and includes a specific area varying in the several states. By the more general rule the land must be connected in a single piece, though in some states the pieces may be distinct. Though divided by a highway this does not effect a separation, as the land therein belongs to the owner subject to the public rights to pass and repass and also use to keep the highway in repair. The peculiarity about a homestead is, it is protected by law from seizure by the owner's creditors.

One of the most important questions relating to a homestead is, the meaning of the head of a family. The term is not limited to a man having a wife and children. It includes an unmarried man [136] with whom his widowed sister and children reside; or a man who supports his mother; likewise an unmarried woman with whom the children of a deceased sister are living. Nor need they live under the same roof, the essential thing is the relation and dependence existing between them. On the death of a husband owning a homestead the right survives to the widow, and usually to the minor children. Some statutes give her the absolute estate, others a life interest; in some states she loses the homestead by a subsequent marriage. In most states the rights of surviving children end on attaining their majority. In many states the surviving husband is entitled to the homestead right, even though there be no children. A husband does not lose his homestead when his wife withdraws from the family under a decree of divorce. Non-residents as a rule are not within the privilege of the homestead laws.

On the dissolution of a marriage by divorce, as the wife ceases to be a member of the husband's family, she loses her rights to the homestead. The decree of divorce may, in the dissolution of the marriage, reserve to her the right, and if she is the owner of the homestead she may continue to occupy it as one. The mere desertion of husband or wife by the other spouse will not, in itself, destroy the character of the homestead although an entire dissolution of the family will have that effect.

By the federal law every head of a family, or a person twenty-one years old and a citizen, or intended citizen, of the United States, if not the owner elsewhere in the United States of one hundred and sixty acres of land and has not previously obtained a federal homestead, is entitled to a quarter section or less of the public land. Three things are necessary: (1) An affidavit [137] showing that the applicant comes under the law; (2) a formal application; (3) payment of the land

office charges. When these things are done, the certificate of entry is delivered to the applicant and the entry is made. Then the entryman must actually reside on and cultivate the land for three years, and at the end of that period, he is entitled to a patent. The lands thus acquired are not liable for any debts contracted prior to the issuing of the patent.

The head of a family can sell or mortgage his homestead, whether he is solvent or not, nor can his creditors prevent its sale since they have no rights therein. And if he sells his homestead and with the proceeds buys another, the second is as fully protected from creditors as the other.

From liability for most debts a homesteader is exempt, but not for all. Generally the homestead is not exempt from taxes, but not everywhere from fines for public offenses or liability on official bonds. Debts contracted prior to the acquisition of the homestead and pre-existing liens in most states are enforceable against the homestead. So are debts contracted in improving or preserving the homestead. These include materials furnished, also the wages of clerks, servants, laborers and mechanics.

Husband and Wife.—The law, while regarding marriage as a contract, adds something more, for it cannot be terminated by the will or consent of the parties; a contract on the other hand in most cases can be. To constitute a marriage there must be an agreement or mutual assent by the parties. This agreement must be made freely, seriously and not as a joke. False representations of health, wealth, etc., do not invalidate the agreement, yet these may be grave enough to have [138] that effect. Consent may be obtained by deceit or compulsion so gross as to justify a court in declaring that the parties were never legally married. A person may be too defective mentally to give an intelligent assent. A subsequent mental weakening would be no ground for annulling a marriage. An Illinois court recently remarked, it is a harsh rule that would permit a married man whose wife later in life became insane to put her away on account of her misfortune. If one were so intoxicated that he did not act intelligently, he could avoid his marriage.

A male at common law can marry at fourteen, a female at twelve. By statute a later date, twenty-one for males and eighteen for females has been fixed in many states. The right to disaffirm a marriage on the ground of non-age, unlike the parties to a contract, applies to both parties.

In this country marriage is regulated largely by the states, though a movement has been started to make marriage and divorce a matter of national regulation.

As marriages are of higher character than other contracts relating to the ordinary dealings of men, even those that are prohibited by law are for reasons of public policy not always void. They are therefore not void, simply because the formalities prescribed by statute in obtaining the license and solemnizing the marriage have not been observed, when the parties afterward live together like other married people.

A marriage ceremony is not void though performed by one outside his jurisdiction, or not having a license obtained at the proper place. Persons who improperly grant licenses and solemnize marriages may themselves suffer legally, but their wrongful action cannot be visited on [139] others. The principle still prevails in most states that a marriage which is good by the common law, though contrary to statutory forms unless there is an express prohibition, is a valid marriage. In a few states a common law marriage is invalid.

A marriage that is valid by the law of the state where it was made, is valid everywhere. Nevertheless, the courts have great difficulty in applying the principle. Suppose that the resident of a state, for the purpose of evading its marriage laws, should go into another state and have the marriage solemnized, and then return, is the marriage valid in that state? No, but to lessen the rigor of the rule, the courts hold that both parties must have intended to evade the law, if, therefore, one of them was innocent the marriage was valid.

After marriage the husband's domicile becomes that of his wife, and her refusal to follow him without good cause, would be in law a desertion. It is said that a promise before marriage not to take her away from her mother and friends will not justify her in refusing to go with him. If, however, she had immediately after marriage, determined to separate from him and to take legal steps to that end, she could legally remain.

A married woman by the common law is answerable personally for her crimes as though she were unmarried, unless they were committed in her husband's presence. When together the law presumes she acted from his coercion, he therefore must be the sufferer, while she escapes. This rule though does not apply to the gravest crimes; for these both are liable. Like so many other legal rules the difficulty is in applying it. How near to the husband must she be when committing a wrong to render him liable and escape herself. In one of the cases a married woman was [140] properly indicted for unlawfully selling intoxicating liquors. At the time of selling them she was alone in the room, though she had sold them by her husband's order.

As the law regards husband and wife as one person, many peculiar things flow from this relation. Thus one cannot steal from the other; but either is criminally liable for an assault committed on the other. By statute in some states the right of either party to sue the other for wrongs has been greatly extended; nor is the husband liable for wrongs committed by his wife unless he participated in them. For example, in some states he is not liable for slanderous words spoken by her in his absence; in other states his liability continues. On the other hand, a wife who can manage and control her separate estate may in turn be liable for the wrongs of her husband while he is acting with authority as her agent.

A husband has a right of action for damages against any person who alienates his wife's affections. Nor can he be defeated by showing that he and his wife did not live happily together. Such facts though may be used to prove that her society was worth less than it would have been had they lived happily, in fact, by money valuation was not worth three cents. A husband forfeits his right to sue others for entertainment when his own misconduct justified and actually caused the separation, otherwise his remedy is complete against all persons whatsoever who have lent their countenance to any agreement for breaking up his household. On the other hand, this is a one-sided rule in some states; in others a wife has the same right to sue for the alienation of her [141] husband's affections as he has for the alienation of hers.

By statute great changes have been made in the way of permitting married women to retain their property and manage it, and to do business. Formerly, all the personal property of a married woman went immediately by law to her husband, and he became responsible for her debts. She still retained her real estate and the management of it. Now, very generally, she also retains her personal property, also the income, very much as if she were unmarried. She often appoints him as her agent to manage her property, and when thus acting he is responsible to others and to her like any other agent. He may contract for erecting any building or improvement on her land, but should he contract in his own name for such improvement she cannot be held therefor, nor can any one who has done work or furnished materials put a lien thereon for them. It may be added that his right to act as her agent is never implied solely from the marital relation.

A wife may act in a representative capacity as agent for her husband, or for other persons, and may execute a power conferred on her by deed or will. She may also be appointed to act as executor, administrator or guardian, though under the common law theory her husband's consent was needful to her acceptance of any of these undertakings.

The common law relations of husband and wife have been greatly changed by statute since about 1844. "It is now," says Peck, "the usual rule of law throughout the United States, established in each state by its own statutes that the wife retains title to the property owned by her before marriage or acquired by her during the marriage, and the right to manage, use or sell it, without the concurrence of her husband. The right to contract, and to sue and be sued, [142] naturally follows from her ownership and control of her property; in most of the states these rights are expressly conferred by statute; and in some they have been held to result by necessary implication."

The husband is generally relieved from liability for her debts or for her torts, except for such debts as are for her support or that of the family, or are within her express or implied agency to act for him. The common law estate of dower and curtesy are retained in some of the states, in the larger number they are materially modified by statute, or wholly abolished and replaced by a right of succession to each other's property as defined by statute.

The distinctive duties resting on a husband are to provide a home, to support his wife and children, to protect her and them from injury or insult. Thus a husband has the same right to protect his wife, to assert and maintain her rights, even to kill a person, if necessary in her defense, that he would have in his own behalf.

The duty of a husband to provide a home implies his right to select and fix the marital abode. The wife must live with him, and a refusal on her part to live in the home provided by him would constitute her a deserter. But he must select a home in good faith and in reasonable accordance with his means and their accustomed mode of life.

It is his duty to maintain order and law in his household. He is therefore liable to prosecution should his wife carry on the illegal sale of liquor, or in other ways defy the law.

A husband cannot chastise his wife, but he may use force to restrain her from committing a violent criminal wrong. Says a competent author: "That depends rather on the right of every one [143] to use reasonable efforts to prevent violence and crime than on any peculiar power of the husband over the wife, and it would also justify like restraint of the husband by the wife."

It is the duty of the wife to assist in the maintenance of the family by such reasonable labor as the necessities of the family and their circumstances in life and financial position require; while the husband has no right to require her to do more than to care for the house and the family in the customary and proper manner. He cannot compel her to engage in business, to work for wages, nor to work for him in his business. The services of any kind which either may render to the other, or for the family, are rendered in consideration of the marriage relation, and of the mutual benefit received therefrom and neither has any right of action against the other for them.

It should be noted that the legislative revolution for the benefit of married women has chiefly affected the property relations of husband and wife, while their personal rights remain quite as before. Probably no single rule of the common law was so bitterly resented and so difficult to defend, as the vesting in the husband of the sole guardianship of their children. By statute in many states both parents are made guardian of them, and if they separate, the welfare of the children is regarded as the decisive question in fixing their guardianship, rather than the superior right of either parent.

A husband and wife by the modern law may agree to live separately. The arrangement in some states is effected through a trustee, in others this may be done by the parties themselves. By this the parties may agree on the disposition and division of their property when this can be done [144] freely and intelligently. A separation agreement made through fear of her husband cannot be sustained.

A wife who voluntarily enters into an agreement of separation covering all property rights cannot, after her husband's death, have it set aside and then claim her rights in his estate, except in some states where community rights exist. On the other hand, her right to share in her husband's estate is not lost though she lives apart from him by agreement, unless this shows a clear intention to relinquish all claims to his estate.

The husband must support his wife. This is the law everywhere. While they live together the law presumes that he has given her authority to purchase necessaries on his credit, and therefore a tradesman can recover who shows that they were thus living and that the things furnished befitted their condition in life. When she is living apart from her husband the presumption is the other way, and a tradesman cannot recover without proof of the fact of her husband's authority to let her have the goods. But when she is living apart from him for good cause, and would starve if the things needful to sustain life did not come from some source, she has an absolute right to pledge her husband's credit for them.

What are the things for which she may pledge her husband's credit? Those required to sustain life and preserve decency, besides other things to maintain her in her social condition. Wearing apparel, furniture, jewelry, even legal expenses incurred in regaining her conjugal rights have been included.

Besides agreements to live separately, the law for several causes permits absolute separation. These are prescribed by statute, and vary greatly in the different states. Adultery is a cause [145] recognized in all of them, for which an absolute divorce can be granted. Cruelty is another cause, almost as general, though more difficult to define. Actual violence is not necessary to constitute cruelty, threats of violence with an intention to do bodily harm will suffice. Again, the cruelty must be unmerited. If she has justly provoked the indignation of her husband, then his cruelty presents a different aspect. Nevertheless, if his cruelty bears no relation to her wrongful beginnings, she still has good ground for separation.

Desertion is a general ground of divorce, the law in every state prescribing a period of time, quite often three years. The period must be continuous. An offer to return made by the deserted spouse in good faith at any time before the separation has run for the statutory period will bar a divorce, but not if the offer is made afterward. Again, a husband who drives his wife away from him by his misconduct deserts her as clearly as if he had left her. To cease living together for the time fixed by statute is not desertion unless this was done intentionally. For example, separation on account of business, sickness, etc., is not desertion. Not only must there be an intention to leave the other party, this must be without consent.

Another cause for divorce, quite generally recognized, is habitual drunkenness. This must be of a gross and confirmed nature. While other causes exist the most general have now been mentioned. In some states there is a more general ground, any reason rendering married life a failure. Of course, much depends on the discretion, mental and moral make-up of a judge in applying the facts to a cause for separation that is so general. An agreement in advance to make [146] a cause of divorce is everywhere condemned by the law.

Divorces are of two kinds: from the bond of marriage, often called absolute divorces, which put an end to the marriage relation and render the parties single; and divorces from bed and board, limited divorces, more accurately called judicial separations, in which the marriage relation is not dissolved, but the injured party is given the right to live separate from the other. In more than half of the American states no distinction is made between kind of divorce, all divorces are absolute, from the bond of marriage.

The legal effect of divorces is still a grave matter. When a divorce has been legally granted by a state, the courts of every other state for obvious reasons recognize and try to uphold the decree or judgment, though not all of them, and consequently strange results follow. Thus a person who was married and living in New York leaves his wife for good reason and goes to Connecticut. After acquiring a legal residence there and proper standing in a court, he applies for a divorce, the proceedings are regular in every respect and a divorce is granted. He marries again and takes his wife to New York for a visit. There he is sued by the first wife for support, moreover, by the laws of New York he is an adulterer. In New York he is still married to the first wife, in Connecticut to the second. If children are born of the second marriage they are legitimate as long as they live in Connecticut, illegitimate should they go to New York. One of the latest legal writers on this difficult subject says: "Foreign divorce judgments granted in states where the plaintiff had obtained an actual, bona fide residence, will doubtless continue to be recognized by [147] the great majority of our states, but the states of New York, California, Maryland, Massachusetts, Vermont, South Carolina, Pennsylvania, and possibly some other states, which have adopted the extreme New York doctrine, are permitted by the rule established in the Haddock case—a decision by the Supreme Court of the United States—to continue to refuse recognition of divorce judgments in other states."

Innkeeper.—An innkeeper's house is a public place to which travelers may resort. He cannot therefore prohibit persons who come under that character in a proper manner and at suitable times from entering, so long as he can accommodate them. He is not obliged to receive one who cannot pay for his entertainment. Indeed, he must exclude some persons who apply, notably thieves. He can refuse to admit all whom he has reason to believe will disturb the peace and safety of his guests; and can afterward exclude all who, though admitted, prove to be noisy and disturbers of the comfort and safety of others. And if having a stable he is under the same obligation to receive and care for horses as he is to receive the person to whom they belong.

Again, he is not required to provide a guest with the precise room he may select, but only reasonable and proper accommodations. If he refuses to do so he is liable in law to the applicant.

In caring for the baggage of a guest, the law is not as well settled as it might be. A competent writer has said: "They are insurers of the property of their guests committed to their care, and are liable for its loss, unless caused by the act of God, a public enemy, or the neglect or fault of the owner or his servants." This strictness of liability, it is said is necessary to protect travelers [148] against any collusion between the innkeeper and his servants, and to compel him to take care that no improper persons are admitted into his house. His charge for the entertainment of his guests is sufficient to cover this risk; he also has a lien on their property entrusted to his care to indemnify him against loss.

By statute in many states innkeepers are exempt from loss by fires which are in no way caused by their own negligence or that of their servants. If a horse dies while in the innkeeper's charge, he is liable unless he can show facts that excuse him.

If the goods of a guest are stolen by the innkeeper's servants or domestics, by another guest, or by someone outside the inn, the innkeeper must make restitution, for it is his duty to provide honest servants, and to exercise an exact vigilance over all persons coming into his house as guests or otherwise. His responsibility extends to all his servants and domestics, and he is bound in every event to pay for them if stolen, unless they were stolen by a servant or companion of the guest. Illness or absence of the innkeeper does not excuse him. An innkeeper is not liable for the loss of a guest's property when this loss is due to the fault or negligence of the guest himself. Thus an unnecessary display of money or valuables, or leaving them where they would tempt thieves, may be negligence. But failure to lock or bolt his door is not necessarily negligence on the part of a guest. It is only evidence of negligence. Nor is an innkeeper exonerated when a theft is committed by a fellow guest with whom the owner of the property stolen had consented to occupy the same room.

An innkeeper may make needful and reasonable regulations that are to be observed by his guests to secure the safety of his property. When they are made and brought to the knowledge of [149] a guest he is bound by them. By contract, custom and statute the responsibility of an innkeeper may be changed. In many states by statute an innkeeper avoids liability for the valuables of his guest unless they are deposited with him. These statutes are construed strictly in favor of the guest. Nor can an innkeeper even by these exempt himself from everything, for if a guest were required to deposit all he had to secure such protection, he would be in a strange fix. Said a Georgia court: "Is the guest to deposit his valise there, and go and send for it to get out a clean shirt?"

If a guest goes away, leaving his valise or other things with an innkeeper, he is not required after a reasonable time to observe such diligence in keeping them as he receives nothing in the way of compensation for so doing.

Keepers of lodging and boarding houses are not innkeepers, nor subject to their liabilities. The proprietor of such a house does not hold himself out to the world as prepared to supply accommodations for all who may apply, nor is he required to receive any persons unless he chooses to do so; an innkeeper's freedom is restricted in this respect. A house may have a double character of boarding house and inn. With transient persons who, without a definite contract, remain from day to day it is an inn; with those under definite contract it is a boarding house.

Land License.—A license is an authority to do something on another's land without acquiring ownership therein, and may be given orally, or it may be simply a permission to use or occupy. A license may be executory, relating to a future act, or it may relate to an act already done or [150] executed. An executory license may be revoked at any time. Thus A laid a water pipe by permission across B's land who afterward rendered the pipe useless by cutting it. A had no redress, for B was acting within his rights. A ought to have obtained written authority for such action. He could, however, remove the pipe or any other improvement he had made on the strength of the license granted to him.

A license may be to do many things on another's land. Thus one may have a license to flood land, erect buildings, pass overland, maintain a ditch, cut timber, use land for railroad purposes. A common form of license is a ticket of admission to enter another's land to witness a spectacle or similar purpose.

No formality is needed to create a license. It may be in writing or be oral, or implied from the relations or conduct of the parties, as where a land owner assents to the doing of certain acts on his land. A person by opening a place of business licenses the public to enter therein for the purpose of transacting business. And a license to do a particular act necessarily involves any act essential thereto.

A license is usually revocable at the pleasure of the licensor, even though it be in writing and under seal, or a consideration has been given. If the licensee has expended money and made improvements on the faith of the license, can it be revoked? On this question the courts divide. The more general opinion seems to be that a license coupled with a grant or interest cannot be revoked. Or, if a license has in effect been so used as to become an easement it remains a burden on the land though sold to a purchaser, unless he had no knowledge of it. A license cannot be [151] assigned by the licensee to another.

Again it is said that the revocation only affects the future exercise of the privilege, and does not

prevent the licensee from removing structures or other movable articles placed by him thereon relying on the license, provided he does this within a reasonable time after the revocation. Even should the owner of land sell, the sale would not operate as a revocation to one to remove trees that he had already cut under a contract of sale and removal.

If a person grants a license to another to come on his land, he owes no duty to him except the negative one of not wantonly injuring or exposing him to danger. Merchants invite the public into their stores to buy wares, but those who accompany them without any intention of purchasing are not invitees, they are mere licensees. The duty of the storekeeper to one who enters his premises by mere license is not to keep the premises in a non-hazardous state, but only to abstain from acts willfully injurious to him.

Lease.—A lease is for the use of land, usually for a few years or shorter period. The lessor is more generally known as the landlord, and the lessee as the tenant. The lease may be oral, though the better way is to put the agreement in writing. If it be for a house or other building the lessee should insist on this, otherwise he would fare much worse should the building be destroyed by fire. Doubtless many do not know that, unless the lessee makes a specific agreement relieving himself, he is liable for the rent of a building, just the same if it is burned down as if he were still the occupier. This is the common law, which has been changed in some states by statute. [152]

If the lease is for more than a year, or other short period, the Statute of Frauds, so called, requires that it must be in writing. If the time be less, a verbal lease may be made, even though the lessee does not take immediate possession of the premises. If on the other hand, it exceeds the statutory period, it is not absolutely void, but continues during the joint wills of both parties, and may therefore cease at the will of either party. If the landlord wishes to terminate it, he must give the tenant notice to quit; should he disregard the law and take immediate possession he would be a trespasser.

When the terms of a lease are in doubt, they are construed in favor of the tenant. A lease to a specified day continues during the whole of it, though custom or statute may prescribe a different rule. A term may also continue during the option of either of the parties to be ended on notice by the party exercising the option.

The most usual agreements or covenants in a lease are on the part of the lessor for quiet enjoyment, which secures the tenant against any hindrance or disturbance of his possession and enjoyment of the premises from persons deriving their title from the landlord, or from any one else who claims to be the owner. Also against all encumbrances, in other words, that no one has any easements or other rights in the premises. The landlord also usually agrees to repair, and often to renew the lease, and the lessee to pay rent, to insure and not to assign or underlet, without the landlord's consent. The parties may of course agree to do any other lawful thing, for example, sometimes the tenant agrees to make repairs, to reside in the premises, not to engage in some kinds of business, to cultivate the land, if the lease be of a farm, in a specified way. Again though an oral lease for a term of years at a stated annual rent may not fulfill the requirement of the Statute of Frauds, the parties may conform to it and thus create a tenancy in fact from which the law will imply a leasing from year to year. If therefore the tenant with the acquiescence of the landlord continues in possession for several months after the expiration of the original term, a tenancy for another year will be created with a corresponding liability on the part of the tenant for a full year's rent. And the measure and extent of the tenant's liability would be the same, whether his continued occupancy related to the original lease, or to a subsequent one just like it, made as the first was soon to expire. [153]

The definite period for which a lease is given is called a term. If a lease is from the first day of January, it begins on the second day and lasts through the last day mentioned; in carefully drawn leases the number of days is fixed to avoid all dispute. A lease for a year with the privilege of remaining three years or longer does not mean a single period of three years, but three yearly periods as the tenant may elect.

A lease may be made to take effect in the future, provided the time for taking possession is not so far away as to violate some statute to the contrary. A lease for an hundred years in some states is deemed a parting with the absolute title to lands though railroads make long leases running for ninety-nine years. If the length of the term is not definitely expressed in the lease, the time may be ascertained by other evidence. When a lease is to run for one or more years "from" a specified day, the corresponding day of the year is excluded from the term, unless a contrary custom exists. A lease to a specified day ends with its expiration. If there be a doubt on which of two days a lease terminates, the lessee may decide. More generally, leases of doubtful duration are construed in favor of the tenants. By statute in New York leases which do not specify the length of occupation, extend to the first of the following May after taking possession. [154]

A lease must describe clearly the premises, nor can a defective description be cured by outside evidence. Any language will suffice that shows the intention of the parties. The words "grant," "demise," and "to farm let," have a technical meaning, and are generally used, but other words may be and often are used. A memorandum expressing the consent of the owner that another shall have immediate possession of the premises, and shall continue to occupy them at a specified rent and for a definite term, is a sufficient lease; in general, any agreement under which one person obtains the right of enjoyment to property of another, with his consent and in subordination.

A distinction exists between a lease and an agreement for a lease, which should be understood, though it sometimes is not by the parties themselves. If the agreement is a lease, it cannot be changed by other evidence, for it is a completed contract; but if it is an agreement for a lease, then it is not complete and other evidence may be produced to show what the parties intended. How can the nature of the agreement be tested? By ascertaining whether it is complete or not. Thus A wrote to B that he would take his home at a stipulated rent for two years if he would put in a furnace, with which offer B at once complied.

This was a lease, for by putting in the furnace nothing more remained to be done. If he had not [155]
put in the furnace, or not before the time A was to take possession, there would have been no lease, unless A had waived his offer and taken possession.

Of course to make a valid lease there must be competent parties. A lease made by a minor is not void, but he may avoid or cancel it by some positive act. Can he do this before attaining his majority? On this the authorities differ. Again appears the risk of making contracts with minors, though the situation many times seems clearly to justify such action. A guardian may lease his minor's land for the period of his minority; if leased beyond, the ward may have the lease canceled for the excess. A lease terminates on the death of the ward, whatever may be the length of the term. A parent cannot lease the land of his minor child like a guardian.

By common law a lease made by a married woman was avoided after her husband's death. The modern statutes excluding her husband's power of control over her property and authorizing her to take and hold property as if she were an unmarried woman, have abolished both his power to invalidate the lease and also her power to repudiate it after his death.

A private corporation may make a lease of its property provided that in doing so it acts within its charter. A municipal corporation, while it may lease property belonging thereto of a private nature, cannot lease property which has been devoted to public use. A corporation whether public or private may take a lease of property so far as this may be a proper means of carrying out the purposes for which the corporation was created.

Executors and administrators may dispose of a lease belonging to the deceased, or make new [156]
leases for terms within the period covered by it. Trustees have a still larger authority to lease the lands entrusted to them, unless restricted by the terms of their trusteeship, or by statute. Though a member of a partnership, as we have seen, is an agent, he cannot make valid lease of partnership land.

What may be leased? Besides land, the right to a wharf, to flow with water the land of another, to go over another's land. An ordinary boarder, who has a room and boards in the house of another and who retains the possession and care of his room, is not a tenant. On the other hand the letting of an entire floor for lodgings may create a tenancy, and so may even a single room. A lease for an unlawful purpose is void, for example, for the sale of spirituous liquors contrary to law.

If the premises are occupied by the lessee and his rent is paid as specified in the lease, this is regarded as a ratification by him of an invalid or void lease. To this rule are some exceptions.

A rule of construction may here be added; if a blank form is used in making a lease and the printed and written parts or agreements are inconsistent, the matters written are regarded as expressing the intention of the parties.

Much might be said concerning the use of the premises. If a farm is rented and the lease is silent on the matter, the law presumes that the tenant will use it in a proper and husbandlike manner, like other exemplary farmers in that vicinity. He must cultivate the soil properly, preserve the timber, consume the hay as fodder to the cattle, if such be the custom, and keep the buildings and fences in repair. Manure in the ordinary course of farming belongs to the farm. To manure made in livery stables a different rule applies and the tenant can remove it. If the lease [157]
be of a mill it usually provides how it shall be run, if it be a house in the city and nothing is said about its use the law implies that there shall be no waste or destruction beyond the ordinary wear and tear. To use the doors for firewood is not uncommon with tenants, unless they are not burnable, though surely it is not a proper use of a leased house.

A farm tenant has the right to take and use material found on the land suitable and needful to repair the buildings, fences, also dead and fallen timber for fuel. He cannot use shrubbery and ornamental trees for this purpose, nor cut standing timber for this purpose. He is entitled also to the way going crop, but must remove it during his lease. He cannot go on the land afterward and remove crops, unless he was prevented by some good reason from removing them while he was in possession.

Can a lessee assign or sublet his lease? Of course this may be forbidden, and often is by the lessor, without his consent. If the lease is silent this can be done. If the lessee die, his executor or administrator can assign the remainder of his term. A lease may also be assigned if the lessee become insolvent, also by a new partnership created by the addition or retirement of a member. A transfer by the lessee of the whole or a part of his interest for a part of the time is a sublease and not an assignment. And whenever a sublease is made, the rights of the original lessor are not changed, nor does he recognize in any way the sub-tenant unless by agreement, nor has he any right of action against him. Of course there is nothing to prevent the parties from making any arrangement that may be agreeable to them.

As the lessee may assign or sublet unless forbidden, so may the lessor part with his interest in [158]
the leased premises. When an assignment of it is made, the assignee may sue in his own name for rent accruing after the assignment.

The lease of a private residence is not a warranty that it is reasonably fit for occupancy. Thus saith the law. Nor can a lessee, unless the lessor has misrepresented the healthfulness of the place, leave after the unwelcome discovery that it is not healthful. This seems to be rather harsh, but the rule is founded on the presumption that the lessee will examine the house before leasing and make proper inquiries about its healthfulness.

By the common law the lessor was not required to make repairs. This has been changed in some states by statute. He is not required to make repairs needed and known to the tenant at the time of making his lease. Hallways, staircases, elevators, and the like that are used in common by the tenants of a building and are under the landlord's control, must be kept in repair by him. If he shall let a many storied building to several tenants, to each tenant a story, who have exclusive possession thereof, the lessor will not be liable to any lessee for the damage caused by another.

If the landlord agrees to make repairs and keep the tenement in good condition, he is required to keep it in essentially the same condition as it was when the tenant took possession. Should the house or other building be destroyed by fire what then? An agreement to keep it in good repair imposes an obligation on the landlord's part to rebuild. But an agreement by the lessee to keep and leave it in good repair, does not require him to rebuild should it be destroyed by fire, or other cause without any fault of his own. If the lease provides that the insurance money, when the [159] landlord has insured the premises, shall be applied to rebuild in the event of fire, he must regard his agreement, but if there be no such agreement, the tenant cannot compel his landlord to thus apply it. Should the lessor fail to fulfill his agreement to repair, the tenant is not excused from paying his rent, nor justified in leaving the premises. His remedy is to sue his landlord for the damages or injury to himself. And even if the premises be destroyed by fire the tenant must continue to pay his rent unless he has been wise enough to relieve himself by a proper clause, or unless some kindly statute has been passed relieving him on the happening of such an event. No oral stipulation, that the parties should make covering the effect of loss by fire or other contingency, would be binding if contrary to the terms of the written lease. As this is the highest form of the agreement, all verbal stipulations to the contrary must give way.

A tenant can make no permanent alteration without his landlord's consent; and should he do so and injure the premises the landlord may recover damages, or, if such an alteration is feared or threatened, he may prevent it by obtaining an injunction from a court ordering the tenant not to make it and penalizing him should the order be disobeyed.

When a lease is renewed, the new lease may be regarded in two different ways. It may be considered as the continuation of the lease, and thereby protecting all the interests created under it. And this will be the case whenever the old lease clearly shows that if a renewal should be made this was the intention of the parties. When nothing is said, a renewed lease is a surrender of the old one and different conditions may arise. It is important therefore when [160] providing for the renewal of a lease to specify what the parties intend, whether a renewal or continuation on the old terms, or a renewal on other terms to be fixed at another time.

Usually a lease specifies not only the amount of rent to be paid, but the time of payment. If silent, yearly rent is not due until the end of the year, quarterly rent at the end of the quarter, monthly rent at the end of the month. When a lessee is evicted or turned out of possession by his landlord, he is excused from paying rent. What, therefore, is an eviction? Any act by the landlord, or by his agent, impairing the worth of the premises to the tenant, for example, the destruction of a summer house, turning rooting pigs into the premises, the erection of a new building rendering the leased premises unfit for occupation. One of the curious cases is the lease of a distillery which could not be run because the landlord prevented the lessee from getting a license. In like manner if the landlord is to furnish heat and fails to do so, the tenant is justified in leaving. More generally, any act by the landlord whereby the leased premises are rendered unfit or impossible for the purpose intended, and affecting the health and comfort of the tenant, is an eviction.

The eviction must be done by the lessor. An act done by a wrongdoer, not under the lessor's order, will not justify the lessee in quitting. Thus the darkening by an adjacent owner of the lessee's premises by erecting a structure, however injurious it might be, would not justify the lessee in quitting and refusing to pay his agreed rent. This is one of the risks taken when making the lease.

Suppose a person occupying state land is evicted by the state, must he continue to pay rent? In [161] Missouri the rent ceases, or if evicted of a part, he must pay rent on the remainder. In some states he must still continue to pay his rent and then demand compensation for his loss.

Sometimes land is rented on shares, a very common way in the olden time. When this is done, the relation of landlord and tenant may be created, or perhaps a partnership relation. If the farmer is to do the work of a servant of the owner of the farm, receiving in return therefor, a specified part of the crops, the agreement is one of hiring and not a lease. If the farmer has rightful possession of the use of the land, then the payment of his rent in produce does not affect his relation as a tenant. The natural increase of stock leased with a farm belongs to the tenant, and a landlord cannot recover for the death of cattle in the tenant's possession, unless he can prove his tenant's negligence. And if a lessee should sell part of the stock contrary to the lease, the purchaser would be liable therefor.

A landlord often leases separate parts of a building to different tenants, while the stairways and passages to them, though intended for their use, are still under his control. He thus invites the tenants and other persons having relations with them to use the approaches to obtain access to their rooms or apartments, and is accordingly liable when they are not kept in proper repair; the

same as any owner of structures either expressly or impliedly invites persons to enter them. If therefore he should leave elevator shafts, or hatchways unguarded, he would be clearly liable for the consequences. So, too, should a mill owner have a defective bridge to his mill, forming part of a common way thereto, he would be liable for the consequences.

The lessor is liable if he leaves his premises with a way or cellar entrance, or coal hole [162] inadequately guarded at the time the lessee takes possession, but not if the guard or covering gets out of repair during the tenancy, or is temporarily left unguarded by the tenant or some third person. If the hole or other dangerous place is made without proper authority, it is considered a nuisance and the owner is liable for all injuries whether he has rented the premises or not. Who is liable for injuries caused to travelers by ice and snow on the pavement? This is a hard question to answer in a short space. If the ice or snow has accumulated by reason of a defective roof, then the landlord is liable because of its faulty construction. In some parts of the country it is most difficult to keep the walks safe in winter. Experience has led the parties to make stipulations defining and fixing their liability. Many states also have statutes and cities ordinances regulating the duties and liabilities of landlords and tenants.

When a lease is about to expire a difficult question sometimes arises, what can the tenant take away with him? Of course he can remove all his furniture and the things that can be separated without injury to the premises, but during his tenancy, he may have added things possessing a more permanent nature, called fixtures, these he cannot remove. The courts have had great difficulty in deciding in some cases what these are. In a general way it may be said that whatever a tenant adds to the premises can be removed, while he is still in possession, without material injury to it, but he cannot remove anything afterwards. Suppose the tenant erects a building, can he remove it? One would not think of his building this for the benefit of his landlord. Suppose he had built it on a foundation from which it could be easily removed, a court would have no [163] difficulty in deciding that it belonged to the tenant. Many cases have arisen about ranges and stoves. An ordinary stove of course can be removed; suppose it is affixed to the house in such a way that some portion of the wall will be detached by the removal, can this be done? Not if the wall will be badly injured. How badly? This is a question of fact to be answered by inquiry in every case. Among the fixtures that can be removed are hangings and tapestries, ornamental chimney pieces, wooden cornices, wainscoting affixed to the wall by screws and spikes, bells and bell wires, chandeliers, cisterns and sinks though fastened by nails and set into the floor, fire frame fixed in the fireplace, pipes for gas or water, grates removable without injury to the building, pumps, stoves, ranges and furnaces, gas ranges and water closet appliances, washtubs fastened to the house, gas fixtures and shelves. A greenhouse is not removable, nor gutters placed in the roof of a dwelling, nor a stairway, nor flowers, shrubs, or bushes planted for ornamental purposes.

Chattels placed by a tenant on leased premises for the purpose of carrying on his business or trade are generally regarded as personal property. Annexations of this kind are called trade fixtures and the law is liberal in permitting their removal. Show cases, counters and shelves, engines, boilers, machinery, tanks in a distillery, a bowling alley, bar fixtures, even buildings are removable. The same liberal rule applies to agricultural implements. A tenant, therefore, if wishing to remove whatever he may have added, should be careful about their nature, or protect himself by an effective agreement.

Legal Remedies.—Elsewhere we have shown how civil and criminal law differ. In criminal [164] proceedings the state is a party and prosecutes offenders through agents or attorneys who are chosen or appointed for that purpose. In all civil offenses the person injured prosecutes the offender, through the courts established by the state for that purpose. Suppose A owed B one hundred dollars for which he gave his promissory note payable in ninety days from date, and which on its maturity A declined to pay. B could then have recourse to a court of law to collect the money. If knowing nothing about the mode of proceeding he would employ a lawyer; if he was familiar with legal proceedings he could do this himself.

What is the first step taken by a lawyer? He makes out a writ or complaint stating B's course of action against A—that he has loaned him a sum of money which he has not paid as he promised to do, and he is summoned to appear in court at a certain time and place and answer why he does not pay and the court is asked to render judgment against him, if there is no defense, for the money due with the addition of the costs incurred in seeking the aid of the court to collect the money. This writ, declaration, or complaint is given to the sheriff of the court where either A or B lives, who "serves" it on A. This service consists in reading a copy of it by the sheriff, or by one of his deputies or a constable, or other authorized person, to A, or in leaving a true and attested copy thereof with him, which has become the universal practice. This is the ordinary mode of beginning a legal action against a person or corporation.

An action thus begun is followed by a trial of the case unless it is settled. Usually the trial comes off within a few months, but not infrequently long delays occur. If, after the introduction of [165] testimony, judgment is rendered in favor of B, an "execution" or order is issued by the court directing the sheriff to levy on A's property, whatever he may have, save a small sum, household furniture and the like, and sell it and turn over the proceeds to B in payment of his debt. If there was a balance left from the sale of A's property after satisfying the judgment of the court and the costs of the legal proceedings, it would be paid to A. This, in fewest words, is the mode of proceeding in a court of law to obtain redress in a civil suit or action.

There are several kinds of actions or remedies used in different cases and these will now be

explained. First, is the action of assumpsit. This is the form of action used whenever one sues to recover on all kinds of promises, those implied by the law as well as express promises, not under seal. They include all ordinary promises to do things either orally or in writing. Next, is the action of covenant. This is used whenever one sues to recover for some failure on the part of a person who has given a deed or other sealed writing. Suppose the purchaser of land discovered there was an unpaid mortgage thereon, though the deed covenants or declares that it is free from all encumbrances. The vendee or purchaser would sue to recover for a broken covenant. Another action is replevin which is used to recover specific goods. Suppose someone had taken my horse and refused to deliver the animal to me. The proper remedy would be replevin. Suppose I did not wish to have the horse back, but only its value or worth. Then the proper remedy would be an action of trover. Another form of action in much use is called trespass. This is used to recover [166] damages for injuries to persons and property. If a person knocked me down and I sued him to recover for the injury, trespass would be the proper form of action. In many states an action in tort instead of trespass is the proper remedy. If one should come upon my land and take away wood, grass, stone, or in any way injure it, trespass also would be the form of action. Ejectment is the action employed to eject or turn out a wrongful possessor and recover possession of land. In this action the title or ownership of the land lies at the foundation; and the title to many a piece has been settled in an action of ejectment. One of the most familiar actions is habeas corpus, which is employed to recover a person's liberty from illegal restraint. As the actions of slander and libel have been described, only two others require notice, mandamus and quo warranto. The first of these is used to compel one to do something. A familiar example is that of a city which refuses to pay a judgment that has been rendered against it. The court in this action commands the city to pay, and it must obey unless there exists a legal defense. A quo warranto is the form of legal action to which a person resorts to get possession of an office to which he is entitled, but is denied him. Suppose one is elected mayor of a city, but for some reason or other, the one in possession is determined to keep him out. He would bring this action and a court would then decide whether he was entitled to it or not, and if he were, the court would proceed to put him in possession.

In many of the states, especially the newer ones, not all of these different forms of action are used. Only one form, called a complaint, includes most of them. While the substitution of this has simplified the modes of redress, the substance of the complaint really embodies, as before, the [167] different kinds of injuries above explained.

Life Insurance.—The contract of life insurance is a mutual agreement whereby the insurer agrees on the payment of a fixed sum or premium to pay to a person designated in the policy on the happening of a contingency, usually death, a sum of money. By another form of insurance the insurance may be made payable at a fixed time, or before, should the insured die before that period.

The contract to be valid must be for the benefit of one having an insurable interest, otherwise the contract is a wager, which the law condemns. This is sufficient if the person taking the insurance has such an interest arising from his relation to the insured as creditor and surety, or from the ties of blood or marriage that will justify a reasonable expectation of advantage or benefit from the continuation of his life. It is not needful that this expectation or benefit should possess a pecuniary valuation. The mutual legal rights and liabilities of father and minor child are sufficient to create an insurable interest on the part of each in the life of the other; also the relationship of brother and sister, and that of husband and wife. Likewise a man and a woman who are engaged to be married; and a creditor has an insurable interest in the life of his debtor. And this interest covers not only the amount of the indebtedness, but also future advances, and the cost of taking out and keeping up the insurance. A partner who has advanced the capital of the business has an insurable interest in the life of his partner. More generally any person who invests money relying on the efforts of another to produce a return has an insurable interest in [168] such person's life. A surety therefore has an insurable interest in the life of his principal; an executor in the life of a person who has granted an annuity to the testator; a common carrier even may insure against loss from injuries to passengers. But the relationship between uncle or aunt, nephew and niece and that of cousin is not sufficient to support a policy taken by one in the life of the other.

A policy may be assigned to one who has no insurable interest if made in good faith, and not as a cloak for the procuring of insurance by one having no insurable interest. This rule does not prevail everywhere, but the courts which do not accept this rule usually protect the assignee who has paid the premiums to the amount of his payments, while the estate of the insured takes the balance that may come from the insurer, whenever the assignment of the policy is not invalid. An assignment to one who has an insurable interest as relative, creditor and the like, is always valid.

A general agent, says Justice McClain, "may bind the company by an agreement as to rate of premiums, or other terms of the contract, even as against the express provisions of a policy subsequently issued, there being no negligence on the part of the insured in failing to advise himself as to the terms of the policy; but if the want of authority of the agent to vary the terms of the application is brought home to the applicant, oral communications of the insured to the agent are not to be considered in determining the validity of the insurance. If the agent has exceeded his authority as to the terms of the proposed contract, the company cannot reject that part which the agent was without authority to make and enforce the rest, but must accept or reject in toto." [169]

Until a proposition for insurance has been accepted by the company there is no contract. Delay in accepting an application which is subject to approval does not effect an acceptance. There may

be a binding contract of insurance as soon as the company has accepted the application, or on the delivery and acceptance of it by the company's agent, when he has authority to do so. In order to complete the contract before issuing the policy there must be an agreement to this effect, and before the death of the applicant. The receipt by an agent for the first premium, or of a note therefor, subject to the approval of the application by the company, does not effect a contract between insurer and insured.

Some states have enacted statutes prescribing requirements for life insurance policies, or standard forms. Delivery to a third person for the insured may be sufficient. The contract becomes complete when the policy is put in the mail, postage prepaid, for delivery in due course to the insured. Delivery to the insured for examination of course does not effect any engagement on the part of the insurer, nor does a delivery on condition.

It is often stated that the delivery shall not be effectual to create a contract unless the insured is alive and in good health when the policy is delivered and the first premium is paid. Indeed, how could it be valid if the insurer is dead? And if the contract is with a person other than the insured as beneficiary, it would be void on the ground of mistake. Likewise, under such a condition, a policy does not become effective, without a waiver, if the insured is in ill health at the time of its delivery or payment of the premium.

Unless waived by the company, there is usually a stipulation to the effect that the company [170] shall not become bound until the first premium has been actually paid and accepted by the company or its authorized agent. But if the premium is actually paid by the agent of the company for the insured by virtue of an agreement between them, this will bind the company. The payment of the premium by a third person without the knowledge of the insured does not have the same effect.

A general agent has authority to waive the stipulation, that the policy shall not take effect until the first premium is paid, though of course he may be restricted in this regard, but a special agent cannot waive this stipulation; though if he acts otherwise and the company ratifies his act, it is bound. A provision also that a policy shall not be valid unless the premium is paid when the insured is in good health may be waived by an agent who has authority to take applications, collect premiums and deliver policies.

Passing to the nature of the contract, if made in violation of a statute, or if contrary to public policy and this is known by both parties, it is void. Thus a stipulation that a policy shall be payable though the insured may be executed for a crime is contrary to public policy and is therefore void. The same is true of a stipulation insuring against death by suicide while sane. It is against public policy to allow one person to have insurance on the life of another without his knowledge. A policy issued on a person beyond a specified age is prohibited by statute.

What is the effect of fraud in negotiating and issuing policies? If the company or its agent perpetrates a fraud whereby one is induced to take out a policy, he can at his option declare it [171] void, unless so negligent in acting as to work an acquiescence of it. But if acting in a proper way and time he can set up fraud as a defense in an action to get the premium for which the contract has stipulated; or he may sue to have the policy declared void and his premiums returned to him; or he may bring an action against the company or its agent, or both, to recover the damages he may have sustained by the fraud that has been practiced on him.

On the other hand, if the insured has been wronged, the courts furnish relief, and perhaps may set the policy aside. Mistake is a common ground of relief; it must in all cases be clearly proved. And if a policy is susceptible of two constructions, the ambiguity is to be resolved in favor of the insured. As the company framed the policy all of its provisions in its favor are strictly construed. It may be added that the construction which the parties themselves have put upon a contract of life insurance will be generally followed in determining their intention. Again, the entire contract is to be construed together for the purpose of giving effect to each clause and as between general and specific provisions relating to the same matter the specific provisions control.

In determining who is the beneficiary under the terms of a policy of life insurance the courts are governed by the intentions of the parties. They need not be named if they can be otherwise identified, and may be designated in a separate paper prepared for that purpose. The amount named in the policy generally fixes the liability of the company. To obviate the wager feature, the amount of insurance effected for a creditor on the life of his debtor ought to be limited to the amount of the debt with interest and premiums during the expectancy of the life insured. [172]

The risk is presumed to begin from the date of the policy and to continue until the happening of the contingency or time when payment is to be made by the insured. It may be added that words or figures written or printed on the margin of a policy of life insurance, on its back, or on a slip, with reference to the terms and conditions of the contract, constitute a part of it and must be considered in deciding its meaning. But representations made in a prospectus or circular issued by a life insurance company are no part of a contract.

The payment of premiums to a general agent without notice of any limitation of his authority to receive payments will bind the company, but a different rule applies to a special agent. The premiums may be paid by the insured, or the beneficiary, or by the agent of the company whenever he has agreed to pay them for the insuring party. A discount allowed by the company for the punctual payment of premiums belongs not to the agent, but to the insured. Cash is usually paid, though other arrangements also exist for taking notes, that are ultimately paid in cash or from the earnings of the company, and belong to the insured and would be paid to him. In mutual life insurance companies a portion of the premium is often paid in this manner.

A policy of life insurance payable to the insured, or in the event of his death to his personal representatives, may be assigned unless forbidden by statute, therefore a policy payable to the wife of the insured, or another may be assigned by the united act of the insured and the beneficiary. Thus a policy taken out for a wife's benefit is often assigned by her and her husband [173] to his creditors to secure their debts. In some states statutes forbid the assignment of such policies for the benefit of creditors. The written assignment must be delivered to the assignee to be effective. On some occasions assignments have been declared valid where the intention was clearly proved though both the written assignment and the policy remained in the possession of the assignor. An assignee who holds a policy as security is entitled on its payment only to the amount of his claim and advances with interest, including premiums paid to keep the policy alive and thus preserve his security. More generally premiums paid for this purpose are chargeable on the proceeds of the insurance, but a mere volunteer who pays the premiums acquires no lien on the proceeds of the policy when it is paid. Nor can one who ought to pay the premiums give a lien on the policy to another for money advanced by him to pay them; and an assignee who has promised to pay the premiums may be liable should he fail to keep the policy alive.

Contracts of reinsurance are often made by all insurance companies. In some states the reinsuring company becomes liable to an action by the beneficiary named in the original policy. Where the reinsuring company, by agreement, undertakes to reinsure the members of the other company should they execute applications for that purpose, any member who does this is not required to be reexamined or comply with other conditions respecting his age or health.

A policy may be canceled or surrendered by mutual agreement. After the death of the insured the rights of the parties become fixed, and there can be no cancellation. During his lifetime the insured may abandon his contract by refusing to pay the premiums, but an intention to abandon [174] will not be presumed, nor will the taking out of a second policy before his failure to pay the premiums on the other establish an abandonment. If both parties treat the contract as void, neither can revive it without the consent of the other. As the beneficiary has a vested or definite interest in the contract, the insured cannot, by surrendering the policy, cut off the rights of the beneficiary without his or her consent unless permitted to do so by the contract itself.

A surrender or cancellation of a policy may be avoided on the ground of mutual mistake. But the insured cannot seek cancellation on the ground that he thought it was something else when his mistake was simply his own in not reading the release.

A policy may be rescinded whenever fraud has been practiced by either party. Thus, should a greater premium be demanded than that stated in the contract this would be a good reason for rescinding on the part of the part of the insured. Likewise, if he was induced to take out the insurance by the fraud of the company or its agent, unless he has lost his right to rescind through inaction or negligence. Likewise, the company may rescind for fraud practiced by the insured by misrepresentation or other fraudulent acts concerning his age, health, etc. Concealment of facts may and often does operate as a fraud on the company. Says Justice McClain: "If the applicant has answered the questions asked in the application he is justified in assuming that no other information is desired. On the other hand if he wholly fails to answer questions the company waives information as to matters thus asked for by accepting the application without objection. If, [175] however, the applicant purports to answer a question by giving only an incomplete answer, concealing facts which should properly be stated in response to the question, and these concealed facts are material, the policy is voidable." If a material change for the worse in the health of the applicant takes place after the application and medical examination, it is the duty of the applicant to disclose it. The failure to disclose facts of which the applicant is ignorant, or which are immaterial to the risk, is not ground for avoiding the policy.

When a policy is surrendered or canceled by the contract or by statute, the insured may be entitled to the surrender value of his policy. The amount is to be determined by the period for which the policy has to run, the amount of the annual premium, the age of the insured, and the probability of the continuance of his life stated in the usual life tables. The value of an immatured paid-up policy is the unearned premium called the reserve and is to be computed in the same manner as that of a policy on which annual premiums are paid. The beneficiary is entitled to the surrender value as against the insured, as well as the creditors, unless the beneficiary has consented to giving them the preference.

By a clause in the contract of insurance or by statute, the insured can convert his policy into a paid-up policy for such an amount as the premiums would have secured. These conversions often happen where the insured is unable or unwilling to continue to pay the premiums required to maintain the policy. Formerly on the failure of the insured to pay, policies lapsed or were forfeited, and the insurance companies gained large sums from this source. This led to legislation [176] and to the creation of paid-up policies. These are issued on somewhat different terms, but the principle in all of them is the same.

Minor.—The contracts of a minor are of two kinds, those for necessaries and other things. Contracts for necessaries made by him the law will uphold. They are really implied contracts which the law will sustain for his benefit and protection. What are necessaries is a question of fact, not always easily answered. Much depends on a minor's place in society and condition. The question is for a jury to decide, also whether the prices for them are reasonable or not. One of the well-known cases occurred many years ago. The bill against the minor was for more than a thousand dollars for twelve coats, seventeen vests, twenty-three pairs of trousers, five canes, fur caps, chip hats and other things, in less than six months. The jury rendered a verdict for almost

the entire amount, but the reviewing court remarked that the bill made the members shudder, that the seller must have known that all these things were not needed for the minor's comfort within that short period, and the verdict was therefore set aside.

The question is constantly arising, what are necessaries? A thing might be to one and not to another. Thus a bicycle merely for pleasure would not be a necessity; one that is used to go to and from an individual's daily work would be. A dentist's bill for repairing one's teeth has been disputed, the law, though, generally favors the preservation of human teeth. Education furnished to a minor may be a necessary thing, yet only when it is suitable to his wants and condition. Should a minor repudiate a contract, the law is observed if he restores all that he has received, or [177] that is capable of restoration.

With respect to contracts for other things, they are not always void, but may be avoided. If they have not been executed, he can disavow them at any time. If nothing is done during infancy inaction operates generally as an affirmation. If he disaffirms a contract, he must return the thing purchased or received, or make the best restitution he can, for it would not be just to retain possession and refuse payment.

A different rule applies to a minor who makes a fraudulent contract. Suppose he buys goods assuring the seller that he is twenty-one years of age when in fact he is not, though nearly so. Can the seller recover on his contract? No, but the law has another way of reaching him. He is liable in an action of deceit, and the amount or damage that may be recovered is that of the goods sold to him.

A minor who has a parent or guardian cannot make a contract even for necessaries, nor is he under any obligation to pay his bills for them. Should he be in need of such things and his guardian or parent be unwilling to furnish them, they can be compelled by law if having the means to provide him with whatever he requires.

Mortgage.—Two kinds of mortgages are given, one kind is secured by real estate, the other kind by personal property. In both the borrower of money pledges his property as security while the money remains unpaid. During this period he usually remains in possession and control of the property, though not always. The borrower is called the mortgagor, the lender the mortgagee. The contract is in writing sealed, is in fact a deed. Sometimes the contract is in two writings, the [178] conveyance of the land and security in one, and the conditions or defeasance on which the conveyance is made in another. It is more usual, however, to set forth the transaction in a single writing or conveyance.

A mortgage may be so made as to cover future advances, but it will not cover them in preference to advances or loans made by another without any knowledge of them. Nor need another person who makes such a loan inquire whether a mortgagor has made any other loan, or for a larger amount than that stated on the public record, where the mortgage deed is recorded. For, it should be added, a mortgage deed is recorded like any other for the benefit of all parties, not only to secure the mortgagee from a later purchaser who might buy if knowing nothing of the prior mortgage, but from another who might be willing to lend on such security like himself; or from a creditor of the mortgagor who might attach the property as belonging to him, if he did not know of the existence of the mortgage. As the record is public, and may be examined by everyone, all who are interested in the property are supposed to examine it and thus find out whether it has been mortgaged, and if it has been, the conditions of the mortgage, and if they do not, their neglect is their own.

Improvements, additions of every kind to property after it has been mortgaged, become a part of it, and if the mortgagee takes future possession, they pass to him. But a difficult question arises sometimes, what additions or improvements are included? We have learned what they are whenever a tenancy relation exists. The law does not favor a mortgagor to the same extent. The [179] test to apply is that of intention. If a mill has been mortgaged, the rule is very broad and the mortgage covers machinery attached by bolts and screws though removable without injury to the premises. If a mortgage has been given, by no evidence can it be shown that the deed was intended as an absolute or entire conveyance of the property. On the other hand by proper evidence it can be shown that an absolute conveyance was intended to be only a mortgage. This has been often done. One may ask, why does the rule not work both ways? There is a much stronger probability of making a mistake in the second case than in the other. One of the facts of great importance in such a dispute is the amount of the consideration or money paid. Suppose a piece of land was worth $1000 and the deed mentioned only $100, unless there was some other explanation, there would be a strong probability that the parties intended only a mortgage which for some reason or other was not completed.

Again, it is a rule of law that an agreement which is in fact a mortgage cannot be changed in character by any other agreement made at the time between the parties relating to the repayment of the money and the return of the property. The law presumes that the entire transaction was embodied in the agreement. "Once a mortgage always a mortgage." Of course this rule does not prevent the parties from making any later arrangement they please about the property.

A mortgage may be made with a power of sale whereby, should the debt be not paid at the time fixed, a valid title may be acquired by a purchase from the mortgagee. The mortgagee thus becomes a kind of trustee or agent for the debtor. This is a great responsibility to repose in the [180] mortgagee, and he must perform the trust in good faith in every respect. He must proceed in a

way that will best serve the interest of the mortgagor, and strictly observe the terms stated in the mortgage, otherwise the sale will not be valid and the mortgagor can recover his property. If there is a surplus after satisfying the mortgage debt it must be paid to the mortgagor, or, if he is dead, to his heir. Such deeds of trust are made by large corporations to secure loans, and may be made to secure future advances as well as present ones.

If the property is sold to satisfy the mortgage debt, the mortgagee cannot purchase it, unless authorized by statute, or by the terms of the mortgage; but if it is sold by an officer of the law, the mortgagee is as free to purchase it as any other individual. This rule, though, is denied by some courts, which hold he cannot because the officer is acting as the mortgagee's agent.

A vendor or seller of property, may have for the money he is to receive a lien, which is nearly the same thing as a mortgage. A subsequent purchaser would be affected by this lien, however innocent he might be of its existence. But if the purchaser should mortgage the property to a third person, who should put his deed on record, he would gain a valid lien over the vendor. This lien is founded on the idea that the vendor holds the land in trust for the purchaser until he has paid for it, but is not recognized in every state. It is reasonable to suppose that the owner will not sell his land until he has been paid, or the purchase money has been secured. The lien will also prevail against any assignment that the vendor may make for the benefit of creditors, provided he enforces his lien before the assignee begins to execute his trust. [181]

Much has been said about the notice of the vendor's lien. Any reasonable notice will suffice, but what is such a notice to charge, for example, a second purchaser with knowledge? Payment of a part of the money is held to be knowledge of the lien. Again, a vendee who has paid any part of the purchase money before the delivery of the deed to him has a lien for the amount advanced. A third party who pays the purchase money to the vendor for the purchaser and takes a note for the amount does not have such a lien.

The mortgagor in most states is regarded as the real owner and remains in possession; and the mortgagee has a lien, or security for his advance of money or whatever it may be. The mortgagor may sell his land at any time subject to the mortgage, in other words he cannot by any sale impair the mortgagee's security. On the other hand, the mortgagee can transfer, sell or assign his mortgage to another, and this is often done.

Both parties may insure the premises though the mortgagee cannot exceed his debt. If they are destroyed by fire, the mortgagor cannot claim to have the insurance applied in liquidation of the mortgage debt. The mortgagee, therefore, can first collect the insurance money and then proceed to collect the debt that is due to him from the mortgagor. If the sums collected from the two sources exceed the amount advanced to the mortgagor that is only the mortgagee's affair. But if he insures the property at the mortgagor's request or at his expense, then the mortgagor would have the benefit of the insurance.

Frequently several mortgages are made of the same property. The one that is the first recorded [182] has the first lien, the one recorded next the second lien, and so on. And if the property is subsequently sold to pay the mortgage, the first mortgagee has the first claim to the money received, the second mortgagee next and so on. If there is not enough to pay all, the last mortgagee is the first to be cut off, or to receive less than the full amount due to him.

If a testator devises mortgaged land, is the devisee or person who receives the land also entitled to the money due from the mortgagor? Generally, but not everywhere. A bequest of money securities includes a note secured by mortgage. The mortgagor's interest in the land on his death, if leaving no will directing who shall take it, goes to his heirs, and not to his executor or administrator like other personal property. Of course, if there were no other property that could be used to pay his debts, if he had any, it could be claimed and taken by his creditors for that purpose.

The mortgage usually states a time for paying the debt, and if the terms are not observed, the mortgagee may proceed to take the property. This he cannot do in an arbitrary way, except in the case of mortgages in which the mortgagee is entrusted with power to sell the property and apply the money in payment of the debt. In other cases the mortgagee must apply to the court to fix a time for the sale of the property, if the mortgagor fails to make payment. The courts usually give the mortgagor a period of several weeks or months to pay, and if payment is not made at the end of this period, the land is sold by an officer of the court, who conveys the title to the new purchaser, and if there is any surplus left after satisfying the mortgage, this is returned to the [183] mortgagor. If there is a deficit, he is still liable therefor. Any person who is interested in a mortgaged estate has the right to redeem it; heirs, devisees, creditors. On the death of a mortgagor his heirs may call his executor or administrator to pay the mortgage out of the personal estate if there is any, and not from the sale of real estate, because it was given, so the law presumes, for the benefit of the personal estate belonging to the mortgagor. Or, if the land has been given to a devisee, he can require the executor or administrator to pay the mortgage. Again, if two persons are jointly liable for the debt, and one of them pays it, he may call on the other to contribute his portion. See *Chattel Mortgage*.

Negotiable Paper.—By negotiable paper is meant paper that can be sold and transferred. The law on this subject is now regulated by a statute that is nearly uniform in almost all the states of the Union. The courts are constantly applying it, and in doing so are putting their meaning or interpretation on the words of the statute. Thus far they have looked with quite similar eyes, and no serious differences have arisen.

The statute declares that a promissory note must be in writing and signed by the maker or drawer; that it must contain an unconditional promise or order to pay a certain sum of money on demand, or at a fixed future time to order or to bearer. And if the note is addressed to a drawee he must be named or indicated with reasonable certainty. A note may be written payable with interest or by stated installments, or with exchange, or with costs of collection, or an attorney's fee in case payment shall not be made at maturity.

[184] An unqualified order or promise to pay is unconditional within the meaning of the law even though it indicates a particular fund from which it is to be paid, or a statement of the transaction on which the note is based. Thus the indorsement of the words "per contract" on the back of a note written at the time of its execution does not affect its negotiability.

A note payable at a fixed future time may be at a fixed period after date or sight, or on or before a fixed future time specified therein, or on or at a fixed period after the occurrence of a specified event which is certain to happen, though the time of happening be uncertain. A note that is payable on a contingency is not negotiable, and the happening of the event does not cure the defect. Likewise a note which contains an order or promise to do any act in addition to the payment of money is not negotiable. To this rule, though, are some exceptions. Thus a note may be negotiable that authorizes the sale of collateral securities that have been delivered to the holder if the note is not paid at maturity. But a note stating that the title to property for which it is given shall remain in the payee, and that he shall have the right to declare the money due and take possession of the property whenever he may deem himself insecure "even before the maturity of the note," is not negotiable.

Again, the validity and negotiable character of a note is not affected by the fact that it is not dated, or does not specify the value given or the place where it is drawn, or the place where it is payable, or bears a seal, or designates a particular kind of current money in which payment is to be made. Furthermore, a note is payable on demand when it is thus stated, or is payable at sight or on presentation. Also an overdue note accepted or indorsed is regarded as payable on demand, [185] so far as the maker is concerned.

A note may be drawn payable to the order of a specified person, or to him or his order, or it may be drawn payable to the order of a payee who is not the maker, drawer or drawee, or it may be drawn payable to the order of the drawer or maker, or to the drawee, or to two or more payees jointly, or to one or some of several payees, or to the holder of an office for the time being.

Again, a note is payable to the bearer when it is thus expressed, or to a person named therein or bearer, or when it is payable to the order of a fictitious or non-existing person, and the fact is known to the person making it so payable, or when the name of the payee does not purport to be the name of any person, or when the only or last indorsement is an indorsement in blank. On one occasion funds were deposited in a bank in the name of a federal disbursing agent under treasury regulations that "any check drawn by a disbursing office upon moneys thus deposited must be in favor of the party by name to whom payment is to be made and payable to order." The disbursing officer fraudulently drew checks payable to fictitious payees and cashed them under forged indorsements of the fictitious payees' name. The court held that the checks were not payable to bearer and that the bank was not protected in paying them.

A note is not invalid for the reason only that it is ante dated or post dated, provided this is not done for an illegal or fraudulent purpose. The person to whom it is delivered acquires the title from the date of delivery. If a note expressed to be payable at a fixed period after the date is issued undated, or the acceptance of such a note is ante dated, the holder may insert the true [186] date of issue or acceptance. Nor does the insertion of the wrong date avoid the note in the hands of a regular subsequent holder. More generally, when a note is wanting in any particular material, the holder or possessor has the authority to complete it by filling up the blanks. This authority extends to every incomplete feature of the note and may be used for inserting the date, amount, name of the payee, and time and place of payment. When authority is conferred on another to fill blanks it must be strictly followed. If a note is drawn payable with interest at the rate of __ per cent, it draws interest at the legal rate, although the blank is not filled. The presumption that a note was completed before it was signed and not afterwards does not arise in a note written in several inks and by different hands. And the purchaser of a note with an unfilled blank is put on inquiry respecting the authority of a person entrusted with an incomplete note. Thus A signed blank forms of notes and left them with his attorney, but with no authority to complete and issue them until instructed. The attorney filled them up without further instructions and issued them to a person who knew they had been signed, that the attorney had a power of attorney to act for A, but did not attempt to read or otherwise ascertain its terms. A was not prevented from denying the validity of the notes. In another case a person who signed a number of notes in blank as to date, payee and amount, and left them in his desk in his office, whence they were stolen, filled in and indorsed to B for value before maturity and without notice of any defects, was nevertheless not liable on them. When therefore an incomplete instrument has not been delivered it cannot be completed and negotiated without authority, and if it is, it is not a [187] valid contract in the hands of any holder as against the person whose signature was placed thereon before delivery.

Every contract on a negotiable note is incomplete and revocable until its delivery. As between the immediate parties, and also a remote party other than a holder in due course, the delivery, in order to be effectual, must be made either by the authority of the party making, drawing, accepting or indorsing as the case may be. The delivery may be shown to have been conditional, or for a special purpose only, and not for the purpose of transferring the property of the note. But

where the note is in the hands of a holder in due course, a valid delivery thereof by all parties prior to him is conclusively presumed.

When the language of a note is ambiguous the following rules of construction are applied: (a) if there is a discrepancy between the words and figures in expressing the amount, the words control, if the words are ambiguous or uncertain, reference may be had to the figures to fix the amount; (b) if the note provides for paying interest without specifying the date from which it is to run, the interest runs from the date of the note, if this is undated, from the issue of it; (c) if not dated a note will be considered as dated from the time of issue; (d) if there is a conflict between the written and printed provisions, the former will prevail; (e) if it is doubtful whether the instrument is a bill or note, the holder may elect which it shall be; (f) it is not clear in what capacity the person making the note intended to sign he is to be deemed an indorser; (g) when a note containing the words "I promise to pay" is signed by two or more persons, they are deemed [188] to be jointly and severally liable thereon.

The signature of any party may be made by a duly authorized agent. No particular form of appointment is necessary for this purpose, and the authority of the agent may be established as in other cases of agency. If, however, one signs as agent without disclosing his principal, he is personally liable. Thus, a husband signed a note in his own name without adding more. As he had disclosed no principal, he was personally bound, and his wife, for whom he claimed to have signed the note, was not liable. The maker of a note added to his signature, "Pastor of St. Frances' church." This was regarded as his personal note, all besides his name were words merely of description. A person signed a note thus: "Estate of William R. Clark by William R. Clark, Jr., Trustee." As he was not authorized to borrow on behalf of the trust and give a note as trustee, he was individually liable notwithstanding the form of the note.

Where the signature is forged or made without the authority of the person whose signature it purports to be it is wholly inoperative. Thus A cashed a number of drafts and checks payable to B's order on a forged indorsement of B's name by B's bookkeeper, who appropriated the money to his own use. Nevertheless, B recovered the amount of the drafts and checks from A, nor was his negligence in not examining the bookkeeper's books or accounts a good defense. In another case before a note was delivered to and accepted by the payee, A, whose name appeared on the back, was shown the note who said, "Everything is all right." Afterward he resisted payment on the ground of forgery. As the payee was induced to take the note on A's statement of its [189] genuineness, he could not escape payment.

Every negotiable note is deemed to have been issued for a valuable consideration, and every person, whose signature appears thereon, to have become a party for the value. An accommodation party is one who has signed the note as maker, drawee, acceptor or indorser without receiving value therefor, and for the purpose of lending his name to some other person. Such a person is liable on the note to a holder for value, though the latter knew he was only an accommodation party.

What is meant by negotiating a note? By transferring it in a way whereby the transferee becomes the holder or owner. If payable to bearer it is negotiated by delivery; if payable to order it is negotiated by indorsement and delivery. An indorsement may be either special or in blank; and it may also be either restrictive, or qualified, or conditional. A special indorsement specifies the person to whom, or to whose order the note is payable. An indorsement in blank specifies no indorsee, and a note thus indorsed is payable to bearer and may be negotiated by delivery. The holder may convert a blank indorsement into a special one by writing over the signature of the indorser in blank any contract consistent with the character of the indorsement. By a qualified indorsement the indorser becomes a mere assignor of the note, and is made so by adding to his signature the words "without recourse," or others of similar import. Such an indorsement does not impair the negotiable character of the note. When a note is payable to the order of two or more payees or indorsers who are not partners, all must indorse unless the one indorsing has authority to indorse for the others. Again, where a note is drawn or indorsed to a person as [190] cashier or other fiscal officer of a bank or corporation of which he is the officer, it may be negotiated by either the indorsement of the bank or corporation or by the indorsement of the officer. And where the name of a payee or indorser is wrongly designated or misspelled he may indorse the note as therein described, adding, if he thinks fit, his proper signature. The holder may at any time strike out any indorsement which is not necessary to the title. When this is done, he and all subsequent indorsers are thereby relieved from liability on the note.

The holder of a negotiable note may sue thereon in his own name; and payment to him in due course discharges it. Who is a holder in due course? One who holds a note on the following conditions: (a) that it is complete and regular on its face; (b) that he became the holder before it was overdue and without notice that it had been dishonored; (c) that he took it in good faith and for value; (d) that at the time of its negotiation to him he had no notice of any infirmity in the note or defect in the title of the person negotiating it. A note therefore, providing that any delinquency in the payment of interest "shall cause the whole note to immediately become due and collectable" is made overdue by the maker's failure to pay the interest when due, and a subsequent taker cannot be a holder in due course.

To constitute notice of an infirmity in a note or defect in the title of the person negotiating it, the person to whom it is negotiated must have had such actual knowledge of the infirmity or defect that his action in taking the note amounted to bad faith, but merely suspicious circumstances are not enough to put a prudent man on inquiry.

On the other hand if the purchaser does suspect and fails to investigate, lest a defense be [191]

disclosed to the maker of the note, he is not a purchaser in good faith. The maker of a note engages that he will pay it according to its terms and admits the signature of the payee and his capacity to indorse, and engages that on due presentation the draft will be accepted or paid or both, according to its terms, and that if it is dishonored, and the needful proceedings in consequence are taken, he will pay the amount. A person placing his signature on a note otherwise than as maker, drawer or acceptor is deemed to be an indorser unless he clearly indicates his intention to be bound in some other way. The Negotiable Instruments Act fixes the liability of a person who is not a party to a note, and who indorses it before delivery. The law was in great confusion before this act established a definite rule. Such a person is now liable as indorser in accordance with the following rules: (a) if the note is payable to the order of a third person, he is liable to the payee and to all subsequent parties; (b) if payable to the order of the maker or drawer, or if payable to bearer he is liable to all parties subsequent to the maker or drawer; (c) if he signs for the accommodation of the payee he is liable to all parties subsequent to the payee.

Presentment for payment is not necessary in order to charge the person primarily liable on a note, but if it is payable at a mentioned place and he is able and willing to pay it there at maturity, such action is equivalent to a tender of payment on his part. Presentment for payment, of course, is needful to charge the drawee and indorsers. When the note is not payable on demand, presentment must be made on the day it falls due. When it is payable on demand, [192] presentment must be made within a reasonable time after its issue. This rule does not apply to all bills of exchange. Thus unreasonable delay in presenting a check will discharge the indorser whether such delay is a cause of loss to him or not. Likewise a certificate of deposit payable on demand must be presented for payment within a reasonable time after its issue in order to hold the indorser. "The usage of trade or business includes the usage of banks relating to presentment of checks for payment. It is sufficient diligence to charge an indorser if a check on the bank in another place is forwarded through various banks for collection in accordance with the regular usage of the business, although presentment might have been more promptly made if a more direct course had been taken." Presentment for payment must be made by the holder or by some person authorized by him to receive payment, at a reasonable hour on a business day and at a defined place, and to the person primarily liable thereon. And if he is absent or inaccessible then to any person who is at the place where presentment is made. If a note is payable at a bank the payor has until the close of banking hours to pay it, and if, before the close of the bank day, he deposits money enough to pay it a demand earlier in the day is premature. Delay for presenting a note for payment is excused where the delay is caused by circumstances beyond the holder's control, and he is in no way negligent. Nor need presentment for payment be made when after using reasonable diligence it cannot be made, or where the drawee of a bill is a fictitious person, and lastly where presentment, express or implied, has been waived.

Every negotiable note is payable at the time fixed therein. When the day of maturity falls on [193] Sunday or a holiday, the note is payable on the next succeeding business day. Notes falling due on Saturday are to be presented for payment on the next succeeding business day, except that notes payable on demand may, at the option of the holder, be presented for payment before twelve o'clock noon on Saturday when that entire day is not a holiday.

When the note is payable at a fixed period after the date, after sight, or after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run, and includes the date of payment. And where a note is made payable at a bank it is equivalent to an order to the bank to pay it for the account of the principal debtor thereon. In accordance with the notation on the margin of a note the holder sent it for collection to a bank which held, as a special deposit, the maker's money. The cashier at maturity notified the maker who directed the cashier to pay the note. The cashier said "All right, your note is paid." The note was regarded as paid.

When a negotiable note has been dishonored by non-acceptance or non-payment, notice of dishonor must be given to the drawer and to each indorser, and any drawer or indorser to whom such notice is not given is discharged. A written notice need not be signed and an insufficient notice may be supplemented by verbal communication. Nor does misdescription of the note vitiate the notice unless the party to whom the notice is given is in fact misled thereby. The notice may be in writing or merely oral, and may be given in any terms which sufficiently identify the note and indicate that it has been dishonored by non-acceptance or non-payment. It may be [194] delivered personally or through the mails. Where the parties to be notified are partners, notice to any one of them is notice to all even though there has been a dissolution. But notice to joint parties who are not partners must be given to each of them, unless one of them has authority to receive the notice for the others.

When the person giving, and the person who is to receive notice reside in the same place, it must be given within the following times: (a) if given at the place of business of the person who is to receive notice this must be done before the close of the business hours on the day; (b) if given at his residence it must be given before the usual hours of rest on the day following; (c) if sent by mail it must be deposited in the post office in time to reach him in usual course on the day following. If the parties reside in different places the notice must be sent within the following times: (a) if sent by mail it must be deposited in the post office in time to go by mail the day following the day of dishonor, or if there be no mail at a convenient hour on that day by the next mail thereafter; (b) if given otherwise than through the post office then within the time notice would have been received in due course of mail if it had been deposited in the post office had it been deposited in the post office as above described.

If a party had added an address to his signature the notice must be sent to that address, if he has not, then the notice must be sent as follows: (a) either to the post office nearest to his place of residence or to the post office where he is accustomed to receive his letters, or if he lives in one place and has his place of business in another, notice may be sent to either place, or if [195] sojourning in another place, the notice may be sent there. In any event if he receives the notice within the time specified, it will satisfy the law.

Of course notice may be waived; sometimes, also, it is quite impossible to give notice; whenever this happens the law does not require notice to be given.

Something should be added concerning alterations that are made occasionally in negotiable instruments. Any alteration which changes the date, the sum payable either of principal or interest, the time or place of payment, the number or the relations of the parties, the medium or currency in which payment is to be made, or which adds a place of payment where no place of payment is specified, or any other change or addition which alters the effect of the instrument in any respect is a material one and ought not to be made. To add the words "with interest," with or without a fixed rate, is a material alteration. But the insertion by the payee of the words "interest" after the making of a note by authority of maker will not vitiate it. And if a note had the clause, "interest at __ per cent," the insertion of the legal rate would not be a material alteration since the legal import would not be changed.

The position of a writing on a note is not important, for the effect of the contract is to be gathered from the four corners of the paper. The general rule is, if a memorandum written on an instrument in the margin or at the foot is made before or at the time of its execution, it is considered a part thereof, and if it affects the operation of the terms of the body of the instrument it is a material part. It follows that words written by a party on the margin of an instrument after its execution and delivery, constitute an alteration if intended to affect the terms [196] of the instrument and would have such effect if they were there when the instrument was executed.

A bill of exchange is an unconditional order in writing addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed determinable future time a certain sum of money to order or bearer. A bill of itself does not operate as an assignment of the funds in the hands of the drawee available for its payment, nor is the drawee liable on a bill until he accepts or agrees to pay it. An inland bill is one drawn and payable within a state. Any other is a foreign bill.

An indorsed promissory note and an accepted bill are very much the same thing, and that is why the law always treats of both together. The maker of a note incurs the same obligations as the acceptor of a bill, both are the parties primarily liable thereon, and the indorser of a note and the drawer of a note are both secondarily liable on proper notification of the failure of the primary parties to pay, as we have learned. The payees in both cases are the same. The acceptance of a bill is the signifying by the drawee that he has assented to the drawer's order, and must be in writing. An unconditional promise in writing to accept a bill before it is drawn is deemed an actual acceptance in favor of every person who on the faith thereof receives the bill for value. The drawee is allowed twenty-four hours after presentment to decide whether or not he will accept the bill; but the acceptance, if given, dates from the day of presentation. Furthermore, an acceptance may be qualified as to time, acceptance of payment in part only and in other ways. When a foreign bill is not accepted it must be protested, which must specify the time and place of [197] presentment, and other particulars, and is usually made by a notary public, though this can be done by other persons.

Parent and Child.—A parent is legally as well as morally bound to support his children who are incapable to care for themselves. Should a wife be divorced from her husband his duty to maintain the children would not fall on her, unless she also had the custody of them. A father's obligation to maintain his child continues until he is able to provide for himself. The legal obligation ceases by common law as soon as a child attains majority, however helpless he may be or great may be his father's wealth.

A child that has property of his own, while his father's means are not enough, may be supported from his own means. Even the principal may be used in this manner. Generally if the father has ample means, he must use them to educate his child. When the father can use the child's fortune and how much, is sometimes a difficult question to answer. The education of a child is now largely regulated by statute.

A parent may protect his child, even a homicide is justifiable. A parent can also correct his child. Says an excellent authority: "The rights of parents result from their duties. As they are bound to maintain and educate their children, the law has given them such authority, and, in support of that authority, a right to the exercise of such discipline as may be requisite to the discharge of the sacred trust." See *Adopted Child*; *Husband and Wife*.

Partnership.—There may be a partnership in a single transaction, for example, to buy and sell [198] a load of potatoes. Persons may be liable as partners to others who had no intention of creating that relation. If A acts in such a way by speech or deeds as to create the belief in B that he is a partner, and thus believing B sells goods to the partnership, A is liable as a partner for them. On the other hand if B knew that A was not a partner, he could not hold him as one. In many cases it is difficult to determine whether one is a partner or not. Many tests have been applied. The most

general is that of intention. Simply sharing in the profits and losses will not always suffice. This was long considered a proper test but it broke down after many applications. Thus, suppose a clerk is paid by giving him a fixed percentage of the profits as a compensation, is he a partner? He was so regarded on one occasion, and the firm having failed he was made liable for all its debts. That is one of the consequences attending the relation, every partner is liable for the entire indebtedness of the amount he may have contributed. The clerk contributed nothing, nevertheless he was liable like the others. Today the courts would decide such a case differently. It would inquire whether the partners intended to make him a partner, or only gave him a share of the profits as a mode of paying him for his service. The recent Partnership Act contains this test.

A partnership may usually hold any kind of property, real and personal, and not infrequently is formed to cultivate or deal in land.

A partner is a general agent. Hence the risk of creating the relation. Being a general agent he can bind his partnership for any acts within the scope of his authority. Yet there are limitations. If [199]
a partnership was engaged in selling dry goods, a partner could hardly bind his partners by making a contract with a person for a quantity of iron, unless it was needed in rebuilding the store, or in some other connection with the business. He can make and indorse negotiable paper that is used in connection with the business. Suppose he borrows money on his own note and he gives the money to his firm, is it responsible for the amount? This has proved a hard question for the courts. If the money though loaned on his note was for the benefit of the partnership, and it was known at the time that it was to be used in that way, the partnership would be liable; but if the money was to be used by the borrower and this was known and believed by the lender he could look only to the borrower for payment.

The receiving of a new member constitutes a new partnership. It may reorganize the old partnership and become responsible for its debts, or it may not. Unless recognized in some way by paying interest on them and the like, the new member does not become responsible for them.

A partnership is formed usually by a definite agreement that is put in writing. Yet it may be simply an oral agreement with very general terms about the contribution of capital or skill of the respective partners and their division of profits. They may and usually do have distinct fields of employment, each doing the thing for which he is, or supposed to be, best prepared. By reason of their general liability, in the olden days persons who wished to thus engage and yet not be responsible, were kept in the background, and were known as secret and dormant partners. If found out they were liable because they were to share in the profits. The fact that they were [200]
unknown when credit was given to the partnership at the time of selling goods to the concern did not shield them from liability after the discovery of their relation.

The difficulty has since been removed in two ways, by incorporating the partners into a corporation whose powers and liabilities are fixed by law and therefore known to all, and by forming limited liability partnerships. These consist of two or more general partners, also special partners who contribute an amount of capital, of which the public is publicly informed. If such an association is unsuccessful, the special partners may indeed lose all, or a part of the capital they have contributed, but are liable for no more. This is a great improvement over the secret and dormant methods of getting the capital needed for partnership purposes. One of the matters that should be carefully guarded in forming a limited liability partnership is to contribute the full amount of capital advertised. If any deception is practiced, or mistake made, whereby a smaller amount is contributed, should the partnership not succeed, the special partners become liable as general partners for the full amount. Once such a partnership was formed with three special partners who contributed each $100,000, and at the end of two years were told that their profits individually were $60,000. Each was asked to contribute $100,000 more, and feeling happy over his venture, he put in $40,000 more, which, added to his profits, made up the required amount. When the concern failed a few years afterwards the books showed that neither special partner was ever entitled to $60,000 as profits. Though innocent, for they had never examined the books, they were held as general partners for the entire indebtedness of the concern. [201]

An illegal contract made by a partner will not bind his partnership, for all parties are supposed to know the law, and an illegal bargain cannot be enforced, for example, an agreement to pay usurious interest.

How may a partnership be dissolved? Unless the time is fixed by agreement, it may be dissolved by any member whenever he pleases to do so, though he cannot act wantonly to the manifest injury of the others without making himself responsible for their loss. And if a partner should attempt to transfer his interest before the time fixed for ending the relation without good reason, to the manifest injury of the other partners, he can be legally restrained from taking such action.

The death of a partner causes a dissolution. Nor can executors or administrators succeed to his place, though they often do so for a short period to prevent the interruption of the business and to enable all parties to fare better than they would by its sudden ending. Yet it is awkward for these officials to thus act, and in so doing they incur an unpleasant personal responsibility. To relieve them from this some states have passed statutes permitting them to thus act with the other partners under the direction and orders of the court having charge of the estate.

A partner who retires should give notice of his retirement to relieve himself from future liability. For, should he neglect, and persons continued to sell on credit to the firm, supposing he was a member, he would be liable as before. The statutes in some states regulate his duty in this regard; it is one that he cannot safely omit.

Should a partnership fail, the general rule with respect to the assets is the partnership property must be used to pay partnership debts, and the individual property of partners to pay their individual debts. If a partner has anything left after paying his individual debts, it must be devoted to paying the partnership debts. If the partnership has anything left after paying its debts, this belongs to the partners in accordance with their agreement in contributing it and the earnings, and must be devoted to the payment of their individual debts. [202]

Lastly concerning the authority of a liquidating partner. He can do many things, give renewal notes, make indorsements, collect debts due the partnership, and even revive an outlawed debt. Of course the affairs of a partnership may be settled by some other person than a partner; not infrequently a receiver is appointed who acts under the order of the court that appointed him.

An agreement between a liquidating partner and the other partners, to take all the property and pay all the debts, is limited in its effect to themselves and does not affect others. After the partnership assets have been transferred to a liquidating partner, or to any other person for liquidation, a debtor who has notice of the transfer is not justified in making a settlement with any one else. And if he should do so, the liquidator could require him to pay again to himself.

Patent.—In the United States the thing patentable is a new and useful art, machine, manufacture or composition of matter, or new and useful improvement thereof, or new, original and ornamental design for an article of manufacture. An idea, principle or law of nature is not patentable, but only the means for utilizing the idea or principle. Many a great discovery has slipped away from the inventor or discoverer, because he sought to hold the discovery or invention of the principle as his own, instead of limiting his claim to the means or methods of putting his principle into use. Morse's invention of telegraphy is one of them. An art or process is patentable as well as machinery, though the inventor may not know the abstract principles involved in his art. But he must know and describe the steps by which the result is accomplished. A composition of matter is a mechanical mixture or chemical combination of two or more substances; and an improvement is an addition to, or change in, a known art, machine, manufacture or composition of matter, which produces a useful result and is patentable if it amounts to invention. Lastly "a patentable design may consist of a new and ornamental shape given to an article of manufacture, or of an ornamentation to be placed upon an article of old shape." It is said that the law relating to this subject intends that the patentability of a design shall be determined by its appeal to the eyes of the ordinary man, and not to the eyes of a jury of artists. Design patents are granted for different periods, three years and a half, seven years and fourteen years, as the applicant may elect. [203]

The subject matter of a patent must be new and useful. It must be new not only to the patentee, but to all the people in this country, and at the time he filed his invention. The federal law, however, secures a patentee who had no knowledge that his invention had been discovered abroad and which had not been patented there, nor described in a printed publication. Before the enactment of this law a patent was not granted without showing that the applicant was the original inventor with relation to every part of the world. [204]

Much has been said concerning the novelty of an invention. This may be in the use of an old means in a new way; or a change of shape or form to produce new functions and results, but the changes must amount to invention, which is more than mere novelty.

A foreign patent in order to invalidate an American patent must antedate the invention patented. A foreign patent exists as a patent only as of the date when the invention was published. In England an invention is not patented within the meaning of the act of Congress until the enrollment of the complete specification.

What is meant by a prior publication? It is a printed book, newspaper or document of a public nature disclosing the invention intended and actually employed for the purpose of informing the public. Publication in a book of general circulation is sufficient; business catalogues or circulars are not such publications as are meant in the law.

To defeat a patent on the ground of want of novelty the proof of prior use or knowledge must be convincing, sufficient to establish the fact beyond a reasonable doubt. The recollection of one witness concerning the peculiar construction of a piece of machinery, especially if the structure is one of complex character, is not enough evidence to defeat a patent. Much less evidence, however, might be sufficient to prove that a very simple invention had been anticipated.

To justify the granting of a patent it must be useful. If the invention be frivolous or pernicious, the inventor cannot secure for it legal protection. The use of the invention must not be contrary to public health or morals. It is not needful that the invention should be the best of its kind, or that it should accomplish all that the inventor claims for it. Furthermore, its utility depends on the state of the art at the time of making the claim or issuing the patent; its subsequent inutility does not invalidate the patent. Extensive use is evidence of utility. The presumption of law favors a patent, and the burden of proof is on the one attacking it to show that it is not useful. The infringement of an invention is in effect an admission of utility, because use implies utility. [205]

A patent also calls for the exercise of inventive power. Though invention must be seen in every patent, it is difficult to define. Says a former commissioner of patents, Justice Duell: "It is a matter resting in judgment and therefore no fixed rule for its determination is possible." Some principles, however, assist in defining the term. "Thus, it is declared that an act of invention is primarily mental and involves the conception or mental construction of a means not previously known for accomplishing a useful result. It is not the mere adaptation of old means by common

reasoning, but is the construction of new means through an exercise of the creative faculties of the mind." Between invention and discovery the patent laws draw no distinction. Again, it has been often said that the design of the patent laws is to reward those who make a substantial invention or discovery, which is an additional step in the useful arts. The law never intended to grant a monopoly for every trifling device which would naturally occur to a skilled mechanic in the ordinary progress of manufacture.

An article of manufacture is not patentable because means have been devised to make it more [206]
perfectly than before; it must be new in itself and not merely in its workmanship. A machine-made article therefore is not patentable simply because it is thus made, and no longer by hand.

The substitution of an art, manufacture, or composition of matter of one element or device for another which does the same thing in the same way and accomplishes a similar result is not invention. Even if the substituted part performs the function better, there is no patentable invention unless some new function or result is secured. Changes therefore of the relative location of parts without changing the functions performed by them are not an invention, nor is the omission of a part with a corresponding omission of function.

A patent can issue only to the inventor, or if he is dead to his executor or administrator. If there be two original inventors the one who first made it or brought it to this country is entitled to a patent. A patent granted on the application of a non-inventor is void. By first inventor is meant the one who first had a mental conception of the invention provided he exercised diligence in perfecting it. If there be a rival claimant the party who first reduced to practice the invention was, until the contrary fact is shown, the first inventor. One who merely utilizes the ideas of others is not an original inventor and is not entitled to a patent. In the United States any person, regardless of residence, citizenship or age may obtain a patent.

An invention is reduced to practice when it is so far perfected that it may be put into practical and successful use. The machine may not be perfectly constructed, but it embodies all the [207]
essential elements of the invention. Demonstration of its success by actual use is usually necessary, but not always. The reduction to practice must be by the applicant for a patent, or by his agent; to do this by a third party will not suffice. The person who first conceived the invention, but was later than his rival in reducing it to practice, is not regarded as the first inventor unless he exercised due diligence to perfect his invention after the time that his rival entered the field against him.

Two or more parties may contribute in developing an idea and producing an invention, which is truly the result of their joint mental efforts, and not the separate invention of either. In such case both must apply for the patent, which is granted to them jointly. But if a patent is thus issued to two and only one of them is the inventor, the patent is invalid. Nor can one of two joint inventors make application and secure the patent on assignment from the other; both must join.

The patent must issue on the application of and in the name of the real inventor even though he was employed to make it for the benefit of another. Notwithstanding, the employer is the owner of the patent and may compel the patentee to transfer it to him. Of course their respective rights may be changed by agreement. If no agreement exists, a company that employs a skilled workman to make improvements on its machinery is not entitled to the patents granted to the workman. Says Justice Duell: "An employee, performing all the duties assigned to him in his department of service, may exercise his inventive faculties in any direction he chooses with the assurance that whatever invention he may thus conceive and perfect is his individual property. [208]
The company, however, has an implied license to make, use and sell the invention."

Where a party employs another to assist him in perfecting an invention the presumption is that the employer is the real inventor of the thing produced by their joint effort. On the other hand, where a person is employed to exercise his inventive skill, because he is known to be the possessor of it, Edison for example, the presumption is in favor of the employee. Government employees may secure patents on inventions made by them during their employment, after their relationship has ceased. The government may have an implied license to use the invention without any title thereto.

Patents may be issued and reissued to assignees on the application of inventors. On the death of an inventor before a patent has been issued to him, his executor or administrator may apply therefor, who takes the patent in trust for the heirs. A foreign executor or administrator may make a similar application. He must, however, present a proper certificate of his authority to act. Likewise, a legally appointed guardian or conservator of an insane inventor may apply for and obtain a patent in trust for him.

The inventor must apply to the commissioner of patents for letters patent which secure to him his invention. The application comprises a petition, specification, claims, oath, drawings if the nature of the invention may be thus shown, and a model, when this is required by the patent office. A fee of fifteen dollars also must be sent with the papers. The application must be signed by the inventor and two witnesses.

The specification is the written description of the invention and of the manner and process of making, constructing, compounding, and using the invention; whatever it may be. He must [209]
describe not merely the principle of the invention, but the mode of applying it in such a clear, intelligible manner that those who are "skilled in the art" can, without other aid, use the invention. Nothing should be left to experiment. The phrase "skilled in the art" means persons of ordinary skill. Whether a description is clear, exact and sufficient is a question for the jury whenever it is a matter of legal contention.

In describing an improvement the same rule is applied. The description should show clearly the nature of it. The description should distinguish between the old and the new. "A description in a patent for an improvement is sufficient if a practical mechanic acquainted with the construction of the old machine in which the improvement is made, can, with the aid of the patent and diagram, adopt the improvement." If an inventor intentionally conceals facts or misleads the public by an erroneous description, his patent is void.

Concerning the claim or claims with which the inventor concludes his specification many questions have arisen. First, the claim must be clearly stated so that the public may know what it is. The claim should not be too broad. Several claims may be made, but they should not be varying phraseology for the same thing. They should state the physical structure or elements of mechanism by which the end or result is produced.

The inventor must make oath that he believes himself to be the original and first inventor, that he does not believe that the thing was ever before known or used, and as to his citizenship. If dead or insane, the oath must be made by his executor, administrator, or other representative. [210] After the application is granted another fee of twenty dollars must be paid.

The commissioner of patents must make an examination for the purpose of deciding whether a patent may be granted or allowed. This examination is made by an examiner, whose decision, however, is not conclusive and may be set aside by the commissioner. The patent office is not confined to technical evidence in rejecting applications, but may base its action on anything disclosing the facts relating to the matter.

When objection is made to the form of the application, an amendment may be made by the applicant or his attorney to correct the error; and this may be done at any time prior to the entry by the first examiner of a final order of rejection, and within one year from the date of the preceding action by the patent office.

When two parties apply for a patent for substantially the same thing an interference is declared and the respective parties must present proofs in support of their claims. The question between them is priority of invention. The proceeding then is much like an equity trial with perhaps a wider latitude in admitting evidence bearing on the inquiry.

The applicant, if dissatisfied with the rejection of his claim by the first examiner, or with the decision in an interference case, can appeal to the board of the examiners-in-chief, and if dissatisfied with their decision he may appeal to the commissioner in person, and if still dissatisfied he can appeal to the Court of Appeals of the District of Columbia. All appeals must be taken from the patent office within a year, or a shorter period, if one has been fixed in a decision. [211]

The decision of the commissioner of patents in granting a patent is not conclusive that the inventor is the first and original inventor, but only prima facie, that is, in the absence of other evidence to the contrary. Consequently, the question of patentability in every case may be reexamined in the courts. In the early days of administering the patent law an inventor often applied to a court for an injunction to prevent an infringer from continuing his work. The court, assuming that the patent had been properly granted, did not hesitate, on adequate proof of the infringement to grant the injunction. The courts were not slow in finding out that patents were sometimes granted that ought not to have been, and so the practice was changed and patentees were required to establish their right to a patent in a court of law before a court would enjoin an infringer, except in very clear cases. These hearings in the courts to decide the claims of patentees, are often prolonged, running through years to collect testimony, and are appealed from one court to another finally reaching the supreme federal tribunal. After a patent is thus judicially established injunctions are readily granted against all infringers.

Payment.—In making payment the parties to an agreement always have in mind cash, unless they otherwise agree. Not every kind of money can be used, nor only in limited amounts. Thus, if one owed another a thousand dollars he could not deliver to him, unless he were willing to accept them, one thousand silver dollar pieces, but only ten of them. Nor can a debtor compel his creditor to receive one cent and five cent pieces to a greater amount than twenty-five cents. [212] National bank notes may be paid or tendered to the government, and by one bank to another, yet they may be refused by an individual in payment of his debt. It is important, when one owes another and there is a dispute over the amount, that the debtor should tender or offer to pay his creditor the proper kind of money, because should he offer him some other kind, national bank notes for example instead of United States notes, or those issued by the federal reserve bank, and he declined to take them and should afterwards sue his debtor for the amount, the latter's offer to pay in national bank notes would be regarded as no payment, or even offer of payment.

A note or check given for a bill of goods is not payment. In everyday affairs a check is thus given and received, in fact it is only a payment conditioned on payment of the check. Consequently if it is not paid, the creditor can sue to recover on the check, or for the original goods as he might elect. In most cases he would ignore the check and sue for the original bill. Suppose some one had endorsed the maker's check, then the creditor would probably sue on that in order to hold both parties.

Does a debtor who turns over a note to his creditor in payment, thereby cancel the debt? If he does not, of course the creditor can still sue the debtor; but if he turned the note over in actual payment, then his right to sue his debtor is gone. What was the intention of the two parties? This is a question of fact to be ascertained like any other.

How shall the money be applied of one who owes several debts to the same person and makes a general payment? The debtor can make the application, if he does not, the creditor can do so; if [213] neither does this, then the law applies it, first to the payment of interest that may be due on any of the debts, and the balance left, should there be any, to the payment of the principal. Of several debts the law applies it to the oldest debt. Again, if there is a surety for any of the debts, he may insist on the application of the money in order to be relieved.

If a depositor in a bank has made a note payable there this is regarded very much like a check, it is a direction to the bank to pay it, especially by the Negotiable Instruments law. Unless the maker of a note is insolvent, a bank can never pay the unmatured note of a depositor. Nor can a bank apply a deposit, which is known to be trust money, or belonging to another person than the depositor to the payment of his note. Generally a bank declines to pay a note that is overdue though there is no law, except in a few states, against paying it should the bank decide to do so. In all cases a depositor may make any application of his deposit he desires, for it is his own and the bank cannot divert it in any way against his direction.

A receipt taken in payment of a debt is not conclusive evidence of payment and may be contradicted by other evidence, though it is regarded on its face as payment. When received, a receipt should be kept for at least six years, because it is such strong evidence of payment. After that period the statutes of limitation in most states have the effect of canceling a debt, on the theory or presumption that it has been paid. If the debtor afterward promises to pay, his new promise is valid though there is no consideration therefor, and he is legally required to pay the debt.

Should a receipt also contain any other statement or contract beside the payment of money, [214] this would have the same effect as any other contract between the parties, and would be equally binding on them.

The effect of a seal after the receiptor's name may be explained in this connection. A sued B and C for a debt. Before trial he gave C a receipt stating that if he did not recover from B he would nevertheless not hold C liable. Having failed in his suit against B, he sought to hold C notwithstanding his receipt releasing him. And he succeeded for the reason that his release was given without consideration and therefore was worthless. Had A added after his name a seal this would have imported or implied a consideration and the receipt would have been an effective release.

Prescriptive rights.—A person may gain rights in the land of another by acting in such a way as to indicate that he clearly makes a claim to them. Thus, if a man goes over the land of another in the same direction to his own land for a period of fifteen years or longer, the period differing in the several states, he acquires the right to continue, in other words he acquires a permanent right of way by such action. As such a right is contrary to the interest of another, it cannot be gained against a person who is incapable of preventing the acquisition of such a right if he pleases. Such a right, therefore, cannot be gained against a minor, nor an insane person, nor any one who is incapable of defending his possessions.

Whether the right has been fully acquired is not always easily determined. Suppose one claims a right of way over another's land, and the right is disputed. How often has he traveled that way? Has the other person known of his going and said nothing? Again, suppose a man sells another a [215] piece of his farm away from a road, the law presumes that he intended to grant or permit the buyer to have ingress and egress to his land, otherwise he would not have purchased. This is called a way of necessity. Can the purchaser choose any outlet he pleases? The law says he must exercise reasonable discretion in making his selection.

When a way has been acquired by such use, the law is strict in confining the gainer in the use of it. Thus A buys a piece of land of another for the purpose of erecting a house thereon. The use of the way thereto must be confined to A and his family, friends and those who come to see him on business. Suppose A should decide to divide it into building lots, which would require a greatly increased use of the way. This could not be done without a new agreement with the seller. Again, a tenant cannot by any use of the land acquire a right therein that will continue beyond his lease. If he had a long lease, say thirty years, and could gain a prescriptive right by an adverse use of fifteen or twenty years, he would, if gaining any prescriptive rights, be obliged to give them up at the end of his tenancy. In claiming a right of way the use need not be exclusive. Other persons may also use the way with the same claim of right.

The owner of land has no natural right to light or air and cannot complain that either has been cut off by the erection of buildings on adjoining land. He may, however, acquire, by grant or some other way, a right to have light and air enter a particular window, or other place, without interruption by the owner of adjacent land. Nor can he acquire a right to light and air across another's land for his own house by simply erecting it on the edge of his own land while the [216] adjoining land is unoccupied. To erect windows on that side is not an adverse use of the land adjoining. But a person may gain a right to light and air by presumption, and if one has acquired the right to maintain a window in a specified place he loses his right by closing it up and opening another of a different size in another place. And the same thing happens to one who tears down his house and builds a new one with windows of the same size and in the same places as in the old one. A person cannot maintain an action against another for cutting off his view unless the right has been expressly acquired.

The general rule with respect to the use of water is, any person through whose land flows a

stream may use it in a reasonable manner. What is such a use has occasioned many a legal dispute, especially among mill owners. Each one of them located on a stream may use the water, but can they hold it back for any length of time? As a general rule this can be done for a short time in order to get the use of the power, if they could not, the water could run to waste and no one would derive any benefit. Again, can any diversion be made of it? Any use, almost, is a diversion. If one used water even to supply his cattle, it would be a diversion, yet such a use ordinarily is lawful. Suppose one had a very large herd, then the use might be excessive especially in view of the needs of other users on the stream. A still more important question has arisen of late concerning the fouling of water. Has a factory the right of putting its dyestuffs into the water, impairing its quality and rendering it unfit for use by all below? This cannot be legally done. Can a stream be used as a sewer? Naturally all the water in a valley flows downward and at [217] last reaches a stream running through it. As population increases the use of streams becomes greater, and questions concerning their use more difficult.

Suppose a land owner on the hillside wishes to use all the surplus water, can he gather it and thus prevent its flowing to the land below? He can. Can he build ditches or other obstructions whereby he can collect the water and pass it to the land below in other than the natural way? He cannot. On the other hand, the lower proprietor can, if he pleases, make an embankment that will prevent the water from coming upon his land. This, though, is not the law everywhere.

The owners of a well may prevent its overflow and thereby cut off water that formerly ran into a stream. But the owner of a spring that flows into the land of another cannot change its course, nor exhaust the water, nor pollute it to the injury of another. Nor can surface water be changed into a water course by impounding it. On the other hand this rule does not apply to water or springs beneath the surface. If in digging a well the source of supply to another is cut off, it is a loss for which there is no redress, unless the well has been dug maliciously. But where percolating water abounds and is obtained by artesian wells a land owner has no right to sink wells on his land and draw off the water supply of his neighbor. The right to cut ice is a natural one, and the owner of a lake or stream may cut a reasonable quantity, but not enough to diminish the water appreciably to the lower proprietor.

While a person has the natural right also to the lateral support of his land, yet he cannot use it to the injury of another. This is a legal maxim. If, therefore, he should excavate to the edge of his [218] land and his neighbor's building should in consequence fall down, would he be without redress? The rule is, the excavation must be made in a reasonable manner. This is a question of fact in every controversy of the kind. The owner of land adjoining a highway has no right to the lateral support of the soil of the street. Therefore, if the grade of a street were lowered by proper authority and one's house located by the side of it should fall, he would have no redress against the city or other public body.

Quasi Contracts.—A quasi contract is a legal obligation arising without the assent of one from the receipt of a benefit which, if retained, would be unjust. The law therefore compels him to make restitution. He is required to do this, not because he has promised to make restitution, but because he has received a benefit which he cannot justly retain.

If one at the time of conferring a benefit on another confers it as a gift, it cannot afterward be claimed that the gift was conferred relying on a supposed contract. Consequently, though the donor's intention may be subsequently altered, no obligation to make restitution will arise. Nor does the failure of the donee to reciprocate the donor's generosity or indirectly reward him, create any right or claim on the donor's part to a return from the donee.

Where one, in the preservation of his own property or the promotion of his own interests, bestows some incidental advantage to another, there is no legal obligation to pay for the value of it. Thus the owner of the lower part of a house is not liable for the advantage resulting to him from the repair of the roof by the owner of the upper part and roof. Nor is one who has thickened [219] and strengthened that part of an ancient party wall which is on his own land, in order to sustain the building he is erecting, entitled to recover from the adjoining owner who used the wall. Nor can anything be recovered from the owner of a vessel by the underwriters who had her docked for repairs though by such docking the owner gained an important benefit. Nor can one who in pumping out his quarry frees another quarry from water recover anything for the service. Nor can one who is benefited by experiments made by another to test the value of patented inventions, in which both are interested, be legally required to pay for the benefit he has received.

As no expectation of payment does presumptively arise when services are rendered by one member of a family to another member, one who claims payment for them must prove that they were not rendered as a gratuity, but on the legal supposition that he had a right to compensation.

One who knows or who has reason to believe that compensation is expected for goods or services tendered to him ought not to accept them unless he intends to pay for them. If he does his act of acceptance will be regarded as a promise of payment, and can be enforced. But if one accepts goods or services without knowledge or reason to believe that compensation will be expected, what then? Suppose A sends a barrel of apples to B supposing, from their previous course of dealing, that B will return them if he does not want them? B should either return them or pay. Suppose B is misinformed and learns that A is giving a barrel of apples to each of his customers? Then he would be justified in keeping them until he learned the truth. [220]

If, in making a contract it is taken for granted by both parties that a certain fact exists, which,

if not existing, would make the contract impossible of execution, the contract is void. Thus, in contracts for the sale of specific personal property, its existence at the time of the sale is generally assumed. If the property has perished or been destroyed, the contract is void. The same rule has been applied to the sale of non-existent reality, of the transfer of void or spurious securities, of the assignment of a void lease. In all these cases the money paid in misreliance on the void contract is recoverable.

Premiums paid on a policy of marine insurance by one who in reality had no goods on board, or for a voyage that was never begun, may be recovered. The existence of a risk is assumed by both parties, in fact there is no risk, consequently there was nothing to which the contract of insurance related.

"A promise," says Woodward, "which is so general or indefinite that it does not enable the courts to determine the nature and extent of the obligation assumed must be regarded as no promise at all. Such has been the fate of a promise to pay good wages; a promise to convey a hundred acres of land, the land not being described; a promise to divide profits, no rate of division being indicated. Instances might be multiplied. A benefit conferred, in the honest, though mistaken, belief that such a promise is binding ought in justice to be restored. Restitution is accordingly enforced."

The law requires some kinds of contracts to be executed in a particular manner. Thus, by statute, many municipalities can make contracts, or those of a particular kind, only on sealed bids or proposals and after proper advertising for bids, etc. If these things are not done, the contract [221] made in disregard of them is invalid. The courts of this country have got into deep confusion in applying this rule to private corporations. Suppose a corporation makes a loan without proper authority and receives the money, can the lender recover it? The corporation had no right to borrow, of this the lender knew as well as the borrower. Both parties are in the wrong. The highest court in this country has been more consistent than many of the state courts, and holds that a contract it cannot make for lack of legal power is not made and cannot be ratified. "No performance on either side can give the unlawful contract any validity, or be the foundation of any right of action upon it." Nevertheless though a contract is unlawful and void because the corporation was unable to make it, a court strives to do justice between the parties by permitting property or money, parted with on faith of the unlawful contract, to be recovered back, or compensation to be made therefor.

The lack of another legal requirement in making contracts gives rise to serious consequences. We have learned that the Statute of Frauds requires for the validity of many contracts that a memorandum of them be made in writing and signed by one or both contracting parties. By English law the statute provides a rule of evidence, that a writing must be shown as proof of a contract before the courts will consider it as having been made; by some of the American courts a contract that does not meet the requirements of the statute is held to be void; by other courts they declare that though the contract is not void it cannot be enforced.

While the Statute of Frauds in some states is regarded as completely nullifying contracts not [222] conforming to its requirements, they are not anywhere held to be illegal, that is, are not made in violation of law. "There appears," says Woodward, "to be no reason of policy, therefore, for denying to a party thereto in a proper case, the aid of the court in obtaining quasi contractual relief, or the right to establish the justice of his quasi contractual demand by proving the terms of the unenforceable agreement. True, the evidence of the agreement in such a case, must be oral; but since the evidence is for the purpose of proving, not a contract as such, but a transaction resulting in an unjust benefit to the defendant, its introduction would seem not to contravene the statute."

A purchaser of land under an oral contract, who is given possession and subsequently fails to pay, is liable for the use of the land to him while he has occupied it. Though the act of the seller in giving the purchaser possession without conveying the title may not be regarded as a part performance of the contract of sale, yet the benefit resulting to the purchaser creates an obligation to make restitution which the courts will enforce. The improvement of land by the purchaser under an oral contract is an act which enables him to enforce the contract in equity. Improvements made by a lessee under an oral lease within the statute are governed by the same rules as those of improvements made by a purchaser.

If no benefit has been derived from the contract, nothing can be recovered. Thus, a son worked for his father on his father's farm under an unenforceable contract with his uncle. The latter was under no quasi contractual obligation to pay the value of such service, since he had derived no benefit from them. Likewise one who, relying on an unenforceable contract, constructed a wood- [223] chopping machine that was not accepted could not recover for the value of his labor and materials.

Again, where one party by his own act or default has prevented the other party from fully performing his contract, the party thus preventing performance cannot take advantage of his own act or default, and screen himself from payment for what has been done under the contract. Thus, if one party agrees with another to work on a house the law implies that the employee owns the building in which the work is to be done. This is a part of the contract whether the house is clearly specified or not. Therefore, an employer who does not own the house, or parts with it before the work is completed, is liable to the other party.

The destruction of a thing in the course of alteration or repair without the fault of the bailee is a case like that above mentioned. The labor and materials are expended in response to the desire of the owner of the property, and therefore it is just that he should pay for the property he

destroyed. In one of the old cases a horse was sent to a farrier to be cured and was burnt before a cure was completely effected. Nevertheless, the farrier was entitled to payment for what he had done. Likewise, the owner of a ship that is destroyed by fire a few hours before the completion of repairs, cannot escape payment on the ground that he has reaped no advantage.

As the illness or death of a contractor does not, like fire or shipwreck, deprive the other party of the fruits of what has been already done, the benefit resulting to him is more obvious, and the element of hardship is wanting that appears in many of the cases. The value of his services or the [224] materials he may have used may therefore be recovered. In one of the cases A agreed that he and his wife should live in B's house and maintain him for life. As A's wife died the contract could not be performed. Nevertheless, A recovered the value of the service he had rendered to B during the lifetime of his wife.

Wagering contracts either by statute or judicial decision are illegal and void in most or all the states. In many of them the statute permits the recovery of the money from the stakeholder or the winner. Payment over to the winner after notice or demand by the loser is not a good defense in an action against the stakeholder. Again, the winner is liable who, when receiving the money, knows that the stakeholder has been notified not to pay it over, or has received notice not to take it.

The legality of contracts made or to be performed on Sunday is determined generally by statute. Generally, when a contract is made on Sunday, or is fully performed on both sides, the money paid or other thing done in execution of it cannot be recovered. Again, one who is induced by fraudulent representations to enter into a contract which is in violation of a Sunday law is not so much in the wrong as the other, and consequently may recover a benefit he has conferred on the other party in performing the contract.

If a member of a firm gives a promissory note signed by the partnership name, for a debt of his own, which his partner is compelled to pay, he may recover the money from the other. So, if a carrier by mistake delivered goods to the wrong person who keeps them, and the carrier is obliged to pay for their value, he can recover the amount of the other person who thus wrongfully keeps them.

Whenever a person makes a payment to another under such a mistake of the material facts as [225] to create a belief in the existence of a liability which does not really exist, the money may be recovered back. Such an obligation arises where money is paid as due on the basis of erroneous accounts, and on a true statement of account is found not to have been due. A voluntary payment with knowledge of all the facts cannot be recovered, even though there may have been no obligation to pay.

A person cannot recover money paid under a mistake of fact who has received the equivalent for which he bargained, because there is no failure of consideration. Nor is the fact immaterial that he need not, and would not have made the payment had he known the true state of things. A bank, for example, that pays the check of a depositor under the erroneous belief that it has sufficient funds, may not recover from the payee the excess to the depositor's credit. But if the purchaser of goods has paid the price, and the seller fails to deliver them, the purchaser may recover his money. And in any case, a person who has paid money under an agreement which he may rescind and does so, because there was a failure of consideration, may recover what he has paid. An action will lie against a person who sells goods as his own, but which do not belong to him, whenever the real owner claims them from the purchaser. In like manner an action will lie against a person who sells bills, notes, bonds, stock or other securities which prove to be worthless, or against a person who agrees to transfer the title to land which, for lack of title or other reason, cannot pass.

As a rule, the consideration of a contract must totally fail to entitle a person to recover back the money he has paid. If the consideration has only partly failed, the remedy, if there is any, is for a [226] breach of the contract, and not to recover back the money he has paid. Thus, if an article is sold with a warranty of its quality, and it is not worthless, his remedy is an action to recover damages for a breach of the warranty, and not an action to recover back the money paid for the thing purchased.

A liability cannot be imposed on a person without his act or consent. One man cannot force a benefit on another without his knowledge or consent, and then compel him to pay for it. "If a person," says Clark, "intentionally and knowingly performs services for another or otherwise confers a benefit on him without his knowledge, so that he has no opportunity to refuse the benefit, the law will not create a liability to pay for it. So, where a person supplies another with goods, the latter supposing that he is being supplied by another person with whom he had contracted for the goods, the law will not even imply a promise to pay for the goods." Where benefits are conferred by one person on another under such circumstances as to raise no promise in fact or in law to pay for them, he may, nevertheless, become liable by retaining them. Thus, if a person were to receive goods from another reasonably but mistakenly believing them to be intended as a gift, and, after learning of his mistake, should retain them, when he might return them, or if he should receive part of the goods purchased from another, and retain them after failure of the latter to supply the rest of the goods, the law would compel him to pay for them. And the same rule applies where benefits are in any other way received under such circumstances as to create no contractual obligation, and are retained when they should in justice be returned. If, however, the benefits thus received are incapable of being returned, as [227] where they consist of services, or of materials which have been used in repairing a house, no liability is created.

Sale.—By a contract to sell goods the seller agrees to transfer the property in them to the buyer for a consideration called the price. There is an important distinction between a contract to sell in the future and a present sale. The first is called an executory, the other an executed, sale. If the goods are to be transferred, there is an executed sale even though the price is not to be paid at the same time. But if the price is paid, and the goods are not then to pass, the transaction is a contract to sell, or an executory sale. Both kinds of sales may be by deed or sealed contract as well as by parol or orally.

Sales and contracts to sell are based on mutual assent, the intent, therefore, of the parties fixes the nature and terms of the bargain. If the offerer understood the transaction to differ from that which his words plainly expressed, it is immaterial, "as his obligation must be measured by his overt acts." Thus, if an offer to buy or sell is sent by telegraph, and is improperly transmitted by the telegraph company, an acceptance by the offeree creates a binding bargain. By using the telegraph as an agency of communication, the offerer makes himself responsible for the offer actually delivered. Of course the telegraph company would be responsible to the offerer for any damage he may have suffered unless relieved by some neglect or fault of the sender of the message.

A contract of sale may be conditional, for example, that the property shall not be transferred until the price is paid. Though the property is transferred by the sale, promises or obligations [228] may still be unperformed by the seller. Or the transfer of the title may be conditional on payment of the price. In such sales the goods are delivered to the buyer, but the title is retained by the seller until payment.

The capacity to buy and sell is regulated by the general law concerning the capacity to contract, transfer and acquire property. When necessaries are sold and delivered to a minor, or to an insane or drunken person, or to a married woman, who is lacking in mental capacity to make a contract, he must, by the general Sales Act, pay a reasonable price therefor. Necessary goods by this act mean those suitable to the condition of the life of the minor or other persons above mentioned at the time of their purchase and delivery.

As we have seen (See *Minor*) a minor may avoid his contracts. The right to do this is given for his protection, and should not be stretched beyond his needs. Therefore the right is confined to himself or his legal representatives. Neither creditors, nor trustees, nor assignees in bankruptcy can do this, but his heirs can do this, and probably his guardian. By the common law a purchaser for value who did not know that the seller bought them of a minor could not retain them if the minor wished to reclaim them as his own. This rule has been changed by the Sales Act, and a bona fide purchaser is therefore safe in purchasing such goods even though the seller did buy them from a minor.

As a minor may disaffirm his contract, any act clearly showing this intent is sufficient. "It was early settled," says Williston, "that an infant's conveyance of realty could be avoided only after he attained his majority. In the case of personal property a sale may be avoided during his minority [229] by an infant seller or buyer. Though an infant may thus avoid his sales, purchases or contracts during infancy, he can make no effective ratification until he becomes of age, for an infant's ratification clearly can be no more effective than his original bargain."

In the Sales Act the Statute of Frauds (See *Statute of Frauds*) has been reënacted, and provides that in a sale or contract to sell goods amounting to five hundred dollars or more, it cannot be enforced unless the buyer shall accept a part of the goods, or give something in earnest to bind the contract, or in part payment, or makes some note or memorandum in writing of the sale which is signed by the party or his agent against whom the other party seeks enforcement.

This statute applies to a contract for goods that may be intended for future delivery, but not to goods that are to be manufactured by the seller especially for the buyer and are not suitable for sale to others in the ordinary course of the seller's business.

The Sales Act contains an important section relating to the sale of an undivided share of goods. If the parties intend to effect a present sale, the buyer becomes an owner in common with the owner of the remaining shares. How important is this section may be easily learned. The grain of many owners is often mingled in an elevator. It is delivered to those who call for it, the kinds and quantities mentioned in the receipts given to them at the times of storing it. The grain in the elevator may be delivered many times before a particular depositor makes his demand. The elevator company must keep on hand enough grain to meet all outstanding receipts. Each [230] depositor thus retains title to some portion of the grain in the elevator. The company is the bailee with the power to change the bailor's separate ownership into an ownership in common with others of a larger mass, and back again. At any given moment all the holders of receipts for the grain are tenants in common of the amount in store, each owning a share and all owning the entire amount, each having the right to sell his share and demand its separation and delivery in accordance with custom and the terms of the receipt.

When a party has specific goods which, without his knowledge, have perished partly or wholly, the buyer may treat the sale as avoided, or as transferring the property in all of the existing goods and as binding him to pay the full agreed price if the sale was indivisible, or if divisible the agreed price for the goods in which the property passes. One can readily imagine trouble when none of the goods have been destroyed but all are in a condition inferior to that supposed at the time of the bargain. In such a case the "only question is whether the article has been so far destroyed as no longer to answer the description of it given by the contract."

The price may be fixed by the contract or in such a manner as the parties may agree, and may be made payable in personal or real property. When the price is not determined in the way mentioned in the Sales Act, the buyer must pay a reasonable price. This is a question of fact in each case. Usually, the price, either in an executed sale or in a contract to sell, is fixed by the parties at the time of making the bargain. In the agreement to sell there must be a consideration on both sides to sustain it. Sometimes the parties agree that the amount of the price shall vary according to the happening, or failure to happen, of a future event. Such a contract may be a [231] wager, which is forbidden by law, or it may be legal, as we shall soon learn. Whenever no price has been fixed the law has established a rule, a reasonable price. It is the intention and understanding of the parties that a buyer who orders a barrel of flour from his grocer will pay a reasonable price. Likewise a buyer who orders a carriage to be made for him and says nothing about the price.

What is a reasonable price? Generally the market price at the time and place fixed by the contract or by law for delivering the goods, but not always. Under unusual conditions the market price does not furnish the only test. Said the court in one of these cases: a reasonable price may or may not agree with the current price of the commodity at the place of shipment at the precise time of making it. The current price of the day may be highly unreasonable from accidental circumstances, by the action of the seller himself in purposely keeping back the supply.

With respect to warranties the Sales Act provides that when the sale is made on a condition which is not performed, the party for whose benefit the condition was made may refuse to proceed with the contract or sale, or may waive performance of the condition. The nonperformance may be treated as a breach of warranty. Thus time may be an important element in a contract, and an agreement to deliver goods by a specified time is a condition or warranty. And if there is a delay in delivering, unless it may be a trifling one, the buyer may refuse to accept the goods.

A common condition in more recent times qualifying the obligation of the buyer is that the goods shall be satisfactory to him. By this is meant the satisfaction of the buyer after the exercise [232] of an honest judgment. In New York and some other states a somewhat different rule prevails. Unless the things covered by the contract involve personal taste, the contract imposes on the seller the requirement only that a reasonable man would be satisfied with performing it, thus not leaving the question of its satisfactory performance entirely to the buyer. This, Williston says, is an arbitrary refusal of the court to enforce the contract that the parties made and seems unwarranted.

Warranties may be express or implied. By the Sales Act any affirmation of fact or any promise by the seller relating to the goods is an express warranty if the natural tendency of such affirmation or promise is to induce the buyer to purchase the goods, and if the buyer purchases the goods relying thereon.

In a contract to sell or a sale, unless a contrary intention appears, there is an implied warranty on the part of the seller that in the case of a sale he has the right to sell the goods, also, in the case of a contract to sell them, he will have the right to do this at the time of passing the property. More briefly the seller warrants the title to the property which is the subject of sale. Whether the seller is in or out of possession of the property, he can by appropriate words sell such interest as he may have therein. But persons also sell property not owned by themselves by authority of others or of the law. Unless they expressly warrant the title they are not liable for lack of it. Sales of this nature are made by a sheriff, or other judicial officer, auctioneer or mortgagee, assignee in bankruptcy, executor or administrator, guardian, or simply an agent.

When there is a contract to sell, or a sale of goods by description, there is an implied warranty [233] that they shall correspond with the description; and if the contract or sale is by sample, as well as by description, it is not sufficient that the bulk of the goods corresponds with the sample if these do not also correspond with the description. The Sales Act contains elaborate provisions relating to implied warranties of the quality of things sold. There is no implied warranty of the quality or fitness of goods for any particular purpose unless the buyer makes known to the seller the purpose for which they are required, and he also relies on the seller's judgment of their fitness for the use he intends to make of them. Again, if the buyer has examined the goods there is no implied warranty of the defects which such an examination ought to have revealed. An implied warranty as to quality or fitness for a particular purpose may also be annexed by the usage of trade. There is an implied warranty that the bulk shall correspond with the sample in quality, and that the buyer shall have a reasonable opportunity of comparing the bulk with the sample.

When does the transfer of ownership occur? When there is an unconditional contract to sell them the property therein passes to the buyer on the making of the contract, regardless of the time of payment or delivery or both. When goods are delivered to the buyer "on sale or return," giving the buyer an option to return them instead of paying the price, the property passes to the buyer on delivery, but the property may go back to the seller by returning or tendering the goods within the time specified in the contract. When the goods are delivered to the buyer on approval or on trial or other similar terms, the property passes to the buyer, (1) when he signifies his [234] approval or acceptance of them, (2) or if he retains them beyond the time fixed for their return, or if none has been fixed, beyond a reasonable time.

It is the duty of the seller to deliver the goods, and of the buyer to accept and pay for them, in accordance with the terms of the contract of sale. Unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions, the seller, therefore, must be ready and willing to give possession of the goods to the buyer in exchange for the price, and the buyer must

be willing and ready to pay the price in exchange for the possession of the goods.

Whether it is for the buyer to take possession of the goods or for the seller to send them to the buyer, is a question depending in each case on the contract, express or implied, between the parties. Apart from contract, or usage of trade to the contrary, the place of delivery is the seller's place of business, if he have one, and if not, his residence. Again, when by the contract of sale of goods no time for sending them has been fixed, the seller must send them within a reasonable time.

Vast quantities of goods are bought and sent forward to buyers, which are not to be delivered until payment. The Sales Act provides that where goods are shipped and by the bill of lading that is given for them they are to be delivered to the order of the buyer or of his agents, but possession of the bill of lading is to be retained by the seller or his agent, he thereby reserves his right to the possession of the goods as against the buyer. Very often a buyer of wheat, for example, will draw a bill of exchange on his principal or company living in the place where the goods are to be delivered and will have it discounted by a bank using the money to pay the seller. [235] The wheat may be in an elevator, or it may be in transit. In either case the bank receives a document, elevator receipt, or bill of lading, and thus becomes the real owner of the wheat, and can control it afterward until it is actually delivered to the consignee, whoever he may be. This is the bank's security for making the loan. The bank sends forward the bill of exchange to its correspondent bank in the place where the consignee lives and the wheat is to be delivered with instructions to deliver it when the bill is paid.

With respect to speculative sales of stock, so well known by every one, a contract, says Williston, giving one party or the other an option to carry out the transaction or not at pleasure, is not a wager, unless forbidden, as in some states is done by statute. A contract to sell goods in the future, which the seller does not own at the time is, aside from the statute, not only legal but common. "The test," says Williston, "adopted in the absence of statute, distinguishes between contracts to buy and sell in which the actual delivery of the property is contemplated, and similar contracts in which it is contemplated merely that a settlement shall be made between the parties based on fluctuations in the market price. A contract of the former kind is legal; one of the latter kind is a wagering contract, and illegal."

Shipping.—The federal statutes require that every ship or vessel of the United States shall be registered or enrolled in the office of the collector of customs of the district that includes the home port of the vessel. None but citizens of the United States can have their vessels registered. Consequently the sale of a vessel to a foreigner denationalizes her. If sold to an American, she [236] must be registered anew. On arriving at a foreign port masters of vessels must deposit their registers with the consul or commercial agent at that port.

Enrollment is the term used to describe the registry of a vessel engaged in coastwise or inland navigation or commerce. Registration is applied to vessels engaged in foreign commerce. License means the same as enrollment, but is applied to small vessels of twenty tons burden or less. The federal laws on this subject do not apply to vessels that are used on nonnavigable waters of the country.

The title to a vessel may be acquired by purchase or building. If a vessel is built for a party no title thereto passes until she is ready for delivery and has been approved and accepted by him. This, however, is no arbitrary rule, and is often modified especially when payment is made in installments and during the construction of the vessel.

Nowadays many vessels are owned by corporations, and the rules that apply to corporations of course determine the ownership of their property. In other cases the several owners of a vessel are tenants in common, and not co-partners, unless by agreement they have established other relations among themselves. They may, of course, become partners and be governed by the rules that apply to persons thus related. When they are related as tenants in common one part owner has no power to bind the others in any way beyond the necessary and regular use of the vessel. He cannot sell or mortgage the interests of the others, draw drafts or notes in their name, apply the freight money earned to pay his individual debt, or procure insurance for the other owners.

The majority rule governs in employing the vessel. The majority therefore have the right to [237] control the use of the vessel on giving security to the minority, if required, to bring back and to restore to them the vessel, or if lost to pay them for the value of their shares. The minority owners in like manner may use the vessel if the majority are unwilling to employ her. A court of admiralty will in such a case act for the parties.

Each part owner is entitled to his share of the profits, and is also liable for the expenses of the vessel unless he has dissented from the voyage. But part owners who dissent from the voyage and take security for the safe return of the vessel are not entitled to share in the profits, nor are they liable for the expenses.

A part owner may bind the others for necessary supplies and repairs required that are procured on credit, unless his general authority to do this has been restricted. The ship's husband or managing owner has authority to do whatever is necessary for the prosecution of the voyage and earning the freight money. For such purposes he is the agent of the owners and can bind them by his contracts, unless his authority is revoked or modified.

Any owner can sell his interest whenever he pleases, and all of them may authorize the sale of the entire vessel. A writing is required to pass the title, but as between the parties an oral sale

and delivery will suffice, at common law. In many cases a bill of sale is required by statute. The writing should describe what things are transferred, but general terms such as appurtenances and necessaries have a fixed meaning which are understood. Intention is the guide to determine what passes in such a sale, as in cases of fixtures already considered.

When the bill of sale is executed the purchaser becomes entitled to all the benefits of [238] ownership, and incurs all the liabilities. If the sale is unconditional, the purchaser is liable for supplies though he may never have taken possession of the vessel, and neither the master nor the merchant furnishing the supplies knew of the sale. The purchaser is not liable for repairs made and supplies furnished before the sale, unless he has agreed to pay for them, or the vessel was at sea at the time. If she was, the purchaser takes her subject to all encumbrances on her, and to all lawful contracts made by the master before learning of the purchase.

A vessel may be mortgaged, and the federal statutes state how this shall be done. A shipbuilder may make a contract whereby he mortgages the vessel to be built in advance of its construction, and a lien attaches as it comes into existence. Such a mortgage is postponed or comes after a maritime lien, that will soon be explained, but comes before the debts of general creditors.

The mortgagor, so long as he retains possession, has all the rights of ownership, and all contracts made by him are valid which do not impair the security of the mortgage. When the mortgagee takes possession of the vessel he is entitled to all the earnings that accrue, but not to those which the mortgagor has reserved, even though they are for the current voyage. Furthermore, his interest may be attached by his creditors. The discharge and foreclosure of mortgages on vessels are governed for the most part by the rules that apply to chattel mortgages. A mortgage on a vessel should be recorded, and many of the rules and usages that apply to the recording of deeds apply also to such mortgages.

A contract may be made for a loan of money on the bottom of a vessel at a rate much greater [239] than the usual rate of interest. Such a loan is sanctioned to enable the master to obtain money for supplies or repairs at some foreign port where they could not be otherwise obtained. The loan is on the security of the vessel and if she never arrives, the lender loses his money. If she does arrive at the port of her destination, the borrower personally, as well as the vessel, is liable for the repayment of the loan with the agreed interest thereon. This maritime loan is highly regarded in legal tribunals, and is liberally construed by them to carry into effect the intention of the parties.

Such a loan or bond can be given by the master of the vessel only in case of necessity and great distress in a foreign port, where the owner is not present and has no representative with funds, and where the master has no other means of getting money. The master has a large discretion. "The necessity must be such as would induce a prudent owner to provide funds for the cost of them on the security of the ship, and that if the master did not take the money the voyage would be defeated or at least retarded." The general purpose of the loan is to effectuate the objects of the voyage and the safety of the ship.

The appointment and employment of a master is wholly within the discretion of the owners. On his death or removal in a foreign port a successor may be appointed by the consul resident there of the country to which the vessel belongs, or by an agent of the owners, or by the consignees of the cargo who have advanced money for repairing the vessel. The registry acts of the United States require the putting of the master's name in the register, but if this is not done his [240] authority is not impaired; and the one to whom the navigation and control of a vessel is entrusted is considered her master, although the name of another appears on the register. His contract may contain any stipulation to which the parties may agree. The right of a master to command his vessel is personal to him; and a sale by a master who is part owner of the vessel of his interest therein transfers no right to the command of the vessel which the other owners are bound to respect. Whenever he becomes incapable of commanding by reason of sickness, insanity, or other reason, the command with the duties pertaining thereto devolves on the first mate until the appointment of another master; should he be absent or incapable of acting, then the second mate and so on down the rank of officers.

The master must do all things for the protection and preservation of the several interests entrusted to him, the owners, charterers, cargo owners, underwriters. He must render a full and satisfactory account to the owners of the vessel of moneys secured and his disbursements before demanding any wages. At sea he is the supreme officer, has sole authority over both officers and crew to do justice to all persons under his command, and to protect passengers and seamen from bad treatment while they are on board. It is said that in respect to passengers he owes a higher and more delicate duty than he owes to the crew, but at the same time he has the necessary control over his passengers and may make proper regulations for their government to ensure their safety, promote their comfort and preserve decent order.

He has authority to bind the owners when they are not present for expenditures needful in the way of repairs, supplies and other necessaries reasonably fit and proper for the safety of the [241] vessel and the completion of the voyage.

As the seamen who serve on a vessel are generally ignorant and improvident, the execution of shipping articles are required by federal statute where the vessel is bound on a foreign voyage, or from a port in one state to a port in another. If these articles are not made seamen have the right to leave the vessel at any time, and may recover the highest rate of wages paid at their shipping port. The articles must be signed by the seaman and by the master, and the contract must be executed before the vessel proceeds on its voyage. The seaman is not bound by any new or unusual stipulation put into the articles affecting his rights without full knowledge of it, and

especially when he cannot read and the stipulation is not read and explained to him. Once executed, the articles cannot be varied by a verbal agreement between master and seaman.

The articles must specify clearly and definitely the nature of the intended voyage, the port at which it is to end and its duration. Indefinite articles, leaving to the option of the master whether the voyage shall be long or to one or more foreign ports, or short to nearby domestic ports, are void. The articles must also state the amount of wages each seaman is to receive. Articles are void that fix a forfeiture of wages in excess of the amount named in the statute, or restrict the time in which seamen must sue for their wages. The contract may be dissolved by cruel treatment by the master and by an abandonment of the vessel without the master's consent, but not by the death, disability, removal or resignation of the master and the substitution of another. Besides the wages a seaman may recover, should the master break the contract, are his expenses [242] in returning to the port of shipment including also general damages.

Claims for wages are "highly favored in admiralty courts," and discharges are not justified for trivial causes, nor for a single offense unless it is an aggravated one. Such causes are continued disobedience or insubordination, rebellious conduct, gross dishonesty, embezzlement or theft, habitual drunkenness, habitually stirring up quarrels, or by his own fault rendering himself incapable of performing duty. The master must receive back a seaman when he has thus been discharged who repents and offers to return to his duty and make satisfaction, unless the offense was of an aggravated character. This is the general rule, though from its nature there is much room for its application.

Statute of Frauds.—Some contracts must be in writing to comply with a statute called the Statute of Frauds, which has been enacted with variations in all the states. One of the most important sections relates to the conveyance of real estate. This requires that the agreement for its sale must be in writing. (See *Agreement for Sale of Land*.)

Another section relates to the sale of goods, wares and merchandise. This has not been enacted in every state. If the amount is above that mentioned in the statute, thirty to one hundred dollars, there must be a written contract or delivery and acceptance of the goods to constitute a contract. If A sells a bill of goods to B, who declines to receive them, and the contract is wholly verbal, he can shield himself behind this statute wherever it prevails. Many questions therefore arise, what is a delivery and acceptance? A delivery of a key of a building containing the property is [243] sufficient. The delivery of a bill of lading of goods properly indorsed, making entries of the goods sold, pointing them out or identifying them is enough to comply with the statute. Whenever there has been a transfer of possession and control by the seller to the purchaser to which the latter has assented there has been a sale. Or, more broadly, whenever there has been such action as to show clearly an intention to sell and accept the property the sale is complete. Part payment of the purchase money for personal property is generally regarded as showing such intention.

To a contract for the manufacture of a thing the statute does not apply. Simple as this answer may be, the law soon gets into difficulties in deciding whether a contract is for the making of a thing, or for the thing itself; whether the important element is the skill or labor that is to be expended, or the thing without regard to the process of making. Thus, if a contract is with one to paint a portrait, the statute would not apply, for the skill of the artist is the important thing purchased, and not the canvas, paint, etc., he must use. To a contract for a locomotive the statute would apply. "If the contract states or implies that the thing is to be made by the seller, and also blends together the price of the thing and compensation for work, labor, skill and material, so that they cannot be discriminated, it is not a contract of purchase and sale, but a contract of hiring and service, or a bargain by which one party undertakes to labor in a certain way for the other party," and the statute does not apply to it.

Statutes of Limitation.—In all the states statutes have been enacted which provide that if the rights of parties to legal redress are not enforced within a specified period, the courts are closed [244] to them. Thus, in most states a statute provides that a holder or owner of a promissory note who neglects to sue the debtor within six years from its maturity cannot do so afterwards. The note is not absolutely void, though the law presumes it has been paid. As the note is not void, payment may be effected as we shall soon learn.

Suppose one is indebted to a merchant, if the debt is not paid within six years in most states and nothing has happened, the debt in popular language is outlawed, in other words cannot be collected by resort to law. The time begins to run as soon as the debt has accrued; if it be a debt to a merchant, as soon as one has stopped trading with him. To the operation of this rule are some important exceptions. It does not run in favor of a minor, married woman or insane or imprisoned person; or not whenever or wherever they are not capable of contracting. But a disability arising after the statute has begun to run in his favor will not prevent it from running.

The Statute of Limitations generally bars the remedy or right to pursue the debtor in a court of law, it does not extinguish the right or debt, and therefore the right to pursue a debtor may be revived by a new promise to pay. One may ask, is not a debtor a foolish man to acknowledge that he is a debtor after the law has released him from his debt? Yes, from a purely selfish point of view. Nevertheless, the moral obligation remains, and happily all morality has not yet fled from the world. One may ask, is not such a promise void because there is no consideration received for it? No, for the reason that there was a consideration for the original obligation, and this is [245] sufficient to sustain the renewed promise to pay it. In some states the statutes provide that such

an acknowledgment to pay a debt after the statute has barred it, must be in writing, and signed by the debtor or his agent. The most general rule is, to remove the bar of the statute, there must be either an express promise to pay, or an acknowledgment of the debt accompanied by an expression of willingness to pay it. To simply acknowledge the existence of a debt is not enough, there must be indicated or expressed a willingness to pay.

A debt may also be revived by part payment. Payment on account of the principal, or payment of interest on the debt will prevent the statute from running against it. Payment to have that effect must be made with reference to the original debt and in such a way as to effect an acknowledgment of it.

While a debtor may always apply a payment to any one or more of different debts he owes his creditor, if he fails to do so the creditor can make the application even to a debt which is already barred by the statute, but his application will not remove the bar to the remainder of the debt. To have that effect the appropriation must be made by the debtor himself.

Statutes of limitation apply to many obligations, and the times or dates at which they become outlawed or outside the scope of legal redress, vary in the different states. In many of them an ordinary book account or negotiable note is outlawed after six years, and cannot be enforced after that time unless the debtor has revived it by a new promise or part payment. A judgment against one usually runs twenty years.

Telegraph and Telephone.—Though the business of a telegraph company is public in its [246]
nature, it is not a common carrier, and it may therefore set up reasonable regulations for the reception, transmission and delivery of messages. As it is a quasi public corporation, it must extend its services to all that apply therefor and offer to pay the charges. And if refusing it may be compelled to do these things. The company may charge more to one person than to another when the service is unlike, though not enough to amount to an unjust discrimination. The difference in charges must bear some relation to the different services rendered.

A telephone company cannot legally discriminate between two competing telegraph companies by giving one the telephone call word "Telegram" and thereby depriving the other telegraph company of business. Nor can a telephone company legally charge a higher rental for a telephone to a telegraph company than to any other patron. Nor can a telegraph company discriminate against another in refusing credit which is given to other responsible parties.

A strike may be a sufficient excuse for failure to have sent messages promptly, though not excusing a railroad company for failure to deliver freight as if no strike had happened. A state may impose a penalty on a telegraph company for failure to deliver promptly in the state messages coming from other states. And a state may impose a penalty on a telegraph company for failure to perform its clear common law duty to transmit messages without unreasonable delay, and this statute applies to messages to points outside the state if it relates to delay within the state. A state statute prohibiting telegraph companies from limiting their liability for the [247]
transmission of telegrams within the state is constitutional. The state may prohibit a telegraph company from transmitting racetrack news. A telegraph company must transmit a message unless it contains indecent language. Nor is it liable for libel in transmitting a telegram stating that a person had been bought up.

It is reasonable for a telegraph company to close its office on holidays, except two hours in the morning and two hours in the afternoon, and therefore is not liable for delay in transmitting a message because of this delay. The unauthorized writing out and sending of a telegram in another person's name is a forgery.

When a telegram must pass over two connecting lines the receiving company may require the sender to designate what route the message is to take, and to pay an extra charge for the words indicating such route. A telegraph company is not privileged in transmitting messages, but they should not be made public, except to produce them when legally required in court. Under the New York statutes it is a criminal offense for a telegraph employee to divulge the contents of a telegram to any other person than the addressee, except when it relates to unlawful business. In that case the employee may give information to the public officer who is prosecuting the unlawful sender. It is a criminal offense to open or read a sealed telegram, or to tap a telegraph wire in order to read messages in course of transmission.

In regulating the receipt, transmission and delivery of telegraph messages, the rules differ from those that are to be transmitted within the state from the rules for interstate messages. The rules with respect to the latter are governed by the Interstate Commerce Act of 1910, state messages [248]
are governed by the laws of their respective states. By the federal law, therefore, a telegraph company providing one rate for unrepeated messages, and another and higher rate for those repeated, may stipulate for a reasonable limitation of its responsibility when the lower rate is paid. And if the contract provides that for any damage resulting from sending the telegram, the sender must give notice within sixty days, he is bound by this stipulation, and is without redress if he delays to act beyond the time.

Torts or Wrongs.—"A tort is an act or omission which unlawfully violates a person's right created by the law, and for which the appropriate remedy is a common law action for damages by the injured person." The right that is violated is private and not public, which marks off a tort from a crime. Again, the wrongful act may be a violation of both a private and public right, in

which case both the individual and the state have a remedy against the wrongdoer. Thus A without excuse attacks B and bruises his nose. B has an action to recover damages against him for despoiling his countenance; the state also may proceed against him in a criminal action for his breach of the public peace. Another illustration may be given. A clerk embezzles money from his bank. It sues him and perhaps his bondsmen and recovers the money. Embezzlement, however, is a criminal offense, and the recovery of the money taken does not affect in any way the right of the state to proceed against the embezzler. Indeed, an individual who has been wronged cannot by any restitution or settlement that he may make with the wrongdoer impair the right of the state to punish him.

Torts or wrongs are very numerous for which the wrongdoer may be held liable. The first to be [249] mentioned is false imprisonment. The law punishes false imprisonment as a crime; the person unlawfully imprisoned also has a civil action for damages. A person is said to be imprisoned "in any case where he is arrested by force and against his will, although it be on the high street or elsewhere and not in a house." Mere words are not an arrest. If an officer says, "I arrest you," and you run away, there is no arrest. But if an officer touches you and takes you into custody there is an arrest even though you run away afterward.

A malicious prosecution is another wrong. A person who brings his action for this wrong must prove four things: first, that the prosecution has terminated in the complainant's favor; second, that it was instituted maliciously; third, that it was brought without probable cause; fourth, that it damaged or injured the complainant. The term malice means something more than "the intentional doing of a wrongful act to the injury of another without legal excuse." It means that the original prosecutor was actuated by some "improper or sinister motive." The term "probable cause" requires explanation. Nothing is better settled, says one of the courts, than this, that when the person who brings such an action against another "submits his facts to his attorney, who advises they are sufficient, and he acts thereon in good faith, such advice is a defense to an action for malicious prosecution." That such advice may be a good defense a full and honest disclosure of all the facts must be made to him. Such advice will not serve as a screen if based on a fragmentary, incomplete statement of facts.

A very common tort is an assault and battery. A person who threatens another with immediate [250] personal violence, having the means and opportunity for executing the threat, commits an assault for which damages may be recovered in a proper action. To raise a club over the head of another and threaten to strike if he speaks, would be an assault. "Absence of intent," says Burdick, "on the part of the defendant to put the plaintiff in fear of bodily harm, is pertinent to the defense that the injury was accidental, or due to a practical joke."

A battery, as distinguished from an assault, is the inflicting of actual violence on a person, though the degree of violence is immaterial. The least touching of another in anger, or as a trespasser, is a battery. Forcibly cutting the hair of a person without legal authority, or injuring the clothing on a person, or snatching an article from his hand, or cutting a rope or belt attached to him, or striking a horse on which one is riding, or that is attached to his carriage, or overturning a chair in which he is seated, is a battery; likewise, if the assailant throws a stone or missile which hits the other, or spits in his face.

There may be a justifiable assault, the law has long recognized this. A public officer is justified in using force in performing his duty, so is a private individual in defending himself, his family or his property, or in enforcing lawful discipline at home, in school, on board a ship, or other public conveyance, or in restraining one mentally or physically incapacitated.

Another injury for which the law furnishes redress is that affecting reputation and character. It is true that the damages one may recover, however great, may be an inadequate redress, yet it is the best the law can do. The party injured by a libel or slander brings his action and wins his [251] victory over his enemy, yet the battlefield remains and the scar of the wound inflicted. The issue in an action for defamation is not the character of the plaintiff, but the wrongfulness of the particular statement. Therefore "it is not a defense to a libel or slander that the plaintiff has been guilty of offenses other than those imputed to him, or of offenses of a similar character; and such facts are not competent in mitigation of damages."

As the gist of the tort consists of the injury done to one's reputation, the defamatory statement must have been published. A person has no cause of action against another for defamatory words spoken to him; they must have been heard by a third person. The plaintiff may make out a case by showing that the libel was contained on the back of a postal card, or by other evidence that makes it a matter of reasonable inference that the libelous matter was brought to the actual knowledge of a third person.

A person who voluntarily engages in the interchange of opprobrious epithets and mutual vituperation and abuse has been held to license his antagonist to reply in like manner. "The right to answer a libel by libel is analogous to the right to defend one's self against an assault upon his person. The resistance may be carried to a successful termination, but the means used must be reasonable." Common carriers, news-vendors, proprietors of circulating libraries and others who are merely unconscious vehicles for carrying defamation generally escape liability for its publication.

If the publication of a libel is the result of the joint efforts of several persons, each is responsible for the wrong done to the plaintiff. If A writes a libel, and B prints it and C publishes [252] it, the person wronged may sue all jointly, or either one of them separately. The publication of the same slander by different persons is not a joint tort, it is a distinct wrong done by each slanderer.

There are distinctions between libel and slander that must be now stated. Slander is applied to oral speech or its equivalent, libel to matters expressed in writing or print, pictures, effigies or other visible and permanent forms. Libel is a criminal offense as well as a tort, while the slander of private persons is not a common law crime; but some forms of slander are crimes by statute. Falsely and maliciously to charge one with committing a felony or other indictable offense involving moral turpitude is in some states a crime. Scandalous matter is not necessary to make a libel. "It is enough if the defendant induces an ill opinion to be held of the plaintiff, or to make him contemptible or ridiculous." Says Burdick: "Any censorious or ridiculing writing, picture or sign made intentionally and without just cause and excuse is a libel upon its victim. The degree of censure or ridicule is not material. If the language is such that others, knowing the circumstances, would reasonably think it defamatory of the person complaining of and injured by it, then it is actionable."

In many cases of libels which affect the victim chiefly or solely in his office or vocation their tendency to cause injury is so clear that proof may be unnecessary. Thus, to import insanity or incompetency to a professional man, or that a public official is dishonest and corrupt is actionable. And when a libelous publication is directed against a class or body of persons, for example, the medical staff of a public hospital, any member of the body may maintain an action [253] for the wrong.

A corporation has no character like a natural person to defend, but a defamatory charge which directly affects its credit and injures its business reputation is an actionable one. On the other hand as a corporation must transact its business and perform its duties through natural persons it is now well settled that a corporation is liable in damages for slander, as it is for other torts.

Slanderous words that are actionable have been thus classified by the United States Supreme Court: "(1) words falsely spoken of a person which impute to the party the commission of some criminal offense involving moral turpitude, for which the party, if the charge be true, may be indicted and punished; (2) words falsely spoken of a person which impute that the party is infected with some infectious disease, where, if the charge is true, it would exclude him from society; (3) defamatory words falsely spoken of a person which impute to the party unfitness to perform the duties of an office or employment of profit or the want of integrity in the discharge of his duties of such office or employment; (4) defamatory words falsely spoken of a party which prejudice such party in his or her profession or trade."

The damages may be either nominal, one dollar is often given in such cases, or compensatory, larger damages, as a punishment. The amount rendered is within the province of the jury, but courts do not hesitate to modify or set aside verdicts which are deemed excessive or too meager.

The defenses in such actions may be briefly described. The truth of the charge is a complete defense to a civil action for slander or libel, because "the law will not permit a man to recover [254] damages in respect to an injury to a character which he either does not or ought not to possess." A privileged communication is another defense. The heads of the executive departments of government are absolutely privileged for defamatory statements made by them while acting within the limits of their authority. Their motives do not become the subject of inquiry in a civil suit for damages. Judicial officers are shielded by this rule while discharging their duties. The publication of judicial proceedings is conditionally privileged. The condition is that the proceedings are public, are decent and fit for publication, that the reports are full and fair, and that their publication is not inspired by malice. Says Burdick: "The reports of such proceedings are usually made without reference to the individuals concerned, and for the information and benefit of the public. The law, therefore, presumes that they are made in good faith." The full and fair reports of parliamentary and legislative proceedings are also conditionally privileged as well as the reports of judicial proceedings, and for the same reasons. The publication of the proceedings of quasi public bodies, like state, medical, and ecclesiastical societies has been deemed conditionally privileged. But "professional publishers of news are not exempt, or a privileged class, from the consequences of damage done by false news. Their communications are not privileged merely because made in public journals." Statements rendered by mercantile or collection agencies to inquirers for business purposes are clearly privileged. But whether the circulation among all their subscribers of a sheet containing such statements is privileged is a disputed question among the courts. Again, every statement made with the object of protecting [255] some interest of the writer or speaker and which is reasonably necessary for such purpose is conditionally privileged. Fair comment is another defense. The most frequent subjects of fair comment from which spring actions for defamations are the character and conduct of public men or candidates for office; and literary, artistic, or commercial productions offered to the public. Whether a particular statement is an unfair aspersion of one's personal character, or a fair comment on his public conduct, is a question usually for the jury.

At common law a defamer could not insist on an opportunity to retract or apologize, but he could give in evidence any apology or retraction to lessen the damages. This rule has formed the basis of a statute in some of the states. Though attacked on constitutional grounds, it has been sustained in Minnesota, North Carolina and perhaps in other commonwealths. Where it can be made, the apology and retraction must be full, fair, prompt.

Passing to private nuisances, a wrong or tort consists in wrongfully disturbing one in the reasonably comfortable use and enjoyment of his property. Ordinarily the motive of the wrongdoer is not material in determining his maintenance of a nuisance. Some things and trades are considered as nuisances of themselves, for example, a slaughter house in a large town, a pigsty near a dwelling house, a house of ill fame, the fouling of a spring, well or stream; keeping a large quantity of explosives near a public dwelling, or animals or other property dangerous to

human life. Likewise, a hospital that operates to destroy the peace, quiet and comfort of those in adjoining residences, affects their health and value of their property is a private nuisance, [256] against which action may be taken for its removal or abatement. Public cemeteries come under the same ban. They will not be adjudged a nuisance simply because they offend the fancy, delicacy, or fastidiousness of neighbors, or even depreciate the value of adjoining property.

When a business is carried on, structures are erected, or excavations are made which are nuisances, the actor is liable in damages for them whether he exercised due care in constructing and maintaining them or not. The same rule applies to the owner or keeper of a savage and dangerous animal.

Acts of discomfort that amount to a nuisance are such as produce this effect to persons of ordinary sensibility who live in the locality where the nuisance exists. Noises, odors, smoke, or dust may constitute an actionable nuisance in one locality and not in another. If the nuisances are from ordinary musical instruments in the dwelling of a neighbor, or from his children, yet are only of a kind that may be expected in such a neighborhood, they must be borne, unless prohibited by law. On the other hand, the same amount of noise caused by horses in the basement of an adjoining house is an actionable nuisance.

A temporary annoyance is quite another thing. The erection of an iron building near a dwelling might, during the period of construction, cause great noise and discomfort, yet the occupier of the dwelling would have no remedy. But there is a limit to the conduct of the annoyer. He must act reasonably. He cannot blast rock, or hammer metal, or operate noisy steam drills at all hours of the day and night. He must conform to the habits of the community, and not unreasonably disturb his neighbors, during ordinary working hours. There is a distinction also between acts [257] that annoy and those that injure adjoining property. Generally acts of the latter kind are actionable. If one fixes his residence near a nuisance, formerly he had no remedy. This is no longer the law. When, however, a court is asked to enjoin or stop a useful and lawful business in a place, the court will inquire whether the business has long existed and the place has grown up by reason of its existence. If this prove to be the case a court will reluctantly interfere. Yet, if the business is actually harmful to health or injurious to property, it will be enjoined however great the loss may be to the owner.

While a land owner is not liable for a nuisance created on his land by a stranger, whose acts cannot in any way be attributed to him, he is liable for a nuisance resulting from a licensee's use of his property. Thus, if a licensee by attaching a wire to a chimney converts it into a nuisance to passers-by, the land owner who knowingly permits the nuisance to continue will be liable for the damages that result. Nor can one who has fouled a stream or the air, or who indulges in disturbing noises, defend himself for doing these things by showing that others did them before he began.

As a person acts at his peril in maintaining a nuisance, so is the owner of trespassing cattle liable for all the harm done by them, whether he knows of their disposition to do harm or not. But he is not liable for harm done by them while they are driven along the highway without negligence on the driver's part; nor is he liable for mischief done by them to the person or personal property of one at other times without knowledge of their viciousness or other proof of negligence. Nor is he liable by the common law as an insurer against all damage done by them [258] when they escape from his land.

When vicious animals are kept for any purpose and are a menace to human beings they are a nuisance. Hence, they may be killed without incurring liability, and should they do damage their owner or responsible keeper must answer for it. If the animal be a vicious dog, the owner must exercise a degree of care commensurate with the danger to others following his escape from custody, and must secure it from injuring anyone who does not unlawfully provoke or intermeddle with the animal.

By the early common law a person who started a fire, even for a needful and lawful purpose, was responsible for the consequences. This rule has been modified with time. "A person," says Burdick, "does not start a fire on his land at his peril. If it spreads beyond his premises and harms others his liability for the harm must be grounded on his negligence. The same is true of his liability for electricity escaping from his control. In both cases the care he must exercise in guarding the dangerous element varies with the hazard to which it exposes others."

The liability of a person who keeps explosives is not absolute, unless he is maintaining a nuisance. Otherwise he is liable only when negligent. If he is ignorant of the character of the explosive, and without fault in not knowing, his duty of care is fixed by the apparent character of the article. Suppose a carrier was carrying a trunk containing an explosive of which he had no knowledge or reason for supposing was there, surely he would not be held liable if it exploded and caused injury.

The liability of a manufacturer, seller, lender, or user of things is not that of an insurer in making, selling, lending or using them. But he does incur liability whenever he fails to exercise [259] such care as is fairly needful to protect others against the hazard in buying and using them. A druggist, therefore, who affixes a wrong label to a bottle of medicine and thereby injures a person who uses it is responsible. And the rule would apply whether the taker was the purchaser or some other person.

When persons are invited on one's premises for mutual advantage, the inviter owes the duty of ordinary care. He is not an insurer of their safety, nor need he exercise extraordinary care in guarding them from harm, unless there was unusual danger. Suppose a man had a way which

persons used in going to and from his business, and he began to dig a well near the way and left the place unprotected during its construction, undoubtedly the owner would be liable. Suppose the well was a considerable distance from the way where persons did not usually go and had no occasion for going. Then he would not be liable. How far away from the road could he dig without thought of the public? The answer would depend on the facts in the case.

A somewhat different rule has been applied to children. Although a child of tender years who meets with an injury on the premises of a private owner may be a technical trespasser, yet the owner may be liable, if the things causing the injury have been left exposed and unguarded, and are of such a nature as to be attractive to children, appealing to their childish curiosity and instincts. Unguarded premises, which are thus supplied with dangerous attractions, are regarded as holding out implied invitations to children. There has been a great deal of controversy over this important rule. Those opposed say, if everywhere applied, it would render the owner of a [260] fruit tree, for example, liable for damages to a trespassing boy who, in attempting to get the fruit, should fall from the tree and be injured. Professor Burdick, after a full review of the cases, says that the tide of judicial opinion is setting the other way. Children, therefore, who invade the premises of a person without any right are trespassers like older people. The duty of caring for children remains with their parents and guardians; and if they are injured while unlawfully going on the land of others their parents cannot visit the consequences of their neglect on the owners of the land where the injuries happened.

Warranty.—The law, assuming that the purchaser knows or can find out the quality and worth of things, does not make an implied warranty of them generally. The legal maxim is, "Let the purchaser beware." He must take care of himself. In many cases, though, he does obtain a warranty. He must, however, distinguish between this and a mere representation. It may be difficult to draw the line always, but it exists. A statement that is not intended as a warranty, made simply to awaken the buyer's interest in the thing for sale, is not a warranty. Nor does the law imply a warranty from the payment of a full price. Formerly, when a commodity was adulterated, it could be returned, and the courts became sorely troubled to defend an adulteration. More recently, statutes have cleared away the difficulty, and are a great protection to buyers. In many cases, doubtless, they know more about the quality and condition of the things they buy than the inexperienced salesmen who are behind the counters, so they need no protection from the law; when they do need it a warranty may serve a good purpose. In articles [261] concerning which the seller does possess a superior knowledge, precious stones, drugs, medicines, and the like, the modern law has raised an implied warranty for the buyer's protection. In this class of cases the buyer and seller do not deal on equal terms. The vendor is professedly an expert.

In a sale of food there is no longer an implied warranty of fitness, unless the buyer expressly or by inspection acquaints the seller with the purpose of the purchase and unless it appears that the buyer relies on the seller's skill and judgment. Even then, if the buyer has examined the goods and has discovered a defect, there is no warranty. The burden of showing that he has made known his purpose and that he has relied on the seller is on the purchaser who claims the existence of an implied warranty.

There is another implied warranty, that of the seller's title, when he is in possession of the goods. This is limited to persons who are acting for themselves, and not agents, trustees, officers of the law, who are acting for others. An innocent purchaser of goods, therefore, for a good consideration obtains a good title, even from a vendee who has obtained them by fraud, as against the original vendor. This rule, though very broad, does not prevent a lawful owner from recovering his property. Thus, if a farmer's oxen were stolen and the thief should sell them as his own, and the purchaser should pay for them, nevertheless the farmer could recover them. The only exception to this rule is negotiable paper. This is made in order to surround it with greater protection.

Where goods are sold by sample there is a warranty that the goods will be like the sample, but there is no warranty of the sample itself. In one of the well-known cases hops were sold by [262] sample, and after the hops had been delivered the discovery was made that they had been injured by heating. The buyer sued though failed to recover anything, for it was proved that they were like the sample, which had been shown several months before, and at that time the heating had not begun. As they were sold at the earlier period, their condition at the time of the delivery did not affect the sale. See *Deceit*; *Sale*.

Will.—A will is a disposition of one's property to take effect after his death. He is called a testator, and must possess a sound mind to make an effective will. He must be able to comprehend what he is doing. Wills are often contested on the ground that the testator's mind was feeble and that undue influence was exercised over him in disposing of his property. Married women can make wills like their husbands and so can a minor in many states.

All of the states have enacted statutes on the subject which require various things; one of the most important is the witnessing of wills. Generally, three witnesses are required. An eminent judge, not long since, made a will to please his wife leaving a large sum to found an institution. He was opposed to the thing. The astute judge had no witnesses, so he both fooled his wife and pleased himself, for his will was worthless. The statutes require the witnesses to sign in the testator's presence, who often give important testimony of his competency whenever his will is contested. As they may be called for this purpose, intelligence should be used in selecting

persons to become witnesses. A witness who is competent at the time of signing does not become incompetent by reason of anything that may happen to him afterward. A witness should not be [263] given anything in the will, for, if this is done, his act of witnessing in perhaps all the states violates the gift. Though this may be the consequence the rest of the will is not thereby impaired. The property given is either real or personal. Real property consists of land extending indefinitely upward and downward, every building thereon, every growing thing, likewise all minerals and in some cases even ice. Personal property includes everything of a movable nature. A transformation is often effected. A tree while standing on the land is a part thereof; cut down it becomes personal property.

A will should be in writing; and this in most states is a statutory requirement, to guard against the wrongs and frauds that might otherwise arise. A testator may write his own will, indeed to do so would be a good test of will-making capacity. If he is unable to write his name, he may make his mark. When this is done, there should be ample proof that he did so, for a mark can be so easily made by any one.

A person to whom real estate is given is called a devisee; the receiver of personal property a legatee. When the testator gives real estate he must have regard to the laws of the state where it is situated; in giving personal property he is governed by the law of the state where he resides, his domicil. Many a devise has been declared invalid, because the testator in devising it did not comply with the law of the state where the land was located.

The principal ground on which wills are attacked is feebleness of mind, lack of mental capacity. The question assumes this form: did the testator at the time he executed his will have sufficient mental capacity to do it. An eminent jurist, Chief Justice Redfield, has said that he must have [264] undoubtedly sufficient active memory to perceive the more obvious relations of things to each other. Even if unable to manage his business, he can nevertheless make a will if he knows what he is doing.

Again an insane person may make a will provided this is done during a lucid interval. Many a person is insane only at times or on particular subjects and therefore may be competent to make a rational disposition of his property. Some persons have curious religious beliefs, prejudices against persons, governments and institutions, and yet these vagaries may not impair their capacity to dispose of their property in a legal and rational manner.

Another requirement of a testator is that he must declare in the presence of the witnesses that it is his last will and testament. This is called a publication of the will. Of course, his will must be completed when this is done. Suppose a person makes several wills, which one of them is effective? The last one. A will should be dated, suppose this has been forgotten, what then? The last will must be established, if possible, by other evidence. Suppose it is believed that the last will has been destroyed, and a prior will is found, can this be set up as establishing the testator's disposition of his property? It is not his last will, for he has made another.

Any person may be a devisee or legatee including married women, minors and corporations. If a bequest is made to a corporation not in existence, is it valid? By some courts this can be done, by others this power is denied to a testator. Many a well-meant bequest to a noble charity has been smitten down because there was no legal donee then existing to receive the gift. A testator may bequeath property to a trustee who shall select the objects of the testator's bounty. [265]

The thing bequeathed must be described with sufficient clearness to identify it, nothing more is required. In some cases proper evidence may be used to identify things where the description in the will is ambiguous.

A devise of lands may consist of the entire estate or interest of the testator, or he may give the devisee a lesser interest in them. It is a common thing for a testator to devise the use of land to a person during his lifetime, and after his death the entire interest or fee to another. He usually adds a final or residuary clause to his will to the effect, that all he may have which has not been bequeathed to any one specifically shall be given to one or more persons or objects named in his will. Or, if a legacy shall lapse, that is, the person to whom it has been given shall die, or for any other reason cannot, or will not take it, it falls into the residuary portion and goes to the residuary legatee.

If a will does not contain such a clause, and there is no statute in the way, then a lapsed legacy or other property, not covered by the will, goes to such persons as the law has prescribed whenever persons die leaving no will, or, in legal language, die intestate.

A will takes effect from the testator's death and so does the validity of all the bequests. Thus, should a person mentioned as legatee die before the testator, the legacy would be invalid. But many or all of the states have provided by statute for the continuation of these in many cases. Thus, should a son, to whom his father has devised some land, die leaving children, they take it in place of their father. These statutes vary much, some limiting the substitution to the lineal heirs [266] of the deceased, son, grandson, etc., others extending the substitutes to the collateral heirs of any devisee or legatee.

Again, by statute and common law a wife is entitled on the death of her husband to a specific portion of his property. Should he not give her as much by his will, unless he had made an agreement with her before marriage with respect to what she was to receive, she may renounce her rights under her husband's will and claim what the law would give her as if he had made no will.

A will can be revoked any time. The common way is to destroy it. Another way is to dispose during his lifetime of his property. In one of the cases a testator had indorsed on his will in his

own handwriting "canceled." Though this was not signed, it was held to be a revocation. In another case a blind testator called for his will which was handed to him. He gave it back with the direction to put it in the fire. Instead of doing so another piece of paper was substituted and burned. This was a downright fraud, and the court justly held that the will had been revoked.

Workmen's Compensation Acts.—Who is entitled to compensation by these acts? The proper test to apply is, whether the employer possessed the power to control the other while at work at the machine or other thing from which the injury arose. Says Honnold: "In the ordinary acceptance of the term, one who is engaged to render services in a particular transaction is not an employee; the term employee embracing continuity of service and excluding those employed for a single and special transaction. It does not usually include physicians, pastors or professional nurses. It may, however, include those not engaged in manual labor, such as a school-teacher. [267] The fact that a workman furnishes tools and materials, or undertakes to do a specified job will not prevent his being an employee. A deaconess, living and working in a hospital and receiving an annuity to cover clothing and expenses, is not an employee of the hospital," nor is an employee of a religious home for the aged who works around the house for which he is not paid any fixed amount. A director of a bank is not an employee within the meaning of the acts under consideration.

To be an employee there must be a contract of service. This is not the same thing as a contract for services. By the latter relationship one is an independent contractor and excluded from the acts. The contract of service need not be actually made, it may be implied, for example, the case of a substitute who is engaged by an employee in accordance with custom. A contract of service is not created by the relation of landlord and tenant, carrier and passenger, bailor and bailee, nor by professional service, nor by forming a partnership, nor by performing manual labor beyond the employer's control. Whether a contract of service arises from charitable work depends on the circumstances of the particular case. State employees are within these acts in some states, and excluded in others, likewise municipal employees. By the federal act the term "laborer" is used to designate men who do work that requires but little skill as distinguished from an artisan who practices an industrial art. The act includes a storekeeper, an inspector who performs no manual labor, a messenger in the government printing office, the master of a dredge, the matron of an Indian school, a transit man, a surveyor, a clerk engaged in office work, an assistant veterinarian, [268] a laboratory assistant, a dock master.

Compensation legislation is not limited to healthy employees. One's previous physical condition is of no consequence in determining the amount of relief to be afforded. Nevertheless, it is a circumstance to be considered in ascertaining, when one has been injured, whether the injury resulted from the work or from his health.

In some of the compensation acts minors are excluded, in other acts he is protected by them. An apprentice who is qualifying himself to operate an elevator is an employee within the Minnesota Act. Many of the acts provide that the term employee shall include every person in the service of another under any contract of hire, except one whose employment is casual, or is not in the usual course of the trade, business profession or occupation of his employer.

Farm laborers are outside these acts in some states. Thus, in Massachusetts "the workmen's compensation act was not intended to confer its advantages upon farm laborers, or to impose its burdens upon farmers." But a farmer may adopt it if he desires. And any contract of insurance made by him under its terms is valid and enforceable. Such an exemption, however, does not except employees working for one who is engaged in a commercial or other non-agricultural enterprise though he be a farmer. Likewise, a farmer carrying on a market garden may procure insurance covering his drivers and helpers employed in distributing the produce of his farm without insuring other employees who are merely farm laborers. The right to compensation is determined by the character of the labor one is actually doing when the accident occurs, rather [269] than by the fact that the employee occasionally does farm labor. Thus, plowing is usually farm labor, but if it is done to make land ready for building a house it is not. If a farmer does not avail himself of the act for all of his employees, he may procure insurance for a limited portion of them. "If there are those," says Chief Justice Rugg, "separable from others by classification and definition, whose labor is more exposed and dangerous, or whom he may desire to protect for any other reason, there is nothing in the act to prevent him from doing so."

Likewise, domestic servants are excluded by some of these acts, who are they? "A household servant is one who dwells under the same roof with the family under circumstances making him a member thereof." And his status is determined rather by his relation to the family than by his relation to the service. Thus, a workman who is hired to tend the furnace, mow the lawn, and do odd jobs about the house, who has a room therein and eats at the family table, is a household servant. On the other hand, a chauffeur who is hired by the month to run the employer's private automobile, but is not living as a member of the family, is not a household servant. In many cases, however, he is one. While it is doubtful whether the test of living in the employer's house is the sole test of household service, it is essential that he is engaged in rendering service in the house, such as cleaning, cooking or washing. On one occasion, a porter in a saloon was sent upstairs by the proprietor to wash the windows in the apartment where the proprietor lived with his family. While thus engaged he fell to the sidewalk and was injured. The court regarded him as a household servant.

Many of the acts exclude from their protection casual employees. This term is a difficult one to [270] define, and has been omitted in many of the acts. Where this is done all employees engaged in

the usual course of the trade, business, occupation, or profession of their employer, with some exceptions, receive compensation. Ordinarily, an employment is casual when it is for a single day, or by the hour, but does not apply to one who is employed to render a service that recurs with some regularity. Thus, one who is employed as a workman in a sawmill on such days as it was in operation for four months was not a casual employee. Casual employment in the Connecticut act means occasional or incidental employment. In California, if the length of employment is less than a week it is casual, even though contrary to agreement the employee took more than a week to do the work for which he was hired, and which a skillful employee could have finished within a week.

"The question whether an employment is casual must be determined with reference to the scope and purpose of the hiring rather than with sole regard to the duration and regularity of the service. One who enters into a contract of employment for an entire season is not a casual employee merely because he may be required to work for only short and irregular periods." Thus, a longshoreman who is employed at a certain sum per hour to help load a ship, having frequently rendered a similar service on other occasions, is not a casual employee; nor is one who keeps machinery and boats in order at an amusement park; nor is a boy who is called at irregular intervals for service in a butcher's shop when extra help is needed, or in the absence of a regular employee; nor is one who is employed during a packing season to drive for a packer whenever he is needed. [271]

The compensation law does not apply to independent contractors. It is difficult, however, to draw the line in many cases. Generally, an independent contractor is one who exercises an independent employment and contracts to do a piece of work according to his own method, without being subject to the control of the employer. A test that is sometimes applied is, who has the right to direct what shall be done and when and how, and who has the right of general control. When, therefore, one exercises an independent employment, selects his own help and has the control of them, and the method of conducting the work, he is an independent contractor. Again, he may change his relation for a time, and become an employee, or he may be a contractor for a part of his service and an employee for a part. Thus, one who was injured while operating a launch to bring supplies to a dredge for his employer was an employee and not an independent contractor, though he was one in conducting the work of dredging. Likewise, a physician who is employed on a salary by another physician, who in turn is serving a manufactory, is an employee of the latter and not an independent contractor, though he is still engaged to some extent in his own private practice.

By the Federal act an employee must be "employed by the United States to be entitled to its benefits." Thus, a plate printer in the bureau of engraving and printing who is paid by the piece, and who bonds himself and hires and pays his own help, also the owner of a power boat chartered to the government and operated by the owner in its service, are contractors, and not federal employees. A workman, therefore, who is employed by a government contractor is not an employee of the government. On the other hand, one who is employed and carried on the pay rolls of the reclamation service, though working for the contractor, is employed by the government, likewise, a workman employed in the forest service who is working with others for county supervisors who, in turn, are executing a contract with the government. [272]

As public officers are not employees within the meaning of the compensation acts, they may be distinguished from others who are employees. Unless the statute says so, a policeman is not an employee of the city which he serves, but an officer holding a public trust. On the other hand, a night policeman or marshal is an employee by the Wisconsin law. Firemen and deputy sheriffs on a fee basis are officers rather than employees.

The compensation acts secure compensation not only for injured workmen, but should they die, to their dependents. Who then is a dependent? "Dependency," says Honnold, "does not depend on an answer to the question whether the alleged dependents could support themselves without the earnings of the person who is no longer living, but whether they were in fact supported in whole or in part by such earnings intentionally by him. Occasional gifts do not prove dependency, yet purely voluntary contributions may establish dependency. Voluntary contributions of money, support or service by a brother to a sister or by a sister to a brother are not complete evidence of the dependency of either. Compensation cannot be awarded to dependents who do not belong to the classes of relatives mentioned in the statutes."

The phrase, actual dependents, means dependents in fact whether they are wholly or partially dependent. Partial dependency, giving a right to compensation may exist though the contributions are at irregular intervals and of irregular amounts, and the dependent has other means of supporting himself. An employee contributed all of his earnings to his mother who was partially dependent on him for support. Five other children contributed to the family fund. It was held that the mother was entitled to a weekly compensation equal to one half of the weekly compensation of her deceased son. A dependent who is an alien living in a foreign country is not debarred from receiving compensation. By some of the acts such compensation to nonresidents is limited to a father or mother. [273]

Children who are entitled to compensation as dependents include stepchildren, illegitimate children, children adopted by the workman, also posthumous, legitimate and illegitimate.

The federal act provides that if the injured artisan or laborer die within the year after his injury "leaving a widow, or a child or children under sixteen years of age, or a dependent parent, they shall be entitled to compensation." The word parent, while including both parents, does not include a stepfather or a stepmother, or a foster parent who has not been legally adopted. The

question of dependence is one of fact; contributions by the deceased tend to establish this, but are not conclusive. The word child or children used in the act is not limited to a child or children born in wedlock, but includes illegitimate offspring, and children legally adopted. If an injured workman dies before he has made application for or received compensation, it may be paid from the date of the injury to the date of his death, as well as for the remainder of the year to his widow or family. [274]

The earnings of a workman are the basis for computing the amount of compensation he is to receive for an injury. These include anything that he receives for his labor that possesses a money value. In the way of illustrating more clearly what he may receive the outline of a section of the Massachusetts Act may be given. It provides what the workman may receive when his injury is partial from the insurance association which has become liable therefor. A weekly compensation equal to one half the difference between his average weekly wages before the injury and the average weekly wages which he is able to earn thereafter; but not more than ten dollars a week, nor for a longer period than three hundred weeks from the date of the injury. Formerly, when injured, he received as compensation a sum fixed by agreement between himself and his employer; and if they could not agree, as often happened, then he sued his employer and the court decided the amount the employer must pay. These suits were often costly, long contested, and if the employee won his counsel often took such a large share as to leave a disappointing amount to the employee. On the other hand, many an employee magnified his injury, juries were usually sympathetic, especially if the employer was a corporation, and from the general dissatisfaction has been created the new system.

Having stated in the most general way what the law provides for a workman who has been injured, there remains the statement of what is done when the workman dies from his accident. The Arizona law illustrates this as well as any other. When he dies within six months thereafter and leaves a widow, and a minor child or children dependent on his earnings for support and education, then the employer must pay to the personal representative of the deceased workman for the benefit of the widow and children a sum equal to twenty-four hundred times one half of the daily wages or earnings of the deceased, not exceeding in any case more than four thousand dollars. If the employer has insured the lives of his employees in an insurance company, for which the acts quite generally provide, then of course payment of the benefits are paid by the company to those who are entitled to them. [275]

Some of the compensation acts provide compensation for both total and partial incapacity resulting from injuries which do not prove fatal. Thus the Connecticut act provides that loss of sight, the loss or paralysis of certain physical members, and incurable imbecility or insanity, resulting from the accident shall be "considered as causing total incapacity." For these and all other injuries resulting in total incapacity to work, there must be paid to the injured employee weekly, while incapacitated, compensation equal to half of his earnings at the time of the injury, for a maximum and minimum period. Another section provides that in cases resulting in partial incapacity there must be paid to the injured employee a weekly compensation during his incapacity, equal to half the difference between his average weekly earnings before the injury and the amount he is able to earn thereafter with a maximum and minimum limitation of the amount within a limited period.

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[277]

Legal Forms for Everyday Use

1

Agreement for Sale of Land

This agreement, entered into this ____ day of _____, 19__, by and between A.B. and C.D., witnesseth: That said A.B. has this day sold to C.D. the following described tract of land, to-wit: (describe) for the sum of $_____, to be paid as hereinafter set forth, and upon the payment of which said A.B. agrees to convey to said C.D. the premises above described, free and clear from all incumbrances, by a deed of general warranty.

And the said C.D. agrees to pay said A.B. for said premises the sum of $_____, as follows: $_____ with interest at ____ per cent on the ____ day of _____, 19__;

The said A.B. agrees that said C.D. shall have immediate possession of said premises for the purpose of residence, cultivation, and improvement.

In witness whereof we have hereunto set our hands this ____ day of _____,

19__.

A.B.
C.D.

2

Agreement Concerning Party Wall

This agreement, made this ____ day of _____, 19__, by and between A.B. and C.D., of the city of _____ _____, witnesseth: That, whereas, the said C.D. is the owner of the house and lot on the south side of _____ Street, [278] second lot east of _____ Street, and the said A.B. is the owner of the lot adjoining the same next easterly thereof, on which said lot there now stands a party wall on a line parallel with _____ Street; and forty-four feet easterly from said _____ Street; and, whereas, the said A.B. has erected his dwelling-house several feet (one story) higher than the said C.D., whereby greater advantage may accrue to the said A.B. from said party wall. Now, therefore, the said C.D., in consideration of the sum of $1, to him in hand paid, the receipt whereof is hereby acknowledged, doth grant, covenant, promise, and agree with the said A.B., that he may peacefully and lawfully enjoy such party wall, to himself, his heirs, and assigns, the said C.D. reserving to himself the right to use the said portion of the party wall built by the said A.B., whenever he may wish to build higher than his house now is.

It is further mutually understood and agreed, between the respective parties, that this agreement shall remain so long as the houses last, and shall pass to the heirs and assigns of the respective parties to these presents.

Witness our hands and seals, the day and year first above written.

A.B. (L.S.)
C.D. (L.S.)

3

Agreement for Building

This agreement, entered into this ____ day of _____, 19__, between A.B. and C.D. witnesseth: That the said A.B. hereby agrees with the said C.D. to erect for him on (describe land) a (dwelling-house) in conformity with the drawing and detailed specifications of one E.F., architect, the work to be performed in a substantial and workmanlike manner, and with the best materials of their respective kinds, the same to be furnished, together with all things necessary to erect and complete said building, at the cost and expense [279] of the said A.B., payments to be made as follows: (specify terms) upon the certificate of the architect, provided that said estimates shall not at any time before the completion of said building exceed the basis of 85 per cent of the value of the work so executed.

And the said C.D. hereby agrees with said A.B. to pay to him the sum of $_____ for the erection and completion of said building in the manner aforesaid, (monthly) estimates to be made by said E.F., architect, of the amount then due to said A.B. thereon, upon the presentation of which estimate said C.D. agrees to pay 85 per cent of the same, the remaining 15 per cent to be retained until the completion of said building. And on the completion of said work in the manner aforesaid to the satisfaction of said architect, and upon the presentation of his certificate to that effect, said C.D. agrees to pay said A.B. the balance remaining unpaid on said contract, including the fifteen per cent retained until the completion of the work. The said A.B. further agrees to complete said building as aforesaid and deliver the same to said C.D. on or before the ____ day of _____, 19__.

In witness whereof we have hereunto set our hands this ____ day of _____, 19__.

A.B.
C.D.

4

Claim of Lien by Workman of Sub-Contractor

A.B. to C.D., Dr.

June 1st, 19__. To twenty-five days' labor at carpenter work, at $5 per day, upon the dwelling-house situated on lot B in block 350, in the city _____, _____ county, _____, which services were rendered on and before the 1st day of June, 19__, and then payable.

(Signed) C.D.

5

[280]

Agreement for Work and Labor

This agreement, entered into this ____ day of _____, 19__, by and between A.B. and C.D., witnesseth: That the said A.B. agrees faithfully to labor for C.D. for the term of (six) months from the first day of _____, 19__, at farm labor, on the farm of said C.D., in _____ county, and to perform such other services as may be reasonable and just, for which services said C.D. agrees to pay said A.B. the sum of $_____ per month (on the ____ day of _____, 19__.)

In witness whereof we have hereunto set our hands this ____ day of _____, 19__.

A.B.
C.D.

6

Bond to Perform a Contract

Know all men by these presents, that, we A.B., as principal, and C.D., as surety, are held and firmly bound unto E.F., in the sum of $_____, for the payment of which well and truly to be made we bind ourselves jointly and severally by these presents.

Dated this ____ day of _____, 19__.

Whereas, said A.B. had, by an agreement of this date, contracted in writing with said E.F. to (here describe the contract).

Now, therefore, the condition of this obligation is such that if the said A.B. shall do and perform all the stipulations and agreements contained in said written contract then this obligation to be null and void. Otherwise to remain in full force and effect.

In witness whereof we have hereunto set our hands this ____ day of _____, 19__.

A.B.
C.D.

7

[281]

Bill of Sale

Know all men by these presents, that _____, of the first part, for and in consideration of the sum of _____, lawful money of the United States, to _____ in hand paid, at or before the ensealing and delivery of these presents by _____, of the second part, the receipt whereof is hereby acknowledged, ha____ bargained and sold, and by these presents do grant and convey, unto the said part _____ of the second part, _____ executors, administrators, and assigns (description of property; or if detailed description is contained in schedule annexed, say, the goods and chattels particularly described in a schedule hereunto annexed and made a part of this instrument), to have and to hold the same unto the said part _____ of the second part, _____ executors, administrators, and assigns forever. And _____ do____ for _____ heirs, executors, administrators, covenant and agree, to and with the said part _____ of the second part, to warrant and defend the sale of the said property _____ hereby sold unto the said part _____ of the second part, _____ _____ executors, administrators, and assigns, against all and every person and persons whomsoever.

In witness whereof, _____ have hereunto set _____ hand _____ and seal _____ the ____ day of _____ in the year one thousand nine hundred

and _____.

Sealed and delivered in the presence of

(Acknowledgment clause.)

8

Bill of Sale—Shorter Form

Know all men by these presents, that I _____ of the county of _____, in the state of _____, do hereby bargain, sell, and convey to said _____, the following described personal property now belonging to me, to-wit: (describe in detail). And I hereby covenant with said _____ _____, to warrant the title of said property to said _____ against the lawful claims of all persons whomsoever. [282]

In witness whereof I have hereunto set my hand this ____ day of _____, 19__.

(Signed)

In the presence of _____

9

Warranty Deed

Know all men by these presents, that we _____, and _____, husband and wife, in consideration of the sum of $_____, in hand paid, do hereby grant, bargain, sell, and convey to _____, of _____ county, _____, the following described real estate situate in the county of _____, and state of Iowa, to-wit: (describe premises), to have and to hold to his heirs and assigns forever. Together with all the tenements, hereditaments, and appurtenances thereto belonging. And we hereby covenant with said _____ that we are lawfully seized of said premises; that they are free from incumbrances; that we have good right and lawful authority to sell the same, and we covenant to warrant and defend the same against the lawful claims of all persons whomsoever. And the said _____, hereby relinquishes her right of dower in said premises.

In witness whereof we have hereunto set our hands this ____ day of _____, 19__.

In presence of _____

_____ _____

State of _____ }
_____ County. }

On this ____ day of _____, 19__, before me, a justice of the peace in and for said county, personally came the above named _____, who are known to me to be the identical persons whose names are affixed to the above deed as grantors, and severally acknowledge the instrument to be their voluntary act, and deed. [283]

In witness whereof I have hereunto set my hand the day and year above written.

A.B.
Justice of the Peace.

10

Warranty Deed in Common Use in New England

Know all men by these presents, that I, (the grantor) of (residence, town or city, county and state), (occupation), in consideration of (the amount paid) to me paid by (here name the grantee or purchaser, giving in like manner his residence and occupation), the receipt whereof is hereby acknowledged, do hereby give, grant, bargain, sell and convey unto the said (name the grantee, and then describe the premises granted, minutely and accurately):—

To have and to hold the above-granted premises, to the said (name the grantee), his (hers or their) heirs and assigns, to his (or her or their) use and behoof forever. And then, the said (name the grantor), for (myself) and (my)

heirs, executors, and administrators, do covenant with the said (name of the grantee), and with his heirs and assigns, that I am lawfully seized in fee simple of the aforegranted premises; that they are free from all incumbrances (if there be any incumbrances, as a mortgage or lien, or right of way, or drain, or air, or light, say excepting, and then describe the incumbrance), that I have good right to sell and convey the same to the said (name of the grantee), and his (or her) heirs and assigns forever as aforesaid; and that I will, and my heirs, executors, and administrators shall, warrant and defend the same to the said (name of the grantee), and his heirs and assigns forever, against the lawful claims and demands of all persons. [284]

In witness whereof, I the said (name of the grantor) and (name of his wife), wife of said grantor, in token of her release of all right and title of or to dower in the granted premises, have hereunto set our hands and seals this ____ day of _____ in the year of our Lord _____

(Signature) (Seal)

Signed, Sealed, and Delivered in the Presence of

11

Deed of Indenture—Short Form

This indenture, made the ____ day of _____, 19__, between _____ (insert occupation and residence), of the first part, and _____ (insert occupation and residence), of the second part,

Witnesseth: That the said part____ of the first part, in consideration of _____ dollars, lawful money of the United States, paid by the part____ of the second part, do ____ hereby grant and release unto the said part____ of the second part, ____h____ heirs and assigns forever (description of land). Together with the appurtenances and all the estate and rights of the part____ of the first part in and to said premises.

To have and to hold the above-granted premises unto the said part____ of the second part, ____h____ heirs and assigns forever.

And that said part____ of the first part do____ covenant with said part____ of the second part, as follows:

That the part____ of the first part will forever warrant the title to said premises.

In witness whereof, the said part____ of the first part ha____ hereunto set ____h____ hand ____ and seal ____, the day and year first above written.

In the presence of
(Acknowledgment clause.)

12 [285]

Quit Claim Deed

Know all men by these presents, that we, _____ and _____, husband and wife, in consideration of the sum of $_____, in hand paid, do hereby sell and quit claim to _____ all our right, title and interest in and to the following described real estate, situate in the county of _____, and state of _____, to-wit: (describe premises) to have and to hold the above described premises to the said _____, and his heirs and assigns forever.

In witness whereof, we have hereunto set our hands this _____ day of _____, 19__.

In presence of _____

_____ _____

State of _____ }
_____ County. }

On this ____ day of _____, 19__, before me, a justice of the peace, in and for said county, personally came the above named _____, who are known to me to be the identical persons whose names are affixed to the above deed as grantors, and severally acknowledged the instrument to be their voluntary act and deed.

Witness my hand the date above given.

A.B.

Justice of the Peace.

13

Quit Claim Deed—Another Form

This indenture, made this ____ day of _____, in the year of our Lord, 19__, between _____, of the first part, and _____, of the second part, witnesseth: That the said part____ of the first part, in consideration of the sum [286] of _____ dollars, to _____, in hand paid by the said part____ of the second part, the receipt whereof is hereby confessed and acknowledged, ha____ bargained, sold, remised, and quitclaimed, and by these presents do____ bargain, sell, remise, and quitclaim unto the said part____ of the second part _____ and to _____, heirs and assigns forever, all _____ together with all and singular the hereditaments and appurtenances thereto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, claim, and demand whatsoever, of the said part____ of the first part, either in law or equity, of, in, and to the above-bargained premises, with the said hereditaments and appurtenances, to have and to hold the said _____ to the said part____ of the second part, _____ heirs and assigns, to the sole and only proper benefit and behoof of the said part____ of the second part, _____ heirs and assigns forever.

In witness whereof, the part____ of the first part ha____ hereunto set _____ hand ____ and seal ____, the day and year first above written.

Sealed and delivered in the presence of
(Acknowledgment clause.)

14

Quit Claim Deed—Short Form

In consideration of $100, to me in hand paid by C.D., I, A.B., hereby sell, grant, release, and quitclaim to said C.D., that certain lot (here insert description). To have and to hold the said released premises unto the said C.D., and his heirs and assigns forever.

Witness my hand and seal, this ____ day of _____, 19__.
(Acknowledgment clause.)

A.B. (L.S.)

15 [287]

Mortgage

Know all men by these presents, that _____ and _____, husband and wife, in consideration of the sum of $_____, to us in hand paid, do hereby grant, bargain, sell, and convey to _____ of _____, the following described real estate, to-wit: (describe premises). Together with all the tenements and appurtenances thereunto belonging. And we do hereby covenant with said _____ that we are lawfully seized of said premises; and we will warrant and defend, the same against the lawful claims of all persons whomsoever.

Provided, however, and these presents are upon this express condition. That whereas _____ on the ____ day of _____, 19__, executed and delivered to _____ promissory notes, as follows: The first of said notes for the sum of $_____, with interest from date, is due and payable _____, 19__, and the second of said notes for the sum of $_____ with interest from date, is due and payable on the ____ day of _____, 19__. Now if said _____ shall pay said notes and interest thereon, when they shall become due, then this conveyance shall be null and void, otherwise to remain in force and effect.

In witness whereof we have hereunto set our hands this _____ day of _____, 19__.

In presence of _____

_____ _____

Acknowledgment as to deed.

16

Mortgage with Power of Sale

This Indenture, made the ____ day of _____ in the year _____ between _____ (name, residence, and occupation of mortgagor) party of the first [288] part, and _____ (name, residence, and occupation of mortgagee) party of the second part, Witnesseth: That the said party of the first part, in consideration of the sum of (the amount of the debt) to him duly paid before the delivery hereof, has bargained and sold, and by these presents does grant and convey to the said party of the second part, and his heirs and assigns forever, all (here describe the premises minutely and accurately) with the appurtenances, and all the estate, right, and title, and interest of the said party of the first part therein.

This grant is intended as a security for the payment of (here describe the debt) which payments, if duly made, will render this conveyance void. And if default shall be made in the payment of the principal or interest above mentioned, then the said party of the second part, or his executors, administrators, or assigns, are hereby authorized to sell the premises above granted, or so much thereof as will be necessary to satisfy the amount then due with the costs and expenses allowed by law.

In witness whereof, the said party of the first part has hereunto set his hand and seal the day and year first above written.

(Signature) (Seal)

Sealed and delivered in the presence of

STATE OF }
COUNTY OF } SS.

On the ____ day of _____ in the year one thousand nine hundred and _____ before me personally came (name of mortgagor) who is known to me to be the individual described in, and who executed the foregoing instrument, and acknowledged that he executed the same, as his free act and deed.

17

Chattel Mortgage with Power of Sale

Know all men by these presents, that I, A.B., in consideration of the sum of $_____ paid by C.D., have bargained and sold, and by these presents do [289] hereby sell and convey to said C.D. the following goods, and chattels, to-wit: (describe the articles mortgaged, or refer to them as the goods and chattels mentioned in the schedule hereto annexed), and which is now in my possession.

Whereas, the said A.B. is justly indebted to C.D. in the sum of $_____, payable on the ____ day of _____, 19__, with interest at ten per cent from the ____ day of _____, 19__ (upon a promissory note of even date herewith, or for goods sold and delivered).

Now the condition of the above obligation is such that if the said A.B. shall well and truly pay said C.D. said sum of money and interest when the same shall become due, then this conveyance shall be void, otherwise to remain in full force and effect. It is also agreed that said A.B. may retain possession of the said mortgaged property until said debt becomes due. But if default be made in the payment of said sum or any part thereof, the said C.D. and his assigns are hereby authorized to sell said goods and chattels, or so much thereof as will be necessary to satisfy the amount then due, together with the costs and expenses incurred by reason of said default.

(Signed) A.B.
In the presence of E.F.

18

Mortgage on Goods and Chattels—Another Form

Know all men by these presents, that A.B., residing at _____, of the first part, for securing the payment of the _____, hereinafter mentioned, and in consideration of the sum of $1, to _____ in hand paid, at or before the

ensealing and delivery of these presents, by C.D., of the second part, the receipt whereof is hereby acknowledged, ha____ granted, bargained, sold, and assigned, and by these presents do ____ grant, bargain, sell, and assign unto the said part____ of the second part, all _____ now remaining and being _____. [290]

To have and to hold, all and singular, the goods and chattels above bargained and sold, or intended so to be, unto the said part____ of the second part, _____ executors, administrators, and assigns forever. And the said part____ of the first part, for _____ heirs, executors, and administrators, all and singular, the said goods and chattels above bargained and sold unto the said part____ of the second part, _____ executors, administrators, and assigns, against the said part____ of the first part, and against all and every person or persons whomsoever shall and will warrant, and by these presents forever defend.

Upon condition, that if the said part____ of the first part shall and do well and truly pay, or cause to be paid, unto the said part____ of the second part, _____ executors, administrators, or assigns, the sum of _____, then these presents and everything herein contained shall cease and be void. And the said part____ of the first part, for _____ executors, administrators, and assigns, do _____ covenant and agree to and with the said part____ of the second part, _____ executors, administrators, and assigns, to make punctual payment of the money hereby secured _____. And in case default shall be made in payment of the said sum above mentioned, or in case the said part____ of the second part shall sooner choose to demand the said goods and chattels, it shall and may be lawful for, and the said part____ of the first part do _____ hereby authorize and empower the said part____ of the second part, _____ executors, administrators, and assigns, with the aid and assistance of any person or persons, to enter and come into and upon the dwelling-house and premises of the said part____ of the first part, and in such other place or places as the said goods and chattels are or may be held or placed, and take and carry away the said goods and chattels to sell and dispose of the same for the best price they can obtain, at either public or private sale, and out of the money to retain and pay the said sum above mentioned, with the interest and all expenses and charges thereon, rendering the overplus (if any) unto the said part____ of the first part, _____ executors, administrators, and assigns. And until default be made in the payment of the aforesaid sum of money, the said part____ of the first part to remain and continue in quiet and peaceable possession of the said goods and chattels, and the full and free enjoyment of the same, unless the said part____ of the second part, _____ executors, administrators, or assigns, shall sooner choose to demand the same; and until such demand be made, the possession of the said part____ of the first part shall be deemed the possession of an agent or servant, for the sole benefit and advantage of his principal, the said part____ of the second part. [291]

In witness whereof, the said part____ of the first part, ha____ hereunto set _____ hand ____ and seal _____ this ____ day of _____, 19__.

Sealed and delivered in the presence of

_____ County of _____ss.:

On this ____ day of _____, 19__, before me came _____, to me known to be the person____ described in and who executed the foregoing instrument, and _____ acknowledged that ____ he _____ executed the same.

19

Notice of Sale under Chattel Mortgage

Notice is hereby given that by virtue of a chattel mortgage, dated on the ____ day of _____, 19__, and duly filed in the office of the county clerk of _____ county, _____ on the ____ day of _____, 19__, and executed by A.B. to C.D. to secure the payment of the sum of $_____, and upon which there is now due the sum of $_____. Default having been made in the payment of said sum, and no suit or other proceeding at law having been instituted to recover said debt or any part thereof, therefore, I will sell the property therein described, viz.: (here describe the articles substantially as in the mortgage) at public auction at the house of _____, in the (city, town, or precinct) of _____, in _____ county, on the ____ day of _____, at one o'clock P.M. of said date. [292]

C.D.
Mortgagee.

Dated ____, _____, 19__.

20

Assignment of Mortgage

This instrument, made this ____ day of _____, 19__, between _____, of the first part, and _____, of the second part, witnesseth: That the part____ of the first part, for a good and valuable consideration, to _____ in hand paid by the part____ of the second part, ha____ sold, assigned, transferred, and conveyed, and do____ hereby sell, assign, transfer, and convey to the part____ of the second part, a certain mortgage, bearing date the ____ day of _____, 19__, made by _____, recorded in the clerk's office of _____ county, in liber _____, of mortgages, at page _____, on the ____ day of _____, 19__, at ____ o'clock ____m., together with the bond accompanying said mortgage, and therein referred to, and all sums of money due and to grow due thereon. And the part____ of the first part hereby covenant that there is _____ due on the said bond and mortgage the sum of _____.

In witness whereof, the part____ of the first part ha____ hereunto set _____ hand ____ and seal ____ the day and year first above written.

(Assignment clause.)

21 [293]

Agreement for Lease

This is to certify that I have, on this 1st day of _____, 19__, let and rented to C.D., lot _____, in block _____, in the city to _____, _____, together with the dwelling-house thereon, with all the appurtenances, and the sole and uninterrupted possession thereof for one year from this date, at the yearly rent of $_____, payable quarterly in advance; rent to cease in case of the destruction of the premises by fire.

(Signed) A.B.

22

Lease

This agreement, entered into this first day of _____, 19__, between A.B. and C.D., witnesseth: That the said A.B., in consideration of the covenants of the said C.D., hereinafter set forth, does hereby lease to the said C.D., from the first day of _____, 19__, to the ____ day of _____, 19__, the following described property, to-wit: (The southeast quarter of section 15, in township 12 north, range 14 east of 6th principal meridian). And the said C.D., in consideration of the leasing of the premises as above set forth, does hereby covenant and agree to pay said A.B. the rent following, to-wit: (Insert terms and mode of payment). The said C.D. also covenants with the said A.B. that he will cultivate said land in a good and husband-like manner; that he will keep said premises in as good a condition as they now are; the usual wear and incidents by fire excepted, and that he will yield peaceable possession of the same to said A.B. at the expiration of said term.

In witness whereof we have hereunto set our hands this _____ day of _____, 19__.

A.B.
C.D.

In presence of E.F.

23 [294]

Lease—Another Form

Landlord and Tenant's Agreement

This instrument, made and executed this ____ day of _____, 19__, between _____, of the _____, part____ of the first part, and _____, of the _____, part____ of the second part, witnesseth:

That the part____ of the first part ha____ hereby let and rented to the part____ of the second part, and the part____ of the second part ha____ hereby hired and taken from the part____ of the first part, _____ for the term of _____ years _____ —— to commence the ____ day of _____, 19__, at the yearly rent of _____ dollars, payable _____. And the part____ of the second part hereby covenant____ to and with the part____ of the first part to make punctual payment of the rent _____ in the manner aforesaid, and quit and surrender the premises at the expiration of said term, in as good state and condition as they are now in, reasonable use and wear thereof, and damages by the elements excepted, and further covenant____ that ____he____, the part____ of the second part, will not use or occupy said premises for any business or purpose deemed extra hazardous on account of fire.

And further covenant____ that ____he____, the part____ of the second part, will not assign this lease or underlet the said premises, or any part thereof, to any persons whomsoever, without first obtaining the written consent of said part____ of the first part, and in case of not complying with this covenant, the part____ of the second part agree____ to forfeit and pay to the part____ of the first part the sum of _____ dollars, as and for liquidated damages which are hereby liquidated and fixed as damages and not as a penalty.

This lease is made and accepted on this express condition, that in case the part____ of the second part should assign this lease or underlet the said premises, or any part thereof, without the written consent of the part____ of [295]
the first part, that then the part____ of the first part, his heirs or assigns, in his option, shall have the power and the right of terminating and ending this lease immediately, and be entitled to the immediate possession of said premises, and to take summary proceedings against the part____ of the second part, or any person or persons in possession as tenant, having had due and legal notice to quit and surrender the premises, holding over their term.

It is further agreed between the parties, that in case said premises should be destroyed by fire before or during said term, that then this lease is to cease and determine; the rent _____ to be paid up to that time.

In witness whereof, the parties have hereunto set their hands and seals the day and year first above written.

In presence of _____

_____ _____

24

Farm Lease

This indenture, made the ____ day of _____ in the year of our Lord, 19__, between A.B., of the city of _____, party of the first part, and C.D., of the same place, party of the second part, witnesseth:

That the said party of the first part, in consideration of the rents, covenants, and agreements hereinafter mentioned, reserved, and contained on the part of the said party of the second part, his executors, administrators, and assigns, to be paid, kept, and performed, has demised and to farm let, unto the said party of the second part, his executors, administrators, and assigns, all (insert description), with the appurtenances, unto the said party of the second part, his executors, administrators, and assigns, from the ____ day of _____, 19__, for the term of ten years then next ensuing, yielding and paying therefor, unto the said party of the first part, his heirs or assigns, yearly and every year during the said term hereby granted, the yearly rent or [296]
sum of $_____, in equal half-yearly payments, to-wit: on the 1st days of October and April in each and every year; provided, that if the yearly rent above reserved, or any part thereof, shall be unpaid on any day of payment whereon the same ought to be paid as aforesaid; or if default shall be made in any of the covenants or agreements herein contained, on the part of the said party of the second part, his heirs or assigns, to re-enter upon the said premises, and the same to have again, as in their first and former estate.

And the said party of the second part does covenant and agree, with the said party of the first part, his heirs and assigns, that he, the said party of the second part, his executors, administrators, or assigns, will yearly and every year during the said term, pay unto the said party of the first part, his heirs or assigns, the yearly rent above reserved, on the days and in manner limited and prescribed as aforesaid, for the payment thereof, without any deduction or delay. And that the said party of the second part, his executors, administrators, or assigns, will, at his own proper costs and charges, bear, pay, and discharge all taxes, duties, and assessments, as may, during the said term hereby granted, be charged, assessed, or imposed upon the said

demised premises. And that on the determination of the estate hereby granted, the said party of the second part, his executors, administrators, or assigns, shall and will leave and surrender unto the said party of the first part, his heirs or assigns, the said demised premises in as good stage and condition as they are now in, ordinary wear and damages by the elements excepted.

And the said party of the first part does covenant and agree, with the said party of the second part, his executors, administrators, and assigns, that the said party of the second part, his executors, administrators, and assigns, paying the said yearly rent above reserved, and performing the covenants and agreements aforesaid on his part, the said party of the second part, his executors, administrators, and assigns, shall and may at all times during the said term hereby granted, peaceably have, hold, and enjoy the said demised [297] premises, without any manner of trouble or hindrance of or from the said party of the first part, his heirs or assigns, or any other person or persons whomsoever.

In witness whereof, the parties to these presents have hereunto set their hands and seals.

Sealed and delivered in the presence of

_____
A.B. (L.S.)

25

Lease of Furnished Rooms

Memorandum. It is agreed by and between A.B. and C.D., as follows, viz.: The said A.B., in consideration of the rent hereinafter mentioned and agreed to be paid to him, hath letten to the said C.D. one room, up two flights of stairs forward, part of the now dwelling-house of the said A.B. situate on _____ Street, in the city of _____, together with the furniture at present standing therein—that is to say: (insert furniture). To hold to the said C.D. for the term of two years, to commence from _____, 19__, at the yearly rent of $100, to be paid quarterly to the said A.B.

The said C.D., in consideration hereof, agrees to pay the aforesaid yearly rent of $100, at the times above limited for payment thereof; and at the end of the term, or in case of any default in the payment, shall and will, on the request of the said A.B., or his assigns, immediately yield and deliver up to him or them, the peaceable and quiet possession of the said room, together with the whole furniture he, from the first entrance thereon, there found and possessed, in good, and sufficient plight and condition, reasonable wear and tear only excepted.

In witness whereof the parties have signed this agreement, this ____ day of _____, 19__.

A.B.
C.D.

26 [298]

Assignment of Lease

For and in consideration of the sum of $_____, to me in hand paid by E.F., I hereby assign and transfer to said E.F. a certain lease, bearing date _____, 19__, and made by A.B. to me, C.D., for (describe the premises), together with all and singular the buildings and appurtenances thereunto belonging, or in any wise appertaining, subject, however, to the rents hereafter to accrue and the covenants and conditions contained in said lease.

C.D.

27

Assignment of Lease—Another Form

Know all men by these presents, that I, A.B., the within-named lessee, for and in consideration of $50, to me in hand paid by C.D., of the town of Franklin, County of Albany, at and before the sealing and delivery hereof, the

receipt whereof I do hereby acknowledge, have granted, assigned and set over, and by these presents do grant, assign and set over, unto the said C.D., his executors, administrators, and assigns, the within indenture of lease, and all that house and farm therein described, with the appurtenances, and also my estate, right, title, term of years yet to come, claim and demand whatsoever, of, in, to, or out of the same. To have and to hold the said house and farm, and the appurtenances thereof unto the said C.D., his executors, administrators, and assigns, for the residue of the term within mentioned, under the yearly rent and covenants within reserved and contained, on my part and behalf to be done, kept and performed.

Witness my hand and seal, this June 20, 19__.

A.B. (L.S.)

(Acknowledgment.)

28

[299]

Notice to Quit

To C.D.:

I hereby notify you to leave the premises now occupied by you, to-wit: (Lot 8 in Block 144, in the city of _____, _____ county, _____.) If you fail to comply with this notice within three days after its service, I shall instigate legal proceedings to obtain possession of said premises.

(Signed) A.B.

29

Subscription to Build a Church

Whereas, the trustees of the church corporation, known as the "Church of the Puritans," are about erecting a church edifice for such corporation; now, we, the undersigned, for the purpose of such erection, hereby agree to and with such trustees and to and with each other, to pay to B.B., the treasurer of said corporation, the several sums by us set opposite our several names, for the purpose of such erection, and we hereby authorize and direct the said trustees to expend such sums in the erection of the same. The said sums are to be paid to the said treasurer on or before the 1st day of March, 1900.

NAMES	AMOUNT
A.B.	$600
C.C.	400

30

Power of Attorney

Know all men by these presents, that we _____ and _____, husband and wife of the county of _____, and state of _____, have made, constituted and appointed, and do hereby make, constitute and appoint _____ of the county of _____, and state of _____, our true and lawful attorney for us and in our names, place and stead, to sell and convey by a good and sufficient deed, with full covenants of warranty the following described real estate, to-wit: (describe), hereby giving and granting to our said attorney full power to do and perform every act and thing necessary to be done in the premises as fully as we could do if personally present, hereby ratifying and confirming all that our said attorney shall do by virtue hereof. [300]

In witness whereof we have hereunto set our hands this ____ day of _____, 19__.

In presence of _____

_____ _____

State of _____ }
_____ County. }

On this ____ day of _____, 19__, before me, a justice of the peace in and for said county, personally came the above named _____ and _____, who are known to me to be the identical persons whose names are affixed to the above power of attorney as makers thereof, and severally acknowledged the

instrument to be their voluntary act and deed.

In witness whereof I have hereunto set my hand the day and year above written.

A.B.
Justice of the Peace.

31

Power of Attorney to Transfer Stock

Know all men by these presents, that _____, for value received, ha____ bargained, sold, and assigned, and by these presents do bargain, sell, and assign unto _____, the following described stock, to-wit: _____ unto [301] _____, belonging and held by certificate No. _____, in _____ name, and hereunto annexed, and do hereby constitute and appoint _____, true and lawful attorney, irrevocably, for _____, and in _____ name and stead, to _____ use, to assign and transfer the said stock unto _____ and for that purpose to make and execute the necessary acts of assignment and transfer, and an attorney, or attorneys under _____, for that purpose, to make and substitute, and to do all other lawful acts requisite for effecting the premises, hereby ratifying and confirming the same.

In witness whereof _____ have hereunto set _____ hand ____ and seal ____ in the city of _____, the ____ day of _____, in the year of our Lord, 19__.

State of Ohio,
City and County of _____ss.:

On the ____ day of _____, 19__, personally appeared before me _____, to me known to be the person _____ described in, and who executed the within instrument, and acknowledged the execution of the same for the uses and purposes therein mentioned.

32

Certificate of Stock

No. _____ No. of shares _____
Par value of each, $_____

The _____ Company:

This is to certify that _____ is the owner of _____ _____ shares of the capital stock of the _____ Company, transferable only on the books of the company by the holder thereof, in person or by attorney, on the surrender of this certificate.

In witness whereof, the said company has caused its corporate seal to be [302] affixed, hereto, and this certificate to be signed by its president and treasurer.

_____, N.Y. _____, 19__.

_____ President.
_____ Treasurer.

On back of the certificate a blank transfer, in following form, should be printed.

For value received, _____ hereby sell, assign, and transfer unto _____ shares of the within-mentioned stock, and do hereby constitute and appoint _____, attorney to transfer the same on the books of the company.

Witness my hand and seal, this ____ day of _____, 19__.

Witness: _____
(SEAL)

33

Agreement to Sell Shares of Stock

Memorandum of agreement, made this ____ day of _____, 19__, between

A.A., of the city of New York, of the first part, and B.B., of the same place, of the second part, witnesseth: That the said A.A. agrees to sell and convey to the said B.B., on or before the 1st day of May next, 1,000 shares of the capital stock of the New Haven Bank, for the price or sum of $110 per share, and to make, execute, and deliver to the said B.B. all assignments, transfers, and conveyances necessary to assure the same to him, his heirs and assigns.

In consideration whereof, the said B.B. agrees to pay unto the said A.A. the price or sum or $110 for each and every share of the said stock so assigned, whenever, and as soon as the said assignment and the scrip of stock so assigned shall be properly executed and delivered to the said B.B.

In witness whereof, the said parties have hereunto set their hands and [303]
seals, the day and year first above written.

A.A. (L.S.)
B.B. (L.S.)

34

Transfer of Shares of Stock

Know all men by these presents, that I, A.B., _____ for value received, have bargained, sold, assigned, and transferred, and by these presents do bargain, sell, assign, and transfer unto C.D., sixteen shares of the capital stock, standing in my name on the books of the _____ First National Bank, and _____ do hereby constitute and appoint the said C.D., _____ my true and lawful attorney, irrevocable, for me and in my name and stead, but to his use, to sell, assign, transfer, and set over all or any part of the said stock, and for that purpose, to make and execute all necessary acts of assignment and transfer, and one or more persons to substitute with like full power, hereby ratifying and confirming all that my said attorney, or his substitute, or substitutes, shall lawfully do by virtue hereof.

In witness whereof, I have hereunto set my hand and seal the ____ day of _____, 19__.

A.B. (SEAL)

35

Assignment of Policy of Insurance

Know all men by these presents, that I, A.B., of the village of Coxsackie, for and in consideration of $25, to me in hand paid by C.D. of the same place, the receipt whereof is hereby acknowledged, have sold, assigned, transferred, and set over, and by these presents do sell, assign, transfer, and set over, unto the said C.D. the policy of insurance, known as policy No. 23,685 of the [304]
Indemnity Insurance Company, and all sum and sums of money, interest benefit and advantage whatsoever, now due, or hereafter to arise, or to be had or made by virtue thereof, to have and to hold the same unto the said C.D., and his assigns forever.

In witness whereof, I have hereto affixed my hand, this June 20, 19__ (A.B.)

(Acknowledgment.)

36

Assignment of Patent Right

"Whereas, letters-patent, bearing the date the 10th of January, 1921, were granted and issued by the Government of the United States, under the seal thereof, to A.B., of the town of Bristol, of the State of Pennsylvania, for (here state the nature of the invention) a more particular and full description thereof is annexed to the said letters-patents in a schedule; by which letters-patents the full and exclusive right and liberty of making and using the said invention, and of vending the same to others to be used, was granted to the said A.B., his heirs, executors, and administrators, or assigns, for the term of seventeen years, from the same date.

Now, know all men by these presents, that I, the said A.B., for and in consideration of the sum of $100, to me in hand paid, the receipt whereof is hereby acknowledged, have granted, assigned and set over, and by these

presents do grant, assign, and set over unto C.D., of the said town of Bristol, his executors, administrators, and assigns, forever, the said letters-patent, and all my right, title and interest in and to the said invention, so granted unto me: to have and to hold the said letters-patent and invention, with all benefit, profit and advantage thereof, unto the said C.D., his executors, administrators, and assigns, in as full, ample, and beneficial manner, to all intents and purposes, as I, the said A.B., by virtue of the said letters-patent, may or might have or hold the same, for and during all the rest and residue of [305] the term for which said letters-patent are granted.

In witness whereof, I have hereto affixed my hand and seal, this 10th day of June, 19__.

A.B. (L.S.)

In the presence of
E.F.
G.H.
(Acknowledgment.)

37

Bond for Payment of Money

(As in Form No. 6, and then as follows):

The condition of this obligation is such, that if the above-bounden A.B., his heirs, executors, and administrators, or any of them, shall well and truly pay, or cause to be paid, unto the above-named C.D., his executors, administrators, or assigns, the just and full sum of $1,000, lawful money, as aforesaid, in manner following, to-wit: $300 part thereof, on the _____ ____ day of _____ next ensuing the date hereof; $300 more thereof on the ____ day of _____, the next following; and $400, the residue, and in full payment thereof, on the ____ day of _____, which will be in the year of _____; then this obligation to be void; but if default shall be made in payment of any or either of the said sums on the days and times hereinbefore mentioned and appointed for payment thereof, respectively, then this bond shall remain in full force and virtue.

A.B. (L.S.)

38

Articles of Co-Partnership

This agreement entered into this ____ day of _____, 19__, by and between A.B. and C.D., witnesseth, that said parties have formed a co-partnership for [306] the purpose of carrying on the business of & _____ at _____, upon the following terms and conditions:

First: The name and style of said co-partnership shall be A.B. & C.D., and shall continue _____ years from this date, unless sooner terminated by the death of either of said partners.

Second: The said A.B. shall contribute to the capital stock of said firm the sum of $_____, and the said C.D. the sum of $_____, and said partners shall be the owners of the stock in that proportion, and any further increase of the capital stock shall be contributed by said partners in the same ratio.

Third: All the profits which shall accrue to said partnership shall be equally divided between said partners; and all losses from whatever cause shall be borne by them in proportion to their interests in the stock of said firm.

Fourth: Neither of said partners shall sign or in any manner become liable upon any promissory note or other obligation, for the accommodation of any person whatsoever, nor lend any of the co-partnership funds without the consent in writing of the other partner.

Fifth: Neither party shall withdraw from the funds of the firm to exceed the sum of $_____, per annum, in _____ in installments of not to exceed the sum of $_____, but neither shall at any time be entitled to draw in excess of his share of the profits then earned.

Sixth: All transactions and accounts of the firm shall be kept in regular books, which shall be open at all times to the inspection of either party or their representatives.

Seventh: An invoice of stock shall be taken on the first day of January of

each year, and the account between the parties settled at that time. And an invoice be taken and an account had at any other time when either partner shall demand the same in writing.

Eighth: No transaction outside of the _____ business shall be entered into [307] by either of said partners without the consent in writing of his co-partner. And any violation of the terms of this agreement shall be sufficient cause for a dissolution of this co-partnership.

In testimony whereof we have hereunto set our hands this ____ day of _____, 19__.

A.B.
C.D.

In the presence of G.H.

39

Articles of Co-Partnership—Another Form

Articles of co-partnership, made this ____ day of _____, 19__, by and between A.B. and C.D. both of the city of _____, witnesseth that:

The said parties hereby agree to form, and do form a co-partnership, for the purpose of carrying on the general produce and commission business on the following terms and articles of agreement, to the faithful performance of which they mutually engage and bind themselves, each to the other.

The style and name of the co-partnership shall be B. and D., and shall commence on the ____ day of _____, 19__, and continue for the period of five years.

Each of the said parties agrees to contribute to the funds of the partnership the sum of $3,000 in cash, which shall be paid in, on or before the ____ day of _____, 19__, and each of said parties shall devote and give all his time and attention to the business, and to the care and superintendence of the same.

All profits which may accrue to the said partnership shall be divided equally, and all losses happening to the said firm, whether from bad debts, depreciation of goods, or any other cause or accident, and all expenses of the business shall be borne by the said parties equally.

All the purchases, sales transactions, and accounts of the said firm shall be [308] kept in regular books, which shall be always open to the inspection of both parties and their regular representatives respectively.

An account of stock shall be taken, and an account between the parties shall be settled as often as once a year, and as much oftener as either partner may desire, and in writing request.

Neither of the said parties shall subscribe any bond, sign or indorse any note of hand, accept, sign, or indorse any draft or bill of exchange, or assume any other liability, verbal or written, either in his own name or in the name of the firm, for the accommodation of any other person or persons whatsoever, without the consent in writing of the other party; nor shall either party lend any of the funds of the co-partnership without such consent of the other partner.

No large purchase shall be made, nor any transaction out of the usual course of the business shall be undertaken by either of the partners, without previous consultation with, and the approbation of, the other partner.

Neither shall withdraw from the joint stock, at any time, more than his share of the profits of the business then earned nor shall either party be entitled to interest on his share of the capital; but if, at the expiration of the year, a balance of profits be found due to either partner, he shall be at liberty to withdraw the said balance, or to leave it in the business, provided the other partner consent thereto, and in that case be allowed interest on the said balance.

At the expiration of the aforesaid term, or earlier dissolution of this co-partnership, if the said parties, or their legal representatives, cannot agree in the division of the stock then on hand, the whole co-partnership effects, except the debts due to the firm, shall be sold at public auction, at which both parties shall be at liberty to bid and purchase like other individuals, and the proceeds shall be divided, after payment of the debts of the firm, in the proportions aforesaid.

For the purpose of securing the performance of the foregoing agreements, [309] it is agreed, that either party, in case of any violation of them, or either of them, by the other, shall have the right to dissolve this co-partnership

forthwith, on his becoming informed of such violation.

In witness whereof, we, the said A.B. and C.D., have hereto set our hands, the day and year first above written.

Executed and delivered in the presence of

(Acknowledgment.)

A.B.
C.D.

40

Letter of Credit

A.B. & Co _____:

Gentlemen.—We will be responsible to you for goods sold to C.D., of _____, to an amount not exceeding _____ dollars (or, for cash advanced to C.D., of _____ not exceeding _____ dollars), (or, for credit secured by you to C.D., of _____, in the purchase of (describe the kind of goods), not exceeding the sum of _____ dollars) at any time before _____, 19__, unless this letter is revoked prior to said date; and providing you send notice to us by mail within ten days of the granting of such credit or making such payment, and also in case said C.D. should default in making payment of any part of any debt created by reason of this agreement when such payment shall become regularly due, then notice of such default shall be sent by mail to us within five days of such default.

Dated, _____ 19__. (Signature)

41

Agreement for Sale of Physician's Practice

Agreement made this ____ day of _____, 19__, between _____, hereinafter called the vendor, and _____, hereinafter called the purchaser.

1. Whereas the said vendor has for many years past exercised his profession [310]
of physician and surgeon at _____, in the county of _____, and is now desirous of retiring from his practice at _____ aforesaid, and the said purchaser is desirous of establishing himself as a physician and surgeon at said _____, now therefore, the said vendor agrees to sell to the said purchaser, who agrees to purchase, the said practice and the good will and benefits thereof from the ____ day of _____ next, together with all the fixtures, furniture, medical books, surgical and other instruments and apparatus, and all the drugs, medicines, bottles, and other things now used therein, for the sum of _____ dollars; in confirmation of which purchase the purchaser, upon the execution of these presents, has paid the sum of _____ dollars by way of deposit and in part of the purchase money.

2. The said vendor further agrees that, on the payment of the residue of the said purchase money as hereinafter mentioned, he will fully and absolutely deliver over and assign to the said purchaser, his executors, administrators, or assigns, the said practice or business, and the good will thereof, for his and their own absolute use and benefit; and likewise the full and uninterrupted possession of the office in which the said practice is now carried on by him, together with the fixtures, furniture, books, instruments, apparatus, and things now used in and relating to the said practice.

3. The said vendor will introduce and recommend the said purchaser to his patients, friends, and others, as his successor; and will use his best endeavors to promote and increase the prosperity of the said practice or business.

4. The said vendor will not reside or practise either as physician or surgeon, or act directly or indirectly as partner or assistant to or with any other physician or surgeon practising _____ either at _____ aforesaid, or elsewhere, within _____ miles thereof.

5. The said purchaser, in consideration of the agreements on the part of the [311]
vendor hereinbefore contained, hereby further agrees to pay him, his executors, or administrators, _____ dollars, by installments as follows: one-half part thereof on the ____ day of _____ next, upon receiving the full and peaceable possession of the said practice, office, good will, fixtures, furniture, books, and things hereinbefore mentioned, and the remaining half part thereon on the ____ day of _____ next.

In witness, etc.

42

Agreement Between Merchant and Traveling Salesman

Agreement made this _____ of _____, between _____ of _____, and _____ of _____, merchants and co-partners, doing business under the firm name and style of _____ & Co., of the one part, and _____ of _____, traveling salesman of the other part.

1. The said salesman shall enter into the service of said firm as a traveler for them in their business of _____ merchants, for the period of _____ years from the ____ day of _____ 19__, subject to the general control of said firm.

2. The said salesman shall devote the whole of his time, attention, and energies to the performance of his duties as such salesman, and shall not, either directly or indirectly, alone or in partnership, be connected with or concerned in any other business or pursuit during the said term of _____ years.

3. The said salesman shall, subject to the control of the said firm, keep proper books of account, and make due and correct entries of the price of all goods sold, and of all transactions and dealings of and in relation to the said business, and shall serve the said firm diligently and according to his best abilities in all respects.

4. The fixed salary of the said salesman shall be the sum of _____ dollars per week for the first year, payable by the said firm weekly from the commencement of the said service, on the ____ day of _____, and _____ dollars per week for the third year, payable weekly in like manner, from the commencement of such respective years. [312]

5. The reasonable traveling expenses and hotel bills of the said salesman, incurred in connection with the business of said firm, shall be paid by the said firm, and the said firm shall from week to week pay to the said salesman the said traveling expenses and hotel bills in addition to the said fixed salary.

In witness, etc.

_____
_____

43

Agreement for the Adoption of Children

This indenture made the ____ day of _____, 19__, between _____ of _____, party of the first part, and _____, of _____, and _____ his wife, parties of the second part.

Whereas the said party of the first part has two daughters, _____ and _____, now aged _____ and _____ years, respectively; and whereas the said parties of the second part are willing to adopt the said children subject to the conditions hereinafter contained, and on the part of the party of the first part to be observed: Now this indenture witnesseth that the said parties covenant and agree as follows, that is to say:

1. The said parties of the second part shall adopt the said children, and shall, until the said children shall respectively attain the age of twenty-one years, or marry under that age, maintain, board, lodge, clothe, and educate them in a manner suitable to their station, and as if they were the lawful children of the parties of the second part and shall at the cost of the parties of the second part, and of the survivor of them, provide the said children with all necessaries, and discharge all the debts and liabilities which the said children or either of them may incur for necessaries, and indemnify the said party of the first part against all actions, claims, and demands in respect thereof. [313]

2. The said party of the first part hereby nominates and appoints the said parties of the second part, during their lives, and after their respective deaths the person or persons to be nominated in that behalf, as is hereinafter mentioned, to be the guardians of the persons and estates of the said children until they shall attain the age of twenty-one years, or until they shall marry under that age respectively.

3. The said party of the first part shall not revoke the appointment hereby

expressed to be made, and will not, by deed, will, or otherwise, appoint or apply for the appointment of any other person or persons to be guardian or guardians of the said children or either of them, or of their respective estates.

4. In case of the death of either of the parties of the second part before the said children shall attain the age of twenty-one years, or marry under that age respectively, it shall be lawful for the survivor of them, the said parties of the second part, by deed or will, to nominate and appoint any person or persons, from and after the decease of such survivor, to be guardian or guardians of the said children or either of them.

5. The said party of the first part shall not himself, nor shall any person or persons claiming under him, or acting under his authority, at any time or in any manner interfere with the training or management of the said children or either of them, or with their or her moral, intellectual, or religious education or instruction.

6. If the said party of the first part shall not perform and observe all and every of the stipulations herein contained and on his part to be performed and observed, then and in every such case it shall be lawful for the said parties of the second part, and the survivor of them, by notice in writing under their, his or her hands or hand, and addressed either to the party of the first part or to the person setting up such claim or demand, or so interfering as aforesaid, to [314] put an end to the agreement hereby expressed to be made, and thereupon the same shall absolutely cease and determine; provided that in such event the said party of the first part, or his estate, shall be liable to pay and satisfy all debts and liabilities incurred by or in any wise for the benefit of the said children, or either of them, which at the time of such determination of this agreement shall not have been paid and satisfied. In witness, etc.

44

Release by Ward of His Guardian

Know all men by these presents, that I, A.B., of _____, son and heir of _____, deceased, in consideration of _____, by these presents remise, release, and forever discharge C.D., of _____, my guardian, of and from all manner of actions, suits, accounts, debts, dues, and demands whatsoever, which I ever had, now have, or which I or my executors or administrators, at any time hereafter, can or may have, claim or demand against the said C.D., his executors or administrators, for, touching, or concerning the management and disposition of any of the lands, tenements, or hereditaments of the said A.B., situate, etc., or any part thereof, or for or by reason of any money, rents, or other profits by him received out of the same, or any payments made thereof, during the minority of the said A.B., or by reason of any matter, cause or thing whatsoever, from the beginning of the world to the day of the date hereof.

In witness whereof, I have hereunto set my hand and seal, this ____ day of _____, one thousand nine hundred and _____.

(Signature and seal)

_____

In presence of

(Signature of witness)

_____

_____

45 [315]

Will

In the name of God, amen: I, A.B., of the city of _____, in the county of _____, and state of _____, considering the uncertainty of this mortal life, and being of sound mind and memory, blessed be God for the same, do make and publish this my last will and testament, in manner and form following, that is to say:

First: I direct that my funeral charges, the expenses of administering my estate, and all my debts be paid out of my personal property. If that be insufficient I authorize my executors, hereafter named, to sell so much of my real estate as may be necessary for that purpose.

Second: I give and bequeath to my beloved wife, C.B., the sum of $_____,

in lieu of dower, and of any distributive share in my estate to which she would otherwise be entitled. I also give and bequeath to my beloved wife the dwelling-house and lot on which I now reside.

Third: I hereby give the custody of my infant children during their minority, and while they remain unmarried, to my beloved wife, so long as she remains my widow; but if she shall die or marry again during the infancy of said children, then in that case, I commit their custody and tuition to my friend E.F., of said city and state.

Fourth: I give and bequeath all of the residue of my estate, real and personal, to my children, share and share alike, as tenants in common, to be paid to them as they respectively come of age. In case any one of my children shall die in my lifetime, leaving issue of descendants, I direct that his share shall not lapse, but shall be paid to such descendants, in equal proportions.

Fifth: I appoint my friend G.H. executor of this, my last will and testament, hereby revoking all former wills by me made.

In witness whereof I have hereunto subscribed my name this 1st day of _____, in the year of our Lord _____. [316]

A.B.

We, whose names are hereunto subscribed, do hereby certify that A.B., the testator, subscribed his name to this instrument in our presence and in the presence of each of us, and declared at the same time in our presence and hearing that this instrument was his last will and testament, and we at his request, sign our names hereto in his presence as attesting witnesses.

L.M., of the city of _____
N.O., of the city of _____

46

Will—Another Form

I, A.B., of the town of _____, in the county of _____, and state of_____, declare this to be my last will and testament:

I give and bequeath to my wife, C.B., _____ dollars, to be received by her in lieu of dower.

To my son, E.B., _____ dollars (which said several legacies I direct to be paid within _____ after my decease).

I give and devise to my son, E.B. aforesaid, his heirs and assigns, all (here designate the property), together with all the hereditaments and appurtenances thereunto belonging or in anywise appertaining.

To have and to hold the premises above described to the said E.B., his heirs and assigns forever.

I give and devise all the rest, residue, and remainder of my real property, of every name and nature whatsoever, to my said daughter, M.B. (and my daughter, O.B., to be divided equally between them, share and share alike).

I give and bequeath all the rest, residue and remainder of my personal property, of what nature or kind soever, to my said wife, C.B. [317]

I hereby appoint E.B. the sole executor of this will, revoking all former wills by me made.

In witness (etc., as in Form 45).

47

Will Bequeathing Legacies and Appointing Residuary Legatee

I, A.B., of _____, declare this to be my last will and testament.

I bequeath to my wife, C.B., all the fixtures, prints, books, plate, linen, china, wines, liquors, provisions, household goods, furniture, chattels, and effects (other than money or securities for money), which shall at my death be in or about my dwelling-house and premises at _____.

I bequeath to my said wife the sum of _____ dollars, to be paid to her within one month after my death, without interest.

I also give and bequeath to my said wife the sum of _____ dollars.

I also bequeath the following legacies to the several persons hereafter

named: To my nephew, E.F., the sum of _____ dollars; to my cousin, G.H., the sum of _____ dollars; and to my friend, J.K., the sum of _____ dollars (and so on with other pecuniary legacies).

I also bequeath to each of my domestic servants who shall be living with me at the time of my death in the capacity of (state the description of servants to whom the legacies are to be given), one year's wages, in addition to what may be due to them at that time.

All the rest, residue and remainder of my real and personal estate, I devise and bequeath to R.S., his heirs, executors, administrators, and assigns, absolutely forever.

I appoint T.U. and V.W. executors of this my will. [318]

In witness, etc.

48

Articles of Incorporation

Know all men by these presents. That we, _____, _____, _____, _____, _____, _____, do associate ourselves together for the purpose of forming and becoming a corporation in the state of _____, for the transaction of the business hereinafter described.

1. The name of the corporation shall be (give name). The principal place of transacting its business shall be in the city of _____, county of _____, and state of _____.

2. The nature of the business to be transacted by said corporation shall be the (give name of business) and the erection and maintenance of such buildings and structures as may be deemed necessary, and to purchase real estate as a site therefor, and especially to _____.

3. The authorized capital stock of said corporation shall be (state amount) thousand dollars in shares of $_____ each, to be subscribed and paid as requested by the board of directors.

4. The existence of this corporation shall commence on the first day of _____, A.D., 19__, and continue during the period of _____ years.

5. The business of said corporation shall be conducted by a board of directors not to exceed five in number, to be elected by the stockholders; such election to take place at such time and be conducted in such manner as shall be prescribed by the by-laws of said corporation.

6. The officers of said corporation shall be a president, secretary and treasurer, who shall be chosen by the board of directors, and shall hold their office for the period of one year, and until their successors shall be elected and qualified.

7. The highest amount of indebtedness to which said corporation shall at any time subject itself shall be not more than _____ thousand dollars. [319]

8. The manner of holding the meetings of stockholders for the election of officers, and the method of conducting the business of the corporation, shall be as provided by the by-laws, adopted by the board of directors.

In witness whereof, the undersigned have hereunto set their hand this ____ day of _____ A.D., 19__.

_____, _____, _____
_____, _____, _____

State of _____ }
_____ County. }

On this ____ day of _____, 19__, before me, A.B., a justice of the peace, in and for the said county, personally appeared the above named _____, _____, _____, _____, who are personally known to me to be the identical persons whose names are affixed to the above articles, as parties thereto, and they severally acknowledged the instrument to be their voluntary act and deed.

Witness my hand the date aforesaid.

A.B.
Justice of the Peace.

[320]

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Typographical errors corrected in text:

Page	2:	adplicable replaced with applicable
Page	16:	posession replaced with possession
Page	32:	fradulent replaced with fraudulent
Page	95:	fnud replaced with fund
Page	126:	Morever replaced with Moreover
Page	133:	morgagee replaced with mortgagee
Page	139:	solemized replaced with solemnized
Page	153:	acquiesence replaced with acquiescence
Page	171:	perpared replaced with prepared
Page	272:	volutary replaced with voluntary
Page	324:	mortage replaced with mortgage
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