ENACTED BY THE COLONIAL COUNCIL

FOR THE

MUNICIPALITY OF ST. THOMAS AND ST. JAN.

CHAPTER I.

OF COURTS.

Section 1. The Judicial power of the Virgin Islands of the United States is hereby declared to be vested in a District Court, Police Courts and Juvenile Courts and a District Court Commissioner. Courts enumerated.

Section 2. The District Court is a court of general and original jurisdiction in all civil, criminal, admiralty, equity, insolvency and probate matters and causes, unless jurisdiction is conferred on some other court, in which event the jurisdiction of the District Court is concurrent. Jurisdiction of the District Court.

Section 3. The Virgin Islands of the United States is divided into three sub-judicial districts as follows: Judicial District defined.

(1) The Islands of St. Thomas and St. John together with surrounding islets, rocks, cays, etc. Sub-Judicial Districts defined.

(2) All that part of the Island of St. Croix now known and defined for judicial purposes as Christiansted jurisdiction.

(3) All that part of the Island of St. Croix now known and defined for judicial purposes as Frederiksted jurisdiction.

Section 4. Three general terms of the District Court shall hereafter be called each year in each sub-judicial district at intervals not exceeding 4 months apart. The sittings of the District Court shall be held at the town of Charlotte Amalie in St. Thomas, and at the towns of Christiansted and Frederiksted in St. Croix. Terms of District Court.

The Judge of the District Court is authorized and directed to hold such special terms of the District Court as may be necessary for the public welfare, or for the despatch of business of the court in each sub-judicial district, as he may deem necessary. Special Terms.

At least 20 days' notice shall be given by the Judge or the Clerk of the District Court, of the time and place of holding the several general and special terms of the District Court. Notice.

Section 5. There shall be appointed by the Governor a Judge for the District Court, who shall hold office for a period of two years, and who shall be eligible for reappointment. Judge of the District Court; term of.

The salary of the District Judge shall be francs twenty-four thousand per year or the equivalent thereof in such currency as may be legal tender. Salary.

The salary of the District Judge shall be paid in equal shares from the respective Municipal Treasuries of the Municipalities of St. Thomas and St. John and St. Croix. Salary of District Judge; how paid.

The duties of the District Judge are such as are provided in the Ordinances, Acts, Codes, Laws and Decrees in force in the Virgin Islands of the United States. Duties.

Section 6. There shall be appointed by the Governor a District Court Commissioner in and for the Municipality of St. Thomas and St. John, provided that no person who has power to issue a warrant of arrest shall be appointed such Commissioner. District Court Commissioner provided.

The District Court Commissioner shall have power to act, under the supervision of the Judge of the District Court in all probate, guardianship, bankruptcy and insolvency matters and may perform all the duties and exercise all the powers imposed or conferred upon the District Judge in probate, guardianship, bankruptcy and insolvency matters. Power and duties of Commissioner.

The District Court Commissioner shall also have power in the absence of the District Court Judge to grant writs of habeas corpus for the purpose of inquiring into the cause of restraint of liberty; temporary restraining orders; and writs of arrest in civil causes; writs of attachment including attachments in admiralty; provided, however, all such writs and orders shall be returnable to the District Court Judge and like proceedings shall be had thereon, as if the same had been granted by the District Court Judge in the first instance.

The Commissioner may also review all applications and orders for bail that may be reviewable by the District Court.

The District Court Commissioner shall retain as compensation the fees earned by his office. Compensation.

Section 7. Upon recommendation of the Judge of the District Court there shall be appointed by the Governor a Clerk of the District Court. Clerk of the District Court.

Section 8. The Judge of the District Court, with the approval of the Governor, may appoint such deputy clerks of the District Court as from time to time may be deemed necessary for the despatch of such business as may be necessary. Deputy Clerks and officers of Court provided.

Section 9. The Clerk of the District Court is the executive of the said court and shall receive an annual salary not exceeding francs fifteen thousand or the equivalent thereof in such currency as may be legal tender. His salary shall be defrayed in equal shares by the respective Municipalities of the Virgin Islands. Clerk executive of District Court.

Section 10. All deputy clerks of the District Court and other employees shall receive such salary as shall be fixed by annual budget. Salaries for other employees.

Section 11. The Police Courts consist of three in number; one to be held at the town of Charlotte Amalie; and one to be held at the town of Christiansted; and one to be held at Police Courts, number.

the town of Frederiksted. Each Police Court has jurisdiction through the sub-judicial District in which it is held of all the offenses cognizable by the Police Courts.

Additional Police Courts provided for.

Section 12. The Judge of the District Court, by and with the consent of the Governor, may create such additional Police Court Districts as may from time to time be deemed necessary and may define the jurisdictional boundaries for such newly created sub-districts and police courts.

Police Judge, how appointed.

Section 13. The Governor shall appoint the Judges of the Police Courts, and their annual salary shall not exceed francs ten thousand five hundred each.

Additional duty for Police Judges.

Section 14. In addition to the duty of administering the Police Courts, the Police Judges may be assigned to act as deputy clerks of the District Court.

Acknowledgments, who may take.

Section 15. The Judge of the District Court, each Police Judge, the Clerk of the District Court and each Deputy Clerk of the District Court shall have power to take acknowledgments of deeds, and administer oaths and affirmations, and shall be notaries public.

Additional notaries public provided.

In addition to notaries public above provided, the Governor may appoint and commission other notaries public for the District, not exceeding ten in number. Each notary public provided for in this section shall be formally commissioned and shall hold such office for a period of four years. Each additional notary public appointed by the Governor must be a citizen of the United States or of the Virgin Islands and must have been a resident of the Virgin Islands for a period of five years immediately preceding his or her appointment. Every person appointed as a notary public must continue to reside within the District during the term of his office, and removal from the District shall vacate his office and is equivalent to resignation.

Fee for notary commission.

In no case shall it be legal for a notary public to certify, attest or take an oath for or to an instrument to which he is an interested party. Each additional notary public shall pay to the Colonial Treasury a fee of fifty dollars for such commission and thereafter on the first day of January of each year an annual fee of twenty-five dollars. Upon default of payment of the annual fee and representation thereof by the Government Attorney, the Governor shall cancel such appointment.

Bond required.

Each additional notary public must execute an official bond in favor of the Municipality, in the penal sum of two thousand five hundred dollars with two resident sureties, who are owners, within the Municipality, of real property of value of five thousand dollars over and above encumbrances thereon, or with any bonding company doing business within the Municipality, which bond must be approved by the Judge of the District Court. Each additional notary public, upon the approval of his or her official bond, and after having taken official oath, shall transmit such bond and oath, duly signed by him or her, to the office of the Government Secretary, whereupon the Governor may issue a commission.

Oath required.

Official record required.

For the official misconduct or neglect of a notary public he or she and sureties on his or her official bond are liable to the parties injured thereby for all damages sustained. Each notary public shall keep an official record in which a memorandum of all official acts shall be noted and the Judge of the District Court is hereby authorized to inspect the official record of any notary public at any time. At the expiration of the term of office of each additional notary, his official record shall be permanently filed in office of the Clerk of the District Court.

Seal required.

Each notary shall keep an official impression seal bearing his name and the date of expiration of his commission.

Compensation for additional notaries.

Each additional notary shall retain the fees earned by him or her as notary public.

Special Judge of the District Court, when appointed.

Section 16. That whenever the Judge of the District Court is disqualified in a particular cause or unable to act by reason of illness or other cause, he shall at once notify the Governor of such fact, whereupon the Governor shall appoint a special judge to act in the particular cause or during the duration of the inability of the regular judge. Such special judge shall receive francs seventy-five per day for his services, to be defrayed out of maintenance of courts.

Special Judge for Police Court provided.

Section 17. In case of the disqualification of a Police Judge in a particular cause or inability to act by reason of illness or other cause, such fact shall be made known to the District Judge, who shall thereupon, either administer the Police Court or designate some person to administer such court. The compensation for a special judge to administer a Police Court shall be francs twenty-five per day to be defrayed out of maintenance of courts.

Jurisdiction of Police Courts.

Section 18. The Police Court shall exercise jurisdiction, but not exclusive, in the following causes:

(1). For the recovery of specific personal property, when the value of the same does not exceed two hundred dollars;

(2). For the recovery of money or damages when the amount claimed does not exceed two hundred dollars;

(3). To give judgment without action upon confession of the defendant for any of the causes specified in this section.

Criminal.

The Police Courts shall also have jurisdiction, but not exclusive, of the following criminal cases:

(1). Larceny when the value of the property does not exceed fifty dollars;

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(2). Assault or assault and battery not charged to have been committed with intent to commit a felony, or in the course of a riot, or with any weapon or upon a public officer when upon duty;

(3). Of any other misdemeanor;

(4). Of any offense wherein jurisdiction is specifically conferred upon the Police Court;

(5). The Judge of the Police Court shall also exercise power as a magistrate and shall be coroner.

Coroner provided.

Section 19. The jurisdiction conferred by the last section does not extend, however—

Jurisdiction of Police Courts not to include certain cases.

(1). To an action in which the title to real property shall come into question;

(2). To an action for false imprisonment, libel, malicious prosecution, criminal conversation, seduction upon a promise to marry, in actions of an equitable nature, or in admiralty causes.

Section 20. Every Court of Justice has power—

Power of Court respecting judicial proceedings.

(1). To preserve and enforce order in its immediate presence;

(2). To enforce order in the proceedings before it or before a person or body empowered to conduct a judicial investigation under its authority;

(3). To provide for the orderly conduct of proceedings before it or its officers;

(4). To compel obedience to its judgments, orders, process, and to the orders of a judge out of court in all actions or proceedings pending therein;

(5). To control in furtherance of justice, the conduct of its ministerial officers and other persons in any manner connected with a judicial proceeding before it in every matter appertaining thereto.

(6). To compel attendance of persons to testify in an action or proceeding therein;

(7). To administer oaths in an action or proceeding pending therein and in all other cases where it may be necessary in the exercise of its powers or the performance of its duties.

Section 21. For the effectual exercise of the powers specified in the last section, the court may punish for contempt in the cases and in the manner provided by law or ordinance.

Powers, how exercised.

Section 22. A judicial officer is a person authorized to act as a judge in a court of justice. Such officer shall not act as such in a court of which he is a member in any of the following cases:

(1). In an action or proceeding to which he is a party or in which he is directly interested;

(2). When he is related to either party by consanguinity or affinity within the third degree;

(3). When he had been attorney in the action or proceeding for either party.

Section 23. A judge may exercise out of court all powers expressly conferred upon a judge as contra distinguished from a court, but not otherwise.

Power of Judge out of Court.

Section 24. Every judicial officer has power—

Power of Judicial Officers.

(1). To preserve and enforce order in his immediate presence, and in the proceedings before him, when he is engaged in the performance of a duty imposed upon him by law;

(2). To compel obedience to his lawful orders;

(3). To compel the attendance of persons to testify in a proceeding pending before him;

(4). To administer oaths to persons, in a proceeding pending before him, and in all other cases where it may be necessary in the exercise of his powers and the performance of his duties.

Section 25. For the effectual exercise of the powers conferred in the last section, a judicial officer may punish for contempt in the cases and in the manner provided by law.

Powers, how exercised.

Section 26. The sittings of every court of justice are public, except as provided in this section. Upon agreement of the parties to a civil proceeding or action, filed with the clerk or entered upon the journal, the court may direct the trial of an issue of law or fact or any other proceeding therein to be private; and upon such order being made all persons shall be excluded except the officers of the court, parties, their witnesses and counsel.

Sittings of Court.

Section 27. The Judge of the District Court may from time to time promulgate rules of court, for the government of the courts, provided such rules shall not be in conflict with any specific law or ordinance.

Rules of Court.

Section 28. The Governor shall by executive order, prescribe the fees to be charged by the law courts, sheriffs, notaries and peace officers during the period of one year after this ordinance shall come into force and at the end of the period of one year, the schedule of fees so being charged by the law courts, sheriff, peace officers and notaries, shall be submitted to the respective Colonial Councils for final ratification or amendment by the said Councils.

Fees to be charged by law courts, etc.

Juvenile Courts established.

Section 29. There is hereby established in this District a Juvenile Court and every Police Judge shall be ex-officio Judge of a Juvenile Court, and shall have such powers as are hereinafter provided.

Power of Juvenile Judge to commit.

Section 30. Each Juvenile Judge shall have power to commit to a reform school, to an orphan asylum, to any other public or charitable institution, or the Board of Children's Guardians, within the District, any child under sixteen years of age for an indeterminate period not exceeding the time he shall have arrived at the age of eighteen years for the following causes:

(1). All children who are destitute of suitable homes and adequate means of earning an honest living;

(2). All children abandoned by their parents or guardians;

(3). All children living with or in the care of habitually drunken, vicious, or unfit persons;

(4). All children kept in vicious or immoral associations;

(5). All children habitually begging or receiving alms;

(6). All children known by their language or life to be vicious or incorrigible.

Juvenile may be held to District Court.

Section 31. The Juvenile Courts shall have power to hold to answer to the District Court, any juvenile charged with a felony, said juvenile to be sentenced, by said District Court, to a reform school; also to arrange for the temporary care of such juveniles, pending investigation or judgment by the court.

Board of Children's Guardians.

Section 32. There is hereby created in and for each Municipality in the Virgin Islands a board to be known as "The Board of Children's Guardians", composed of the Government Attorney, the Director of Police and one woman citizen of such Municipality, to be appointed by the Governor. Each of said board of Children's Guardians shall elect its own Chairman and Secretary, and shall have power to conclude arrangements with persons or institutions for the care of dependent children.

Board of Children's Guardians to be legal Guardians.

Section 33. That the said Board of Children's Guardians shall be the legal guardians of all children committed by the Juvenile Courts, and shall have full power to board them in private families, or in institutions willing to receive them; to bind them out or apprentice them; or give them in adoption to foster parents.

When Juvenile Courts to act.

Section 34. The Judge of the Juvenile Courts shall hear and examine all cases relating to children as herein provided on the complaint of any parent, guardian, school teacher or any other reliable person.

Police Judge to be member of certain commissions.

Section 35. Hereafter the Police Judge shall succeed to the various commissions and boards of which the Judge of the Ordinary Town Court or Police Master is or was a member, and each Police Judge shall act as coroner within his District.

Section 36. This ordinance, when enacted and promulgated shall, for reference purposes, constitute and be known as Chapter One of Title One of an Ordinance entitled "An Ordinance establishing and declaring the Organization of the Judiciary and Educational Departments of the Virgin Islands, etc." which was enacted by the Colonial Council of St. Thomas and St. John 20 May, 1920, and sanctioned and approved 17 March, 1921.

Section 37. Chapters One and Three of the Ordinance referred to in Section 36 and all laws and ordinances, pertaining to the Judiciary, in conflict with this act are hereby repealed.

Thus passed by the Colonial Council for St. Thomas and St. John at 3rd discussion in the meeting held on the 8th December, 1921.

THIELE
Chairman.

J. DE JONGH
Secretary.

The above Ordinance is hereby sanctioned and approved in whole.

Witness my Hand and the Seal of the Government of the Virgin Islands of the United States this twentieth day of December, 1921.

[SEAL]

SUMNER E. W. KITTELLE
Governor.

CHAPTER II.

DEPARTMENT OF EDUCATION.

Section 1.—All schools and educational institutions, public, private, parochial and denominational shall be under the Department of Education, as provided in this Chapter. **Department of Education.**

Section 2.—a. The Head of the Department of Education shall be appointed by the Governor, and shall be known as the "Director of Education", and hereinafter referred to as the Director. He shall receive an annual salary of francs fifteen thousand or the equivalent thereof in such currency as may be legal tender in the Virgin Islands. **Director of Education: appointment.**

b. The Director shall supervise education in all schools, subject to the provisions of this Chapter; and to assist him in the work of supervision and administration the Governor shall appoint, as occasion may require, an officer for each of the Municipalities of the Virgin Islands, to be known as "Assistant Director of Education"; and hereinafter referred to as Assistant Director; Provided, That no person shall be appointed Director or Assistant Director who is not a citizen of the United States, or of the Virgin Islands, and that no person shall be appointed Director or Assistant Director of Education unless he has graduated from some high school or secondary school of recognized standard, and in addition he must have completed at least two years' work in some normal school, college, or other higher institution of learning of recognized standard; and Provided further, That no person shall be appointed Director or Assistant Director of Education unless he has had at least four years' experience as a teacher, or principal, in the public school system of the United States or its possessions.

c. During the absence of the Director from the Virigin Islands, or if for any reason the Director is unable to perform the duties of his office, the Assitant Director, who is senior in length of service, shall serve as Acting Director of Education until the Director is able to resume the duties of his office.

d. The Assistant Directors of Education shall be appointed by the Governor on the recommendation of the Director and shall receive an annual salary of not more than francs twelve thousand or the equivalent thereof in such currency as may be legal tender in the Virgin Islands.

e. The duties of assistant directors shall be such as may be prescribed by the Director. **Duties.**

f. The Director shall appoint clerks, messengers, etc., at such salaries as may be provided by budget. **Clerks, etc., appointment.**

g. The Director shall make rules and regulations for all employees of his department. **Regulations for employees.**

h. The Director shall submit to the Governor, in February of each year, estimates of appropriations required for the department. **Annual estimates.**

i. The Director shall submit to the Governor, as soon as possible after the close of the fiscal year, an Annual Report of the operations of the department. **Annual report.**

Second 3.—a. There shall be a board in each Municipality, to be known as the "Educational Board of Review", and hereinafter referred to as "The Board", to be constituted as follows: **Educational Board of Review; appointment.**

For the Municipality of St. Thomas and St. John:

1. The Government Attorney, Chairman;
2. The Government Secretary, Vice Chairman; **Constitution.**
3. The Chairman of the Colonial Council;

4. One additional member selected from the Colonial Council by the Colonial Council;

5. One member selected by the four above specified who must be a citizen of the United States or the Virgin Islands and a resident of the Municipality;

6. The Director of Education (or his Assistant) who shall serve as secretary of the Board, and shall have the right to take part in all discussions, but shall have no vote.

For the Municipality of St. Croix:

1. The Government Attorney, Chairman;
2. The Despatching Secretary, Vice Chairman;
3. The Chairman of the Colonial Council;
4. One additional member selected from the Colonial Council by the Colonial Council;
5. One member selected by the four above specified who must be a citizen of the United States or the Virgin Islands and a resident of the Municipality;
6. The Director of Education (or his Assistant) who shall serve as secretary of the Board, and shall have the right to take part in all discussions, but shall have no vote.

Powers of Board.

b. The powers and duties of the Board shall extend only to such cases as are specifically mentioned in this chapter and all other powers shall be exercised by the Director.

Meetings.

c. The Board shall hold semi-annual meetings, and such other meetings, from time to time, as may be called by the Governor or the Chairman.

Rules.

d. The Board shall make rules and regulations for its own organization and for the conduct of its meetings and shall fix the dates upon which the semi-annual meetings shall be held.

Power to take testimony.

e. The Board shall have power to summon and examine witnesses regarding school matters; to compel their attendance at any meeting of the Board, and the Chairman or Vice Chairman may administer oaths and take sworn testimony regarding such matters; Provided, no subpœna will be returnable in less than ten days.

Appeals to: in writing.

f. All appeals made to the Board, as provided for in this chapter, shall be writing and subscribed and sworn to.

Decisions final.

g. All decisions rendered by the Board shall be final.

Provided, however, that when in the opinion of the Director, any matter concerning schools, teachers, or other employees of the Department of Education is of so serious a nature as to require thorough investigation, the said matter may be referred by the Director to the Board of Review for investigation and such action as may be deemed necessary by the Board. A report of the investigation and action of the Board in each case shall be forwarded to the Governor for his information.

TITLE II.

CIVIL LAW.

CHAPTER ONE.

HUSBAND, WIFE AND MARRIAGE.

Marriage a civil contract.

Section 1.—Marriage is hereby declared to be a civil contract which may be entered into between a male and a female in accordance with law.

Neither husband or wife has interest in property of other.

Section 2.—When property is owned by either husband or wife, the other has no such interest as will make the same liable for the contract or liabilities of either the husband or wife who is not the owner of property, except as herein otherwise provided.

Civil remedies against each other.

Section 3.—Should either the husband or the wife obtain possession or control of property belonging to the other, either before or after marriage, the owner of the property may maintain an action therefor, or any right growing out of the same, in the same manner and to the same extent as if they were unmarried.

Contract between husband and wife.

Section 4.—A conveyance, transfer, or lien executed by either husband or wife to or in favor of the other shall be valid to the same extent as between other persons.

May constitute each other attorney in fact.

Section 5.—A husband or wife may constitute each other his or her attorney in fact, to control or dispose of his or her property and may revoke the same to the same extent and manner as other persons.

Neither liable for the other's debts.

Section 6.—Neither husband nor wife is liable for the debts or liabilities of the other incurred before marriage, and, except as herein otherwise provided, they are not liable for the separate debts of each other nor is the rent or income of property of either liable for the separate debts of the other.

Husband to elect where to reside.

Section 7.—The wife shall obey the husband and follow him wherever he elects to reside.

Management of separate estates.

Section 8.—The husband and wife shall have the right to manage and dispose of their respective estates, except as otherwise provided in this ordinance.

Illegitimate children legitimized by marriage of parents.

Section 9.—Illegitimate children become legitimized by the subsequent marriage of their parents with each other.

CHAPTER TWO.

ADOPTION OF CHILDREN.

Application to adopt a child.

Section 1.—Any inhabitant of the District may petition the District Court for leave to adopt a child not his own, which is in the district, and if desired, for a change of the child's name; but the prayer of such petition by a person having a husband or wife shall not be granted unless the husband or wife joins therein. The husband and wife may adopt jointly, and, excepting in this case no person shall be adopted by more than one person.

Consent of parents and guardian.

Section 2.—The parents of the child, or the survivor of them, shall, except as herein otherwise provided, consent in writing to such adoption. If neither parent is living, the guardian of the child, or, if there is no guardian, the next of kin in the Virgin Islands may give such consent, or if there is no next of kin, the Judge of the District Court may appoint a suitable person to act in the proceedings as guardian *ad litem* of the child, and to give or withhold such consent.

When parent insane.

Section 3.—If either parent is insane or imprisoned in a penitentiary under sentence for a term not less than two years, or has wilfully deserted and neglected to provide proper care and maintenance for the child for one year next preceding the time of filing the petition, or is an unfit person to have the care and custody of the child, the court may proceed as if such parent was dead, and, it its discretion, may appoint some suitable person to act in the proceeding as guardian *ad litem* of the child and give or withhold the consent aforesaid but in all cases notice to the parent not laboring under said disabilities of insanity or imprisonment mentioned in this section shall be required.

Notice to parent.

Section 4.—If such parent does not consent to the adoption of his child the Court shall order a copy of the petition and order thereon served on him and the child personally, if found in the Virgin Islands, and, if not, that a notice thereof be published once a week for three successive weeks in such newspaper as the court directs, the last publication to be at least four weeks before the time appointed for the hearing and in all cases a copy of the petition and order shall be served on the child. Like notice shall also be published when a child has no parent living and no guardian or next of kin in said islands. The court may order such further notice as it deems necessary or proper.

Consent of child, when necessary.

Section 5.—If the child is of the age of fourteen years or upwards the adoption shall not be made without his consent given to the court on privy examination.

Decree of adoption and effect of same.

Section 6.—If upon such petition so presented and consented the court is satisfied of the identity and relations of the persons, and that the petitioner is of sufficient ability and in all respects a proper person to bring up the child and furnish suitable nurture and education, having reference to the degree and condition of the parents, and that it is fit and proper that such adoption should take effect, a decree shall be made setting forth the facts and ordering that from the date of the decree the child shall, to all legal intents and purposes, be the child of the petitioner.

Status of adopted child.

Section 7.—A child so adopted shall be deemed, for the purpose of inheritance and all other legal consequences and incidents of the natural relation of parents and children, the child of the parents by adoption, the same as if he had been born to them in lawful wedlock, except that he shall not be capable of taking property expressly limited to heirs of the body or bodies of the parents by adoption, nor property from the lineal or collateral kindred of said parent by right of representation.

Adoption terminates relation of parent and child.

Section 8.—The parent of such child shall be deprived by the said proceedings of all legal rights as respect the child, and the child shall be freed from all obligations of maintenance and obedience as respect his parents.

When a rehearing may be had.

Section 9.—A parent who has not, before the hearing of a petition for the adoption of his child, had personal notice thereof, may, at any time within one year after actual notice, apply to the District Court for a hearing *de novo* and the District Court must give such hearing and issue orders or judgment after such hearing as are warranted in such hearing *de novo.*

Change of name of adopted child.

Section 10.—If, in a petition for adoption of a child, a change of the child's name is requested, the court, upon adjudging the adoption, may also adjudge such change of name and grant a certificate thereof without further notice and a copy thereof shall be furnished the proper Registrar of vital statistics.

CHAPTER THREE.

CHANGE OF NAME.

Application for change of name.

Section 1.—Application for change of names of other persons may be heard and determined by the District Court. No lawful change of the name of a person, except a woman upon her marriage or divorce, or upon the adoption of a child, shall be made unless for sufficient reasons not inconsistent with the public interest and satisfactory to the court.

Proceedings on application.

Section 2.—Before adjudging a change of name, except as provided in case of adoption, the court shall require public notice of the application therefor to be given that all persons may appear and show cause, if they have any, why the same should not be granted. The court shall also require public notice to be given of the change adjudged, and on return of proof thereof may grant a certificate, under the seal of the court, of the name the party is to have, and which shall thereafter be his legal name and a copy thereof shall be furnished the proper Registrar of vital statistics, and provided, that if the child has been baptized in this District the proper church official shall be notified of such change in name.

CHAPTER FOUR.

AGE OF MAJORITY AND EMANCIPATION.

Emancipation; kind of.

Section 1.—The law recognizes four kinds of emancipation, viz:

(1) Emancipation conferring the power to administer property.
(2) Emancipation by marriage.
(3) Judicial emancipation.
(4) Emancipation by reason of having attained the age of majority.

Majority of males and females.

Section 2.—All persons shall be deemed to have arrived at majority at the age of twenty-one years, and thereafter shall have control of their own actions and business and have all the rights and be subject to all the liabilities of persons of full age.

Emancipation by court.

Section 3.—Any minor who shall have completed the age of eighteen years may also with the consent of his parent or parents be emancipated by a decision of the District Court for the purpose of administering his property, in the manner prescribed hereinafter in this chapter. Emancipation may be petitioned for either by a relative of the minor or by the minor himself.

Against the will of the father or mother.

Section 4.—The minor may be emancipated against the will of his father or mother when they ill treat him or refuse to maintain and educate him or when they give him corrupt examples.

Capacities of the emancipated minor.

Section 5.—Emancipation by the court capacitates the minor to govern his property and person as if he were of age; but until he attains his majority the said emancipated person can not make any promise or contract any obligation exceeding in value the amount of his income for one year. Neither can he encumber nor sell his real property, without the consent of the court. Neither may he appear in a suit without the appearance of a guardian *ad litem.*

Emancipation by marriage.

Section 6.—A minor, whether male or female, becomes emancipated of right by marriage, nevertheless, in order to alienate and mortgage any real property or to contract loans a minor emancipated by marriage shall require the consent of his father; in default of his father that of his mother, and in the proper case, that of his guardian.

Judicial emancipation of minor having no parents.

Section 7.—A minor who has lost both parents may obtain the benefit of majority by permission of the District Court, after hearing by the Government Attorney.

Opposition by guardian.

Section 8.—The guardian may oppose the emancipation, in which case the District Court shall hear the parties at an oral hearing in which the reasons for and against such emancipation may be alleged and proved.

Requisites for granting.

Section 9.—For granting the concession stated in the preceding section, it shall be required:

(1) That the minor be over eighteen years of age and have the necessary ability to manage and administer his property.
(2) That the minor consent to the emancipation.
(3) That such emancipation be deemed advantageous to the minor.

What comprised in decree.

Section 10.—When the District Court decrees the emancipation of the minor, it shall order that he be considered as of age, for all legal effects, except as herein limited.

CHAPTER FIVE.

THE SUPPORT OF RELATIONS.

Support defined.

Section 1.—Support is understood to be all that is indispensable for maintenance, housing, clothing and medical attention according to the social position of the family. Support also includes the education and instruction of the person supported when he is a minor.

Who is entitled to support.

Section 2.—The following are obliged to support each other within the full meaning of the preceding section:

(1) Husband and wife.
(2) Legitimate ascendants and descendants up to eighteen years of age.
(3) Parents and children and the legitimate descendants of the latter up to eighteen years of age.
(4) The adopter and the person adopted.
(5) Parents and illegitimate children who have been recognized as children by decree of a competent court.

Brothers and sisters also owe to their brothers and sisters, even when only on the mother's or father's side, the aid necessary to maintain their existence, when through a physical or mental defect or for any other cause not the fault of the person requiring support, the said person cannot provide for himself. With such support is included the expenses necessary for the elementary education and teaching of a profession or trade.

Claim for support.

Section 3.—A claim for support when proper and when there are two or more persons who are bound to give it, shall be made in the following order:

(1) To the husband or wife.
(2) To the nearest descendants.
(3) To the nearest ascendants.
(4) To brothers or sisters.

Among descendants and ascendants the gradation shall follow the order in which they are to inherit, the legitimate of the person having the right to be supported.

Proportionate.

Section 4.—When the obligation to support devolves upon two or more persons, the amount that each shall pay shall be proportioned to his respective estate. Nevertheless in cases of urgent necessity and under special circumstances, the judge may order one of them to provisionally provide such support, and he shall have the right to reclaim from the others their corresponding part of the amount.

When two or more person claim support at the same time of a person lawfully obliged to give it, and the latter has not sufficient fortune to attend to the needs of all the order established in the preceding section shall be observed.

Amount provided.

Section 5.—The amount provided for support shall be proportioned to the resources of the person giving such support and to the necessities of the party receiving it, and shall be reduced or increased in proportion to the resources or the necessities of the latter.

Claim for support.

Section 6.—The obligation to support may be claimed from the time the person having a right thereto shall require such support, but it shall not begin until the date on which a petition therefor is made.

Payments, how made.

Section 7.—Payments for support shall be made monthly, in advance, and when the person receiving the same dies, his heirs shall not be required to repay any sum that may have been paid in advance.

Form of support.

Section 8.—The person obliged to render support may, if he so elects,

either pay the amount required to be paid or receive and maintain in his own dwelling the person having a right to such support.

Cessation of obligation.

Section 9.—The obligation to give support ceases with the death of the person obliged to give it, even when given in fulfilment of a final judgment.

Transfer of rights to receive.

Section 10.—The right to receive support can not be relinquished or transmitted to a third party. Neither shall such support be set off against any amount owing by the recipient to the person obliged to give it.

When obligation ceases.

Section 11.—The obligation to give support also ceases:

(1) With the death of the recipient.

(2) When the fortune of the person obliged to give it shall have been reduced so that he cannot do so without disregarding his own needs and those of his family.

(3) When the recipient is capable of working at a trade, profession or industry, or has obtained employment or bettered his fortune so that he does not stand in need of the amount given for support.

(4) When the recipient is a descendant of the person obliged to give support and the necessity therefor arises from wrong conduct or lack of application to work, during the time such cause exists.

CHAPTER SIX.

OF FRAUDULENT CONVEYANCES OF REAL PROPERTY.

Void as to whom.

Section 1.—Every conveyance of interest in lands, or the rents or profits thereof, and every charge upon lands or upon the rents and profits thereof, made or created with the intent to defraud prior or subsequent purchasers for valuable consideration of the same lands, rents, or profits, as against such purchasers shall be void.

Qualifications of last section.

Section 2.—No such conveyance or charge shall be deemed fraudulent in favor of a subsequent purchaser who shall have actual or legal notice thereof at the time of his purchase, unless it shall appear that the grantee in such conveyance or person to be benefitted by such charge, was privy to the fraud intended.

Conveyance with power of revocation.

Section 3.—Every conveyance or charge of or upon any estate or interest in lands containing any provisions for the revocation, determination, or alteration of such estate or interest, or any part thereof at the will of the grantor, shall be void as against subsequent purchasers from such grantor for a valuable consideration of any estate or interest so liable to be revoked or determined, although the same be not expressly revoked, determined, or altered by such grantor by virtue of the power reserved or expressed in such prior conveyance or charge.

Conveyance by one authorized to revoke grants.

Section 4.—Where a power to revoke the conveyance of any lands, or the rents and profits thereof, and to reconvey the same, shall be given to any person other than the grantor in such conveyance, and such person shall thereafter convey the same lands, rents, or profits to a purchaser for a valuable consideration, such subsequent conveyance shall be valid in the same manner and to the same extent as if the power of revocation were recited therein and the intent to revoke the former conveyance expressly declared.

Same when conveyance is made before power of revocation vested.

Section 5.—If a conveyance to a purchaser under either of the last two preceding sections shall be made before the person making the same shall be entitled to execute his power of revocation, it shall nevertheless be valid from the time the power of revocation shall actually vest in such person, in the same manner and to the same extent as if then made.

CHAPTER SEVEN.

OF FRAUDULENT CONVEYANCES OF PERSONAL PROPERTY.

What transfers are void.

Section 1.—All deeds of gift, all conveyances, and transfers or assignments, verbal or written of goods and chattles or things in action, made in trust for the person making the same, shall be void as against the creditors, existing or subsequent, of such person.

Filing of chattel mortgages.

Section 2.—It shall be the duty of the Recorder of Deeds upon the presentation for that purpose of any mortgage or conveyance intended to operate as a mortgage of goods and chattels, or a copy of any such instrument, and the payment of his fees, to indorse thereon the time of receiving the same, and to deposit such instrument or copy in his office, to be kept for the inspection of all persons interested.

Index of chattel mortgages.

Section 3.—Such Recorder of Deeds shall enter in a book, to be provided by him for that purpose, the names of all the parties to such instrument, arranging the names of the mortgagors alphabetically, and shall note thereon the time of filing each instrument or copy.

Mortgage ceases to be valid at end of one year, unless further interest established.

Section 4.—Every such mortgage shall cease to be valid as against the creditors of the person making the same, or subsequent purchasers or mortgagors in good faith, after the expiration of one year from the filing of the same or a copy thereof, unless within thirty days next preceding the expiration of the year the mortgagee, his agent or attorney shall make and annex to the instrument or copy on file, as aforesaid, an affidavit setting forth the interest which the mortgagee has, by virtue of such mortgage, in the property therein mentioned, upon which affidavit the Recorder shall indorse the time when the same was filed.

Affidavit may be renewed.

Section 5.—The effect of any such affidavit shall not continue beyond one year from the time when such mortgage would otherwise cease to be valid as against the creditors of the person making such mortgage, or subsequent purchasers or mortgagees in good faith; but within thirty days next preceding the time when any such mortgage would otherwise cease to be valid as aforesaid, a similar affidavit may be filed and annexed as provided in the preceding section, and with like effect.

Copy in evidence; what it proves.

Section 6.—A copy of any such instrument, or a copy of any copy thereof so filed as aforesaid, including any affidavits annexed thereto in pursuance of this chapter, certified by the Recorder of Deeds in whose office the same shall be filed, shall be received in evidence, but only of the fact that such instrument, copy or affidavit was received and filed according to the indorsement of the Recorder thereon, and of no other fact.

CHAPTER EIGHT.

OF GENERAL PROVISIONS CONCERNING FRAUDULENT CONVEYANCES AND CONTRACTS.

Conveyance with intent to defraud creditors void.

Section 1.—Every conveyance or assigment, in writing or otherwise, of any estate or interest in lands, or in goods, or things in action, or of any rents or profits issuing therefrom, and every charge upon lands, goods, or things in action, or upon the rents or profits thereof, made with the intent to hinder, delay, or defraud creditors or other persons of their lawful suits, damages, forfeitures, debts or demands, and every bond or other evidence of debt given, action commenced, decree or judgmnt suffered, with the like intent, as against the persons so hindered, delayed, or defrauded shall be void.

Grant of trust to be in writing.

Section 2.—Every grant or assignment of any existing trust in lands, goods, or things in action, unless the same shall be in writing, subscribed by the party making the same, or by his agent lawfully authorized, shall be void.

What conveyances void against heirs.

Section 3.—Every conveyance, charge, instrument, or proceeding declared by law to be void as against the creditors, purchasers, or mortgagees shall be equally void as against the heirs, successors, personal representatives, or assigns of such creditors, purchasers, or mortgagees.

Fraudulent intent a question of fact.

Section 4.—The question of fraudulent intent in all cases arising under the provisions of this code shall be deemed a question of fact, and not of law.

Purchaser; when not affected.

Section 5.—The provisions of chapters seven, eight, and ten, of this title shall not be construed in any manner to affect or impair the title of a purchaser for a valuable consideration unless it shall appear that such purchaser had previous notice of the fraudulent intent of his immediate grantor, or of the fraud rendering void the title of such grantor.

Definitions of lands, etc.

Section 6.—The term "lands" as used in chapters seven, eight and ten of this title shall be construed as coextensive in meaning with "lands, tenements, and hereditaments", and the term "estate and interest in lands" shall be construed to embrace every interest, freehold, and chattel, legal and equitable, present and future, vested and contingent in lands as above defined.

Definition of conveyances.

Section 7.—The term "conveyance", as used in chapters seven, eight and ten of this title shall be construed to embrace every instrument in writing except a last will and testament, whatever may be its form and by whatever name it may be known in law, by which any estate or interest in lands is created, aliened, assigned, or surrendered.

CHAPTER NINE.

FRAUDS.

Real estate, conveyance of.

Section 1.—No interest in land other than leases for a term of not exceeding one year from the making thereof, nor any trust or power over or concerning lands, or in any manner relating thereto, shall hereafter be created, granted, assigned, surrendered, or declared, unless by operation of law, or by a deed of conveyance in writing, subscribed by the party creating, granting, assigning, surrendering, or declaring same. This section shall not be construed to affect the disposition of property by will, nor to prevent a trust from arising or being extinguished by implication or operation of law.

Contract for over one year to be in writing.

Section 2.—Every contract for the leasing for a longer period than one year from the making thereof, or for the sale of any lands, or any interest in lands, shall be void unless the contract or some note or memorandum be in writing, and signed by the party to be charged.

Equity not abridged.

Section 3.—Nothing in this chapter contained shall be construed to abridge the powers of the court in equity to compel specific performance.

What agreements to be in writing.

Section 4.—In the following cases every agreement shall be void unless such agreement, or some note or memorandum thereof, be in writing, and subscribed by the party to be charged therewith:

(1) Every agreement that by its terms is not to be performed within one year from the making thereof.

(2) Every special promise to answer for the debt, default, or misdoings of another person.

(3) Every agreement, promise, or undertaking made upon consideration of marriage, except mutual promises, to marry.

(4) Every special promise made by an executor or administrator to answer damages out of his own estate.

Contracts of sale over one hundred dollars.

Section 5.—Every contract for the sale of any goods, chattels or things in action, for the price of one hundred dollars or more, shall be void unless:—

(1) A note or memorandum of such contract be made in writing, and be subscribed by the party to be charged thereby; or,

(2) Unless the buyer shall accept and receive part of such goods or the evidences, or some of them of such things in action; or,

(3) Unless the buyer shall at the time, pay some part of the purchase money.

Auction excepted.

Section 6.—Whenever goods shall be sold at public auction, the entry of the bid shall constitute a sufficient note or memorandum and shall be binding.

Bottomry excepted.

Section 7.—Nothing contained in the two preceding sections shall apply to contracts of bottomry or respondentia, nor to assignments or hypothecations of vessels at sea, or in foreign ports, if the mortgagee or assignee shall take possession of such vessel as soon as may be after arrival thereof.

CHAPTER TEN.

OF THE DISPOSITION OF PROPERTY BY WILL.

Disposition of property by will.

Section 1.—Every person of twenty-one years of age and upwards, of sound mind, may by last will devise all his or her property, real or personal, saving in the case of a married man to the widow her dower, and saving in the case of a married woman any rights which her husband may have as tenant by curtesy.

Will, how executed.

Section 2.—Every will shall be in writing, signed by the testator, or by some other person under his direction, in his presence, and shall be attested by two or more competent witnesses, subscribing their names to the will in the presence of the testator, at the request of the testator and in the presence of each other.

When will revoked by marriage and birth of issue.

Section 3.—If, after making a will disposing of the whole estate of the testator, such testator shall marry and die, leaving issue by such marriage living at the time of his death, or shall leave issue of such marriage born to him after his death, such will shall be deemed revoked unless provision shall have been made for such issue by some settlement, or unless such issue shall be provided for in the will, and no evidence shall be received to rebut the presumption of such revocation.

Marriage of unmarried person revokes will.

Section 4.—A will made by an unmarried person shall be deemed revoked by his or her subsequent marriage.

Bond, etc., to convey property devised.

Section 5.—A bond, covenant, or agreement made for a valuable consideration by a testator, to convey any property devised or bequeathed in any last will previously made, shall not be deemed a revocation of such previous devise or bequest, but such property shall pass by the devise or bequest, subject to the same remedies on such bond, covenant, or agreement, for the specific performance or otherwise, against devisees or legatees, as might be had by law against the heirs of the testator, or his next of kin, if the same had descended to them.

Charge or incumbrance upon property devised.

Section 6.—A charge or incumbrance upon any real or personal estate for the purpose of securing the payment of money or the performance of any covenant or agreement shall not be deemed a revocation of any will relating to the same estate previously executed. The devises and legacies therein contained shall pass and take effect subject to such charge or incumbrance.

Children, etc., to have portion of estate.

Section 7.—If any person make his last will and die, leaving a child or children, or descendants of such child or children, in case of their death, not named or provided for in such will, although born after the making of such will or the death of the testator, every such testator, so far as shall regard such child or children, or their descendants not provided for, shall be deemed to die intestate and such child or children, or their descendants, shall be entitled to such proportion of the estate of the testator, real and personal, as if he had died intestate, and the same shall be assigned to them; and all the other heirs, devisees, and legatees shall refund their proportional part.

Effect of advancement.

Section 9.—If such child or children, or their descendants, shall have an equal proportion of the testator's estate bestowed on them in the testator's life-time by way of advancement, they shall take nothing by virtue of the provisions of the preceding section.

When issue of deceased devisee to take estate.

Section 10.—When any estate shall be devised to any child or grandchild, or other relative of the testator, and such devisee shall die before the testator, leaving lineal descendants such descendants shall take the estate, real and personal as such devisee would have done in case he had survived the testator.

Cancelling of second will, when to revive first.

Section 11.—If after making any will the testator shall duly make and execute a second will, the destruction, cancelling, or revocation of such second will shall not revise the first will, unless it appear by the terms of such revocation that it was his intention to revive and give effect to the first will, or unless he shall duly republish his first will.

Mariner or soldier may dispose of wages and personal property.

Section 12.—Any mariner at sea, or soldier in the military service, may dispose of his wages or other personal property as he might have done by common law, or by reducing the same to writing.

Nuncupative will.

Section 13.—No proof shall be received of any nuncupative will unless it be offered within six months after speaking the testamentary words, nor unless the words, or the substance thereof, were reduced to writing within ten days after they were spoken.

Probate of nuncupative will.

Section 14.—No probate of any nuncupative will shall be granted for fourteen days after the death of the testator, nor shall any nuncupative will be at any time proved unless the testamentary words, or the substance thereof, be first committed to writing, and a citation issued, accompanied with a copy thereof, to call the widow or next of kin of the deceased that they may contest the will if they think proper.

Law of the place, when to govern and when not.

Section 15.—Any person not an inhabitant of, but owning property, real or personal, in the Virgin Islands may devise or bequeath such property by last will executed according to the laws in force in the islands or the state or territory or foreign country in which the will may be executed and if such will be probated in any State, Territory, or other district or possession of the United States, or in any foreign country or state, copies of such will and of the probate thereof, certified by the clerk of the court in which such will was probated, with the seal of the court affixed thereto, if there be a seal together with a certificate of the Chief Judge or presiding magistrate, that the certificate is in due form and made by the clerk or other person having the legal custody of the record, shall be recorded in the same manner as wills executed and proved in the island, and shall be admitted in evidence in the same manner and with like effect.

Copies of foreign wills.

Foreign will, how contested.

Section 16.—Any such will may be contested and annulled within the same time and in the same manner as wills executed and proved in the Virgin Islands.

Devisee or legatee may prove.

Section 17.—If any person has attested or shall attest the execution of any will to whom any beneficial devise, legacy, estate, interest, gift, or appointment of or affecting real or personal estate other than or except charges in lands, tenements, or hereditaments for the payment of any debt or debts shall be thereby given or made, such devise, legacy, estate, gift or appointment shall, so far only as concerns such person attesting the execution of such will or any person claiming under him, be void, and such person shall be admitted as a witness to the execution of such will.

When such witness to have share of estate.

Section 18.—If any such witness would be entitled to any share in the testator's estate in case the will should not be established, then so much of the estate as would have descended or would have been distributed to such witness shall be saved to him as will not exceed the value of the devise or bequest made to him in the will; and he may recover the same from the devisees or legatees named in the will in proportion to and out of the parts devised and bequeathed to him.

If sufficient other witnesses, devisee may take, devise; etc.

Section 19.—If the execution of such will be attested by a sufficient number of other competent witnesses, as required by the code, then such devise, legacy, interest, estate, gift, or appointment shall be valid.

Creditor may be witness.

Section 20.—If by any will any real estate be charged with any debt, and any creditor whose debt is so charged has attested the execution of such will, every such creditor shall be admitted as a witness to the execution of such will.

Section 21.—If any person has attested or shall attest the execution of any will to whom any legacy or bequest is thereby given, and such person, before giving testimony concerning the execution of such will, shall have released such bequest or legacy and renounced without valuable consideration all benefits under said will, such person shall be admitted as a witness to the execution of such will.

Legatee, how made competent.

Section 22.—If any legatee or devisee who has attested or shall attest the execution of any will shall have died or die in the lifetime of the testator, or before he shall have received or released the legacy or bequest so given to him, and before he shall have refused to receive such legacy or bequest on a tender made thereof such legatee or devisee shall be deemed a legal witness to the execution of such will.

Deceased legatee, when deemed legal witness.

Section 23.—No person to whom any estate, gift, or appointment shall be given or made which is hereby declared to be null and void, or who shall have refused to receive such legacy or bequest or tender made, and who shall have been examined as a witness concerning the execution of such will, shall, after he shall have been so examined, demand or receive, except as provided in section three of chapter seventeen hereinafter any profit or benefit of or from such estate, interest, gift, or appointment, so given or made to him by such will, or demand, receive, or accept from any person any such legacy or bequest, or any satisfaction or compensation for the same.

Legatee, when not entitled to legacy.

Section 24.—If any person by last will devise any real estate to any person for the term of such person's life, and after his death, to his or her children or heirs, or right after his death, to his or her children or heirs, or right heirs in fee, such devise shall vest an estate for life only in such devisee, and remainder in fee simple in such children.

Estate for life, remainder in fee.

Section 25.—A devise of real property shall be deemed and taken as a devise of all the estate or interest of the testator therein subject to his disposal, unless it clearly appears from the will that he intended to devise a less estate or interest; and any estate or interest in real property acquired by anyone after the making of his or her will shall pass thereby, unless it clearly appear therefrom that such was not the intention of the testator; nor shall any conveyance or disposition of real property by anyone after the making of his or her will prevent or affect the operation of such will upon any estate or interest therein subject to the disposal of the testator at his or her death.

When fee passes.

Secion 26.—When any testator in his last will shall give any chattel or real estate to any person, and the same shall be taken in execution for the payment of the testator's debts, then all the other legatees, devisees, and heirs shall refund their proportional part of such loss to such person from whom the bequest shall be taken.

Contribution among legatees.

Section 27.—The term "will", as used in this chapter, shall be so construed as to include all codicils as well as wills.

Definition of will.

Section 28.—All courts and others concerned in the execution of last wills shall have due regard to the directions of the will and the true intent and meaning of the testator in all matters brought before them.

Construction of wills.

Section 29.—Where any estate, real, or personal is given by deed or will to any person for his life, and after his death to his heirs, or to the heirs of his body the conveyance shall be construed to vest an estate for his life only in such person, and a remainder in fee simple in his heirs or the heirs of his body.

Life estate by will with remainder to heirs.

Section 30.—A last will and testament, except when made by a soldier in actual military service or by a mariner at sea, is invalid unless it be in writing and executed with such formalities as are required by law.

When will must be in writing.

How written will may be revoked or altered.

Section 31.—A written will can not be revoked or altered otherwise than by another written will, or other writing of the testator, declaring such revocation or alteration, and executed with the same formalities required by law for the will itself; or unless the will be burnt, torn, cancelled, obliterated, or destroyed with the intent and for the purpose of revoking the same by the testator himself, or by another person in his presence, by his direction and consent and when so done by another person the direction and consent of the testator, and the fact of such injury or destruction shall be proved by at least two witnesses.

CHAPTER ELEVEN.

OF ESTATES IN DOWER.

Widow entitled to dower.

Section 1.—The widow of every deceased person shall be entitled to dower, or the use during her natural life of one-half part in value of all the lands whereof her husband died seized of an estate of inheritance.

When dower shall be assigned by the district court.

Section 2.—When a widow is entitled to dower in the lands of which her husband died seized, it may be assigned to her by the district court upon application of the widow or any person interested in the lands; notice of application shall be given to such heirs, devisees, or other persons in such manner as the court shall direct.

Warrant for assignment of dower.

Section 3.—For the purpose of assigning such dower the district court shall direct a warrant to issue to three discreet and disinterested persons, as commissioners, authorizing and requiring them to set off the dower by metes and bounds, when it can be done without injury to the whole estate.

Proceedings and warrant of commissioners.

Section 4.—The commissioners shall be sworn by any officer authorized to administer impartially oaths to discharge their duties, and shall as soon as may be, set off the dower according to the command of such warrant, and make return of their doings, with an account of their charges and expenses, in writing, to the District Court; and the same being confirmed by the court and recorded, and an attested copy thereof filed in the office of the Recorder of Deeds. The dower shall remain fixed and certain unless such confirmation be set aside or reversed; all costs to be apportioned in the discretion of the court.

When property cannot be divided.

Section 5.—When the estate or any part thereof out of which dower is to be assigned can not be equitably divided by metes and bounds, the dower may be assigned of the rents, issues, and profits thereof, to be had and received by the widow as a tenant in common with the other owners of the estate.

Widow may occupy with heirs.

Section 6.—When a widow is entitled to dower in the lands of which her husband died seized she may, if residing thereon continue to occupy the same, and enjoy the rents, issues, and profits thereof with the children or other heirs of the deceased, or if not residing thereon may receive one-half part of the rents, issues, and profits thereof, so long as the heirs or others interested do not object, without having the dower assigned.

Dower, how barred by jointure.

Section 7.—A woman may be barred of her dower in all the lands of her husband by jointure settled on her with her assent before the marriage; Provided, Such jointure consists of a free hold estate in lands, for the life of the wife at least, to take effect in possession or profit immediately on the death of her husband.

Evidence of assent to jointure.

Section 8.—Such assent shall be expressed, if the woman be of the full age of twenty-one, by her becoming a party to the conveyance by which it is settled, and if she be under that age by her joining with her father or guardian in such conveyance.

Pecuniary provision a bar to dower.

Section 9.—Any pecuniary provision that shall be made for the benefit of an intended wife, and in lieu of dower, shall, if assented to as provided in the preceding section bar her right to dower in all the lands of her husband.

When widow may elect between jointure and dower.

Section 10.—If any such jointure or pecuniary provision be made before marriage, and without the assent of the intended wife, or if it be made after marriage, she shall make her election after the death of her husband whether she will take such jointure or pecuniary provision or be endowed of the lands of her husband, but she shall not be entitled to both.

When to elect between devise and dower.

Section 11.—If any lands be devised to a woman, or the provision be made for her in the will of her husband, expressly in lieu of dower, she shall make the election whether she will be endowed of the lands of her husband; but shall not be entitled to both unless it plainly appears by the will to have been so intended by the testator.

When widow deemed to have elected.

Secion 12.—When a widow shall be entitled to an election under either of the two sections last preceding she shall be deemed to have elected to take such jointure, devise or other provision unless within one year after the death of her husband she shall file in the District Court her election in writing to relinquish her rights under the jointure, devise or provision.

When widow to be endowed anew.

Section 13.—If any woman be lawfully evicted of lands assigned to her as dower or settled upon her as jointure, or be deprived of the provision made for her by will or otherwise in lieu of dower, she may be endowed anew in like manner as if such judgment, jointure, or other provision had not been made.

Alien or non-resident entitled to dower.

Section 14.—A woman being an alien shall not on that account be barred of her dower; and any woman residing out of the Virgin Islands shall be entitled to dower of the lands of her deceased husband lying in the islands of which her husband died seized of an estate of inheritance; and the same may be assigned to her or recovered by her in like manner as if she and her deceased husband had been residents within the island at the time of his death.

Widow may remain in dwelling house one year.

Section 15.—A widow may remain in the dwelling house of her husband one year after his death without being chargeable with the rent therefor, and shall have reasonable sustenance out of the estate for one year.

Damages for withholding dower.

Section 16.—Whenever, in any action brought for the purpose, a widow shall recover her dower in the lands of which her husband died seized, she shall be entitled also to recover damages for the withholding of such dower.

Damages, how estimated.

Section 17.—Such damages shall be one third of the annual value of the mesne profits of the lands in which she shall so recover her dower, to be estimated in action against the heirs of her husband from the time of his death and in action against other persons from the time of demanding her dower of such persons.

Damages, not to include use of permanent improvement.

Section 18.—Such damages shall not be estimated for the use of any permanent improvements made after the death of her husband by his heirs or by any other person claiming title to such lands.

Damages against heirs.

Section 19.—When a widow shall recover her dower in any lands aliened by the heir of her husband she shall be entitled to recover of such heir, in a civil action, her damages for withholding such dower from the time of the death of her husband to the time of alienation by the heir, not exceeding six years in the whole, and the amount which she shall be entitled to recover from such heir shall be deducted from the amount she would otherwise be entitled to recover from such grantee; and any amount recovered as damages from such grantee, shall be deducted from the sum she would otherwise be entitled to recover from such heir.

Collusive recovery of dower not to prejudice infant heirs.

Section 20.—When a widow not having a right of dower shall, during the infancy of the heirs of the husband, or any of them, or of any other person entitled to the lands, recover dower by the default or collusion of the guardian of such infants heirs, or such other person, such heir or other person so entitled shall not be prejudiced thereby, but when he comes of full age he shall have an action against such widow to recover the lands so wrongfully awarded for dower.

CHAPTER TWELVE.

OF ESTATE BY THE CURTESY.

Section 1.—When any man and his wife shall be seized in her right of any estate of inheritance in lands the husband shall on the death of his wife, hold the lands for his life as tenant thereof by the curtesy, although such husband and wife may not have had issue born alive.

Husband's life estate.

CHAPTER THIRTEEN.

OF GENERAL PROVISIONS CONCERNING ESTATES IN LANDS.

Persons in possession liable for rent.

Section 1.—Every person in possession of land out of which any rent is due, whether it was originally demised in fee, or for any other estate or freehold, or for any term of years, shall be liable for the amount or proportion of rent due from the land in his possession, although it be only a part of what was originally demised.

Rent, how recovered.

Section 2.—Such rent may be recovered in an action, and the deed or demise, or any other instrument in writing, if there be any, showing the provisions of the lease, may be used in evidence by either party to prove the amount due from the defendant.

Last two sections not to exclude other remedies.

Section 3.—Nothing contained in the two preceding sections shall deprive landlords of other legal remedy for the recovery of their rents, whether secured to them by their leases or provided by law.

Determination of estates will and by sufferance.

Section 4.—All estates at will or by sufferance may be determined by either party, by three month's notice in writing given by the other party; and when the rent received in a lease at will is payable at periods of less than three months the time of such notice shall be sufficient if it be equal to the interval between the times of payment; and in all cases of neglect or refusal to pay the rent due on a lease at will fourteen days notice to quit, given in writing by the landlord to the tenant, shall be sufficient to determine the lease.

Action for injury to inheritance.

Section 5.—A person seized of an estate in remainder or reversion may maintain a civil action for any injury done to the inheritance, notwithstanding any intervening estate for a life or years.

Remedy for tenants in common.

Section 6.—A tenant in common may maintain any proper action or proceeding against the cotenant for receiving more than his joint proportion of the rents or profits of the estate owned by them in common; and joint tenancy is abolished, and all persons having an undivided interest in real property are deemed and considered tenants in common.

No entailed estates shall be valid in this District and all provisions of any deed or will creating or attempting to create such estate shall be void.

CHAPTER FOURTEEN.

OF THE PROPERTY OF MARRIED WOMEN.

Separate property of wife not subject to husband's debts.

Section 1.—The property and pecuniary rights of every married woman at the time of her marriage or afterwards acquired by gift, devise, or inheritance shall not be subject to the debts or contracts of her husband, and she may manage, sell, convey or devise the same by will to the same extent and in the same manner that her husband can property belonging to him.

Property acquired during coveture.

Section 2.—All property, either real or personal, acquired by any married woman during coveture by her own labor shall not be liable for the debts, contracts, or liabilities of her husband, but shall in all respects be subject to the same exemptions and liabilities as property owned at the time of her marriage or afterwards acquired by gift, devise or inheritance.

District Court may adjudge that husband has abandoned wife; effect of.

Section 3.—When any married man residing in the Virgin Islands shall abandon his wife without making suitable provision for her support for a period of one year the District Court may, upon her petition setting up the facts of such abandonment, verified by her own oath, summarily proceed to hear the petition and adjudge the fact as to such abandonment, which adjudication shall be conclusive as to such facts as to third persons; and if such abandonment shall be adjudged thereupon such married woman during the absence of her husband, may in all respects contract to sell, convey, and deal with her separate property, real and personal, in the same manner as if she were a *femme sole,* and may in her own name, without being joined with her husband, sue and be sued in relation to her separate property on any contract made by her after such adjudication and before the return of her husband.

Return of husband not to abate action.

Section 4.—No action wherein a married woman shall be a party, under the provisions of this code, shall be abated on the return of her husband into the District, but he may, on his application, be admitted to prosecute or defend such action jointly with her.

Liability for civil injuries.

Section 5.—For all civil injuries committed by a married woman damages may be recovered from her alone, and her husband shall not be responsible therefor, except in case where he would be jointly responsible with her if the marriage did not exist.

Wife's contract binding upon her.

Section 6.—Contracts may be made by a wife, and liabilities incurred, and the same enforced by or against her to the same extent and in the same manner as if she were unmarried.

Civil disabilities removed.

Section 7.—All laws which impose or recognize civil disabilities upon a wife which are not imposed or recognized as existing as to the husband are hereby repealed; and for any unjust usurpation of her property or natural rights she shall have the same right to appeal in her own name alone to all courts for redress that her husband has.

Register of personal property.

Section 8.—The Recorder of Deeds shall keep a register, in which he shall enter a description of the personal estates of married women, as hereinafter directed.

Effect of registration.

Section 9.—A married woman possessed of or owning any personal property or pecuniary rights may make a descriptive list of the same, and make and subscribe on the said list an oath that the property and rights therein described belonged to her at the time of her marriage, or that she has acquired the same by her own labor, or by bequest, inheritance, or by the gift of some

person named other than her husband; and the list and affidavit shall be recorded in the register, and shall be *prima facie* evidence of the facts therein stated, and property not so registered shall be deemed *prima facie* to be the property of the husband rather than of the wife.

Certified copies of the register.

Section 10.—A certified copy of the register shall be original evidence equally with the original list and affidavit, and the fees for recording and for making the certified copies of the register shall be the same as in the case of deeds.

CHAPTER FIFTEEN.

OF CONVEYANCES OF REAL PROPERTY.

Section 1.—A conveyance of lands, or of any estate or interest therein, may be made by deed, signed and sealed by the person from whom the estate or interest is intended to pass, being of lawful age, or by his lawful agent or attorney and acknowledged or proved, and recorded as directed in this chapter, without any other act or ceremony.

Conveyance how made.

Section 2.—A husband or wife shall, by their joint deed, convey his or her or their real estate but the wife shall not be bound by any convenant contained in a joint deed conveying the property of the husband.

Conveyance of wife's property.

Section 3.—A deed of quitclaim and release shall be sufficient to pass all the real estate which the grantor could lawfully convey by a deed of bargain and sale.

Effect of quit claim.

Section 4.—The term "heirs", or other words of inheritance, shall not be necessary to create or convey an estate in fee simple; and any conveyance of any such estate hereafter executed shall pass all the real estate granted, unless the intent to pass a less estate shall appear by express terms or be necessarily implied in the terms of the grant.

Word "heirs" not necessary to convey fee simple.

Secction 5.—A conveyance made by a tenant for life or years purporting to grant a greater estate than be possessed or could lawfully convey shall not work a forfeiture of his estate, but shall pass to the grantee all the estate which such tenant could lawfully convey.

Conveyance by tenant for life or years.

Section 6.—No covenant shall be implied in any conveyance of real estate, whether such conveyance contain special covenants or not.

Covenant not implied.

Section 7.—No mortgage shall be construed as implying a covenant for the payment of the sum thereby intented to be secured; and when there shall be no express covenant for such payment contained in the mortgage, and no bond or other separate instrument to secure such payment shall have been given, the remedies of the mortgage shall be confined to the lands mentioned in the mortgage.

Mortgage not to imply covenant to pay money.

Section 8.—No grant or conveyance of land or interest therein shall be void for the reason that at the time of the execution thereof such lands shall be in the actual possession of another claiming adversely.

Conveyance of lands held adversely by another.

Section 9.—Every conveyance or devise of lands or interest therein made to two or more persons, other than to executors and trustees, as such, shall be construed to create a tenancy in common in such estate, unless it be expressly declared in such conveyance or devise that the grantees or devisees shall take the lands as joint tenants.

Joint conveyance to create cotenancy.

Section 10.—Deeds executed within the District of lands or any interest in lands therein shall be executed in the presence of two witnesses, who shall subscribe their names to the same as such; and the persons executing such deeds may acknowledge the execution thereof before the judge or clerk of the district court or any notary public within the island, and the officer making such acknowledgment shall indorse thereon a certificate of the acknowlegment thereof and the true date of making the same under his hand.

Execution and acknowledgment of deeds.

Section 11.—In the cases provided for in the last section unless the aknowledgment be taken before a commissioner appointed for that purpose, or before a notary public certified under his notarial seal, or before the clerk of a court of record certified under the seal of the court, such deed shall have attached thereto a certificate of the clerk or other proper certifying officer of a court of record of the county or district within which such acknowledgment was taken under the seal of his office that the person whose name is subscribed to the

Certificate of official character.

certificate of acknowlegment was at the date thereof such officer as he is therein represented to be, and that he believes the signature of such person to be genuine, and that the deed is executed and acknowledged according to the laws of such State, Territory, District, or Possession.

Acknowledgment of deeds in foreign country.

Section 12.—If such deed be executed in any forein country it may be executed according to the laws of such county, and the execution thereof may be acknowledged before any notary public therein, or before any minister plenipotentiary, minister extraordinary, minister resident, *chargé d'affaires*, commissioner, consul or consular officer of the United States appointed to reside therein, which acknowledgment shall be certified thereon by the officer taking the same, under his hand; and if taken before a notary public his seal of office shall be affixed to such certificate.

Acknowledgment by married women.

Section 13.—When a married woman residing in the Virgin Islands shall join with her husband in a deed of conveyance of real property situated within the District she shall acknowledge that she executed such deed freely and voluntarily and she must be examined by the officer taking her acknowledgment separately and apart and without the sight and hearing of her husband and such officer must then acquaint her with the effect of the instrument and then inquire if she sign the same freely and voluntarily.

Conveyance by married woman residing out of district.

Section 14.—When any married woman not residing in the District shall join with her husband in any conveyance of real estate situated within the District the conveyance shall have the same effect as if she were *femme sole* and the acknowledgment or proof of the execution of such conveyance by her may be the same as if she were *femme sol.*

Effect of instrument not executed by husband or wife.

Section 15.—An instrument executed by a husband or wife without the signature or the other spouse shall operate only to convey or bind the interest of the one executing the same, and the grantee etc., shall take such interest subject to all of the rights of dower or curtesy of the one not joining in the execution of the instrument.

Officer taking acknowledgment must know grantor.

Section 16.—No acknowledgment of any conveyance having been executed shall be taken by any officer unless he shall know or have satisfactory evidence that the person making such acnowledgment is the individual described in and who executed such conveyance.

Proof of execution by subscribing witnesses.

Section 17.—Proof of the execution of any conveyance may be made before any officer authorized to take acknowledgment of deeds and shall be made by a subscribing witness thereto who shall state his own place of residence and that he knows the person described in and who executed such conveyance; and such prooof shall not be taken unless the officer is personally acquainted with such subscribing witness or has satisfactory evidence that he is the same person who was a subscribing witness to such instrument.

Proof when witnesses dead or absent.

Section 18.—When any grantor is dead, out of the island, or refuses to acknowledge his deed, and all the subscribing witnessess to such deed shall also be dead or reside out of the island, the name may be proved before the district court, by proving the handwriting of the grantor and of any subscribing witness thereto.

Witness to execution of deed.

Section 19.—Upon the application of any grantee to the District Court of any person claiming under him, verified by the oath of the applicant, setting forth that the grantor is dead, out of the island, or refused to acknowledge his deed, and that any witness to such conveyance refuses to appear and testify touching the execution thereof, and that such conveyance can not be proved without his evidence, a subpoena may issue requiring such witness to appear and testify before the court touching the execution of such conveyance.

Penalty for refusing to appear and testify.

Section 20.—Every person duly served with such subpoena who shall, without reasonable cause, refuse or neglect to appear, or appearing shall refuse to

answer upon oath touching the matter aforesaid, shall forfeit to the injured party a sum of not more than one hundred dollars, and may also be committed to prison as for a contempt of court, there to remain until he shall submit to answer on oath as aforesaid.

Certificate to be endorsed on the deed.

Section 21.—Whenever the District Court shall take proof of any conveyance it shall issue a certificate, on the deed, over the signature of the Judge thereof and the seal of the court, which shall set forth the things hereinbefore required to be done, known, or proved, together with the names of the witnesses examined, and their places of residence, and the substance of the evidence given by them.

Deed proved may be read in evidence.

Section 22.—Every conveyance acknowledged or proved or certified in the manner hereinbefore prescribed by the District Court, may be read in evidence without further proof thereof, and shall be entitled to be recorded in the office of the Recorded of Deeds; but such instrument, if not acknowledged, proved, or certified, shall not be recorded by the Recorded of Deeds.

Certificate of record.

Section 23.—The recorder shall certify upon each conveyance recorded by him the time when it was received and the reference to the book and the page where it is rcorded, and every conveyance shall be considered as recorded at the time it was so received.

Unrecorded conveyance; when void as to third persons.

Section 24.—Every conveyance of real property hereafter made within this district which shall not be filed for record shall be void against any subsequent innocent purchaser in good faith and for a valuable consideration of the same real property, or any portion thereof, whose conveyance shall be first duly recorded.

Record of transcript of evidence.

Section 25.—The record of a conveyance duly recorded, or a transcript therof duly certified by the Recorder of Deeds in the District in whose office the same may have been recorded, may be read in evidence in any court in the district with the like force and effect as the original instrument; but the effect of such evidence may be rebutted by other competent evidence.

Record of deeds of defeasance.

Section 26.—When a deed purports to be an absolute conveyance in terms, but is made or intended to be made defeasible by force of a deed of defeasance or other instrument for that purpose, the original conveyance shall not be thereby defeated or affected as against any person other than the maker of the defeasance, or his heirs or devisees, or persons having actual notice thereof, unless the instrument of defeasance shall have been recorded in the office of the Recorder of Deeds.

Record of assignment of mortgage.

Section 27.—The recording of the assignment of a mortgage shall not in itself be deemed notice of such assignment to the mortgagor, his heirs or personal representatives, so as to invalidate any payment made by them or either of them to the mortgagee.

Discharge upon certificate of mortgage.

Section 28.—A mortgage may be discharged upon the record thereof by the recorder in whose custody it shall be whenever there shall be presented to him a certificate executed by the mortgagee, his personal representatives or assigns, acknowledge or proved and certified as hereinbefore prescribed to entitle conveyance to be recorded, specififying that such mortgage has been paid or otherwise satisfied or discharged.

Certificate of mortgage to be recorded.

Section 29.—Every such certificate and the proof or acknowledgment thereof shall be recorded at full length, and a reference shall be made to the book and page containing such record in the minute of the discharge of such mortgage made by the recorder upon the record thereof.

Penalty for refusing to discharge mortgage.

Section 30.—If any mortgagee or his personal representative or assignee, as the case may be, after full performance of the condition of the mortgage, whether before or after a breach thereof, shall, for the space of ten days after being thereto requested in writing, and after tender of his reasonable charges, refuse

or neglect to execute and acknowledge a certificate of discharge or release thereof, he shall be liable to the mortgagor, his heirs or assigns, in a sum of not to exceed one hundred dollars damages, and also for all actual damages occasioned by such neglect or refusal to be recoverd in an action.

Power of attorney and contract may be recorded.

Section 31.—Every letter of attorney or other instrument containing a power to convey lands as agent or attorney for the owner of such lands, and every executory contract for the sale or purchase of lands when acknowledged or proved in the manner prescribed in this title for the acknowledgment of proof of conveyances, may be recorded in the recorder's office; and when so acknowledged or proved and the record thereof when recorded, or the transcript of such record duly certified, may be read in evidence in any court in the District without further proof of the same.

Deeds heretofore made, etc.

Section 32.—All conveyance of real property heretofore made and acknowledged or proved in accordance with the laws of the District in force at the time of such making and acknowledgment of proof shall have the same force as evidence and be recorded in the same manner and with like effect as conveyances executed and acknowledged in pursuance of the provisions of this chapter.

Decrees, etc., affecting lands may be recorded.

Section 33.—Notices of pending actions affecting title to real estate, judgments of courts in the District requiring the execution of a conveyance of real estate within the island, shall be entitled to be recorded in the office of the recorder in like manner and with like effect as conveyances of land duly acknowleged, proved, or certified.

Record of such instrument.

Section 34.—The record of any such notice of pending action or judgment duly certified by the recorder in whose office the same may have been recorded may be read in evidence in any court in the District with like force and effect as the orignal thereof.

Other defective deeds cured.

Section 35.—All deeds to real property heretofore executed which shall have been signed by the grantors in due form shall be sufficient in law to convey the legal title to the premises therein described from the grantors to the grantees without any other execution or acknowledgment whatever; and such deeds so executed shall be received in evidence in all courts in the District and be evidence of the title to the lands herein described against the grantors, their heirs and assigns.

Defective execution of conveyances by executors; decree in cases.

Section 36.—When any real estate has been heretofore or shall be hereafter sold by any executor or administrator under or by virtue of any license or order of the District Court and the sale shall have been approved by the District Court and the purchaser shall have paid the purchase money for the same, and the sale shall have been made in good faith, in order to provide for payment of the claims against the estate, and the executor or administrator shall have failed or neglected to make or execute any deed conveying such real estate to such purchaser, or if from mistake or omission in the deed or defect in its execution the same shall be inoperative, and the period of five years shall have elapsed after the making of such sale, then in such case all such sales shall be, and are hereby confirmed and approved, notwithstanding any irregularities or informalities in the proceedings prior to the sale, and when such facts shall be made to appear in any action of an equitable nature brought to quiet title to such real property against the heirs or their assigns of the deceased person whose property shall have been thus sold, in the proper court for such suits, then such court shall make its decree quieting such title and compelling and ordering conveyances of the same to be made to such purchaser, his heirs, or assigns, as if a valid contract to convey the real property had been made by such deceased person in his lifetime; and no action shall be maintained by such heirs, or their heirs or assigns, to disposess any such purchaser, his heirs or assigns, after the expiration of five years from any such sale.

CHAPTER SIXTEEN.

OF THE DESCENT OF REAL PROPERTY.

Section 1.—When any person shall die seized of any real propery, or any right thereto, or entitled to any interest therein in fee simple or for the life of another, not having lawfully devised the same, such real property shall descend, subject to his debts, as follows:

Real property; to whom it descends.

(1) In equal shares to his or her children and to the issue of any deceased child by right of representation; and if there be no child of the intestate living at the time of his or her death, such real property shall descend to all his or her other lineal descendants; and if all such descendants are in the same degree of kindred to the instestate, they shall take such real property equally; or otherwise they shall take according to the right of representation.

(2) If the intestate shall leave no lineal descendants, the half of such real property shall descend to his wife, and the other half to his father, and or mother, or to the brothers and sisters of the intestate and to the issue of any deceased brother and sister by right of representation in the order of succession herein mentioned; or if the intestate be a married woman, the half of such property shall descend to her husband, and the other half to her father, and or mother, or to her brothers and sisters and the issue of any deceased brother and sister by right of representation in the order herein mentioned.

(3) If the intestate shall leave no lineal descendants, neither husband nor wife, such real property shall descend to his or her father, and or mother, or in the absence of such ancestors, in equal shares to the brothers and sisters of the instestate.

(4) If the intestate shall leave one or more children, and the issue of one or more deceased children, and any of such surviving children shall die under age all such real property that came to such deceased child by inheritance from such intestate shall descend in equal shares to the other children of such intestate who shall have died, by right of representation. But if all the other children of such intestate shall also be dead, and any of them shall have left issue, such real property so inherited by such deceased child shall descend to all the issue of such other children of the intestate in equal shares, if they are in the same degree of kindred to such deceased child; otherwise they shall take by right of representation.

(5) If the intestate shall leave no lineal descendants or kindred as above provided, or recognized illegitimate children subject to proof of filiation approved by the District Court, such real property shall escheat to the Municipality.

CHAPTER SEVENTEEN.

OF THE DISTRIBUTION OF PERSONAL PROPERTY.

Distribution of personal property.

Section 1.—When any person shall die possessed of any personal property, or of any right to or interest therein, not having lawfully bequeated the same, such personal property shall be applied and distributed as follows:

(1) If the intestate shall leave a widow, she shall be allowed all articles of her apparel and ornament, according to the degree and estate of the intestate, and such property and provisions for the use and support of herself and minor children as shall be allowed and ordered; and this allowance shall be made as well as when the widow waives the provision made for her in the will of her husband as when he dies intestate.

(2) The personal property of the instestate remaining after such allowance shall be aplied to the payment of the debts of the deceased and the charges and expenses of administration as provided by law.

(3) The residue, if any, of the personal property shall be distributed among the persons who would be entitled to the real property of the intestate, as provided in this ordinance, and in the like proportion or share.

(4) If there be no husband, widow, kindred or recognized illegitimate children subject to proof of filiation to be approved by the District Court, entitled to inherit of the intestate, the whole of such residue shall escheat to the Municipality.

CHAPTER EIGHTEEN.

OF MISCELLANEOUS PROVISIONS CONCERNING THE DESCENT AND DISTRIBUTION OF PROPERTY

Status of illegitimate children.

Section 1.—An illegitimate child shall be considered an heir of its mother, and shall inherit or receive her property, real or personal, in whole or in part, as the case may be, in like manner as if such child had been born in lawful wedlock; and such child shall be entitled to inherit or receive, as representing his mother, and property real or personal, of the kindred, either lineal or collateral, of such mother: Provided, When the parents of such child have formally married such child shall not be regarded as illegitimate within the meaning of this code, although such formal marriage shall be adjudged to be void.

Mother heir to illegitimate child; effect of marriage of parents.

Section 2.—If an illegitimate child shall die intestate without leaving a widow, husband, or lawful issue, the property, real and personal, of such intestate shall descend to or be received by the mother; or failing her by her ascendants; but if after the birth of an illegitimate child the parents thereof shall intermarry, such child shall be considered legitimate to all intents and purposes.

Kindred, how to receive.

Section 3.—The kindred of the half blood shall inherit or receive equally with those of the whole blood in the same degree.

Advancement to issue.

Section 4.—Any property, real or personal, that may have been given by the intestate in his lifetime as an advancement to any child or other lineal desecendant shall be considered a part of the intestate's estate, so far as regards the division and distribution thereof among his issue, and shall be taken by such child or other descendant toward his share of the intestate's estate.

When advancement greater or less than share.

Section 5.—If the amount of such advancement shall exceed the share of the heir so advanced, such heir shall be excluded from any further share or portion in the division or distribution of the estate, but shall not be required to refund any part of such advancement; and if the amount so received shall be less than his share, such heir shall be entitled to so much more as will give him his full share or portion of the estate of the intestate.

Rules for computing value of advancement.

Section 6.—If any such advancement is made in real property the value thereof shall, for the purpose of the last section, be considered as part of the real property to be divided; and if the advancement be either in real or personal property, and shall in either case not exceed the share or portion of such real or personal property that would come to the heir so advanced, such heir shall not refund any part of it, but shall take or receive so much less out of the whole share equal to those of the other heirs who are in the same degree with the heir so advanced.

Grants and gifts to heirs.

Section 7.—All grants and gifts shall be deemed to be made in advancement if so expressed in the grant or gift, or if so charged, in writing, by the intestate, or acknowledged, in writing, to be so made by the child or other descendant to whom it is made, and not otherwise.

When value of advancement expressed.

Section 8.—If the value of the property, real or personal so advanced is expressed in the conveyance or writing whereby the same in granted or given, or in the charge thereof made by the intestate, or in the acknowledgment made by the party receiving it, in the division and distribution of the estate, such advancement shall be considered of the value so expressed; otherwise, it shall be estimated at its value when granted or given.

Advancement to heirs.

Section 9.—If any child or lineal descendant to whom advancement is made shall die before the intestate, leaving issue, such advancement shall be deemed made to such issue and the division and distribution of the estate shall be made accordingly.

Estate by curtesy and dower not affected.

Section 10.—Nothing contained in this chapter shall affect or impair the estate of a husband as tenant by the curtesy, nor that a widow as tenat in dower.

Certain terms defined.

Section 11.—The word "issue", as used in this chapter, includes all the lineal descendants of the ancestor; and the term "real property" includes all lands, tenements, and hereditaments, and rights thereto, and all interests therein, whether in fee simple or for the life of another. The term "personal property" includes all goods and chattels, moneys, credits and effects of whatever nature not included in the term "real property". Inheritance "by right of representation" takes place when the lineal descendants of any deceased heir take the same share or portion of the estate of an intestate that the parent of such descendant would have taken if living. For the purpose of this code a posthumous child is to be deemed living at the death of its parent.

Posthumous children.

CHAPTER NINETEEN.

OF ESCHEAT.

When property escheats.

Section 1.—When any person shall die without such heirs as provided by law to inherit, leaving any real or personal property in the District the same shall escheat to and become the property of the Municipality.

Proceedings to obtain possession.

Section 2.—The Municipality may maintain any action or proceeding necessary to recover the possession of any such property, or for the enforcement or protection of its rights thereto or on account thereof, in like manner and with like effect as any natural person. Such action or proceeding shall be prosecuted by the Government Attorney by the leave and under the direction of the Governor, and not otherwise.

Governor must take steps to recover.

Section 3.—When the Governor is informed or has reason to believe that any real or personal property has escheated to the Municipality he shall direct the Government Attorney to file an information in behalf and in the name of the Municipality in the District Court, setting forth a description of the estate, the name of the person last seized, the name of the occupant or the person in possession and claiming such estate, if known, and the facts and circumstances in consequence of which the estate is claimed to have been escheated, with an allegation that by reason thereof the Municipality has right by law to such estate. Upon such information a summons must issue to such person requiring him to appear and answer the information within the time allowed by law in civil actions, and the court must make an order setting forth briefly the contents of the information and requiring all persons interested in the estate to appear and show cause, if any they have, within such time as the court making such order may fix, why the title should not vest in the Municipality which order must be published for at least six consecutive weeks from the date thereof in a newspaper published in the District, if one be published therein, and in case no newspaper is published in the District then in such newspaper as the court by order may direct.

Court may appoint receiver.

Section 4.—The court, upon the information being filed, with and upon the application of the Government Attorney, either before or after answer, upon notice to the party claiming such estate, if known, may upon sufficient cause therefor being shown, appoint a receiver to take charge of such estate, and receive the rents and profits of the same, until the title to such estate is finally settled.

All persons claiming interest may defend.

Section 5.—All persons named in the information may appear and answer, and may traverse or deny the facts stated in the information, the title of the Municipality to the lands and tenements therein mentioned at any time before the time for answering expires; and any other person claiming an interest in such estate may appear and be made a defendant by motion for that purpose in open court within the time allowed for answering; and if no person appear and answers within the time, then judgment must be rendered that the Municipality be seized of the lands and tenements in such information claimed. But if any person appears and denies the title set up by the Municipality, or traverses any material fact set forth in the information, the issues of the fact must be tried as issues of facts are tried in civil actions. If, after the issues are tried, it appears from the facts found that the Municipality has good title to the estate in the information mentioned, or any part thereof, judgment must be rendered that the Municipality be seized thereof, and recover costs of action against the defendant. In any judgment rendered by any court of competent jurisdiction, escheating real property to the Municipality, on motion of the Government Attorney the court shall make an order that the real property be sold at public sale, and upon such terms, whether for cash or credit, or both, as shall be deemed for the best interests of the Muncipality. After giving such notice of the time and place of sale as may be prescribed by

the court in the order, the sheriff shall, within ten days after such sale, make a report thereof to be court, and, upon hearing the report, the court may examine the same and witnessess in relation thereto, and if the proceedings of such sale are unfair, or the sum or sums bid are disproportionate to the value of the portion sold, and if it appear that a greater sum can be obtained for the property, or any portion thereof, exceeding such bid at least ten per centum, exclusive of the expense of a new sale, the court may vacate the sale and direct another sale to be had and the new sale shall be conducted in all respects as if no previous sale had taken place. But if it appears to the court that the sale was legally made and fairly conducted, and that the sum bid is not disproportionate to the value of the property sold, and that a greater sum than ten per centum, exclusive of the expense of a new sale, can not be obtained, the court must make an order confirming the sale and directing the sheriff in the name of the Municipality to execute to the purchaser or purchasers a conveyance of the property sold, and the conveyance shall vest in the purchaser or purchasers all the right and title of the Municipality therein, and also directing that the purchaser or purchasers shall execute and deliver to the sheriff his or their note or notes, payablle to the Municipality for the deferred payments with a first mortgage upon the property conveyed, to secure the deferred payments. And the sheriff shall, out of the proceeds of such sale, pay the cost of the proceedings incurred on behalf of the Municipality, including the expense of making such sale, and the remainder, together with the notes and mortgages he shall deliver to the Treasurer for the Municipality.

When persons may claim proceeds proceedings thereon.

Section 6.—Within ten years after judgment in any proceeding had under this chapter, a person not a party or privy to such proceeding may file a petition in the district court showing his claim or right to the property or the proceeds thereof, a copy of such petition must be served upon the Government Attorney at least twenty days before the hearing of the petition, who must answer the same; and the court thereupon must try the issue as issues are tried in civil actions, and if it be determined that such person is entitled to the property or the proceeds thereof, it must order the property, if it has not been sold, to be delivered to him; or if it has been sold and the proceeds paid into the Treasury, then it must order that a copy of the judgment be forwarded to the Treasurer. All persons who fail to appear and file their petition within the time limited by law are forever barred, saving, however, to infants and persons of unsound mind the right to appear and file their petitons at any time within the time limited, or one year after their respective disabilities cease.

Proceedings in case of personal property.

Section 7.—In all cases of personal estate the court shall direct by order that the same be sold by the sheriff, as upon execution, and the proceeds applied to the payment of the costs incurred by the Municipality and the costs and charges of making such sale, and the residue to the Treasurer for the Municipality.

Escheated property held by bank.

Section 8.—When the Governor is informed or has reason to believe that any bank, banker, or other banking institution in the Virgin Islands now has or holds on deposit or otherwise any fund, funds, or other property of any kind or nature which has escheated to the Municipality, he shall direct the Government Attorney to file in the District Court an information or bill of discovery, with proper interrogatories to be answered by the owner, agent, or manager of such bank or banking institution, and upon the filing of such information or bill the court shall order and direct, at a time to be designated in the bill, that the owner, agent or manager of such bank or banking institution shall, under oath, file an answer to the information and interrogatories, and shall specially answer each and every interrogatory contained in such information or bill. If it appears to the court from such answer that the bank, banker or banking institution has any property in its possession which has escheated or may escheat to the Municipality, it shall direct the bank, banker, or banking institution forthwith to bring the same into such court, and the court shall proceed to dispose of the property as provided elsewhere in this chapter.

CHAPTER TWENTY.

OF EMINENT DOMAIN.

Purposes for which it may be exercised.

Section 1.—Subject to the provisions of this chapter, the right of eminent domain may be exercised in behalf of the following public uses:

(1) All public uses authorized by Congress or the Colonial Council.

(2) Public buildings and grounds for the use of the District and all other public uses authorized by Congress or the Colonial Council.

(3) Public buildings and grounds for the use of any town, village, school district, or other municipal division, whether incorporated or unincorporated; canals, aqueducts, flumes, ditches, or pipes conducting water, heat, or gas for the use of the inhabitants of any town, or other municipal division, whether incorporated or unincorporated, roads, streets, and alleys, and all other public uses for the benefit of any town, or other municipal division, whether incorporated or unincorporated, or the inhabitants thereof, which may be author- other public uses authorized by Congress or the Colonial Council.

(4) Wharves, docks, piers, bridges, of all kinds, railroads, canals, ditches, flumes, aqueducts, and pipes for public transportation, supplying farming neighborhoods with water, and sites for reservoirs necessary for collecting and storing water.

(5) Telephone, electric light, power, or telegraph lines.

(6) Sewerage of any town, village, or other municipal division, whether incorporated or unincorporated, or any subdivision thereof, or of any public buildings belonging to the district.

(7) Tramway lines.

(8) For the construction of impounding dams and basins to retain water for irrigation purposes and for canals, flumes, aqueducts, etc., to distribute water for irrigation, provided however, that in any condemnation proceeding on behalf of an irrigation system it must be shown, that the proposed system is general in its nature and designated to serve the available contiguous agricultural lands.

What estates in land may be acquired by condemnation.

Section 2.—That the following is a classification of the estates and rights in lands subject to be taken for public use:

(1) A fee simple, when taken for public buildings or grounds or for permanent buildings, for reservoirs and dams, and permanent floodings thereby.

(2) An easement when taken for any other use.

(3) The right of entry upon and occupation of lands, and the right to take therefrom such earth, gravel, stones, trees and timber as may be necessary for some public use.

Private property defined; classes enumerated.

Section 3.—The private property which may be taken under this chapter includes:

(1) All real property belonging to any person.

(2) Lands belonging to the municipality, or other municipal division, whether incorporated or unincorporated not appropriated to some public use.

(3) Property appropriated to public use; but such property must not be taken unless for a more necessary purpose than that to which it has already been apropriated.

(4) Franchises for roads, bridges, and ferries, and all other franchises; but such franchises must not be taken unless for free highways, free bridges, railroads, or other more necessary public use.

(5) All rights of way for any and all the purposes mentioned in section one, and any and all structures and improvements thereon, and the lands held and used in connection therewith must be subject to be connected with, crossed, or intersected by any other right of way or improvements or structures thereon. They must also be subject to a limited use, in common with the owner thereof, when necessary; but such uses, crossings, intersections,

and connections must be made in manner most compatible with the greatest public benefit and least private injury.

(6) All classes of private property not enumerated may be taken for public use when such taking is authorized by law.

Facts necessary to be found before condemnation.

Section 4.—Before property can be taken it must appear:

(1) That the use to which it is to be applied is a use authorized by law.

(2) If already appropriated to some public use that the public use to which it is to be applied is a more necessary public use.

(3) That the taking is necessary to such use.

Parties may make location and enter to make surveys.

Section 5.—In all cases where land is required for public use the municipality, or its agents in charge of such use, may survey and locate the same, but it must be located in the manner which will be must compatible with the greatest public good and the loast private injury, and subject to the provisions of section six of this chapter.

The municipality or its agents in charge of such public use, may enter upon the land and make examination, surveys, and maps thereof, and such entry shall constitute no cause of action in favor of the owners of the land, except from injuries resulting from negligence, wantonness, or malice.

Jurisdiction of the district court.

Section 6.—All proceedings under this chapter must be brought in the district court of the district. They must be commenced by filing a complaint and issuing a summons thereon.

The complaint and its contents.

Section 7.—The complaint must contain:

(1) The name of the corporation, association, commission, or person in charge of the public use for which the property is sought, who must be styled plaintiff.

(2) The names of all owners and claimants of the property, if known, or a statement that they are unknown, who must be styled defendants.

(3) A statement of the rights of the plaintiff.

(4) If a right of way be sought, the complaint must show the location, general route, and termini, and must be accompanied with a map thereof, so far as the same is involved in the action or proceeding.

(5) A description of each piece of land sought to be taken and whether the same includes the whole or only a part of the entire parcel or tract. All parcels required for the same public use may be included in the same or separate proceedings at the option of the plaintiff, but the court may consolidate or separate them to suit the convenience of parties. When application for the condemnation of a right of way for the purpose of sewerage is made on behalf of a town, or settlement, the Governor may be named as plaintiff.

Summons, what to contain; how issued and served.

Section 8.—Upon the filing of such complaint a summons shall be issued, which shall contain the names of the parties, a description of the lands proposed to be taken, a statement of the public use for which they are sought, and a notice to the defendant to appear before the court or judge, at a time and place therein specified, and show cause why the property described should not be condemned, as prayed for in the complaint. Such summons shall, in other particulars, be in the form of a summons in a civil action, and shall be served in like manner upon each defendant named therein at least twenty days previous to the time designated in such notice for the hearing, and no copy of the complaint need be served. But the failure to make such service upon the defendant does not affect the right to proceed against any or all other of the defendants upon whom service of the summons had been made.

Who may defend.

Section 9.—All persons named in the complaint in occupation of, or claiming an interest in, any of the property described in the complaint, or in the damage for taking thereof, though not named, may appear, answer, or demur, each in respect to his own property or interest.

Section 10.—The court or judge has power:

Appointment of commissioners, etc.

(1) To regulate and determine the place and manner of making the connections and crossings and enjoying the common uses mentioned in subdivision five of section three of this chapter.

(2) To determine whether or not the use for which the property is sought to be appropriated is a public use within the meaning of the laws relating to the district.

(3) To limit the amount of property sought to be appropriated, if in the opinion of the court or judge the quantity sought to be appropriated is not necessary.

(4) If the court or judge is satisfied that the public interests require the taking of such lands, it or he must make an order appointing three competent persons resident in the Virgin Islands as commissioners to ascertain and determine the amount to be paid by the plaintiffs to each owner or other person interested in such property as damages, by reason of the appropriation of such property, and specifying the time and place of the first meeting of such commissioners, and fixing their compensation.

Meeting of commissioners.

Section 11.—The commissioners mentioned in the last section must, before entering upon their duties, severally take and subscribe an oath before some person qualified to administer oaths, to discharge faithfully and impartially the duties of their appointment. The commissioners must meet at the time and place mentioned in the order appointing them, and proceed to examine the lands sought to be appropriated, and shall hear the allegations and evidence of all persons interested in each of the several parcels of land, and shall ascertain and assess:

(1) The value of the property sought to be appropriated and all improvements thereon, pertaining to the realty and each and every separate estate and interest therein; if it consists of different parcels, the value of each parcel and each estate or interest therein must be separately assessed.

(2) If the property sought to be appropriated constitutes only a part of a larger parcel, the damages which will accrue to the portion not sought to be condemned by reason of its severance from the portion sought to be condemned, and the construction of the improvements in the manner proposed by the plaintiff.

(3) Separately, how much of the portion not sought to be condemned; and each estate or interest therein will be benefited, if at all, by the construction of the improvements proposed by the plaintiff, and if the benefit shall be equal to the damages assessed under subdivision two the owner of the parcel shall be allowed no compensation except the value of the portion taken; but if the benefits shall be less than the damages assessed the former shall be deducted from the latter, and the remainder shall be the only damages allowed in addition to the value.

(4) If the property sought to be condemned be for a railroad, the cost of good and sufficient fences along the line of such railroad, and the cost of cattle guards where fences may cross the line of such railroad.

(5) As far as practicable compensation must be assessed for each source of damage separately.

Date with respect to which compensation shall be assessed, and measure of damages.

Section 12.—For the purpose of assessing compensation and damages, the right thereto shall be deemed to have accrued at the date of the summons, and its actual value at that date shall be the measure of compensation of all property to be actually taken, and the basis of damages to property not actually taken but injuriously affected. If an order be made letting the plaintiff into possession as provided in section eighteen, the compensation and damages awarded shall draw lawful interest from the date of such order. No improvements put upon the property subsequent to the date of the service of summons shall be included in the assessment of compensation or damages.

Report of commissioners.

Section 13.—Within thirty days after giving their appraisement and the assessment of damages, the commissioners must file a report of their proceedings, accompanied by a map, if a right of way be sought, showing the route, location, and termini thereof, in the office of the clerk of the court, and the clerk must notify the parties interested that such report has been filed which notice must be served upon all the parties interested in the same manner as a summons.

Appeal.

Section 14.—An appeal from any assessment made by the commissioners may be taken and prosecuted in the court where the report of the commissioners is filed by any party interested. Such appeal must be taken within the period of thirty days after the service upon appellant of the notice of the filing of the award by the service of notice of such appeal upon the plaintiff or his attorney in such proceedings, and the same shall be brought on for trial upon the same notice and in the same manner as other civil actions; and the same shall be tried and the damages to which appellant shall be entitled by reason of the appropriation of his property shall be reassessed upon the same principle as hereinbefore prescribed for the assessment of such damages by commissioners.

Upon any decision or assessment by commissioners becoming final, judgment shall be entered declaring that upon payment of such decision or assessment, together with the interest and costs allowed by law, if any, the right to construct and maintain such railroad or other public work or improvement and to take, use, and appropriate the property described in such veredict or assessment for the use and purpose for which the land has been condemned shall, as against the parties interested in such decision or assessment, be and remain in the plaintiff and his or its heirs, successors, or assigns, so long as the same shall be used for the purpose for which it is condemned. In case the party appealing from the award of commissioners in any proceeding as aforesaid shall not succeed in increasing the amount of damages finally awarded to him in such proceeding he shall not recover the costs of such appeal, but all the costs of the appellee upon such appeal shall be taxed against and recovered from the appellant: Provided, upon the trial of such appeal the plaintiff may contest the right of any party or parties thereto to any of the property mentioned and set forth or involved in the appeal, which was located after the preliminary survey of any such railroad seeking to condemn its right of way under and pursuant to the provisions of this act: Provided, such condemnation proceedings are begun within one year after such preliminary survey.

New proceedings to cure defective title.

Section 15.—If the title attempted to be acquired is found to be defective from any cause, the plaintiff may again institute proceedings to acquire the same, as in this chapter prescribed.

Payment of damages.

Section 16.—The plaintiff must within thirty days after final judgment pay the sum of money assessed, but may at the time of or before the payment elect to build the fences and cattle guards; and if he so elect, shall execute to the defendant a bond, with sureties to be approved by the court in double the assessed cost of the same to build such fences and cattle guards within eight months from the time the railroad is built on the land taken; and if such bond be given, need not pay the cost of such fences and cattle guards. In an action on such bond the plaintiff may recover reasonable attorney's fees.

To whom paid.

Section 17.—The payment may be made to the defendants entitled thereto or the money may be deposited in court for the defendants and be distributed to those entiled thereto. If the money be not so paid or deposited, the defendants may have execution as in civil cases; and if the money can not be made on execution, the court or judge, upon a showing to that effect must set aside and annul the entire proceedings and restore possession of the property to the defendant, if possession has been taken by the plantiff.

Final order of condemnation.

Section 18.—When payments have been made and the bond given, if the plaintiff elects to give one, as required by the last two sections, the court

or judge must make a final order of condemnation, which must describe the property condemned and the purposes of condemnation. A copy of the order must be filed in the office of the commissioner of the recording district wherein the land is located and thereupon the property described therein shall vest in the plaintiff for the purposes therein specified.

Putting plaintiff in possession.

Section 19.—At any time after the report and assessment of damages of the commissioners has been made and filed in the court, and either before or after appeal from such assessment or from any other order or judgment in the proceedings, the court or judge thereof at chambers, upon application of the plaintiffs, shall have power to make an order that upon payment into court for the defendant entitled thereto of the amount of damages assessed, either by the commissioners or by the court as the case may be, the plaintiff be authorized, if already in possession of the property of such defendant sought to be appropriated, to continue in such possession; or, if not in possession, that the plaintiff be authorized to take possession, of such property and use and possess the same during the pendency and until the final conclusion of the proceedings and litigation; and that all actions and proceedings against the plaintiff on account thereof be stayed until such time; Provided, however, Where an appeal is taken by such defendant, the court or judge may, in its or his discretion, require the plaintiff, before continuing or taking such possession, in addition to paying into court the amount of damages assessed, to give a bond or undertaking, with sufficient sureties, to be approved by the judge, and to be in such sum as the court or judge may direct, conditioned to pay the defendant any additional damages and costs over and above the amount assessed, which it may finally be determined that defendant is entitled to for the appropriation of the property, and all damages which defendant may sustain if for any cause such property shall not be finally taken for public use. The amount assessed as damages by the commissioners or by the jury on appeal, as the case may be, shall be taken and considered, for the purposes of this section, until reassessed or changed in the further proceedings, as just compensation for the property appropriated; but the plaintiff, by payment into court of the amount assessed or by giving security, as above provided, shall not be thereby prevented or precluded from appealing from such assessment, but may appeal in the same manner and with the same effect as if no money had been deposited or security given; and in all cases where the plaintiff deposits the amount of the assessment and continues in possession or takes possession of the property, as herein provided, the defendant entitled thereto, if there be no dispute as to the ownership of the property, may at any time demand and receive from the court the money so deposited, and shall not by such demand or receipt be barred or precluded from his right of appeal from such assessment, but may, notwithstanding, take and prosecute such appeal from such assessment: Provided, if the amount of such assessment is finally reduced on appeal by either party, such defendant who has received the amount of the assessment deposited shall be liable to the plantiff for any excess of the amount so received by him over the amount finally assessed, with legal interest on such excess from the time such defendant received the money deposited, and the same may be recovered by action: And provided further, upon any appeal from the assessment of damages by the commissioners the court may find as compensation or damages a less as well as an equal or greater amount than that assessed by the commissioners.

Bond.

Liability for excess over amount finally assessed etc.

Appeal, etc.

Payment of costs.

Section 20.—Costs may be allowed, or, if not so allowed, may be so apportioned between the parties on the same or adverse sides, in the discretion of the court.

Rules of practice.

Section 21.—Except as otherwise provided in this chapter, the provisions of The Code of Civil Procedure are applicable to and constitute the rules of practice of the proceedings mentioned in this act.

CHAPTER TWENTY-ONE.

OF INTEREST AND USURY.

Legal rate of interest.

Section 1.—The rate of interest in the District shall be six per centum per annum, on all moneys after the same become due; on judgments and decrees for the payment of money; on money received to the use of another and retained beyond a reasonable time without the owner's consent, expressed or implied, or on money due upon the settlement, expressed or implied, or on money due upon the settlement of matured accounts from the day balance is ascertained; on money due or to become due where there is a contract to pay interest and no rate specified. But on contracts interest at the rate of ten percentum may be charged by express agreement of the parties, and no more; provided however, that on first priority mortgages on real estate the maximum legal rate shall be six per centum, and no more, and any rate over and above six per centum charged upon a first priority mortgage shall be usurious.

Illegal interest not to be taken.

Section 2.—No person shall, directly or indirectly receive in money, goods, or things in action, or in any other manner, any greater sum or value for the loan or use of money, or upon contract founded upon any bargain, sale or loan of wares merchandise, goods, chattels, lands and tenements, than in this chapter prescribed.

May recover usurious interest paid.

Section 3.—If usurious interest, as defined by the preceding sections shall hereafter be received or collected the person or persons paying the same, or their legal representatives, may by action brought in the District Court, within two years after such payment, receive from the person, firm, or corporation, having received the same, double the amount of the interest so received or collected.

Illegal interest, contract for

Sction 4.—If it shall be ascertained in any action brought on any contract that a rate of interest has been contracted for greater than is authorized by this chapter, whether directly or indirectly, in money, property, or other valuable thing, or that any gift or donation of money, property, or other valuable thing has been made or promised to be made to a lender or creditor, or to any person for him, the design of which is to obtain for money so loaned or for debts due or to become due, a rate of interest greater than that specified by the provisions of this chapter, the same shall be deemed to be usurious and shall work a forfeiture of the entire interest on the debt. The court before which such action is prosecuted shall render judgment for the amount due, without interest, on the sum loaned or the debt contracted, against the defendant and in favor of the plaintiff and against the plaintiff for costs of action, whether such action be contested or not.

Assignee of usurious contract may recover amount paid for same.

Section 5.—Nothing in this chapter shall be construed to prevent the proper *bona fide* assignee of any usurious contract recovering against his immediate assignor, or the original usurer, the full amount paid by him for such contract, but the same may be recovered by proper action in the District Court: Provided, Such assignee had no notice of the usury affecting the contract.

Mortagor and mortagee may agree which shall pay taxes, when.

Section 6.—All contracts made and entered into in the District by and between the borrower and lender, debtor and creditor or mortgagor and mortagee, on which the rate of interest is six *per centum* or under, whereby one party shall agree to pay the taxes on the debt, credit, or mortgage existing or entered into between such parties, shall be and the same are hereby declared legal and valid and shall not be deemed or taken to be usurious.

Assessment how made in such cases.

Section 7.—All contracts entered into under the last preceding section may be enforced by the parties thereto in the courts of the District: Provided, In making the assessments or credits, loans or mortgages the same shall be assessed to the holder thereof.

CHAPTER TWENTY-TWO.

OF LIENS ON PERSONAL PROPERTY.

Liens for labor on personal property.

Section 1.—Any person who shall make, alter, repair, or bestow labor on any article of personal property at the request of the owner or lawful possessor thereof shall have a lien upon such property so made, altered, or repaired, or upon which labor has been bestowed, for his just and reasonable charges for the labor he has performed and the material he has furnished, and such person may hold and retain possession of the same until such charges shall be paid.

Lien of carriers, storers of merchandise, and agisters of cattle.

Section 2.—Any person who is a common carrier, or who shall, at the request of the owner or lawful possessor of any personal property, carry, convey, or transport the same from one place to another, and any person who shall safely keep or store any grain, wares, marchandise, and lawful property at the request of the owner or lawful possessor thereof, and any person who shall pasture or feed any horses, cattle, hogs, sheep, or other live stock, or bestow any labor, care, or attention upon the same at the request of the owner or lawful possessor thereof, shall have a lien upon such property for his just and reasonable charges for the labor, care, and attention he has bestowed and the food he has furnished, and he may retain possession of such property until such charges be paid.

Proceedings to enforce such liens.

Section 3.—If such just and reasonable charges be not paid within three months after the care, attention, and labor shall have been perfomed or bestowed, or the materials or food shall have been furnished, the person having such lien may proceed as hereinafter provided.

Agreement not to be interfered with.

Section 4.—The provisions of the three previous sections shall not interfere with any special agreement of the parties.

Preferred liens.

Section 5.—The liens provided for in this chapter are preferred liens and are prior to any and all other liens.

Limitation of lien for labor.

Section 6.—The person rendering the service or doing the work or labor named in sections one and two of this chapter is only entitled to the liens as provided herein for services, work, or labor for the period of six months, or any part thereof next preceding the filing of the claims as provided in the next succeeding section of this chapter.

Filing claims.

Sction 7.—Every person, within thirty days after the rendition of the services, or after performing the work or labor mentioned in sections one and two of this chapter who shall claim the benefit hereof must file for record in the Recorder's office, a claim containing a statement of his demand, and the amount thereof, after deducting, as near as possible all just credits and offsets, with the name of the person by whom he was employed, with a statement of the terms and conditions of his contract, if any; and in case there is no express contract, the claim shall state what such service, work, or labor is reasonably worth and shall also contain a description of the property to be charged with the lien sufficient for identification with reasonable certainty, which claims must be verified by the oath of himself or some other person for him to the effect that the affiant believes the same to be to be true.

Record of claim.

Section 8.—The Recorder must record every claim filed under the provisions of this title in books kept by him for that purpose, which records must be indexed as deeds and other conveyances are required by law to be indexed and for which he may receive the same fees as are allowed by law for recording deeds or other instruments.

Limitation for bringing action.

Section 9.—No lien provided for in this chapter shall bind any property for a longer period than six months after the claim as herein provided for, has been filed, unless an action be commenced within that time to enforce the same.

Jurisdiction.

Section 10.—The liens provided for in this chapter shall be enforced by an action and shall be governed by the laws regulating the proceeding relating to the mode and manner of trial and the proceeding and laws to secure property so as to hold it for the satisfaction of any lien that may be against it.

Against what lien may be enforced.

Section 11.—Any person who shall bring an action to enforce a lien herein provided for, or any person having a lien as herein provided for, who shall be made a party to any such action, has a right to demand that such lien be enforced against the whole or any part of the property.

Joinder of liens.

Section 12.—Any number of persons claiming liens under this chapter may join in the same action, and when separate actions are commenced the court may consolidate them. The court may also allow, as part of the costs, the moneys paid for filing and recording the claim, and a reasonable attorney's fee for each person claiming a lien.

Judgment lien; execution.

Section 13.—In such action judgment must rendered in favor of each person having a lien for the amount due him, and the court shall order any property subject to the lien herein provided for to be sold by the marshal or sheriff in the same manner that personal property is sold on execution, and the court shall apportion the proceeds of such sale to the payment of each judgment *pro rata,* according to the amount of such judgment.

Sale when property is subject to loss or destruction.

Section 14.—The judge of the District Court may, in vacation upon motion, supported by affidavit, showing that the property is liable to loss or destruction, order any property subject to a lien as in this title provided, to be sold by the marshal or sheriff as personal property is sold on execution before the judgment is rendered, as provided in the next preceding section, and the proceeds of such sale must be retained by the marshal or sheriff until judgment, to be applied as in section thirteen of this directed.

Preventing the identification of property subject to lien.

Section 15.—Any person, firm or corporation who shall injure, impair, or destroy, or who shall render difficult uncertain, or impossible of identification of any property knowing the same to be subject to a lien, as herein provided, without the express consent of the person entitled to such lien, shall be liable to the lien holder for damages to the amount secured by this lien, which sum may be recovered by an action against such person, firm, or corporation, without bringing the suit as provided in section nine of this chapter: Provided, in all such actions the principal debtor shall be made a codefendant.

Consignee or depositary to enter receipt of property in books.

Section 16.—Whenever any personal property shall be consigned to or deposited with any forwarding merchant, wharf, warehouse, or tavern keeper, or the keeper of any depot for the reception and storage of trunks, baggage, merchandise, or other personal property, such consignee, or bailee shall immediately cause to be entered in a book kept by him a description of such property, with the date of reception thereof.

When bailee to notify owner of receipt of property.

Section 17.—If such property shall not have been left with such consignee or bailee for the purpose of being forwarded, disposed of, or kept according to directions received by such consignee or bailee at or before the time of the reception thereof, and if the name and residence of the owner of such property be known to the person having such property in his possession, he shall immediately notify the owner, by letter directed to him and deposited in the post office, of the reception of such property.

When bailee may sell property.

Section 18.—If any such property shall not be claimed and taken away within one year after the time it shall have been so received, the person having possession thereof may, at any time thereafter, proceed to sell the same in the manner provided in this chapter.

Notice of sale when to be given personally to owner.

Section 19.—Before any such property shall be sold, if the name an residence of the owner thereof be known, at least sixty days notice of such sale shall be given him, either personally or by leaving a notice at his residence or

place of doing business; but if the name and residence of the owner be not known, or if service cannot be made as above provided, the person having the possession of such property shall cause a notice to be published once a week containing a description of the property, for the space of six weeks successively in a newspaper, published in the district.

Proceeding when property not claimed.

Section 20.—If the owner or person entitled to such property shall not take the same away and pay the charges thereon within sixty days from the first publication of service of notice as above provided, it shall be the duty of the person having possession thereof, his agent or attorney, to make and deliver to the clerk of the District Court, an affidavit setting forth a description of the property remaining unclaimed, the time of its reception, the publication or service of the notice, and whether the owner of such property be known or unknown.

Inventory and order of sale.

Section 21.—Upon the delivery to him of such affidavit the clerk shall cause such property to be opened and examined in his presence, and a true inventory thereof to be made and shall annex to such inventory an order under his hand that the property therein described be sold by the sheriff at public auction.

Sale by sheriff, notice of.

Section 22.—It shall be the duty of the sheriff receiving such inventory and order to give ten days' notice of the sale, by posting up written notices thereof in three or more public places in the District, one of which shall be at the post office, or immediately adjacent thereto, and sell such property at public auction to the highest bidder, in the same manner as provided by law for sales under execution.

Return of sheriff and fees.

Section 23.—Upon completing the sale the sheriff making the same shall indorse upon the order aforesaid a return of his proceedings thereon, and return the same to the clerk together with the inventory and the proceeds of sale, after deducting his fees.

Clerk to make entry.

Section 24.—The clerk of the District Court shall make an entry of the amount received by him and the time when received, and shall file in his office such statement so delivered to him by the marshal or sheriff.

Owner may claim and receive deposit from clerk within two years.

Section 25.—If the owner of the property sold or his legal representatives, shall, at any time within two years after such moneys shall have been deposited with the clerk of the District Court, furnish satisfactory evidence of the ownership of such property, he or they shall be entitled to receive from him the amount so deposited in his office.

If proceeds not claimed.

Section 26.—If the amount so deposited with the clerk of the District Court shall not be claimed by the owner thereof or his legal representatives within the two years, the same shall belong to the Municipality.

Sale of decaying and perishable property.

Section 27.—Property of a perishable kind and subject to decay by keeping, consigned or left in manner before mentioned if not taken away within thirty days after it shall have been left, may be sold by giving ten days' notice thereof, as provided in section twenty-two, the sale to be conducted and the proceeds of the same to be applied in the manner before provided in this chapter: Provided, any property in a state of decay, or that is manifestly liable immediately to become decayed, may be summarily, without notice, sold by order of the clerk of the District Court after inspection thereof, as provided in section twenty-two of this chatper.

CHAPTER TWENTY-THREE.

OF MORTGAGES OF PERSONAL PROPERTY.

Chatels may be mortgaged:

Section 1.—Any interest in personal property which is capable of being transferred may be mortgaged.

Requisites to validity of chattel mortgage.

Section 2.—A mortgage of personal property is void as against creditors of the mortgagor and subsequent purchasers and incumbrancers of the property in good faith for value, unless;

(1) The possession of such property be delivered to and retained by the mortgagee; or

(2) The mortgage provide that the property may remain in possession of the mortgagor and be accompanied by an affidavit of all the parties thereto, or, in case any party is absent from the District at the time of the execution thereof, an affidavit of those present and of the agent or attorney in fact of such absent party that the same is made in good faith to secure the amount named therein, and without any design to hinder, delay, or defraud creditors, and be acknowledged and filed as hereinafter provided.

Mortgage by partnership.

Section 3.—Subject to the provisions of the next preceding section, one member of a firm of general partners may alone execute a mortgage of personal property and make the affidavit therein required on behalf of the firm and the mortgage so executed and the affidavit so made is as valid as if executed and made by all the partners or their agent or attorney in fact. In case of a corporation, the president, secretary or managing agent thereof may make the affidavit on its behalf.

Acknowledgment.

Section 4.—Every mortgage of personal property shall be acknowledged by the mortgagor or person executing the same in the manner provided for the acknowledgment of conveyances of real property before some officer authorized by law to take acknowledgments of deeds.

Filing of mortgage and duty of recorder.

Section 5.—Every mortgage of personal property, together with the affidavits of the parties thereto or a copy thereof, certified to be correct by the person before whom the acknowledgment has been made, must be filed in the office of the Recorder; and the Recorder must, on receipt of such mortgage or copy, endorse thereon the time of receiving the same, and file and keep the same in his office for the inspection of all persons, and shall enter in a book properly ruled and kept for that purpose, the names of all the parties—the names of the mortgagors to be alphabetically arranged—a specification of the articles mortgaged, the consideration thereof, the date of its maturity and the time of filing the same.

When and how mortgage to be renewed.

Section 6.—Every mortgage filed as provided in this chapter shall be void as against the creditors of the person making the same, or against subsequent purchasers or mortgagees in good faith after the expiration of one year from the filing thereof, unless within thirty days next preceding the expiration of the term of one year a true copy of such mortgage, with a verified statement exhibiting the interest of the mortgagee in the property at the time the same is renewed, as claimed by virtue of such mortgage, is again filed in the office where the original was filed; and the effect of such renewal shall be to extend the lien of the mortgage as against the creditor purchasers, and incumbrancers of the property for the further term of one year.

Rights of subsequent mortgagee.

Section 7.—Any subsequent mortgagee of personal property upon which a prior mortgage exists, which has been extended or renewed as provided in the last preceding section, may, at any time during the existence of such mortgage, pay the amount of the debt and the interest owing and secured thereby, as shown by such verified statement and mortgage, or deposit the full amount thereof with the recorder, subject to the order of the mortgagee, his legal representatives or assigns, and the receipt or duplicate receipt for such payment or deposit shall be filed in the office and attached to said mortgage, and thereby

such subsequent mortgagee shall be subrogated to all the rights of the prior mortgagee under such mortgage.

Mode of attachment of mortgaged chattels.

Section 8.—Personal property mortgaged may be taken on attachment or execution issued at the action of a creditor of the mortgagor; but before the property is so taken the officer must pay or tender to the mortgagee or the assignee thereof the amount of the mortgaged debt and interest, or must deposit the amount thereof with the Recorder, payable to the order of the mortgagee or the assignee thereof; and when the property then taken is sold under process the officer must apply the proceeds of the sale as follows:

(1) To the repayment of the sum paid to the mortgagee or the assignee of said mortgage, with interest from the date of such payment; and

(2) The balance, if any, in like manner as the proceeds of sale under execution are applied in other cases.

Certified copy in case of loss of original.

Section 9.—A copy of any mortgage of personal property made, acknowledged, and filed as provided in this chapter, certified by the Recorder, may be read in evidence in any court in the District without further proof of the execution of the original, if the original be lost or out of the possession of the person wishing to use it.

Extent of provisions of this chapter.

Section 10.—The provisions of the foregoing sections of this chapter shall extend to all such bills of sale, deeds of trust, and other conveyances of goods, chattels, or personal property as shall have the effect of a mortgage or lien upon such property.

Foreclosure.

Section 11.—An action for the foreclosure of a mortgage of personal property, or the enforcement of any lien thereon of whatever nature, may be commenced and conducted in the same manner as provided by law for the foreclosure of mortgages and liens upon real property, and the same may be joined in an action for the recovery of the possession of the property mortgaged.

Satisfaction of mortgage.

Section 12.—Whenever the debt of obligation secured by any mortgage of personal property which has been filed in the office of the Recorder as provided in this chapter shall be paid or discharged, an acknowledgment of satisfaction, signed by the mortgagee, his legal representative or assignee, must be endorsed upon the mortgage or copy thereof filed as aforesaid, and the fact of such discharge or satisfaction noted by the Recorder in the book kept by him, as provided in section five of this chapter, opposite the names of the parties to such mortgage.

Penalty for selling mortgaged chattels.

Section 13.—Any person having conveyed any goods, chattels, or personal property to another by mortgage who shall, during the existence of the lien or title created by such mortgage sell the property or any part thereof to a third party for a valuable consideration without informing him of the existence and effect of such mortgage, shall forfeit and pay to the purchaser twice the value of such property so sold, which forfeiture may be recovered in an action of debt in any court having jurisdiction thereof.

Mortgage on growing crops.

Section 14.—The lien of a mortgage on a growing crop continues on the crop after severance, whether remaining in its original state or converted into another product, so long as the same remains on the land of the mortgagor.

CHAPTER TWENTY-FOUR.

OF LIMITED PARTNERSHIPS.

Name.

Section 1.—This act shall be known as the "Uniform Limited Partnership Law."

Limited partnership defined.

Section 2.—A limited partnership is a partnership formed by two or more persons under the provisions of Section 3, having as members one or more general partners and one or more limited partners. The limited partners as such shall not be bound by the obligations of the partnership.

Formation.

Section 3. (1)—Two or more persons desiring to form a limited partnership shall:—

(A) Sign and swear to a certificate, which shall state

I. The named of the partnership,

II. The character of the business,

III. The location of the principal place of business,

IV. The name and place of residence of each member; general and limited partners being respectively designated;

V. The term for which the partnership is to exist,

VI. The amount of cash and description of and the agreed value of the other property contributed by each limited partner,

VII. The additional contributions, if any, agreed to be made by each limited partner and the time at which, or events on, the happening of which they shall be made,

VIII. The time, if agreed upon, when the contribution of each limited partner is to be returned,

IX. The share of the profits or the other compensation by way of income which each limited partner shall receive by reason of his contribution,

X. The right, if given, of a limited partner to substitute an assignee as contributor in his place, and the terms and conditions of the substitution,

XI. The right, if given, of the partners to admit additional limited partners,

XII. The right, if given, of one or more of the limited partners to priority over other limited partners, as to contributions or as to compensation by way of income, and the nature of such priority,

XIII. The right, if given, of the remaining general partners or partner to continue the business on the death, retirement or insanity of a general partner, and

XIV. The right, if given, of a limited partner to demand and receive property other than cash in return for his contribution.

(B) File for record the certificate in the office of the Recorder of Deeds.

(2) A limited partnership is formed if there has been substantial compliance in good faith with the requirements of Paragraph (1) of this section.

Business which may be carried on.

Section 4.—A limited partnership may carry on any business which a partnership without limited partners may carry on.

Character of contribution.

Section 5.—The contribution of a limited partner may be cash or other property but not services.

Name not to contain sur name of limited partner; exceptions.

Section 6. (1)—The surname of a limited partner shall not appear in the partnership name, unless

(a) It is also the surname of a general partner, or

(b) Prior to the time when the limited partner became such the business had been carried on under a name in which his surname appeared.

(2) A limited partner whose name appears in a partnership name contrary to the provisions of Paragraph (1) of this section, is liable as a general partner to partnership creditors who extend credit to the partnership without actual knowledge that he is not a general partner.

Section 7.—If the certificate contains a false statement, one who suffers loss by reliance on such statement may hold liable any party to the certificate, who knew the statement to be false;

Liability for false statements in certificate.

(a) At the time he signed the certificate, or

(b) Subsequently, but within a sufficient time before the statement was relied upon to enable him to cancel or amend the certificate, or to file a petition for its cancellation or amendment as provided in Section 26 (3).

Section 8.—A limited partner shall not become liable as a general partner unless in addition to the exercise of his rights and powers as a limited partner, he takes part in the control of the business.

Limited partner not liable to creditors.

Section 9.—After the formation of a limited partnership, additional limited partners may be admitted upon filing an amendment to the original certificate in accordance with the requirements of Section 26.

Admission of additional limited partners.

Section 10. (1)—A general partner shall have all the rights and powers and be subject to all the restrictions and liabilities of a partner in a partnership without limited partners, except that without the written consent or ratification of the specific act by all the limited partners, a general partner or all of the general partners have no authority to;

Rights, powers and liabilities of a general partner.

(a) Do any act in contavention of the certificate,

(b) Do any act which would make it impossible to carry on the ordinary business of the partnership,

(c) Confess a judgment against the partnership,

(d) Possess partnership property, or assign their rights in specific partnership property, for other than a partnership purpose,

(e) Admit a person as a general partner,

(f) Admit a person as a limited partner, unless the right so to do is given in the certificate,

(g) Continue the business with partnership property, on the death, retirement or insanity of a general partner, unless the right so to do is given in the certificate.

Section 11.—A limited partner shall have the same right as a general partner to:

Rights of a limited partner.

(a) Have the partnership books kept at the principal place of business of the partnership, and at all times to inspect and copy any of them,

(b) Have on demand true and full information of all things affecting the partnership, and a formal account of partnership affairs whenever circumstances render it just and reasonable, and

(c) Have dissolution and winding up by decree of court.

(2) A limited partner shall have the right to receive a share of the profits or other compensation by way of income and to the return of his contribution as provided in Sections 16 and 17.

Section 12.—A person who has contributed to the capital of a business conducted by a person or partnership erroneously believing that he has become a limited partner in a limited partnership, is not by reason of his exercise of the rights of a limited partner, a general partner with the person or in the partnership carrying on the business, or bound by obligations of such person or parnership; provided that on ascertaining the mistake he promptly renounces his interests in the profits of the business, or other compensation by way of income.

Status of person erroneously believing himself limited partner.

Section 13. (1)—A person may be a general partner and a limited partner in the same partnership at the same time.

One person both general and limited partner.

(2) A person who is a general, and also at the same time a limited partner shall have all the rights and powers and be subject to all the restrictions of a general partner, except that, in respect to his contribution, he shall have the rights against the other members which he would have had if he were not also a general partner.

Loans and other business transactions with limited partner.

Section 14.—(1) A limited partner also may loan money to and transact other business with the partnership, and, unless he is also a general partner, receive on account of resulting claims against the partnership, with general creditors, a *pro rata* share of the assets. No limited partner shall in respect to any such claim:

(a) Receive or hold as collateral security any partnership property, or

(b) Receive from a general partner or the partnership any payment, conveyance, or release from liability, if at the time the assets of the partnership are not sufficient to discharge partnership liabilities to persons not claiming as general or limited partners.

(2) The receiving of collateral security or a payment, conveyance, or release in violation of the provisions of Paragraph (1) of this section, is a fraud on the creditors or the partnership.

Relation of limited partners Inter Se.

Section 15.—Where there are several limited partners the members may agree that one or more of the limited partners shall have a priority over other limited partners as to the return of the contributions, as to their compensation by way of income, as to any other matter. If such an agreement is made it shall be stated in the certificate, and in the absence of such a statement all the limited partners shall stand upon equal footing.

Compensation of limited partner.

Section 16.—A limited partner may receive from the partnership the share of the profits or the compensation by way of income stipulated for in the certificate: Provided, that after such payment is made, whether from the property of the partnership or that of a general partner, the partnership assets are in excess of all liabilities of the partnership, except liabilities to limited partners on account of their contributions and to general partners.

Withdrawal or reduction of limited partner's contribution.

Section 17. (1)—A limited partner shall not receive from a general partner or out of partnership property any part of his contribution until;

(a) All liabilities of the partnership, except liabilities to general partners and to limited partners on account of their contributions, have been paid or there remains property of the partnership sufficient to pay them,

(b) The consent of all members is had, unless the return of the contribution may be rightfully demanded under the provisions of Paragraph (2) of this section, and

(c) The certificate is cancelled or so amended as to set forth the withdrawal or reduction.

(2) Subject to the provisions of Paragraph (1) of this section, a limited partner may rightfully demand the return of his contribution,

(a) On the dissolution of a partnership, or

(b) When the date specified in the certificate for its return has arrived, or

(c) After he has given six months' notice in writing to all other members, if no time is specified in the certificate either for the return of the contribution or for the dissolution of the partnership.

(3) In the absence of any statement in the certificate to the contrary or the consent of all members, a limited partner, irrespective of the nature of his contribution, has only the right to demand and receive cash in return for his contribution.

(4) A limited partner may have the partnership dissolved and its affairs wound up when;

(a) He rightfully but unsuccessfully demands the return of his contribution, or

(b) The other liabilities of the partnership have not been paid, or the partnership property is insufficient for their payment as required by Paragraph (1) (a) of this section, and the limited partner would otherwise be entitled to the return of his contribution.

Liability of limited partner to partnership.

Section 18. (1)—A limited partner is liable to the partnership;

(a) For the difference of his contribution as actually made and that stated in the certficate as having been made, and

(b) For any unpaid contribution which he agreed in the certificate to make in the future at the time and on the conditions stated in the certificate.

(2) A limited partner holds as trustee for the partnership;

(a) Specific property stated in the certificate as contributed by him, but which was not contributed or which has been wrongfully returned, and

(b) Money or other property wrongfully paid or conveyed to him on account of his contribution.

(3) The liabilities of a limited partner as set forth in this section can be waived or compromised only by the consent of all members; but a waiver or compromise shall not affect the right of a creditor of a partnership, who extended credit or whose claim arose after the filing and before a cancellation or amendment of the certificate, to enforce such liabilites,

(4) When a contributor has rightfully received the return in whole or in part of the capital of his contribution, he is nevertheless liable to the partnership for any sum, not in excess of such return with interest, necessary to discharge its liabilities to all creditors who extended credit or whose claims arose before such return.

Nature of limited partner's interest in partnership.

Section 19.—A limitated partner's interest in the partnership is personal property.

Assignment of limited partner's interest.

Section 20. (1)—A limited partner's interest is assignable.

(2) A substituted limited partner is a person admitted to all the rights of a limited partner who has died or has assigned his interest in a partnership.

(3) An assignee, who does not become a substituted limited partner, has no right to require any information or account of the partnership transactions or to inspect the partnership books; he is only entitled to receive the share of the profits or other compensation by way of income, or the return of his contribution to which his assignor would otherwise be entitled.

(4) An assignee shall have the right to become a substituted limited partner if all the members (except the assignor) consent thereto or if the assignor being thereunto empowered by the certificate, gives the assignee that right.

(5) An assignee becomes a substituted limited partner when the certificate is appropriately amended in accordance with Section 26.

(6) The substitute limited partner has all the rights and powers, and is subject to all the restrictions and liabilities of his assignor, except those liabilties of which he was ignorant at the time he became a limited partner and which could not be ascertained from the certificate.

(7) The substitution of the assignee as a limited partner does not release the assignor from liability to the partnership under Section 7 and 18.

Retirement death or insanity of a general partner.

Section 21.—The retirement, death or insanity of a general partner dissolves the partnership; unless the business is continued by the remaining general partners;

(a) Under a right so to do stated in the certificate, or

(b) With the consent of all members.

Death of limited partner.

Section 22.—(1) On the death of a limited partner his executor or admnistrator shall have all the rights of a limited partner for the purpose of settling his estate, and such power as the deceased had to constitute his assigneee a substituted limited partner.

(2) The estate of a deceased limited partner shall be liable for all his liabilities as a limited partner.

Rights of creditors of limited partner.

Section 23.—(1) On due application to a court of competent jurisdiction by any judgment creditor of a limited partner, the court may charge the interest of the indebted limited partner with payment of the unsatisfied amount of the judgment debt, and may appoint a receiver, and make all other orders, directions and inquiries which the circumstances of the case may require.

(2) The interest may be redeemed with the separate property of any general partner, but may not be redeemed with partnership property.

(3) The remedies conferred by paragraph (1) of this section, shall not be deemed exclusive of others which may exist.

Distribution of assets.

(4) Nothing in this act shall be held to deprive a limited partner of his statutory exemption.

Section 24.—(1) In secttling accounts after dissolution the liabilities of the partnership shall be entitled to payment in the following order;

(a) Those to creditors, in the order or priority as provided by law, except those to limited partners on account of their contributions, and to general partners,

(b) Those to limited partners in respect to their share of the profits and other compensation by way of income on their contributions, and to general partners,

(c) Those to limited partners in respect to the capital of their contributions,

(d) Those to general partners others than for capital and profits,

(e) Those to general partners in respect to profits,

(f) Those to general partners in respect to capital.

(2) Subject to any statement in the certificate or to subsequent agreement, limited partners share in the partnership assets in respect to other claims for capital, and in respect to their claims for profits or for compensation by way of income on their contributions respectively, in proportion to the respective amounts of such claims.

When certificate shall be cancelled or amended.

Section 25. (1)—The certificate shall be cancelled when the partnership is dissolved or all limited partners cease to be such.

(2) A certificate shall be amended when;

(a) There is a change in the name of the partnership or in the amount or character of the contribution of any limited partner,

(b) A person is substituted as a limited partner,

(c) An additional limited partner is admitted,

(d) A person is admitted as a general partner,

(e) A general partner retires, dies, or becomes insane, and the business is continued under Section 21,

(f) There is a change in the character of the business of the partnership,

(g) There is a false or erroneous statement in the certificate,

(h) There is a change in the time as stated in the certificate for the dissolution of the partnership or for the return of a contribution,

(i) A time is fixed for the dissolution of the partnership or the return of a contribution, no time having been specified in the certificate, or

(j) The members desire to make a change in any other statement in the certificate in order that it shall accurately represent the agreement between them.

Requirements for amendment and for cancellation of certificate.

Section 26. (1)—The writing to amend certificate shall;

(a) Conform to the requirements of Section 3 (1) (a) as far as necessary to set forth clearly the change in the certificate which it is desired to make, and

(b) Be signed and sworn to by all members, and an amendment substituting a limited partner or adding a limited or general partner shall be signed also by the member to be substituted or added, and when a limited partner is to be substituted, the amendment shall also be signed by assigning limited partner.

(2) The writing to cancel a certificate shall be signed by all members.

(3) A person desiring the cancellation or amendment of certificate, if any person designated in Paragraphs (1), (2) and (3) as a person who must execute the writing, refuses to do so, may petition the District Court to direct a cancellation or amendment thereof.

(4) If the court finds that the petitioner has a right to have writing executed by a person who refuses to do so it shall order the Recorder of Deeds in the office where the certificate is recorded to record the cancellation or amendment of the certificate; and where the certificate is to be amended, the court shall also cause to be filed for record in said office a certified copy of its decree setting forth the amendment.

(5) A certificate is amended or cancelled when there is filed for record in the office of the Recorder of Deeds where the certificate is recorded;

(a) A writing in accordance with the provisions of Paragraph (1) or (2), or

(b) A certified copy of the order of the court in accordance with the provisions of Paragraph 4.

(6) After the certificate is duly amended in accordance with this section, the amended certificate shall thereafter be for all purposes the certificate provided for by this act.

Parties to actions.

Section 27.—A contributor, unless he is a general partner is not a proper party to proceedings by or against a partnership, except where the object is to enforce a limited partner's right against or liability to the partnership.

Rules of construction.

Section 28.—(1) The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this act.

(2) This act shall be so interpreted and construed as to effect its general purpose to make uniform the law of those states which enact it.

(3) This act shall not be so construed as to impair the obligations of any contract existing when the act goes into effect, nor to effect any action or proceedings begun or right accrued before this act takes effect.

Rules for Cases not provided for in this Act.

Section 29.—In any case not provided for in this act the rules of law and equity, including the law merchant, shall govern.

Provisions for existing limited partnerships.

Section 30.—(1) A limited partnership formed under any statute prior to the adoption of this act, may become a limited partnership under this act by complying with the provisions of section 3; provided that the certificate sets forth;

(a) The amount of the original contribution of each limited partner, and the time when the contribution was made, and

(b) That the property of the partnership exceeds the amount sufficient to discharge its liabilities to persons not claiming as general or limited partners by an amount greater than the sum of the contributions of its limited partners.

(2) A limited partnership formed under any statute prior to the adoption of this act, until or unless it becomes a limted partnership under this act, shall continue to be governed by the provisions of the statutes under which it was formed, except that such partnership shall not be renewed.

CHAPTER TWENTY-FIVE

OF PARTNERSHIPS.

Definition of terms.

Section 1.—This shall be known as "Uniform Partnership Law."

Name of Act.

Section 2.—In this Act "Court" includes every court and judge having jurisdiction in the case.

"Business" includes every trade, occupation, or profession.

"Person" includes individuals, partnerships, corporations, and other associations.

"Bankrupt" includes bankrupt under the Federal Bankruptcy Act or insolvent under any state or other insolvent act.

"Conveyance" includes every assignment, lease, mortgage, or encumbrance.

"Real property" includes land and any interest or estate in land.

Interpretation of knowledge and notice.

Section 3.—(1) A person has "knowledge" of a fact within the meaning of this act not only when he has actual knowledge thereof, but also when he has knowledge of such other facts as in the circumstances shows bad faith.

(2) A person has "notice" of a fact within the meaning of this act when the person who claims the benefit of the notice:

(a) States the fact to such person, or

(b) Delivers through the mail, or by other means of communication, a written statement of the fact to such person or to a proper person at his place of business or residence.

Rules of Construction.

Section 4.—(1) The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this act.

(2) The law of estoppel shall apply under this act.

(3) The law of agency shall apply under this act.

(4) This act shall be so interpreted and construed as to effect its general purpose to make uniform the law of those states which enact it.

(5) This act shall not be construed so as to impair the obligations of any contract existing when this act goes into effect, nor to effect any act or proceedings begun or right accrued before this act takes effect.

Rules for cases not provided for in this act.

Section 5.—In any case not provided for in this act the rules of law and equity, including the law merchant, shall govern.

PART II.

NATURE OF PARTNERSHIP.

Partnership defined.

Section 6.—(1) A partnership is an association of two or more persons to carry on as co-owners a business for profit.

(2) But any association formed under any other statute of this Municipality, or any statute adopted by authority, other than the authority of this Municipality is not a partnership under this act, unless such association would have been a partnership in this Municipality prior to the adoption of this act; but this act shall apply to limited partnerships except in so far as the statutes relating to such partnerships are inconsistent herewith.

Rules for determining the existence of a partnership.

Section 7.—In determining whether a partnership exists these rules shall apply:

(1) Except as provided by Section 16, persons who are not partners as to each other are not partners as to third persons.

(2) Joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property, or part ownership does not itself establish a part-

nership, whether such co-owners do or do not share any profits made by the use of the property.

(3) The sharing of gross returns does not of itself establish a partnership, whether or not the persons sharing them have a joint or common right or interest in any property from which the returns are derived.

(4) The receipt by a person of a share of the profits of a business is *prima facie* evidence that he is a partner in the business, but no such inference shall be drawn if such profits were received in payment:

(a) As a debt by installments or otherwise.

(b) As wages of an employee or rent to a landlord.

(c) As an annuity to a widow or representative of a deceased partner.

(d) As interest on a loan, though the amount of payment vary with the profits of the business.

(e) As the consideration for the sale of the good will of a business or other property by installments or otherwise.

Partnership property.

Section 8.—All property originally brought into the partnership stock or subsequently acquired, by purchase or otherwise, on account of the partnership is partnership property.

(2) Unless the contrary intention appears, property acquired with the partnership funds is partnership property.

(3) Any estate in real property may be acquired in the partnership name. Title so acquired can be conveyed only in the partnership name.

(4) A conveyance to a partnership in the partnership name, though without words of inheritance, passes the entire estate of the grantor unless a contrary intent appears.

PART III.

RELATIONS OF PARTNERS TO PERSONS DEALING WITH THE PARTNERSHIP.

Partner agent of partnership as to partnership business.

Section 9.—(1) Every partner is an agent of the partnership for the purpose of its business, and the act of every partner, including the execution in the partnership name of any instrument, for apparently carrying on in the usual way the business of the partnership of which he is a member binds the partnership unless the partner so acting has in fact no authority to act for the partnership, in the particular matter, and the person with whom he is dealing has knowledge of the fact that he has no such authority.

(2) An act of a partner which is not apparently for the carrying on of the business of the partnership in the usual way does not bind the partnership unless authorized by the other partners.

(3) Unless authorized by the other partners or unless they have abandoned the business, one or more but less than all the partners have no authority to:

(a) Assign the partnership property in trust for creditors, or on the assignee's promise to pay the debts of the partnership.

(b) Dispose of the good-will of the business.

(c) Do any other act which would make it impossible to carry on the ordinary business of the partnership.

(d) Confess a judgment.

(e) Submit a partnership claim or liability to arbitration or reference.

(4) No act of a partner in contravention of a restriction on his authority shall bind the partnership to persons having knowledge of the restriction.

Conveyance of real property of the partnership.

Section 10.—(1) Where title to real property is in the partnership name, any partner may convey title to such property by a conveyance executed in the partnership name; but the partnership may recover such property unless the partner's act binds the partnership under the provisions of paragraph (1) of Section 9, or unless such property has been conveyed by the grantee or a person claiming through such grantee to a holder for value without knowledge that the partner, in making the conveyance, has exceeded his authority.

(2) Where title to real property is in the name of the partnership, a conveyance executed by a partner, in his awn name, passes the equitable interest of the partnership provided the act is one within the authority of the partner under the provisions of paragraph (1) of section 9.

(3) Where title to real property is in the name of one or more but not all the partners, and the record does not disclose the right of the partnership, the partners in whose name the title stands may convey title to such property, but the partnership may recover such property if the partner's act does not bind the partnership under the provisions of paragraph (1) of Section 9, unless the purchaser or his assignee, is a holder for value, without knowledge.

(4) Where the title to real property is in the name of one or more or all the partners, or in a third person in trust for the partnership, a conveyance executed by a partner in the partnership name, or in his own name, passes the equitable interest of the partnership, provided the act is one within the authority of the partner under the provisions of paragraph (1) of section 9.

(5) Where the title to real property is in the names of all the partners a conveyance executed by all the partners passes all their rights in such property.

Partnership bound by admission of partner.

Section 11.—An admission or representation made by any partner concerning partnership affairs within the scope of his authority as conferred by this act is evidence against the partnership.

Partnership charged with knowledge of or notice to partner.

Section 12.—Notice to any partner of any matter relating to partnership affairs, and the knowledge of the partner acting in the particular matter, acquired while a partner or then present to his mind, and the knowledge of any other partner who reasonably could and should have communicated it to the acting partner, operate as notice to or knowledge of the partnership, except in the case of a fraud on the partnership committed by or with the consent of that partner.

Partnership bound by partner's wrongful act.

Section 13.—Where, by any wrongful act or omission of any partner acting in the ordinary course of the business of the partnership, or with the authority of his co-partners loss or injury is caused to any person, not being a partner in the partnership, or any penalty is incurred, the partnership is liable therefor to the same extent as the partner so acting or omitting to act.

Partnership bound by partner's breach of trust.

Section 14.—The partnership is bound to make good the loss:

(1) Where one partner acting within the scope of his apparent authority receives money or property of a third person and mis-applies it; and

(2) Where the partnership in the course of its business receives money or property of a third person and the money or property so received is misapplied by any partner while it is in the custody of the partnership.

Nature of partners liability.

Section 15.—All partners are liable:

(a) Jointly and severally for everything chargeable to the partnership under sections 13 and 14.

(b) Jointly for all other debts and obligations of the partnership; but any partner may enter into a separate obligation to perform a partnership contract.

Partner by estoppel.

Section 16.—(1) When a person, by words spoken or written or by conduct, represents himself, or consents to another representing him to be any one, as a partner in an existing partnership or with one or more persons not actual partners he is liable to any such person to whom such representation has been made, who has, on the faith of such representation, given credit to the actual or apparent partnership, and if he has made such representation or consented to its being made in a public manner he is liable to such persons, whether the representation has or has not been made or communicated to such person so giving credit by or with the knowledge of the apparent partner making the reperesentation or consenting to its being made.

(a) When a partnership liability results, he is liable as though he were an actual member of the partnership.

(b) When no partnership liability results, he is liable jointly with the other person, if any, so consenting to the contract or representation as to incur liability, otherwise separately.

(2) When a person has thus been represented to be a partner in an existing partnership, or with one or more persons not actual partners, he is an agent of the person consenting to such representation, to bind them to the same extent and in the same manner as though he were a partner in fact, with respect to persons who rely upon the representation. Where all members of the existing partnership consent to the representation, a partnership act or obligation results; but in all other cases it is the joint act or obligation of the person acting and the persons consenting to the representation.

Liability of incoming partner.

Section 17.—A person admitted as a partner into an existing partnership is liable for all the obligations of the partnership arising before his admission as thought he had been a partner when such obligations were incurred, except that this liability shall be satisfied only out of partnership property.

PART IV.

RELATION OF PARTNERS TO ONE ANOTHER.

Rules determining rights and duties of partners.

Section 18.—The rights and duties of the partners in relation to the partnership shall be determined, subject to any agreement between them, by the following rules:

(a) Each partner shall be repaid his contributions, whether by way of capital or advances to the partnership property and share equally in the profits and surplus remaining after all liabilities, including those to partners, are satisfied; and must contribute towards the losses, whether of capital or otherwise, sustained by the partnership according to his share of the profits.

(b) The partners must indemnify every partner in respect of payments made and personal liabilities reasonably incurred by him in the ordinary and proper conduct of its business or property.

(c) A partner, who in aid of the partnership makes any payment or advance beyond the amount of capital which he agreed to contribute, shall be paid interest from the date of payment or advance.

(d) A partner shall receive interest on the capital contributed by him only from the date when payment should be made.

(e) All partners have equal rights in the management and conduct of the partnership business.

(f) No partner is entitled to remuneration for acting in the partnership business, except that a surviving partner is entitled to reasonable compensation for his services in winding up the partnership affairs.

(g) No person can become a member of a partnership without the consent of all the partners.

(h) Any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the partners; but no act in contravention of any agreement between the partners may be done rightfully without the consent of all the partners.

Partnership books.

Section 19.—The partnership books shall be kept, subject to any agreement between the partners, at the principal place of business of the partnership, and every partner shall at all times have access to and may inspect and copy any of them.

Duty of partners to render information.

Section 20.—Partners shall render on demand true and full information of all things affecting the partnership to any partner or the legal representative of any deceased partner or partner under legal disability.

Partner accountable as fiduciary.

Section 21.—(1) Every partner must account to the partnership for any benefit, and hold as trustee for it any profits derived by him without the consent of the other partners from any transaction connected with the formation, conduct or liquidation of the partnership or from any use by him of its property.

(2) This section applies also to the representatives of a deceased partner engaged in the liquidation of the affairs of the partnership as the personal representative of the last surviving partner.

Right to an account.

Section 22.—Any partner shall have the right to a formal account as to partnership affairs;

(a) If he is wrongfully excluded from the partnership business or possession of its property by his co-partners.

(b) If the right exists under the terms of any agreement,

(c) As provided by Section 21,

(d) Whenever other circumstances render it just and reasonable.

Continuation of partnership beyond fixed term.

Section 23.—(1) When a partnership for a fixed term or particular undertaking is continued after the termination of such term or particular undertaking without any express agreement, the rights and duties of the partners remain the same as they were at such termination, so far as is consistent with a partnership at will.

(2) A continuation of the business by the partners or such of them as habitually acted therein during the term, without any settlement or liquidation of the partnership affairs, is *prima facie* evidence of continuation of the partnership.

PART V.

PROPERTY RIGHTS OF A PARTNER.

Extent of property rights of partner.

Section 24.—The property rights of a partner are, (1) his rights in specific partnership property, (2) his interest in the partnership, and (3) his right to participate in the management.

Nature of a partner's right in specific partnership property.

Section 25.—(1) A partner is co-owner with his partners of specific partnership property, holding as a tenant in partnership.

(2) The incidents of this tenancy are such that:

(a) A partner, subject to the provisions of this act and to any agreement between the partners has an equal right with his partners to possess the specific partnership property for partnership purposes; but he has no right to possess such property for any other purpose without the consent of his partners.

(b) A partner's right in specific partnership property is not assignable except in connection with the assignment of the rights of all the partners in the same property.

(c) A partner's right in specific partnership property is not subject to attachment or execution except on a claim against the partnership. When partnership property is attached for a partnership debt the partners, or any of them or the representative of a deceased partner cannot claim any right under the homestead or exemption laws.

(d) On the death of a partner his right in specific partnership property, vests in the surviving partner, when his right in such property vests in his legal representative. Such surviving partner or partners, or the legal representative of the last surviving partner, has no right to possess the partnership property for any but a partnership purpose.

(e) A partner's right in specific partnership property is not subject to dower, curtesy, or allowances to widows, heirs, or next of kin.

Nature of partner's interest in partnership.

Section 26.—A partner's interest in the partnership is his share of the profits and surplus, and the same is personal property.

Section 27.—A conveyance by a partner of his interest in the partnership does not of itself dissolve the partnership, nor as against the other partners in the absence of agreement, entitle the assignee, during the continuance of the partnership, to interfere in the management or administration of the partnership business or affairs, or to require any information or account of partnership transactions or to inspect the partnership books; but it merely entitles the assignee to receive in accordance with his contract the profits to which the assigning partner would otherwise be entitled.

Assignment of partner's interest.

In case of a dissolution of the partnership, the assignee is entitled to receive the assignor's interest and may require an account from the date only of the last account agreed to by all partners.

Section 28.—(1) On due application to a competent court by any judgment creditor of a partner, the court which entered the judgment, order or decree, or any other court, may charge the interest of the debtor partner with payment of the unsatisfied amount of such judgment debt with interest thereon; and may then or later appoint a receiver of his share of the profits, and of any other money due or to fall due to him in respect of the partnership, and make all other orders, directions, accounts, and inquiries which the debtor partner might have made, or which the circumstances of the case may require.

Partner's interest subject to changing order.

(2) The interest charged may be redeemed at any time before foreclosure, or in case of a sale being directed by the court may be purchased without thereby causing a dissolution:

(a) With separate property, by any one or more of the partners, or

(b) With partnership property, by any one or more of partners with the consent of all the partners whose interests are not so charged or sold.

(3) Nothing in this act shall be held to deprive a partner of his right, if any, under the exemption laws, as regards his interests in the partnership.

PART VI.

DISSOLUTION AND WINDING UP.

Section 29.—The dissolution of a partnership is the change in the relation of the partners caused by any partner ceasing to be associated in the carrying on as distinguished from the winding up of the business.

Dissolution defined.

Section 30.—On dissolution the partnership is not terminated, but continues until the winding up of partnership affairs is completed.

Partnership not terminated by by dissolution.

Section 31.—Dissolution is caused:

Causes of dissolution.

(1) Without violation of the agreement between the partners,

(a) By the termination of the definite term or particular understaking specified in the agreement.

(b) By the express will of any partner when no definite term or particular undertaking is specified.

(c) By the express will of all the partners who have not assigned their interests or suffered them to be charged for their separate debts, either before or after the termination of any specified term or particular undertaking.

(d) By the expulsion of any partner from the business *bona fide* in accordance with such power conferred by the agreement between the partners;

(2) In contravention of the agreement between the partners, where the the circumstances do not permit a dissolution under any other provisions of this Section, by the express will of any partner at any time;

(3) By any event which makes it unlawful for the business of the partnership to be carried on or for the members to carry it on in partnership;

(4) By the death of any partner;

(5) By the bankruptcy of any partner or the partnership;

(6) By decree of court under Section 32.

Dissolution by decree of court.

Section 32.—(1) On application by or for a partner the court shall decree a dissolution whenever:

(a) A partner has been declared a lunatic in any judicial proceeding or is shown to be of unsound mind;

(b) A partner becomes in any other way incapable of performing his part in the partnership contract;

(c) A partner has been guilty of such conduct as tends to effect prejudicially the carrying on of the business;

(d) A partner wilfully or persistently commits a breach of the partnership agreement, or otherwise so conducts himself in matters relating to the partnership business that it is not reasonably practicable to carry on the business in partnership with him;

(e) The business of the partnership can only be carried on at a loss.

(f) Other circumstances render a dissolution equitable.

(2) On the application of the purchaser of a partner's interest under section 28 or 29;

(a) After determination of the specified term or particular undertaking.

(b) At any time if the partnership was a partnership at will when the interest was assigned or when the charging order was issued.

General effect of dissolution on authority of partner.

Section 33.—Except so far as may be necessary to wind up partnership affairs or to complete transactions begun or not then finished, dissolution terminates all authority of any partner to act for the partnership:

(1) With respect to the partners,

(a) When the dissolution is not by the act, bankruptcy or death of a partner; or

(b) When the dissolution is by such act, bankruptcy or death of a partner, in cases where section 34 so requires.

(2) With respect to persons not partners, as declared in section 35.

Right of partner to contribution from copartners after dissolution.

Section 34.—Where the dissolution is caused by the act, death or bankruptcy of a partner, each partner is liable to his co-partner for his share of any liability created by any partner acting for the partnership as if the partnership had not been dissolved unless,

(a) The dissolution being by act of any partner, the partner acting for the partnership had knowledge of the dissolution; or

(b) The dissolution being by the death or bankruptcy of a partner, the partner acting for the partnership had knowledge or notice of the death or bankruptcy.

Power of partner to bind partnership to third person after dissolution.

Section 35. (1)—If the partnership has not been dissolved because it has become unlawful to carry on the business, a partner cannot, after the dissolution, bind the partnership to third persons by any act which is not necessary to wind up the partnership affairs or to complete transactions then unfinished unless;

(a) Such third person, having had relations with the partnership by which a credit was extended upon the faith of the partnership, has had no knowledge or notice of the dissolution; or

(b) Such third person not having had business relations with the partnership by which a credit was extended to the partnership, has no knowledge or notice of the dissolution, and the fact of dissolution has not been advertised in a newspaper of general circulation of the place (or of each place if more than one) at which the partnership business was regularly carried on.

(2) The partnership is in no case bound by the acts of a partner who has become bankrupt; but this provision does not affect the liability of any person who, as declared by section 16, after bankruptcy, has represented himself, or consented to another's representing him to be a partner of the bankrupt.

Effect of dissolution on partner's existing liability.

Section 36. (1)—The dissolution of the partnership does not of itself discharge the existing liability of any partner.

(2) A partner is discharged from any existing liability upon dissolution of the partnership by an agreement to that effect between himself, the partner-

ship creditor and the person or partnership continuing the business; and such agreement may be inferred from the course of dealing between the creditor having knowledge of the dissolution and the person or partnership continuing the business.

(3) Where a person agrees to assume the existing obligations of a dissolved partnership, the partners whose obligations have been assumed shall be discharged from any liability to any creditor of the partnership who, knowing of the agreement, consents to a material alteration in the nature or time of payment of such obligations.

(4) The individual property of a deceased partner shall be liable for all obligations of the partnership incurred while he was a partner but subject to the prior payment of his separate debts.

Right to wind up.

Section 37.—Unless otherwise agreed the partners who have not wrongfully dissolved the partnership or their legal representative or the last surviving partner, not bankrupt, has the right to wind up the partnership affairs; provided however, that any partner, his legal representative, or his assignee, upon cause shown, may obtain winding up by the court.

Rights of partners to application of partnership property.

Section 38. (1)—When dissolution is caused in any way, except in contravention of the partnership agreement, each partner, as against his co-partners and all person claiming through them in respect of their interest in the partnership unless otherwise agreed, may have the partnership property applied to discharge its liabilities, and the surplus applied to pay in cash the net amount owing to the respective partners. But if dissolution is caused by expulsion of a partner, *bona fide* under the partnership agreement, and if the expelled partner is dicharged from all partnership liabilities, either by payment or agreement under section 36 (2), he shall receive in cash only the net amount due him from the partnership.

(2) When dissolution is caused in contravention of the partnership agreement the rights of the partners shall be as follows:

(a) Each partner who has not caused dissolution wrongfully shall have:

I. All the rights specified in paragraph (1) of this section, and

II. The right as against each partner who has caused the dissolution wrongfully, to damages for breach of the agreement.

(b) The partners who have not caused the dissolution wrongfully, if they all desire to continue the business in the same name, either by themselves or jointly with others, may do so, during the agreed term for the partnership and for that purpose may possess the partnership property, provided they secure the payment by bond approved by the court, or pay to any partner who has caused the dissolution wrongfully, the value of his interest in the partnership at the dissolution, less any damages recoverable under clause (2aII) of this section, and in like manner indemnify him against all present or future partnership liabilities.

(c) A partner who has caused the dissolution shall have:

I. If the business is not continued under the provisions of paragraph (2b) all the rights of a partner under paragraph (1), subject to clause (2aII), of this section. If the business is continued under paragraph (2b) of this section the right as against his co-partners and all claiming through them in respect of their interests in the partnership, to have the value of his interests in the partnership, less any damages caused to his co-partners by the dissolution ascertained and paid to him in cash, or payment secured by bond approved by the court, and to be released from all existing liabilities of the partnership, but in ascertaining the value of the partners' interest the value of the good will of the business shall not be considered.

Rights where partnership is dissolved for fraud or misrepresentation.

Section 39.—Where a partnership contract is rescinded on the ground of the fraud or misrepresentation of one of the parties thereto, the party entitled to rescind is, without prejudice to any other right, entitled:

(a) To a lien on, or right of retention of, the surplus of the partnership property after satisfying the partnership liabilities to third persons for any

sum of money paid by him for the purchase of an interest in the partnership and for any capital or advance contributed by him; and

(b) To stand, after all liabilities to third persons have been satisfied, in the place of the creditors of the partnership for any payments made by him in respect of the partnership liabilities; and

(c) To be indemnified by the person guilty of the fraud or making the representation against all debts and liabilities of the partnership.

Rules for distribution.

Section 40.—In settling accounts between the partners after dissolution, the following rules shall be observed, subject to any agreement to the contrary;

(a) The assets of the partnership are:

I. The partnership property.

II. The contributions of the partners necessary for the payment of all the liabilities specified in clause (b) of this paragraph.

(b) The liabilities of the partnership shall rank in order of payment, as follows:

I. Those owing to creditors other than partners.

II. Those owing to partners other than for capital and profits.

III. Those owing to partners in respect of capital.

IV. Those owing to partners in respect of profits.

(c) The assets shall be applied in the order of their declaration in clause (a) of this paragraph to the satisfaction of the liabilities.

(d) The partners shall contribute, as provided by section 18 (a) the amount necessary to satisfy the liabilities; but if any, but not all, of the partners are insolvent or not being subject to process, refuse to contribute, the other partners shall contribute their share of the liabilities and in the relative proportions in which they share the profits and additional amount necessary to pay the liabilities.

(e) An assignee for the benefit of creditors or any person appointed by the court shall have the right to enforce the contributions specified in clause (d) of this paragraph.

(f) Any partner, or his legal representative, shall have the right to enforce contributions specified in clause (d) of this paragraph, to the extent of the amount which he has paid in excess of his share of the liabilities.

(g) The individual property of a deceased partner shall be liable for the contributions specified in clause (d) of this paragraph.

(h) When partnership property and the individual properties of the partners are in the possession of a court for distribution, partnership creditors shall have priority on partnership property and separate creditors on individual property, saving the rights of lien or secured creditors as heretofore.

(i) When a partner has become bankrupt or his estate is insolvent the claims against his separate property shall rank in the following order:

I. Those owing to separate creditors,

II. Those owing to partnership creditors,

III. Those owing to partners by way of contribution.

Liability of persons continuing the business in certain cases.

Section 41. (1)—When any new partner is admitted into an existing partnership, or when any partner retires and assigns (or the representative of the deceased partner assigns) his right in partnership property to two or more of the partners, or to one or more of the partners and one or more third persons, if the business is continued without liquidation of the partnership affair, creditors of the first or dissolved partnership are also creditors of the partnership so continuing the business.

(2) When all but one partner retire and assign (or the representative of a deceased partner assigns) their rights in partnership property to the remaining partner, who continues the business without liquidation of partnership affairs, either alone or with others, creditors of the dissolved partnership are also creditors of the person or partnership so continuing the business.

(3) When any partner retires or dies and the business of the dissolved partnership is continued as set forth in Paragraphs (1) and (2) of this section, with the consent of the retired partners or the representatives of the deceased partner, but without any assignment of his right in partnership property, rights

of creditors of the disolved partnership and of the creditors of the person or partnership continuing the business shall be as if such assignment had been made.

(4) When all the partners or their representatives assign their rights in partnership property to one or more third persons who promise to pay the debts and who continue the business of the dissolved partnership, creditors of the dissolved partnership are also creditors of the person or partnership continuing the business.

(5) When any partner wrongfully causes a dissolution and the remaining partners continue the business under the provisions of section 38 (2b), either alone or with others, and without liquidation of the partnership affairs, creditors of the dissolved partnership are also creditors of the person or partnership continuing the business.

(6) When a partner is expelled and the remaining partners continue the business either alone or with others, without liquidation of the partnership affairs, creditors of the dissolved partnership are also creditors of the person or partnership continuing the business.

(7) The liability of a third person becoming a partner in the partnership continuing the business, under this section to the creditors of the dissolved partnership shall be satisfied out of partnership property only.

(8) When the business of a partnership after dissolution is continued under any conditions set forth in this section the creditors of the dissolved partnership as against the separate creditors of the retiring or deceased partner or the representative of the deceased partner, have a prior right to any claim of the retired partner or the representative of the deseased partner against the person or partnership continuing the business, on account of the retired or deceased partner's interest in the dissolved partnership or on account of any consideration promised for such interest or for his right in partnership property.

(9) Nothing in this section shall be held to modify any right of creditors to set aside any assignment on the ground of fraud.

(10) The use by the person of partnership continuing the business of the partnership name, or the name of a deceased partner as part thereof, shall not of itself make the individual property of the deceased partner liable for any debts contracted by such person or partnership.

Rights of retiring or estate of deceased partner when the business is continued.

Section 42.—When any partner retires or dies, and the business is continued under any of the conditions set forth in Section 41 (1, 2, 3, 5, 6), or section 38 (2b), without any settlement of accounts as between him or his estate and the person or partnership continuing the business, unless otherwise agreed, he or his legal representative as against such persons or partnership may have the value of his interest at the date of dissolution ascertained, and shall receive as an ordinary creditor an amount equal to the value of his interest in the dissolved partnership with interest, or, at his option or at the option of his legal representative, in lieu of the interest, the profits attributable to the use of his right in the property of the dissolved partnership; provided, that the creditors of the dissoved partnership as against the separate creditors, or the representative of the retired or deceased partner, shall have priority on any claim arising under this section, as provided by section 41 (8) of this act.

Accrual of actions.

Section 43.—The right to an account of his interest shall accrue to any partner, or his legal representative, as against the winding up partners or the surviving partners or the person or partnership continuing the business at the date of dissolution, in the absence of any agreement to the contrary.

CHAPTER TWENTY-SIX.

OF THE INCORPORATION OF BUSINESS CORPORATIONS.

Who may incorporate. Exceptions.

Section 1.—That three or more natural persons of full age, two of whom are *bona fide* residents of the district, may unite to form a stock corporation for any lawful business purpose or purposes, whose chief business shall be in the district, except for the purpose of banking, insurance, brokerage, or loan, trust and guaranty associations.

How incorporation effected.

Section 2.—That the articles of incorporation shall be made in triplicate, signed by each of the incorporators, acknowledged by at least three of them, before any officer authorized to take the acknowledgment of deeds, and there shall be filed one of such articles in the office of the Government Secretary, another in the office of the Clerk of the District Court, and the third shall be retained in the possession of the corporation, and each copy so filed shall be recorded by the officer, with whom filed, in a book to be kept by him for that purpose.

Said articles shall contain and state:

I. The name of the corporation, which shall not be the same as, nor so similar as to cause confusion with, the name of any other domestic corporation or foreign corporation admitted to do business in this District, and shall be such as to indicate that it is a corporation as distinguished from a natural person or partnership.

II. The purpose or purposes for which it is formed.

III. The amount of capital stock, which shall not be less than two thousand dollars, how the same shall be paid in, and what proportion, if any is preferred stock and its preferences, in conformity with section five, of this chapter.

IV. The number of shares of which the capital stock shall consist, each of which shall not be less than one dollar nor more than one hundred dollars.

V. The location of its principal place of transacting business, which shall be within this District.

VI. The period of duration, if limited.

VII. The highest amount of indebtedness or liability to which said corporation shall at any time be subject.

VIII. The number of its directors, which shall not be less than three, with the names and post office addresses of those selected to serve for the first year, or until their successors are elected.

IX. The time and place of holding its annual meeting of stockholders, in conformity with section nine of this chapter.

X. The names and places of residence of the persons forming the corporation.

XI. The articles of incorporation may contain any other provision, not inconsistent with this chapter, regulating the business and conduct of the affairs of the corporation and limiting its powers, and the power of its directors and stockholders not exempting them, however, from any obligation nor from the performance of any duty imposed by law.

Amendment of same, how executed.

XII. The articles of incorporation may be amended when authorized by a vote of a majority of the stock given at a regular meeting of the stockholders. Such amended articles shall be executed and acknowledged by the board of directors, or a majority of them, and shall be filed and recorded in the same place and manner as the original articles.

Section 3.—That when the articles of incorporation have been filed and recorded, the persons who have duly executed the same, and their successors, shall be a body corporate and politic in fact and in law in the name stated in the articles of incorporation, and by such corporate name shall have succession for the time stated in such articles of incorporation, and shall have power:

I. To make and use a common seal, and alter the same at pleasure; **Power of corporation.**

II. To sue and be sued by its corporate name the same as a natural person in any court having jurisdiction;

III. To purchase, hold, mortgage, sell and convey real and personal property subject to such limitations as shall be prescribed by law;

IV. To appoint such officers, agents and servants as the business of the corporation shall require, to define their powers, prescribe their duties, and fix their compensations;

V. To make by laws, not inconsistent with any existing law, fixing or altering the management of its property, the regulation and government of its affairs, and the manner of the certification and transfer of its stock;

VI. To wind up and dissolve itself, or to be wound up and dissolved in the manner hereinafter prescribed;

VII. To carry on all kinds of business within the scope and power of its articles of incorporation.

Certificates and transfer thereof.

Section 4.—The stock of every corporation organized under the provisions of this act shall be represented by certificates, the form of which shall be determined by the directors, and signed by the president or vice-president, and sealed with the seal of the corporation, and shall be transferable as provided elsewhere in this title.

Two or more kinds of stock may be created.

Section 5.—Every corporation organized under this chapter shall have power to create two or more kinds of stock, of such classes, with such designations, preferences, and voting powers or restrictions or qualification thereof as shall be stated and expressed in the articles of incorporation or in any amendment thereof; and the power to increase or decrease stock as in this act elsewhere provided shall apply to all or any of the classes of stock; but at no time shall the total amount of the preferred stock issued and outstanding exceed two-thirds of the capital stock paid for in cash, labor, or property estimated at its true money value, and such preferred stock may if desired be made subject to redemption at any time after three years from the issue thereof, at any price not less than par, and the holders thereof shall be entitled to receive, and the corporation shall be bound to pay thereon, dividends at such rates and on such conditions as shall be stated in the original or amended articles of incorporation, not exceeding eight *per centum per annum*, payable quarterly, halfyearly, or yearly, and such dividends may be made payable before any dividends shall be set apart or paid on the common stock, and such dividends may be made cumulative; provided the corporation shall set apart or pay the said dividends to the holders of non-cumulative preferred stock before any dividends shall be paid on the common stock but in case of insolvency the debts or other liabilities of the corporation shall be paid in preference to this preferred stock.

Value to be paid for stock.

Section 6.—That no corporation shall issue any of its stock except in consideration of money, labor, or property estimated at its true money value.

Subscriptions and payments of same.

Section 7.—(1) Subscriptions to the capital stock of a corporation shall be paid at such times and in such installments as the by-laws may provide, unless otherwise provided by this act. If default shall be made in the payment of any installment as thereby required, the Board of Directors may declare the stock and all previous payments thereon forfeited for the use of the corporation, after the expiration of sixty days from the service on the defaulting stockholder, personally or by mail directed to him at his last known postoffice address, or a written notice requiring him to make payment within sixty days from the service of the notice, at a place specified therein, and stating that, in case of failure to do so his stock and all previous payments thereon will be forfeited for the use of the corporation.

(2) Such stock, if forfeited may be reissued, or subscriptions therefor may be received, as in the case of stock not issued or subscribed for.

First meeting of stockholders.

Section 8.—The first meeting of every corporation shall be called within the District by any of the stockholders named in the articles of incorporation, upon not less than thirty days prior personal notice as prescribed in the following section, to each of the incorporators, or written waiver thereof signed by all; Provided, however, that such meeting shall be held within one year after the filing of the articles of incorporation, or the corporation shall be *ipso facto* dissolved.

Annual meeting.

Section 9.—Stockholders' meetings shall be held annually, at the principal place of business of the corporation, and notice thereof must be delivered personally, or by depositing in the post office, properly addressed, to each stockholder, at least thirty days before such meeting. At least thirty days before such meeting a complete list of the stockholders entitled to vote shall be open to inspection at the place of such meeting.

Voting.

Section 10.—Each stockholder shall at every stockholders' meeting be entitled to one vote in person or by proxy for each share of the capital stock held by him; the stockholders shall have the right of cumulative voting in the elections of officers or directors.

Stock held by corpotion not to be voted.

Section 11.—Shares of the capital stock of the corporation belonging legally or equitably to the corporation shall not be voted, either directly or indirectly.

Liability of stockholders.

Section 12.—Every holder of the capital stock of a corporation shall be personally liable to the creditors of the corporation to an amount equal to the amount unpaid on such stock.

When action against will lie.

Section 13.—Except in cases of insolvency or bankruptcy proceedings, no action shall be brought against a stockholder for any debt of the corporation, until judgment has been recovered against the corporation and an execution returned unsatisfied in whole or in part.

Board of directors.

Section 14.—The business of every corporation organized under this act shall be managed by a board of not less than three directors, each of whom shall own in his own right at least one share of the capital stock, who shall be elected at the first stockholders' meeting, and annually thereafter, and shall hold office until their successors are respectively chosen, and who shall, before entering upon the duties of their office, severally take and subscribe an oath to perform faithfully their duties as such director. Whenever any vacancy shall happen among the directors by death, resignation or otherwise, except by removal and the election of a successor, it shall be filled by appointment of the board of directros for the unexpired term of such vacancy.

Officers.

Section 15.—The directors shall elect from their number a president, and shall also appoint a secretary and a treasurer and may appoint other officers, agents and employees, who shall, respectively, have such powers and perform such duties as may be prescribed in the by-laws, and any of the officers, agents and employees may be removed at the pleasure of the directors.

Liability of directors.

Section 16.—If the bonded indebtedness of any corporation organized under this act shall exceed the amount of its paid-in and unimpaired capital stock or if stocks or bonds be issued for property at more than cash value, in the reasonable judgment of the directors, or if any dividends or other distribution of the assets be made other than from net profits, or if a reduction of capital be made under the guise of a loan to stockholders, or if any report or statement or public notice shall not be made as required by law, or if made, shall be false in any material representation, the directors of such corporation assenting thereto shall be jointly and severally liable to the creditors of the corporation for any loss or damage arising therefrom, and in case of reports, statements and public notices required by law, the officers shall be jointly and severally liable with the directors as provided above.

Section 17.—The District Court of the District shall have jurisdiction over the directors, managers, trustees and other officers of a corporation organized under this act, and of any foreign corporation admitted to do business in this District:

Power of District Court over appropriations.

I. To compel such directors, managers, trustees and other officers to account for their official conduct in the management and disposition of the funds, property and business committed to their charge;

II. To order, decree and compel payment by them to the corporation which they represent, and to its creditors of all sums of money and all the value of all property which they may have acquired to themselves, or transferred to others, or may have lost or wasted by any violation of their duties or abuse of their powers, by such directors, managers, trustees or other officers of such corporation.

III. To enjoin any director, trustee, manager or other officer from exercising his office whensoever it shall appear that he has abused his trust.

IV. To remove any such director, trustee or other officer upon proof or conviction of gross misconduct.

V. To direct, if necessary, new elections to be held by the body or board of stockholders, duly authorized for that purpose, to supply any vacancy created by such removal, and at such election no person so removed or suspended shall be eligible as a director, trustee or other officer of such company.

VI. To restrain and prevent any alienation of property of the corporation by said directors, trustees or other officers in cases where it may be threatened, or there is good reason to apprehend that it is intended to be made in fraud of the rights and interests of such company.

Section 18.—An action may be brought, as prescribed in section 17, by the Government Attorney, in behalf of the people of the District or except where the action is brought for the purpose specified in sub-divisions III, IV, or V of said section 17, by a creditor of the corporation, or by a trustee, director, manager, or other officer of the corporation, having a general superintendence of its concerns.

Who may enforce provisions of Sec. 17.

Section 19.—The stockholders of any corporation formed under this act shall have the power to make such by-laws as they deem proper for the management of the affairs of the corporation, not inconsistent with the provisions of this act, or of other existing laws, provided, however, the articles of incorporation may vest in the board of directors of any corporation formed under this act, the authority to make, and to adopt by-laws, subject, however, to the right of a majority of the stock-holders to amend, repeal, alter or modify such by-laws, so made and adopted by such board of directors, at any regular meeting called or at any special meeting called for such purpose.

By-laws.

Section 20.—Every corporation formed under this act, shall have at its office within the District, in the custody of its proper officer, correct books of account of its business transactions which, or a full transcript thereof certified by the President and Vice-President, shall be produced at said place of business within five days on the demand of any stockholder for inspection, and a stock book which shall be open daily for inspection at reasonable times to any of its stockholders, containing an alphabetical list of the stockholders of the corporation, showing their places of residence, the number of shares held by them respectively, the dates when they respectively became owners thereof, and the amount paid thereon. The officr of the corporation to whose custody, under the by-laws, the book or books in question are committed, or in the absence of express provision of the by-laws committing the custody of such books to any specific officer, then the president of the corporation, shall pay a penalty of fifty dollars for every day he shall neglect to keep such books and shall fail to permit the inspection thereof as in this section provided, and such penalty shall be recovered in an action by an aggrieved stockholder.

Records and inspection thereof.

Section 21.—Every corporation organized under this act, may, at a meeting of stockholders duly called for the purpose, by a vote of two-thirds of all

Amendment of articles how made.

its stock, amend its articles of incorporation in any manner conformable to the provisions of this act, including the increase or decrease of capital stock; Provided, however, that the object of incorporation shall not be changed, and the capital stock shall not be increased to more than the maximum amount allowed for such corporation, nor decreased to an amount less than the corporate indebtedness.

A certificate of amendment, in triplicate, shall be executed, duly acknowledged, and filed within ten days after adoption, in the same manner as the original articles of incorporation.

Annual report required.

Section 22.—Every corporation formed under this act shall, annually, within thirty days after the time fixed for the annual meeting of stockholders, file with the Government Secretary, and publish in a newspaper of general circulation published nearest to the place of transacting the business of the corporation, a report made and verified by the president and treasurer, and shall keep a copy thereof at its main office for inspection of stockholders, which shall state:

I. The amount of its capital stock and the proportion actually issued.
II. The amount of its debts.
III. The amount of its assets.
IV. The names and addresses of all the directors and officers of the company.

Penalty for failure to report.

If any report be not made, published and field as prescribed in this section, any of such officers who shall thereafter neglect to make, publish and file such report, within ten days after a written request so to do shall have been made by a creditor or a stockholder of the corporation, shall be under penalty of fifty dollars, recoverable by such aggrieved creditor or stockholder, for every day he shall so neglect or refuse.

Dissolution at instance of directors.

Section 23.—(I) Whenever in the judgment of the board of directors, it shall be deemed advisable and beneficial for such corporation that it should be dissolved, the board within twenty days after the adoption of a resolution to that effect by a majority of the whole board at any meeting called for that purpose, of which meeting every director shall have received at least three days' notice, shall cause notice of the adoption of such resolution to be mailed to each stockholder, and also beginning with said twenty days cause a like notice to be published in a newspaper of general circulation published nearest to the place wherein the corporation shall have its principal place of business, at least four weeks sucessively, once a week, next preceding the time appointed for the same, of a meeting of the stockholders to be held at the office of the corporation, to take action upon the resolution so adopted by the board of directors, which meeting shall be convened between the hours of ten o'clock in the forenoon and three o'clock in the afternoon of the day so named and which meeting may, on the day so appointed by consent of a majority in interest of the stockholders present, be adjourned from time to time, for not less than eight days at any one time, of which adjourned meeting notice by advertisement in said newspaper shall be given; and if at any such meeting two thirds in interest of all the stockholders shall consent that a dissolution shall take place and signify their consent in writting, such consent, together with a list of the names and residences of the directors and officers, certified by the president and the secretary or treasurer, shall be filed in the office of the Government Secretary who upon being satisfied by due proof that the requirements aforesaid have been complied with, shall issue a certificate that such consent has been filed, and the board of directors shall cause such certificate to be published four weeks consecutively, at least once a week, in a newspaper of general circulation; and upon the filing in the office of the Government Secretary of an affidavit that the said certificate has been so published, the corporation shall be dissolved and the board shall proceed to settle up and adjust its business and its affairs; whenever all the stockholders shall consent in writing to a dissolution, no meeting or notice thereof shall be necessary, but on filing said consent

in the office of the Government Secretary he shall forthwith issue a certificate of dissolution, which shall be published as above provided.

II. A corporation organized and doing business under this act which desires to close its affairs may also, unless otherwise provided in the certificate of incorporation, by the vote of two-thirds in interest of all its issue and outstanding stock entitled to vote, authorize a petition for its dissolution, to be filed in any court of competent jurisdiction, setting forth in substance the grounds of the application and the court, after notice to parties interested and a hearing, may decree a dissolution of the corporation.

Dissolution at instance of stockholders.

Section 24.—An action for any one or more of the following causes, to procure a judgment dissolving a corporation created by or under this act, and forfeiting its corporate rights and franchises; or its license to do business within the District, if it be a foreign corporation, may be maintained by the Government Attorney in the name and in behalf of the people, or by a creditor or stockholder upon proof to the court that the Government Attorney omits for thirty days after the submission of a verified statement of the facts to maintain such an action:

Who may bring action for dissolution.

I. Where the corporation is insolvent, as evidenced by a return of no property found on execution, or by a judgment or decree in insolvency proceedings.

II. Where it has suspended its ordinary and lawful business for at least one year.

III. Where it is a party to an illegal combination in restraint of trade.

IV. Where the law imposes the penalty of dissolution.

For what causes.

Section 25.—I. A corporation dissolved under this act shall be held to be extinct in all respects as if its corporate existence had expired by the limitation of its charter.

Winding up affairs of corporation.

II. All corporations, whether they expire by their own limitation or be annuled by the legislature or otherwise dissolved, shall be continued bodies corporate for the purpose of prosecuting and defending suits by or against them and of enabling them to settle and close their affairs, to dispose of and convey their property and to divide their capital, but not for the purpose of continuing the business for which they were established.

III. Upon the dissolution in any manner of any corporation the directors shall be trustees thereof, with full power to settle the affairs, collect the outstanding debts, sell and convey the property and divide the moneys and other property among the stockholders, after paying its debts as far as such money and property shall enable them; they shall have power to meet and act under the by-laws of the corporation and, under regulations to be made by a majority of said trustees, to prescribe the terms and conditions of the sale of such property, and may sell all or any part for cash, or partly on credit, or take mortgages and bonds for part of the purchase price for all or any part of said property.

IV. The directors, constituted trustees as aforesaid, shall have authority to sue for and recover the aforesaid debts and property, by the name of the corporation, and shall be sueable by the same name, or in their own names or individual capacities for the debts owing by such corporation, and shall be jointly and severally responsible for such debts, to the amount of the moneys and property of the corporation which shall come to their hands or possession as such trustees.

V. When any corporation shall be dissolved in any manner whatever, the District Court for the district, on application of any creditor or stockholder at any time, may either continue the directors trustees as aforesaid, or appoint one or more persons to be receivers of such corporation, to take charge of the estate and effects thereof and to collect the debts and property due and belonging to the corporation, with power to prosecute and defend, in the name of the corporation or otherwise, all suits necessary or proper for the purpose aforesaid, and to appoint an agent or agents under them, and to do all other acts which might be done by such corporation, of its unfinished business; and the powers of such trustees or receivers may be continued as long as the court shall think necessary for such purpose.

Insolvent corporation.

Application for Receiver.

Injunction.

Section 26.—Whenever any corporation shall become insolvent or shall suspend its ordinary business for want of funds to carry on the same, any creditor or stockholder may by petition or bill of complaint setting forth the facts and circumstances of the case, apply to the District Court for a writ of injunction and the appointment of a receiver or receivers or trustees, and the Court being satisfied by affidavit or otherwise of the sufficiency of said application, and of the truth of the allegations contained in the petition or bill, and upon such notice, if any, as the Court by order may direct, may proceed in a summary way to hear the affidavits, proofs and allegations which may be offered on behalf of the parties, and if upon such inquiry it shall appear to the Court that the corporation has become insolvent and is not about to resume it business in a short time thereafter with safety to the public and advantage to the stockholders, it may issue an injunction to restrain the corporation and its offices and agents from exercising any of its privileges or franchises and from collecting or receiving any debts or paying out, selling, assigning or transferring any of its estates, moneys, funds, lands, tenements or effects, except to a receiver appointed by the Court, until the Court shall order otherwise.

Appointment of Receiver.

Section 27.—Such Court, at the time of ordering such injunction, or at any time afterwards, may appoint a receiver or receivers or trustees for the creditors and stockholders of the corporation, with full power and authority to demand, sue for, collect, receive and take into their possession all the goods and chattels, rights and credits, moneys and effects, lands and tenements, books, papers, choses in action, bills, notes and property of every description of the corporation, and to institute, suits at law or in equity for the recovery of any estate, property, damages or demands existing in favor of the corporation and in his or their discretion to compound and settle with any debtor or creditor of the corporation, or with persons having possession of its property or in any way responsable at law or in equity to the corporation at the time of the insolvency or suspension of business, or afterwards, upon such terms and in such manner as he or they shall deem just and beneficial to the corporation, and in case of mutual dealings between the corporation and any person to allow just set-offs in favor of such person in all cases in which the same ought to be allowed according to law and equity; a debtor who shall have in good faith paid his debt to the corporation without notice of its insolvency or suspension of business shall not be liable therefor, and the receiver or receivers or trustees shall have power to sell, convey and assign all the said estate, rights and interests, and shall hold and dispose of the proceeds thereof under the directions of the Court; and the word receiver as used this chapter shall be construed to include receivers and trustees appointed as provided in this act.

Bond and oath of Receiver.

Section 28.—Every receiver shall before acting enter into such bond and comply with such terms as the Court may prescribe and take and subscribe, the following oath and affirmation, "I..... do swear (or affirm) that I will faithfully, honestly and impartially execute the powers and trusts reposed in me as receiver, for the creditors and stockholders of the..... and that without favor or affection"; which oath or affirmation shall be filed in the office of the clerk of the court within ten days after the taking thereof.

Title to property to vest in receiver.

Section 29.—All real and personal property of any insolvent corporation, wheresoever situated and all its franchises, rights, privileges and effects, shall upon the appointment of a receiver, forthwith vest in him, and the corporation shall be divested of the title thereto.

Dissolution of receivership.

Section 30.—Whenever a receiver shall have been appointed as aforesaid and it shall afterwards appear that the debts of the corporation have been paid or provided for, and that there remains or can be obtained by further contributions sufficient capital to enable it to resume its business, the Court may, in its discretion, a proper case being shown, direct the receiver to re-convey to the corporation all its property, franchises, rights and effects, and thereafter the corporation may resume control of and enjoy the same as if the receiver had never been appointed.

CHAPTER TWENTY-SEVEN.

OF THE INCORPORATION OF BANKS, ETC.

Pages: 75, 76, 77, 78, 79, 80 and 81 are omitted herein.

CHAPTER TWENTY-EIGHT.

OF INCORPORATION OF SCHOOLS, CHURCHES, CHARITABLE ORGANIZATIONS, ETC.

Corporations for charitable and other purposes.

Section 1.—That three or more adult persons, *bona fide* residents of the Virgin Islands of the United States, desirous of forming a corporation for a college, seminary, church, library, or any other benevolent, fraternal, social, religious, educational, charitable or scientific association, whose chief business shall be in the Virgin Islands of the United States, shall make and subscribe written articles of incorporation in triplicate and acknowledge the same before any officer authorized to take the acknowledgment of deeds, and file one of said articles in the office of the Government Secretary, and another in the office of the Clerk of the District Court of the Judicial Disrict in which the principal place of business of the corporation is intended to be located, and retain the third in possesson of the corporation, and each copy so filed shall be recorded by the officer with whom filed in a book kept by him for that purpose.

Method of organization.

What articles of incorporation shall contain.

Section 2.—Such articles shall contain and state:

First. The name of the corporation.

Second. The objects and purposes for which the corporation is formed.

Third. The principal place of transacting the business of the corporation.

Fourth. The time of commencement and the period of the continuance of said corporation, which shall not exceed fifty years.

Fifth. If a joint stock company, the amount of capital stock and the amount constituting a share; if not a joint stock company, then the terms of admission to membership.

Sixth. The highest amount of indebtedness or liability to which the corporation shall at any time be subject.

Seventh. By what officers the affairs of the corporation shall be managed, and when such officers are to be elected.

Amendment of articles of incorporation.

Eighth. Said articles of incorporation may be amended when authorized by the vote of the majority of the stock given at a regular meeting of the stockholders; or, if not a joint stock company by a vote of two-thirds of the members comprising the membership of any association incorporated under this act. Such amended articles shall be executed and acknowledged by the officers in whon the management of the affairs of the corporation is vested; and shall be filed and recorded in the same place and manner as the original articles.

Certified copy as evidence.

Section 3.—That a copy of any articles of incorporation filed pursuant to this act, and certified by the Clerk of the District Court in which the same is filed, or one of his deputies, or by the Government Secretary, shall be received as *prima facie* evidence of the facts therein stated.

By-laws, what to contain.

Section 4.—Before transacting any business or acquiring any property the persons constituting the membership of the corporation must meet and adopt by-laws. The vote of a majority of all the members in good standing of the corporation shall be necessary to the adoption of such by-laws and when adopted the same must be written in a book kept by the corporation, to be duly signed by all persons thereafter becoming members of said corporation so formed under this act. The corporation may by its by-laws provide for the time, place and manner of calling and conducting its meetings, the number of trustees, the time of their election, their term of office, the mode and manner of their removal ,the mode and manner of filling vacancies on the board caused by death, resignation, removal or otherwise, the power and authority of the trustees, the compensation of the trustees or of any officer, the mode and manner of conducting business, the mode and manner of conducting elections, the qualifications for membership, the manner in which membership shall cease, the mode and manner of expulsion of a member, the termination of a member's interest in the corporate property upon the cessation of his membership; and

whether he shall be remunerated thereof, and, if so, in what manner, the amount of membership fee, and the dues, or other charges which each member may be required to pay, if any, the charges which may be made for services rendered or supplies furnished the members of the corporation by it, the manner of collection or enforcement of membership fees, dues or charges, and the method of forfeiting the membership interest, for non-payment, the method, time and manner of permitting the withdrawal of a member, if at all, and how such withdrawing member's interest may be ascertained and payments made therefor, if the corporation decide he should be reimbursed therefor, the formation of a surplus fund and the manner and proportion in which such surplus fund shall be distributed, either upon the order of the corporation or upon its dissolution, and generally, all such other matters as may be proper to carry out the purpose for which the corporation was formed; Provided, however, that such by-laws, when so made and adopted, shall not be inconsistent with the laws of the District and the laws and Constitution of the United States.

Interest of members to be equal.

Section 5.—In every corporation incorporated under the provisions of this act, the interest of each incorporator or member shall be equal to that of any other, and no incoporator or member can acquire any interest which will entitle him to any greater voice, vote, authority or interest in the corporation than any other member.

Corporation effective upon filing articles.

Section 6.—Upon the filing of the articles of incorporation as herein provided, the persons who have executed and acknowledged the same, and their successors, shall be a body corporate and politic in fact and in law under the name stated in the articles of incorporation, and by such corporate name shall have succession for the period limited in this chapter, and in such name may sue and be sued in any court, may take and use a common seal and alter the same at pleasure, may receive gifts and devices, may purchase, hold and convey real and personal property, as the purposes of the corporation may require, may sell and forfeit the interests of members in the corporation for default with respect to any lawful provisions of the by-laws, may enter into any lawful contracts and incur obligations essential to the transaction of its affairs for the purpose for which it was formed, may borrow money and issue notes, bills or evidence of indebtedness, and may mortgage its property to secure the same as its by-laws may provide, and, generally, may do all things necessary or proper to carry out the purposes of its creation.

CHAPTER TWENTY-NINE.

OF FOREIGN CORPORATIONS.

To file copy of charter and appoint agent.

Section 1.—All corporations or joint stock companies organized under the laws of the United States, or the laws of any State, Territory or possession of the United States, or of any foreign country, shall, before doing business within the District file in the office of the Government Secretary and in the office of the Clerk of the District Court, a duly authenticated copy of their charter or articles of incorporation, and also a statement, verified by the oath of the president and secretary of such corporation, and attested by a majority of its board of directors, showing:—

(1) The name of such corporation and the location of its principal office or place or business without the District; and, if it is to have any place of business or principal office within the District, the location thereof;

(2) The amount of capital stock;

(3) The amount of its capital stock actually paid in in money;

(4) The amount of its capital stock paid in in any other way, and in what;

(5) The amount of the assets of the corporation, and of what the assets consist, with the actual cash value thereof;

(6) The liabilities of such corporation, and if any of its indebtedness is secured, how secured, and upon what property.

Such corporation or joint stock company shall also file, at the same time and in the same offices, a certificate, under the seal of the corporation and the signature of its president, vice president, or other acting head, and its secretary, if there be one, certifying that the corporation has consented to be sued in the courts of the District upon all causes of action arising against it in the District, and that service of process may be made upon some person, a resident of the District, whose name and place of residence shall be designated in such certificate, and such service, when so made upon such agent, shall be valid service on the corporation or company, and such agent shall reside at the principal place of business of such corporation or company in the District.

Consent of agent, etc.

Section 2.—The written consent of the person so designated to act as such agent shall also be filed in like manner, and such designation shall remain in force until the filing in the same offices of a written revocation thereof, or of a new consent, executed in like manner. A certified copy of the designation so filed, accompanied with a certificate that it has not been revoked, is presumptive evidence of the execution thereof, and conclusive evidence of the authority of the officer executing it.

Death or removal of agent.

Section 3.—In case of the death, removal from the District, or disqualification of the person so designated or of the revocation of his consent, it shall be the duty of the Clerk of the District Court to notify such corporation or company; and its shall be the duty of such corporation or company, within four months thereafter, to designate another person in the manner hereinbefore provided.

Penalty for failure to comply.

Section 4.—If any such corporation or company shall attempt or commence to do business in the District without first having filed said statements, certificates, and consents required by this chapter, it shall forfeit the sum of twenty-five dollars for every day it shall so neglect to file the same; and every contract made by such corporation, or any agent or agents thereof, during the time it shall so neglect to file such statements, certificates, or consents, shall be voidable at the election of the other party thereto. It shall be the duty of the Government Attorney to sue for and recover in the name of the Municipality the penalty above provided, and the same, when so recovered shall be paid into the Municipal Treasury.

Annual reports to be filed.

Section 5.—Every such corporation or company shall annually make a report, which shall be in the same from and contain the same information as required in the statement mentioned in section one of this chapter, which report

shall be filed in the office of the Government Secretary, and a duplicate thereof in the office of the Clerk of the District Court for the Division wherein the business of the corporation is carried on.

Existing corporations to comply.

Section 6.—Any such corporation or company that has heretofore engaged in business, performed acts, or made contracts in the District, may within one hundred and eighty days from the time this act goes into effect, comply with the provisions hereof, and thereupon all its acts and contracts done and made before this act goes into effect shall be valid and enforceable.

Penalty for failure to comply.

Section 7.—If any such corporation or company shall fail to comply with any of the provisions of this chapter, all its contracts with citizens of the District shall be void as to the corporation or company, and no court of the District, or of the United States, shall enforce the same in favor of the corporation or company so failing.

CHAPTER THIRTY.

OF TRANSFER OF SHARES OF STOCK OF CORPORATIONS.

PART I.

How title to certificates and shares may be transferred.

Section 1.—Title to a certificate and to the shares represented thereby can be transferred only:

(a) By delivery of the certificate indorsed either in blank or to a specified person by the person appearing by the certificate to be the owner of the shares represented thereby, or

(b) By delivery of the certificate and a separate document containing a written assignment of the certificate or a power of attorney, to sell, assign, or transfer the same or the shares represented thereby, signed by the person appearing by the certificate to be the owner of the shares represented thereby. Such assignment or power of attorney may be either in blank or to a specified person.

(c) The provisions of this section shall be applicable although the charter or articles of incorporation or code, regulations or by-laws of the corporation issuing the certificate and the certificate itself, provide that the shares represented thereby shall be transferable only on the books of the corporation or shall be registered by a registrar or transferred by a transfer agent.

Power of those lacking full legal capacity and fiduciaries not enlarged.

Section 2.—Nothing in this chapter shall be construed as enlarging the powers of an infant or other person lacking full legal capacity, or of a trustee, executor, or administrator, or other fiduciary, to make a valid indorsement, assignment or power of attorney.

Corporation not forbidden to treat registered holder as owner.

Section 3.—Nothing in this act shall be construed as forbidding a corporation:

(a) To recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, or

(b) To hold liable for calls and assessments a person registered on its books as the owner of shares.

Title derived from certificate extinguishes title derived from a separate document.

Section 4.—The title of a transferee of the certificate under a power of attorney or assigment not written upon the certificate, and the title of any person claiming under such transferee, shall cease and determine, if at any time prior to the surrender of the certificate to the corporation issuing it, another person, for value in good faith, and without notice of the prior transfer, shall purchase and obtain delivery of such certificate from the person appearing to be the owner thereof by the written assignment or power of attorney of such person, though contained in a separate document.

Who may deliver a certificate.

Section 5.—The delivery of a certificate to transfer title in accordance with the provisions of section 1, is effectual except as provided in section 7, though made by one having no right of possession and having no authority from the owner of the certificate or from the person purporting to transfer the title.

Indorsement effectual in spite of fraud, duress, mistake, revocation, death, incapacity or lack of consideration or authority.

Section 6.—The indorsment of a certificate by the person appearing by the certificate to be the owner of the shares represented thereby is effectual, except as provided in section 7, though the indorser or transferer,—

(a) Was induced by fraud, duress or mistake, to make the indorsement or delivery, or

(b) Has revoked the delivery of the certificate, or the authority given by the endorsement or delivery of the certificate, or

(c) Has died or become legally incapacitated after the indorsement, whether before or after the delivery of the certifiacte, or

(d) Has received no consideration.

Section 7.—If the indorsement or delivery of a certificate,

Recision of transfer.

(a) Was procured by fraud or duress, or

(b) Was made under such mistake as to make the indorsement or delivery equitable, or

If the delivery of the certificate was made

(c) Without authority from the owner, or

(d) After the owner's death or legal incapacity, the possession of the certificate may be reclaimed and the transfer thereof rescinded, unless;

(1) The certificate has been transferred to a purchaser for value in good faith without notice of any facts making the transfer wrongful, or

(2) The injured person has elected to waive the injury, or has been guilty of laches in endeavoring to enforce his rights.

Any court of appropiate jurisdiction may enforce specifically such right to reclaim possession of the certificate or to rescind the transfer thereof, and pending litigation, may enjoin the further transfer of the certificate or impound it.

Recision of transfer of certificate does not invalidate subsequent transferee in possession.

Section 8.—Although the transfer of a certificate or of shares represented thereby has been rescinded or set aside nevertheless, if the transferee has possession of the certificate or of a new certificate representing part or the whole of the same shares of stock, a subsequent transfer of such certificate by the transferee, mediately or immediately, to a purchaser for value in good faith, without notice of any facts making the transfer wrongful, shall give such purchaser an indefeasible right to the certificate and the shares represented thereby.

Delivery of indorsed certificate imposes obligation to indorse.

Section 9.—The delivery of a certificate by the person appearing by the certificate to be the owner thereof without the indorsement requisite for the transfer of the certificate and the shares represented thereby, but with intent to transfer such certificate or shares shall impose an obligation in the absence of an agreement to the contrary, upon the person so delivering, to complete the transfer by making the necessary indorsement. The transfer shall take effect as of the time when the indorsement is actually made. This obligation may be specifically enforced.

Ineffectual attempt to transfer amounts to on a promise to transfer.

Section 10.—An attempted transfer of title to a certificate or to the shares represented thereby without delivery of the certificate shall have the effect of a promise to transfer, and the obligation if any, imposed by such promise shall be determined by the law governing the formation and performance of contracts.

Warranties on sale of certificate.

Section 11.—A person who for value transfers a certificate, including one who assigns for value a claim secured by a certificate, unless a contrary intention appears, warrants,—

(a) That the certificate is genuine.

(b) That he has a legal right to transfer it, and

(c) That he has no knowledge of any fact which would impair the validity of the certificate.

In the case of an asignment of a claim secured by a certificate, the liability of the assignor upon such warranty shall not exceed the amount of the claim.

No warranty implied from accepting payment of a debt.

Section 12.—A mortgagee, pledgee, or other holder for security, of a certificate who in good faith demands or receives payment of the debt for which such certificate is security, whether from a party to a draft drawn for such debt, or from any other person, shall not by so doing, be deemed to represent or to warant the genuines of such certificate, or the value of the shares represented thereby.

No attachment or levy upon shares unless certificate surrendered or transfer enjoined.

Section 13.—No attachment or levy upon shares of stock for which a certificate is outstanding shall be valid until such certificate is actually seized by the officer making the attachment or levy, or be surrendered to the corporation which issued it, or its transfer by the holder be enjoined except where a certi-

ficate is lost or destroyed, such corporation shall not be compelled to issue a new certificate for the stock until the old certificate is surrendered to it.

Creditor's remedies to reach certificate.

Section 14.—A creditor whose debtor is the owner of a certificate shall be entitled to such aid from courts of appriopriate jurisdiction, by injunction and otherwise, in attaching such certificate or in satisfying the claim by means thereof as is allowed at law or in equity, in regard to property which can not readily be attached or levied upon by ordinary legal process.

There shall be no lien or restriction unless indicated on certificate.

Section 15.—There shall be no lien in favor of a corporation upon the shares represented by a certificate issued by such corporation and there shall be no restriction upon the transfer of shares so represented by virtue of any by-laws of such corporation, or otherwise, unless the right of the corporation to such lien or the restriction is stated upon the certificate.

Alteration of certificate does not divest title to share.

Section 16.—The alteration of a certificate, whether fraudulent or not and by whomsoever made, shall not deprive the owner of his title to the certificate and the shares originally represented thereby, and the transfer of such certificate shall convey to the transferee a good title to such certificate and to the shares originally represented thereby.

Lost or destroyed certificate.

Section 17.—Where a certificate has been lost or destroyed a court of competent jurisdiction may order the issue of a new certificate therefor on service of process upon the corporation and on reasonable notice by publication, and in any other way which the Court may direct, to all persons interested, and upon satisfactory proof of such loss or destruction and upon the giving of a bond with sufficient surety to be approved by the Court to protect the corporation or any person injured by the issue of a new certificate from any liability or expense which it or they may incur by reason of the original certificate remaining outstanding. The Court may also in its discretion order the payment of the corporation's reasonable costs and counsel fees.

The issue of a new certificate under an order of the Court as provided in this section, shall not relieve the corporation from liability in damages to a person to whom the original certificate has been or shall be transferred for value without notice of the proceedings of the issuance of the new certificate.

Rule for cases not provided for by this act.

Section 18.—In any case not provided for by this act, the rules of law and equity, including the law merchant, and in particular the rules relating to the law of principal and agent, executors, administrators and trustees, and to the effect of fraud, misrepresentation, duress or coercion, mistake, bankruptcy, or other invalidating cause, shall govern.

Interpretation shall give effect to purposes of uniformity.

Section 19.—This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

Definition of indorsement.

Section 20.—A certificate is indorsed when an assignment or a power of attorney to sell, assign, or transfer the certificate or the shares represented thereby is written on the certificate and signed by the person appearing by the certificate to be the owner of the shares represented thereby; or when the signature of such person is written without more upon the back of the certificate. In any of such cases a certificate is indorsed though it has not been delivered.

Definition of person appearing to be the owner of certificate.

Section 21.—The person to whom a certificate was originally issued is the person appearing by the certificate to be the owner thereof, and the shares represented thereby, until and unless he indorses the certificate to another specified person, and thereupon such other specified person is the person appearing by the certificate to be the owner thereof until and unless he also indorses the certificate to another person. Subsequent special indorsements may be made with like effect.

Other definitions.

Section 22.—Unless the context or subject matter otherwise requires,—

"Certificate" means a certificate of stock in a corporation organized under the laws of this District or of another state, Territory, or possession whose laws are consistent with this chapter.

"Delivery" means voluntary transfer of possession from one person to another.

"Person" includes a corporation or partnership of two or more persons having a joint or common interest.

"To purchase" includes to take as mortgagee or as pledgee.

"Purchaser" includes mortgagee and pledgee.

"Shares" mean a share or shares of stock in a corporation organized under the laws of this state or of another state whose laws are consistent with this act.

"State" includes State, Territory, District and Insular possession of the United States.

"Transfer" means transfer of legal title.

"Title" means legal title and does not include a merely equitable or beneficial ownership or interest.

"Value" is any consideration sufficient to support a simple contract. An antecedent or pre-existing obligation, whether for money or not, constitutes value where a certificate is taken either in satisfaction thereof or as security therefor.

Section 23.—The provisions of this act apply only to certificates issued after the taking effect of this act. **Act does not apply to existing certificate.**

Section 24.—All acts or parts of acts inconsistent with this act are hereby repealed **Inconsistent legislation repealed.**

Section 25.—This chapter may be cited as the Uniform Stock Transfer Act. **Name of Act.**

CHAPTER THIRTY-ONE.

REGULATING AND PRESCRIBING FEES FOR LICENSE TO DO BUSINESS TO BE PAID BY DOMESTIC CORPORATIONS.

Filing articles of incorporation.

Section 1.—Every corporation incorporated under the laws of this District, or of any State, Territory or possession of the United States or of any foreign state or country, doing business in the District is hereby required to file articles of incorporation in the office of the Government Secretary, and shall pay a filing fee of fifty dollars.

Filing amendatory or supplemental articles.

Section 2.—Every corporation, foreign or domestic, desiring to file in the office of the Government Secretary, articles amendatory or supplemental, or certificates of increase or decrease of capital stock shall pay to the Government Secretary a fee of twenty-five dollars.

Certified copies.

Section 3.—The fee for furnishing a certified copy of articles of incorporation, or articles amendatory or supplemental, or certificates of increases or decrease of capital stock, or certificate of appointment of resident agent or certificate of revocation of appointment of resident agent, shall be fifty cents per folio but not less than five dollars.

Annual license fee.

Section 4.—Every corporation incorporated under the laws of this District and every foreign corporation having its articles of incorporation on file in the office of the Government Secretary shall, on or before the first day of January of each and every year, pay to the Government Secretary, the following fees: Every corporation having a capital stock, one dollar for each thousand dollars of stock used in conducting business in this District, provided, that the minimum fee is fifteen dollars for any corparation, although no capital or capital stock is used. Every corporation failing to pay the said annual license fee, on or before the first day of January of each and every year, and desiring to pay the same thereafter, and before the first day of July next following, shall pay to the Government Secretary, in addition to the said license fee, the following further fee, as a penalty for such failure: Fifty *per cent.* of its annual license fee.

Shall not maintain suit unless license is paid. Name to be stricken from records by Secretary.

Section 5.—No corporation shall be permitted to commence or maintain any suit, action or proceeding in any court without alleging and proving that it has paid its annual license fee last due. A certificate of the payment of such annual license fee, or any duplicate of such certificate under the seal of the Government Secretary, shall be *prima facie* evidence of such payment; and the Government Secretary is hereby required to issue such certificate, upon request. The Government Secretary may institute suits to enforce the payment of any license fee, due from any corporation under this law. Failure upon the part of any corporation to pay its annual license fee for a period of one year from and after the date when such payment first became due, shall be *prima facie* evidence of the insolvency of such corporation and the fact of such insolvency may be shown by the People or by any private person or corporation. It shall be the duty of the Government Secretary to strike from the records of his office the names of all corporations which have neglected for a period of two years to pay their annual license fees; and any corporation thereafter organized may take and shall have the exclusive right to use the corporate name of any corporation so striken from the records.

Reinstatement of delinquent corporation.

Section 6.—Every corporation whose name has been or shall hereafter be striken from the records of the office of the Government Secretary in pursuance of law for failure to pay its annual license fee for two years is hereby authorized and permitted to apply to the Government Secretary for reinstatement at any time within six months after its name has been striken from the records of the office of the Government Secretary.

Section 7.—Any corporation so applying for reinstatement shall at the time of its application pay to the Government Secretary, all license fees and penalties due from it and the sum of one hundred dollars additional as penalty; and upon the making of such application and such payment, it shall be the duty of the Government Secretary to enter upon his records a notation that such corporation is reinstated.

Penalties to be paid for reinstatement.

Section 8.—Thereafter such corporation shall have and enjoy the same rights and powers as if its name had never been striken from the records, and all things done by in it the exercise of its corporate powers before such reinstatement are hereby validated and confirmed.

Rights restored.

Section 9.—If, however, within the period named within which a corporation may make application to be reinstated such corporation shall not have made such application, the Government Secretary shall enter upon his records a notation that such corporation is dissolved, and it shall thereupon be dissolved and the trustees of such corporation shall hold the title to the property of the corporation for the benefit of its stockholders and creditors to be disposed of under appropriate court proceedings.

Dissolution for non-payment.

Section 10.—The name of a corporation which has been striken from the records of the office of the Government Secretary for non-payment of its annual license tax shall not be adopted by another corporation until the expiration of the time within which such delinquent corporation is allowed in which to apply for reinstatement, or while such application for reinstatement is pending.

Adoption of name of delinquent corporations.

Section 11.—This act shall not apply to domestic corporations organized for religious, fraternal, scientific, benevolent, social, charitable, or educational purposes, or to foreign corporations organized for like purposes, when not engaged in this District in the loaning of money or the conducting of any other business pursuits for profit.

Not to apply to certain corporations.

Section 12.—All fees provided for in this act are due in advance and shall be paid to the Government Secretary before the services desired are performed.

All fees shall be paid in advance.

Section 13.—All fees and licenses paid under the provisions of this chapter shall be accounted for and covered into the Treasury.

Fees to be deposited.

CHAPTER THIRTY-TWO.

OF BULK SALES.

Duty of purchaser of stock of goods, wares or merchandise in bulk.

Section 1.—It shall be the duty of every person who shall bargain for or purchase any stock of goods, wares or merchandise, in bulk, or all, or substantially all, of the fixtures and equipment used in and about the business then carried on by the vendor, for cash or credit, before paying the vendor, or his agent, or representative, or delivering to the vendor, or his agent, any of the purchase price thereof, or any promissory note or other evidence of indebtedness, therefor, to demand of and receive from such vendor, or agent, or if the vendor or agent be a corporation, then from the president, secretary, treasurer or managing-agent of such corporation, a written statement, sworn to substantially as hereinafter provided, of the names and addresses of all the creditors of said vendor, to whom said vendor may be indebted, together with the amount of the indebtedness due and owing, by said vendor to each of said creditors, and it shall be the duty of said vendor or agent to furnish such statement which shall be verified by an oath to the following effect:

To demand and receive sworn statements from vendor.

What statement must contain, form of.

Virgin Islands of the United States, }
District of ..... } ss.

..... (name of vendor or agent as the case may be), being first duly sworn, on oath, says: that the foregoing statement contains the names of all the creditors of said..... .....(name of vendor), together with their addresses, and that the amounts set opposite the names of said creditors are the correct amounts now due or owing and which shall become due or owing by ....(name of vendor) to such creditors respectively; that there are no creditors holding claims due; or which shall become due, for on or account of any goods, wares or merchandise or fixtures and equipment used in and about said business, purshased upon credit; or on account of money borrowed to carry on the business of which said goods, wares or merchandise, or fixtures and equipment are a part; other than as set forth in said statement, that the matter set forth in said statement and this affidavit are within the personal knowledge of affiant.

....
(Name of person making affidavit)

Subscribed and sworn to before me this..... day of ....

.....
(Title of officer administering oath)

A purchase made in violation of this chapter, sale void.

Section 2. — Whenever any person shall bargain for, or purchase any stock of goods, wares or merchandise in bulk, or all, or substantially all, of the fixtures and equipment used in and about said business, for cash or credit, and shall pay any part of the purchase price, or execute or deliver to the vendor thereof, or to his order, or to any person for his use any promissory note or other evidence of indebtedness for said purchase price or any part thereof, without first having demanded and received from the said vendor or from his agent the statement provided for in section one of this chapter and verified as there provided, and without applying or causing to be applied such purchase price *pro rata* to the payment of the *bona fide* claims of the creditors of the vendor, as shown upon such verified statement, and such supplemental statement as may be received by the vendee, from such vendor, or his agent, prior to such distribution, such sale, or transfer shall be fraudulent and void,

Provided, that when the consideration for such sale or transfer shall be anything other than cash or credit, or when it shall appear that the total indebtedness of the vendor or transferer as shown in the statement provided for in section one of this chapter shall exceed the cash proceeds of such sale or transfer, then such sale or transfer shall be fraudulent and void as to such creditors unless the purchaser or transferee shall, at least thirty days before taking possession of such merchandise, fixtures or equipment, or paying therefor, notify personally or by registered mail, every creditor whose name and address are stated in said list, or of which he has knowledge, of the proposed sale and of the price, terms and conditions thereof, and unless such purchaser or transferee shall have demanded and received from said vendor or transferer, or his agent, the statement provided for in section one of this chapter and verified as threin provided.

Making false statement deemed perjury and penalty provided.

Section 3.—Any vendor of any stock of goods, wares or merchandise, in bulk, or all, or substantially all, of the fixtures and equipment used in and about the business of the vendor, who shall knowingly or wilfully make or deliver or cause to be made or delivered a statement as provided for in section one of this chapter which shall not include the names of all the creditors of such vendor with the correct amount due, and to become due to each of them, or which shall contain any false or untrue statement, shall be deemed guilty of perjury and upon conviction thereof shall be punished by imprisonment in the penitentiary for not more than two years, or shall be fined in any sum not exceeding five hundred dollars. If prior to distribution of the consideration as provided in section two of this chapter the vendor or any person acting for him or on his behalf, shall learn that any creditor or creditors have been omitted from the verified statement originally furnished by the vendor, to the vendee, it shall be the duty of the vendor, or such person acting for or on his behalf, forthwith to furnish the vendee a supplemental verified statement which shall contain a list of such additional creditors, and which shall in all other respects be substantially in the same form and contain the same information as the original verified statement.

Suplemental statements.

Bulk sales defined.

Section 4.—Any sale or transfer of a stock of goods, wares or merchandise, or all or substantially all, of the fixtures, and equipment used in and about the business of the vendor out of the usual or ordinary course of business or trade of the vendor, or whenever substantially the entire business or trade theretofore conducted by the vendor, shall be sold or conveyed or whenever an interest in or to the business or trade of the vendor is sold or conveyed, or attempted to be sold or conveyed, shall be deemed a sale and transfer in bulk in contemplation of this chapter; Provided, however, That if such vendor produces and delivers a written waiver of the provisions of this chapter from any of his creditors as shown by such verified statements then and in that case the provisions of this chapter shall not apply as to such creditors.

Sales under judicial process exempt from this act.

Section 5.—Nothing in this chapter contained shall apply to executors, administrators, receivers, or any public officer acting under judicial process.

CHAPTER THIRTY-THREE.

ASSIGNMENTS.

Validity.

Section 1.—No voluntary assignment for the benefit of creditors hereafter made shall be valid unless the same shall be made in conformity to the terms of this act.

All property to be included.

Section 2.—Every such assignment shall be of all the property, real and personal, of the assignor or assignors therein named, wherever situated, except so much thereof as may be exempt from levy and sale on execution under the general laws of the District.

Description of realty.

Section 3.—Real estate so assigned shall be described in the deed of assignment in such manner as would be requisite in an ordinary deed of conveyance thereof, and real estate claimed to be exempt shall be expressly excepted by like description.

Exempt property.

Section 4.—Personal property claimed to be exempt shall be separately specified and described as such in the inventory of the assignor or assignors hereinafter required to be made.

Assignee.

Section 5.—In every such assignment the Clerk of the District Court shall be named as assignee.

Execution; Acknowledgment; Record.

Section 6.—Such assignment shall be in writing, and shall be executed and acknowledged in the manner in which a conveyance of real estate is or shall be required to be executed and acknowledged in order to entitle the same to be recorded. Within twenty-four hours after its execution it shall be filed for record in the clerk's office. If it shall convey real estate it shall be recorded in the records of the Recorder's office.

Duties of the clerk.

Section 7.—Immediately upon the execution and delivery of any such assignment, the clerk shall take possession of all the asisgned estate, and preserve, insure, and safely keep the same for administration according to law, and the clerk and his sureties shall be liable, upon his official bond, for the faithful execution of the trust created by such assignment, for the preservation of such assigned estate, and for the accounting for and paying over of all moneys derived therefrom. He shall, under order of the District Court, inspect the assigned estate, and take all necessary steps to sell or properly dispose of any and all perishable goods or property of said estate.

Inventory.

Section 8.—Within ten days after such assignment is made the assignor or assignors executing the same shall make and file in the District Court an inventory verified by the affidavit of the person or persons making the same, that the same is in all respects full, true, and accurate according to the best of their knowledge and belief, and showing:

First. All the creditors of the assignor or assignors.

Second. The place of residence of each creditor, if known to the assignor or assignors, and if not known, that fact must be stated.

Third. The sum owing to each creditor, and the nature of each debt or liability, whether arising on written security, account, or otherwise.

Fourth. The true consideration of the liablity in each case, and when and the place where it arose, and whether there has been any renewal or new promise in relation thereto.

Fifth. Every existing mortgage, judgment, or other security for the payment of any debt or liability of the assignor or assignors.

Sixth. All property of the assignor or assignors at the date of the assignment which is exempt by law from execution.

Seventh. All of the assignor's property at the date of the assignment, both real and personal, of every kind and wherever situated, not so exempt, and the encumbrances existing thereon, and all vouchers and securities relat-

ing thereto, and the value of such property in detail according to the best of the assignor's knowledge.

Meeting of creditors.

Section 9.—It shall be the duty of the District Court Judge, immediately upon the receipt of such inventory, to fix a day, not more than fifteen days thereafter, for a meeting of the creditors of such assignor or assignors at his office for the purpose of choosing an assignee to succeed the clerk in such trust, and he shall immediately make advertisement of the time and place of such meeting by publication in some newspaper published of general circulation in the District and also shall within two days after the first publication thereof, send a copy of such notice to each creditor mentioned in said inventory, addressed to his place of residence therein named, with postage prepaid. No informality or neglect with reference to such notice shall invalidate an action taken pursuant thereto or to such order.

Same; proceedings.

Section 10.—At the time and place fixed in such order, the creditors, or so many of them as shall be present in person or by proxy, may proceed by ballot to choose an assignee to succeed the clerk, and the clerk shall not be eligible. At such election each creditor shall be entitled to cast one vote, but no person shall be regarded as chosen unless he shall receive the votes of creditors representing a majority of the gross indebtedness, and shall also have been voted for by one-third of all the creditors; nor shall any creditor be permitted to vote upon any claim against the assignor or assignors unless the same shall be verified by the affidavit of the creditor to be just and reasonable and wholly unpaid to the extent claimed, setting forth the true consideration thereof and that the same is not, to the best of said affiant's knowledge and belief, subject to any legal or equitable claim, recoupment, counter-claim, or set-off, which if allowed, would reduce the debt below the amount claimed.

Adjourned meeting.

Section 11.—Such meeting of the creditors may be adjourned from day to day not exceeding three days, and should there be a failure to choose an assignee as provided in the preceding section, the clerk shall remain the assignee of the estate.

Inventory. Appraisement.

Section 12.—Immediately upon the adjournment of such meeting the clerk and the assignee, if any be chosen thereat, shall proceed to make and return to the District Court an inventory and appraisement of the entire estate assigned.

Property delivered to assignee.

Section 13.—The clark shall deliver to such assignee, all the personal property belonging to such estate, and shall execute and deliver to such assignee, as such, a deed of quit claim of all real estate conveyed by such assignment.

Claims.

Section 14.—Upon the day of meeting of the creditors the judge shall fix a day, not more than one hundred and eighty days thereafter, within which all claims against the assigned estate shall be filed, and within which the assignee or assignor or any creditor may file any objection, defense, set-off, or counter-claim to any claim which the assignor might or could have opposed to the same had action been brought upon the same before assignment. Notice of the time so fixed shall be given in the manner hereinbefore provided for notice of the first meeting of the creditors. Any claim, objection, set-off, or counter-claim not filed on or before the date so named shall be forever barred from being considered in the settlement of said estate or participating in any dividend therein.

Same; trial.

Section 15.—On the day following the day fixed under the provisions of the preceding section all uncontested claims shall by the judge be allowed. Upon all contested claims the judge shall order pleadings, as nearly as practicable like those in ordinary civil actions in said court, to be summarily made up, the thereupon said cause shall proceed in said court as in ordinary civil actions therein.

Same; judgment.

Section 16.—Judgment in said action shall be that such claim or some amount thereof be allowed, or that the same be disallowed, or that the assignee have and recover from the person making the claim a certain amount. If the claim shall be allowed judgment for costs shall be adjuged against the party or parties contesting the same. If the claim be allowed in part only, the court adjudicating the same shall apportion the costs or adjudge them as may be just. If the claim be wholly disallowed, or the assignee recover judgment, costs shall be adjuged against the claimant, but in no case shall the costs be paid out of the assigned estate except as in this act otherwise provided. In such cause the claimant shall be named as plaintiff, and the contestants or contestant as defendant. Judgment in favor of the assignee or for costs shall be collected as in other cases.

Sale.

Section 17.—Immediately upon the return of the inventory and appraisement, the assignee with the consent of the debtor shall proceed to advertise for sale and sell the assigned estate in all respects as though the same had been taken on execution issued out of the District Court. Real estate so sold shall be conveyed by the assignee to the purchaser or purchasers of the same by deed or deeds of conveyance, executed and acknowledge as in other cases, which shall convey all the interest the assignor had in the property sold at the date of the asignment. Before such conveyance shall be made the proceedings on such sale shall be returned to and confirmed by the District Court or judge as in case of sales of real estate on execution, and the court or judge may set said sale aside or make any order in the premises as in case of such sales on execution. No notice of an application to have such sale confirmed need be given to any person, but any party interested may appear and resist the confirmation, and the application may be made by any person interested, and the assignee may be compelled by attachment by the court or judge to make the return with all reasonable dispatch.

Provided, however, That the creditors at their first meeting may, by a like vote as that required for the election of an assignee, require any portion or all the personal property assigned to be sold at private sale. Upon such request the judge shall make an order that the personal property described in the request shall be sold by the assignee at private sale, and shall direct the mode of such sale whether the same being merchandise, shall be sold by retail or in job lots, or both, or otherwise, and whether upon any or upon what notice or advertisement, and such sale shall be solely for cash. Nor shall any such property be sold at private sale for less than its appraised value, execept upon written application of a majority in amount of the claims voted upon the election of the assignee, fixing the price, and on order of the court. The court shall also direct by order who shall be employed if any one, to assist at such private sale, and the amount of his or their compensation, but such private sale shall not continue longer than sixty days after the making of the order authorizing the same. At the expiration of such time the remainder of such estate, if any, shall be immediately advertised and sold in the manner hereinbefore provided.

Report of sale.

Section 18.—Immediately upon the sale of any portion of the estate, the assignee shall report to the court the description or descriptions of the property sold and the amount received for the same and shall retain such proceeds subject to the order of the court. He shall also make a like report between the first and fifth days inclusive of every calendar month after his appointment.

Distribution of funds.

Section 19.—At the expiration of two hundred and ten days if necessary from the date of the inventory and appraisement, or sooner if, and as often as the assignee shall be in the possession of sufficient funds, the court shall order a distribution of all moneys in the assignee's hands, fixing the amount in dollars and cents to be paid to each person entitled thereto, and thereupon the assignee and his sureties shall become liable to such person therefor absolutely. The court may also enforce obedience to such order by the assignee by attachment

for contempt, and may commit him to jail, or any suitable place of confinement and safe keeping until he shall comply therewith.

Same.

Section 20.—As soon as the entire estate shall have been converted into money the court shall make a like order for the final distribution thereof, which shall have the same effect and may be enforced in like manner as the order mentioned in the last preceding section.

Same.

Section 21.—Moneys coming into the hands of the assignee shall be distributed in the following manner:

First. To the payment of the fees and allowances of the assignee, judge, clerks, sheriff, and officers.

Second. To the payment of any public tax or assessment charged against the assignor or assignors or his or their property.

Third. To the payment of preferred claims in full.

Fourth. The balance shall be divided among the creditors so that the amount paid to each shall bear the same relation to the whole sum to be so divided that the amount of such creditor's claim shall bear to the aggregate amount of all the claims proven.

Contested claims.

Section 22.—If at the time any order of distribution is made there shall be any contested claim still being litigated, a dividend shall be declared in its favor in all respects as though the same had been finally allowed, but the assignee shall be directed, in the order of distribution, to retain the same in his hands until the litigation shall be finally determined, and he shall retain the same accordingly. When it shall be certified to the District Court by the clerk of the court in which any such action is pending, that litigation therein is finally determined, and that the time for appeal or proceedings in error therein has expired, or has been waived, the District Court shall make a further order determining the amount of such dividend to which such claimant shall be entitled, if any, and directing the assignee to pay such amount to such claimant and retain the balance of such dividend, if any, to be distributed in the same manner as other funds belonging to the estate.

Final order of distribution.

Section 23.—When all the estate has been converted into money, and all the contested claims have been finally determined and the result thereof certified to the District Court as aforesaid, the court shall make a final order of distribution, which shall be immediately obeyed.

Discharge of assignee.

Section 24.—When the final order of distribution shall have been made, and the assignee shall have made return and satisfactory proof that he has obeyed all orders of distribution and paid the money as therein directed, the judge shall enter an order discharging the assignee from all liability on account of said trust; but before such order shall be made, a time shall be fixed for hearing the matter and notice thereof shall be given in the manner provided with reference to the first meeting of creditors.

Assignment void; when.

Section 25.—Every such assignment shall be void against the creditors of the assignor:

First. If it give a preference of one debt or class of debts over another, except a preference to any person of not more than the amount due for sixty days for labor or wages.

Second. If it require any creditor to release or compromise his demand.

Third. If it reserve any interest in the assigned property or any part thereof to the assignor or assignors, or for his or their benefit, before his or their existing debts have been paid.

Fourth. If it confer any power upon the assignee, other or different from those contained in this act.

Fifth. If the assignor or assignors shall fail to make the inventory required to be made by him or them by this act within the time required by this act, assigment shall not be void, but the court may by attachment or other proper remedy compel the making and return thereof by the assignor.

But an omission of any property, or of the name or claim of any creditor therefor, shall not avoid the assigment.

Fraudulent conveyance.

Section 26.—If the assignor or assignors shall have made any fraudulent conveyance or disposition of his or their property, or any part of it, or any conveyance of the same, or any part of it, in whole or in part directly or indirectly for his or their benefit, the assignee shall upon the direction in writing of a majority in number of the creditors owning two-thirds in amount of all the claims proven against the estate at the time fixed for proving the same, begin and maintain an action for the purpose of setting said conveyance aside, or having the same adjudged void, or to recover the property so conveyed; and in such action he shall have all the rights and be entitled to all the remedies of judgment creditors of the assignor or assignors; and if in such case a like action shall be pending in favor of any creditor or creditors, such assigned property shall be disposed of as other like property belonging to the assigned estate.

Power of the judge.

Section 27.—The judge may at any time cite the assignee to make an account, and shall do so whenever the assignee neglects or refuses to account at any time when he is required so to do by this act. The judge may enforce his orders in the premises by attachment as for contempt, and may punish disobedience thereto by fine and imprisonment as in other cases of contempt. Upon complaint of any creditor, and upon good cause shown, he may remove any assignee chosen by the creditors and restore the sheriff to the execution of the trust and make all necessary orders in the premises.

Partnership assignments.

Section 28.—A co-partnership estate may be assigned without including the individual property of the persons composing the co-partnership, or one or more of such persons may include his or their individual estate in such assignment; but in such case separate inventories of the property, and creditors of such estate shall be made and filed as in this act provided; and in such case the failure of the assignment as to one estate shall not affect it as to any other; and in such case the co-partnership estate shall first be applied to the payment of co-partnership debts, and individual estates shall first be applied to the payment of individual debts and the balance, if any, in the latter case shall be applied to the payment of debts of the former description, while the balance, if any, in former case belonging to an individual partner shall be applied to the payment of his individual debts.

Rights of creditor.

Section 29.—The existence of an assignment, or the fact that any creditor has proven his claim against an assigned estate shall not affect the right of such creditor to pursue any remedy at law or in equity for the collection of his claim against all or any of the assignors or all or any of their estate or property; nor shall the proving of a claim against either an individual or a co-partnership estate affect the right of a creditor to attack the validity of the assignment.

Examination of assignor.

Section 30.—The court may, upon the application of the assignee, or of any creditor compel, by citation or attachment, the assignor or assignors to appear in person forthwith or at such times as the court may fix, and answer under oath, such questions as may be put to them, or either of them, concerning the matter of the assignment, and such assignor or assignors may thereupon be fully examined, upon oath, as to all matters touching their estate or property, its situation and amount, and as to whether any or what disposition has been made of the same or part thereof, and as to the names of creditors, their residence, and the amount due each; and may compel the completion or correction of any inventory made by the assignor or assignors, and the delivery of any money, choses in action, or property belonging to the assigned estate to the assignee, and may compel obedience to his order in the premises by fine or imprisonment as for contempt as in other cases.

Section 31.—The court may also when there shall be filed an affidavit by any person interested in the estate, alleging that any person or persons has or have, or that the affiiant has good reason to and does verily believe that any person or persons has or have any property, goods, chattels, bills of exchange, promissory notes, credits, or effects of the assignor or assignors in his or their possession or under his or their control, or has or have knowledge of any of the property or effects of the assignor or assignors cite any such person or persons to appear for examination; and such person or persons may be examined, upon oath, in all respects, as to such matters as the assignors or asignor may be required to appear and be examined under the provisions of this act: and the court may make any order with respect to any property or effects, found or disclosed to be in the possession or under the control of such person, which he might or could make with respect to property or effects, in the possession of an assignor, and may enforce obedience to his orders in the premises in like manner. Garnishment of assignor's debtors.

Section 32.—The assignee shall, from time to time, file in the court additional inventory and valuation of any property coming into his hands, after the filing of any former inventory, which shall be treated as a part of the original inventory and appraisement. Additional inventory.

Section 33.—Proof may be made of claims not due, but in such cases a reasonable rebate shall be made in case they do not draw interest, or in case they draw interest at a less rate than may be allowed by law. Claims not due.

Section 34.—The assignee shall have full power, except as in this act otherwise provided, to sue for and recover in his own name as assignee, all and singular, the estate, property and effects, real and personal, and amounts owing upon choses in action, and to execute and give releases, acquittances, and discharges and generally to do all manner of things requisite and convenient for the speedy and effectual collection of the estate which the assignor or assignors might or could have made, given, or done, if such assignment had not been made. Suits by assignee.

Section 35.—If a person being insolvent, or in contemplation of insolvency, within ninety (90) days before the making of any assignment, makes a sale, assignment, transfer, or other conveyance of any descripton of any part of his property, to a person who then has reasonable cause to believe him to be insolvent or in contemplation of insolvency, and such sale, assignment, transfer, or other conveyance is made with a view to prevent the property from coming to his assignee in insolvency, or to prevent the same from being distributed under the laws relating to insolvency, or to defeat the object of or in any way to impeir, hinder, impede or delay the operation and effect of, or to evade any said provisions, the sale, assignment, transfer, or conveyance shall be void, and the assignee may recover the property or the assets of the insolvent. And if such sale, assignment, transfer, or conveyance is not made in the usual and ordinary course of business of the debtor, that fact shall be *prima facie* evidence of such cause of belief. Assignment by insolvent.

Section 36—If a person being insolvent, or in contemplation of insolvency, within ninety days before the making of the assignment, with a view to giving a preference to a creditor or person who has a claim against him, procures any part of his property to be attached, sequestered, or seized on execution, or makes any payment, pledge, assignment, transfer, or conveyance of any part of his property, either directly or indirectly, absolutely or conditionally, the person receiving such payment, pledge, assignment, transfer, or conveyance, or to be benefitted thereby, having reasonable cause to believe such person is insolvent, or is in contemplation of insolvency, and that such payment, pledge, assignment, or conveyance is made in fraud of the laws relating to insolvency, the same shall be void, and the assignee may recover the property, or the value of it, from the person so receiving it or so to be benefitted. Preferring creditors.

Penalty.

Section 37.—Every person who, in contemplation of making an assignment for the benefit of creditors shall:

First. Secrete or conceal any property belonging to his estate; or,

Second. Part with, conceal, destroy, alter, mutilate, or falsify, or cause to be concealed, destroyed, altered, multilated, or falsified, any book, deed, document, or writing relating to his estate or property; or,

Third. Remove, or cause to be removed, any such property, or book, deed, writing, or document out of the District, or otherwise, dispose of any part thereof with intent to prevent its coming into the possession of the sheriff or assignee, or to hinder, impede, or delay them, or either of them, in removing or receiving the same; or,

Fourth. Make any payment, gift, sale, assignment, transfer, or conveyance of any property belonging to his estate with like intent; or,

Fifth. Spend any property belonging to his estate, in gaming; or,

Sixth. Wilfully and fraudulently, with intent to defraud, conceal from his assignee or omit from his inventory, any property or effects; or,

Penalty.

Seventh. Having reason to suspect that any other person has presented a false or fictitious demand against his estate, shall fail to disclose the same to his assignee within one month after its coming to his knowledge or belief; or,

Eighth. Fraudulently attempts to account for any of his property by fictitious losses or expenses; or,

Ninth. Within three months, next before the assignment, for the benefit of creditors, under the false color and pretense of carrying on business and dealing in the ordinary course of trade, obtain on credit from any person any goods or chattels with intent to defraud such person; or,

Tenth. Within three months next before the assignment for the benefit of creditors with the intent to defraud his creditors, pawn, pledge, or dispose of, otherwise than by transactions made in good faith in the ordinary way of his trade, any of his goods, chattels, or property, which have been obtained on credit and remain unpaid for, shall be deemed guilty of a fraudulent evasion of this act, and upon conviction thereof shall be punished by imprisonment in the penitentiary for not more than four years.

Court may grant final discharge to assignor.

Section 38.—The District Court may, in its discretion, after the final order of distribution, issue a further final order discharging the assignor from any and all liabilities existing on the date of the filing of the assignment.

CHAPTER THIRTY-FOUR.

OF NEGOTIABLE INSTRUMENTS.

NEGOTIABLE INSTRUMENTS IN GENERAL.

ARTICLE I.

FORM AND INTERPRETATION.

Form of negotiable instrument.

Section 1.—An instrument to be negotiable must conform to the following requirements:

(1) It must be in writing and signed by the maker or drawer;
(2) Must contain an unconditional promise or order to pay a sum certain in money;
(3) Must be payable on demand, or at a fixed or determinable future time;
(4) Must be payable to order or to bearer; and
(5) Where the instrument is addressed to a drawee, he must be named or otherwise indicated therein with reasonable certainty.

Certainty as to sum; what constitutes.

Section 2.—The sum payable is a sum certain within the meaning of this act, although it is to be paid:
(1) With interest; or
(2) By stated installments; or
(3) By stated installments, with a provision that upon default in payment of any installment or of interest, the whole shall become due; or
(4) With exchange, whether at a fixed rate or at the current rate; or
(5) With costs of collection or an attorney's fee, in case payment shall not be made at maturity.

When promise is unconditional.

Section 3.—An unqualified order or promise to pay is unconditional within the meaning of this act, though coupled with:

(1) An indication of a particular fund out of which reimbursement is to be made, or a particular account to be debited with the amount; or
(2) A statement of the transaction which gives rise to the instrument. But an order or promise to pay out of a particular fund is not unconditional.

Determinable future time; what constitutes.

Section 4.—An instrument is payable at a determinable future time, within the meaning of this act, which is expressed to be payable:

(1) At a fixed period after date or sight; or
(2) On or before a fixed or determinable future time specified therein; or
(3) 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.

An instrument payable upon a contingency is not negotiable, and the happening of the event does not cure the defect.

Additional provisions not affecting negotiability.

Section 5.—An instrument which contains an order or promise to do any act in addition to the payment of money is not negotiable. But the negotiable character of an instrument otherwise negotiable is not affected by a provision which:

(1) Authorizes the sale of collateral securities in case the instrument is not paid at maturity; or
(2) Authorizes a confession of judgment if the instrument be not paid at maturity; or
(3) Waives the benefit of any law intended for the advantage or protection of the obliger; or
(4) Gives the holder an election to require something to be done in lieu of payment of the money.

But nothing in this section shall validate any provision or stipulation otherwise illegal.

Omissions; seal; particular money.

Section 6.—The validity and negotiable character of an instrument are not affected by the fact that:

(1) It is not dated; or

(2) Does not specify the value given, or that any value has been given therefor; or

(3) Does not specify where it is drawn or the place where it is payable; or

(4) Bears a seal; or

(5) Designates a particular kind of current money in which payment is to be made.

But nothing in this section shall alter or repeal any statute requiring, in certain cases, the nature of the consideration to be stated in the instrument.

When payable on demand.

Section 7.—An instrument is payable on demand:

(1) Where it is expressed to be payable on demand, or at sight, or on presentation; or

(2) In which no time for payment is expressed.

Where an instrument is issued, accepted, or indorsed when overdue, it is, as regards the person so issuing, accepting, or indorsing it, payable on demand.

When payable to order.

Section 8.—The instrument is payable to order where it is drawn payable to the order of a specified person or to him or his order. It may be drawn payable to the other of:

(1) A payee who is not maker, drawer, or drawee; or

(2) The drawer or maker; or

(3) The drawee; or

(4) Two or more payees jointly; or

(5) One or more of several payees; or

(6) The holder of an office for the time being.

Where the instrument is payable to order the payee must be named or otherwise indicated therein with reasonable certainty.

When payable to bearer.

Section 9.—The instrument is payable to bearer:

(1) When it is expressed to be so payable; or

(2) When it is payable to a person named therein or bearer; or

(3) When it is payable to the order of a fictitious or non-existing person, and such fact was known to the person making it so payable; or

(4) When the name of the payee does not purport to be the name of any person; or

(5) When the only or last indorsement is an indorsement in blank.

Terms when sufficient.

Section 10.—The instrument need not follow the language of this act, but any terms are sufficient which clearly indicate an intention to conform to the requirements hereof.

Date; presumption as to.

Section 11.—Where the intrument or an acceptance or any indorsement thereon is dated, such date is deemed *prima facie* to be the true date of the making, drawing, acceptance, or indorsement as the case may be.

Ante-dated and post-dated.

Section 12.—The instrument 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 an instrument so dated is delivered acquires the title thereto as of the date of delivery.

When date may be inserted.

Section 13.—Where an instrument expressed to be payable at a fixed period after date is issued undated, or where the acceptance of an instrument payable at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the instrument shall be payable accordingly. This insertion of a wrong date does not avoid the instrument in

the hands of a subsequent holder in due course; but as to him, the date so inserted is to be regarded as the true date.

Blanks, when may be filed.

Section 14.—Where the instrument is wanting in any material particular, the person in possession thereof has a *prima facie* authority to complete it by filling up the blank therein. And a signature on a blank paper delivered by the person making the signature in order that the paper may be converted into a negotiable instrument operates as a *prima facie* authority to fill up as such for any amount. In order, however, that any such instrument when completed may be enforced against any person who became a party thereto prior to its completion, it must be filled up strictly in accordance with the authority given and within a reasonable time. But if any such instrument, after completion, is negotiated to a holder in due course, it is valid and effectual for all puropses in his hands, and he may enforce it as if it had been filled up strictly in accordance with the authority given and within a reasonable time.

Incomplete instrument not delivered.

Section 15.—Where an incomplete instrument has not been delivered it will not, if completed and negotiated, without authority, be a valid contract in the hands of any holder, as against any person whose signature was placed thereon before delivery.

Delivery when effectual, when presumed.

Section 16.—Every contract on a negotiable instrument is incomplete and revocable until delivery of the instrument for the purpose of giving effect thereto. As between immediate parties, and as regards a remote party other than a holder in due course the delivery in order to be effectual, must be made either by or under the authority of the party making, drawing, accepting or indorsing, as the case may be; and in such case the delivery may be shown to have been conditional or for a special purpose only, and not for the purpose of transferring the property in the instrument. But where the instrument is in the hands of a holder in due course, a valid delivery thereof by all parties prior to him so as to make them liable to him is conclusively presumed.

And where the instrument is no longer in the possession of the party whose signature appears thereon, a valid and intentional delivery by him is presumed until the contrary is proved.

Construction where instrument is ambiguous.

Section 17.—Where the language of the instrument is amibiguous or there are omissions therein, the following rules of construction apply:

(1) Where the sum payable is expressed in words and also in figures and there is a discrepancy between the two, the sum denoted by the words is the sum payable; but if the words are ambiguous or uncertain, reference may be had to the figures to fix the amount;

(2) Where the instrument provides for the payment of interest, without specifying the date from which interest is to run, the interest runs from the date of the instrument, and if the instrument is undated, from the issue thereof;

(3) Where the instrument is not dated, it will be considered to be dated as of the time it was issued;

(4) Where there is a conflict between the written and printed provisions of the instrument, the written provisions prevail;

(5) Where the instrument is so ambiguous that there is doubt whether it is a bill or note, the holder may treat it as either at his election;

(6) Where a signature is so placed upon the instrument that it is not clear in what capacity the person making the same intended to sign, he is to be deemed an indorser;

(7) Where an instrument containing the words "I promise to pay" is signed by two or more persons, they are deemed to be jointly and severally liable thereon.

Liability of person signing in trade or assumed name.

Section 18.—No person is liable on the instrument whose signature does not appear thereon, except as herein otherwise expressly provided. But one

who signs in a trade or assumed name will be liable to the same extent as if he had signed in his own name.

Signature by agent; authority; how shown.

Section 19.—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.

Liability of person signing as agent etc.

Section 20.—Where the instrument contains or a person adds to his signature words indicating that he signs for or on behalf of a principal, or in a representantive capacity, he is not liable on the instrument if he was duly authorized; but the mere addition of words describing him as agent, or as filling a representative character, without disclosing his principal, does not exempt him from personal liability.

Signature by procuration; effect of.

Section 21.—A signature by "procuration" operates as notice that the agent has but limited authority to sign, and the principal is bound only in case the agent in so signing acted within the actual limits of his authority.

Effect of indorsement by infant or corporation.

Section 22.—The indorsement or assignment of the instrument by a corporation or by an infant passes the property therein, notwithstanding that from want of capacity the corporation or infant may incur no liability thereon.

Forged signature; effect of.

Section 23.—When a signature is forged or made without the authority of the person whose signature it purports to be, it is wholly inoperative, and no right to retain the instrument or to give a discharge therefor, or to enforce payment thereof aginst any party thereto, can be acquired through or under such signature, unless the party, aginst whom it is sought to enforce such right, is precluded from setting up the forgery or want of authority.

ARTICLE II.

CONSIDERATION.

Presumption of consideration.

Section 24.—Every negotiable instrument is deemed *prima facie* to have been issued for valuable consideration; and every person whose signature appears thereon to have become a party thereto for value.

What constitutes consideration.

Section 25.—Value is any consideration sufficient to support a simple contract. An antecedent or pre-existing debt constitutes value; and is deemed such whether the instrument is payable on demand or at a future time.

What constitutes holder for value.

Section 26.—Where value has at any time been given for the instrument, the holder is deemed a holder for value in respect to all parties who became such prior to that time.

When lien on instrument constitutes holder for value.

Section 27.—Where the holder has a lien on the instrument, arising either from contract or by implication of law, he is deemed a holder for value to the extent of his lien.

Effect of want of consideration.

Section 28.—Absence or failure of consideration is matter of defense as aginst any person not holder in due course; and partial failure of consideration is a defense *pro tanto,* whether the failure is an ascertained and liquidated amount or otherwise.

Liability of accomodation party.

Section 20.—An accommodation party is one who has signed the instrument as maker, drawer, 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 instrument to a holder for value, notwithstanding such holder at the time of taking the instrument knew him to be only an accommodation party.

ARTICLE III.

NEGOTIATIONS.

What constitutes negotiation.

Section 30.—An instrument is negotiated when it is transferred from one person to another in such manner as to constitute the transferee the holder thereof. If payable to bearer it is negotiated by delivery; if payable to order it is negotiated by the indorsement of the holder completed by delivery.

Endorsement; how made.

Section 31.—The indorsement must be written on the instrument itself or upon a paper attached thereto. The signature of the indorser, without additional words, is a sufficient indorsement.

Indorsement must be of entire instrument.

Section 32.—The indorsement must be an indorsement of the entire instrument. An indorsement which purports to transfer to the indorsee a part only of the amount payable, or which purports to transfer the instrument to two or more indorsees severally, does not operate as a negotiation of the instrument. But where the instrument has been paid in part, it may be indorsed as to the residue.

Kinds of indorsement.

Section 33.—An indorsement may be either special or in blank; and it may also be either restrictive or qualified, or conditional.

Special indorsement; indorsement in blank.

Section 34.—A special indorsement specifies the person to whom, or to whose order, the instrument is to be payable; and the indorsement of such indorsee is necessary to the further negotiation of the instrument. An indorsement in blank specifies no indorsee, and an instrument so indorsed is payable to bearer, and may be negotiated by delivery.

Blank indorsement, how changed to special indorsement.

Section 35.—The holder may convert a blank indorsement into a special indorsement by writing over the signature of the indorser in blank any contract consistent with the character of the indorsement.

When indorsement restrictive.

Section 36.—An indorsement is restrictive, which either:

(1) Prohibits the further negotiation of the instrument; or
(2) Constitutes the indorsee the agent of the indorser; or
(3) Vests the title in the indorsee in trust for or to the use of some other person.

But the mere absence of words implying power to negotiate does not make an indorsement restrictive.

Effect of restricting indorsement; rights of indorsee.

Section 37.—A restrictive indorsement confers upon the indorsee the right:

(1) To receive payment of the instrument;
(2) To bring any action thereon that the indorser could bring;
(3) To transfer his rights as such indorsee, where the form of the indorsement authorized him to so do.

But all subsequent indorsees acquire only the title of the first indorsee under the restrictive indorsement.

Qualified indorsement.

Section 38.—A qualified indorsement constitutes the indorser a mere assignor of the title of the instrument. It may be made by adding to the indorser's signature the words "without recourse" or any words of similar import. Such an indorsement does not impair the negotiable character of the instrument.

Conditional indorsement.

Section 39.—Where an indorsement is conditional, a party required to pay the instrument may disregard the condition, and make payment to the indorsee or his transferee, whether the condition has been fulfilled or not. But any person to whom an instrument so indorsed is negotiated, will hold the same, or the proceeds thereof, subject to the rights of the person indorsing conditionally.

Indorsement of instrument payable to bearer.

Section 40.—Where an instrument payable to bearer, is indorsed specially, it may nevertheless be further negotiated by delivery; but the person indorsing specially is liable as indorser to only such holders as make title through his indorsement.

Indorsement where payable to two or more persons.

Section 41.—Where an instrument is payable to the order of two or more payees who are not partners, all must indorse, unless the one indorsing has authority to indorse for the others.

Effect of instrument drawn or indorsed to a person as cashier.

Section 42.—Where an instrument is drawn or indorsed to a person as "cashier" or other fiscal officer of a bank or corporation, it is deemed *prima facie* to be payable to the bank or corporation of which he is such officer; and may be negotiated by either the indorsement of the bank or corporation, or the indorsement of the officer.

Indorsement where name is misspelled, etc.

Section 43.—Where the name of a payee or indorsee is wrongly designated or misspelled, he may indorse the instrument as therein described, adding, if he think fit, his proper signature.

Indorsement in representative capacity.

Section 44.—Where any person is under obligation to indorse in a representative capacity, he may indorse in such terms as to negative personal liability.

Time of indorsement; presumption.

Section 45.—Except where an indorsement bears date after the maturity of the instrument, every negotiation is deemed *prima facie* to have been effected before the instrument was overdue.

Place of indorsement; presumption.

Section 46.—Except where the contrary appears, every indorsement is presumed *prima facie* to have been made at the place where the instrument is dated.

Continuation of negotiable character.

Section 47.—An instrument negotiable in its origin continues to be negotiable until it has been restrictively indorsed or discharged by payment or otherwise.

Striking out indorsement.

Section 48.—The holder may at any time strike out any indorsement which is not necessary to his title. The indorser whose indorsement is struck out, and all indorsers subsequent to him, are thereby relieved from liability on the instrument.

Transfer without indorsement; effect of.

Section 49.—Where the holder of an instrument payable to his order transfers it for value without indorsing it, the transfer vests in the transferee such title as the transferor had therein, and the transferee acquires, in addition, the right to have the indorsement of the transferor. But for the purpose of determining whether the transferee is a holder in due course, the negotiation takes effect as of the time when the indorsement is actually made.

When prior party may negotiate instrument.

Section 50.—Where an instrument is negotiated back to a prior party, such party may, subject to the provisions of this act, reissue and further negotiate the same. But he is not entitled to enforce payment thereof against any intervening party to whom he was personally liable.

ARTICLE IV.

RIGHTS OF THE HOLDER.

Right of holder to sue; payment.

Section 51.—The holder of a negotiable instrument may sue thereon in his own name and payment to him in due course discharges the instrument.

What constitutes a holder in due course.

Section 52.—A holder in due course is a holder who has taken the instrument under the following conditions:

(1) That it is complete and regular upon its face;

(2) That he became the holder of it before it was overdue, and without notice that it had been previously dishonored, if such was the fact;

(3) That he took it in good faith and for value;

(4) That at the time it was negotiated to him he had no notice of any infirmity in the instrument or defect in the title of the person negotiating it.

When person not deemed holder in due course.

Section 53.—Where an instrument payable on demand is negotiated an unreasonable length of time after its issue, the holder is not deemed a holder in due course.

Notice before full amount paid.

Section 54.—Where the transferee receives notice of any infirmity in the instrument or defect in the title of the person negotiating the same before he has paid the full amount agreed to be paid therefor, he will be deemed a holder in due course, only to the extent of the amount therefor paid by him.

When title defective.

Sction 55.—The title of a person who negotiates an instrument is defective within the meaning of this act when he obtained the instrument, or any signature thereto, by fraud, duress, or force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud.

What constitutes notice of defect.

Section 56.—To constitute notice of an infirmity in the instrument or defect in the title of the person negotiaing the same, the person to whom it is negotiated must have had actual knowledge of the infirmity or defect, or knowledge of such facts that his action in taking the instrument amounted to bad faith.

Rights of holder in due course.

Section 57.—A holder in due course holds the instrument free from any defect of title of prior parties and free from defenses available to prior parties among themselves and may enforce payment of the instrument for the full amount thereof against all parties liable thereon.

When subject to original defenses.

Section 58.—In the hands of any holder other than a holder in due course, a negotiable instrument is subject to the same defenses as if it were non-negotiable. But a holder who derives his title through a holder in due course, and who is not himself a party to any fraud or illegality affecting the instrument, has all the rights of such former holder in respect to all parties prior to the latter.

Who deemed holder in due course.

Section 59.—Every holder is deemed *prima facie* to be a holder in due course; but when it is shown that the title of any person who has negotiated the instrument was defective, the burden is on the holder to prove that he or some person under whom he claims acquired the title as holder in due course. But the last mentioned rule does not apply in favor of a party who became bound on the instrument prior to the acquisition of such defective title.

ARTICLE V.

LIABILITIES OF PARTIES.

Liability of maker.

Section 60.—The maker of a negotiable instrument by making it engages that he will pay it according to its tenor, and admits the existence of the payee and his then capacity to indorse.

Liability of drawer.

Section 61.—The drawer by drawing the instrument admits the existence of the payee and his then capacity to indorse; and engages that on due presentment the instrument will be accepted or paid, or both, according to its tenor, and that if it be dishonored, and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder, or to any subsequent indorser who may be compelled to pay it. But the drawer may insert in the instrument an express stipulation negativing or limiting his own liability to the holder.

Liability of acceptor.

Section 62.—The acceptor by accepting the instrument engages that he will pay it according to the tenor of his acceptance; and admits:

(1) The existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the instrument; and

(2) The existence of the payee and his then capacity to indorse.

When person deemed indorser.

Section 63.—A person placing his signature upon an instrument otherwise than as maker, drawer, or acceptor, is deemed to be an indorser, unless he clearly indicates by appropriate words his intention to be bound in some other capacity.

Liability of irregular indorser.

Section 64.—Where a person, not otherwise a party to an instrument, places thereon his signature in blank before delivery he is liable as indorser in accordance with the following rules:

(1) If the instrument is payable to the order of a third person, he is liable to the payee and to all subsequent parties.

(2) If the instrument is payable to the order of the maker or drawer, or is payable to bearer, he is liable to all parties subsequent to the maker or drawer.

(3) If he signs for the accommodation of the payee, he is liable to all parties subsequent to the payee.

Warranty where negotiation by delivery, etc.

Section 65.—Every person negotiating an instrument by delivery or by qualified indorsement, warrants:

(1) That the instrument is genuine and in all respects what it purports to be;

(2) That he has good title to it;

(3) That all prior parties had capacity to contract;

(4) That he has no knowledge of any fact which would impair the validity of the instrument or render it valueless.

But when the negotiation is by delivery only, the warranty extends in favor of no holder other than the immediate transferee.

The provisions of sub-division three of this section do not apply to persons negotiating public or corporation securities, other than bills and notes.

Liability of general indorser.

Section 66.—Every indorser who indorses without qualification, warrants to all subsequent holders in due course;

(1) The matters and things mentioned in subdivision one, two and three of the two next preceding sections; and

(2) That the instrument is at the time of his indorsement valid and subsisting.

And in addition, he engages that on due presentment, it shall be accepted or paid, or both, as the case may be according to its tenor, and that if it be dishonored, and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder, or to any subsequent indorser who may be compelled to pay it.

Liability of indorser where paper negotiable by delivery.

Section 67.—Where a person places his indorsement on an instrument negotiable by delivery he incurs all the liabilities of an indorser.

Order in which indorsers are liable.

Section 68.—As respects one another indorsers are liable *prima facie* in the order in which they indorse; but evidence is admisible to show that as between or among themselves they have agreed otherwise. Joint payees or joint indorsers who indorse are deemed to indorse jointly and severally.

Liability of an agent or broker.

Section 69.—Where a broker or other agent negotiates an instrument without indorsements he incurs all the liabilities prescribed by section sixty-five of this act, unless he discloses the name of his principal, and the fact that he is acting only as agent.

ARTICLE VI.

PRESENTMENT FOR PAYMENT.

Effect of want of demand on principal debtor.

Section 70.—Presentment for payment is not necessary in order to charge the person primarily liable on the instrument; but if the instrument is, by its terms, payable at a special place, and he is able and willing to pay it there at maturity, such ability and willingness are equivalent to a tender of payment upon his part. But except as herein otherwise provided, presentment for payment is necessary in order to charge the drawers and indorsers.

Presentment where instrument is not payable on demand and where payable on demand.

Section 71.—Where the instrument is not payable on demand, presentment must be made on the day it falls due. Where it is payable on demand, presentment must be made within a reasonable time after its issue, except that in the case of a bill of exchange, presentment for payment will be sufficient if made within a reasonable time after the last negotiation thereof.

What constitutes a sufficient presentment.

Section 72.—Presentment for payment, to be sufficient, must be made:

(1) By the holder or by some person authorized to receive payment on his behalf;

(2) At a reasonable hour on a business day;

(3) At a proper place as herein defined;

(4) To the person primarily liable on the instrument or if he is absent or inaccesible, to any person found at the place where the presentment is made.

Place of presentment.

Section 73.—Presentment for payment is made at the proper place:

(1) Where a place of payment is specified in the instrument and it is there presented.

(2) Where no place of payment is specified, but the addresses of the person to make payment is given in the instrument and it is there presented.

(3) Where no place of payment is specified and no address is given and the instrument is presented at the usual place of business or residence of the person to make payment;

(4) In any other case if presented to the person to make payment wherever he can be found, or if presented at his last known place of business or residence.

Instrument must be exhibited.

Section 74.—The instrument must be exhibited to the person from whom payment is demanded, and when it is paid must be delivered up to the party paying it.

Presentment where instrument payable at bank.

Section 75.—Where the instrument is payable at a bank presentment for payment must be made during banking hours, unless the person to make payment has no funds there to meet it at any time during the day, in which case presentment at any hour before the bank is closed on that day is sufficient.

Presentment where principal debtor is dead.

Section 76.—Where a person primarily liable on the instrument is dead, and no place of payment is specified, presentment for payment must be made to his personal representative if such there be, and if, with the exercise of reasonable diligence, he can be found.

Presentment to persons liable as partners.

Section 77.—Where the persons primarily liable on the instrument are liable as partners, and no place of payment is specified, presentment for payment may be made to any one of them, even though there has been a dissolution of the firm.

Presentment to joint debtors.

Section 78.—Where there are several persons, not partners, primarily liable on the instrument, and no place of payment is specified, presentment must be made to them all.

When presentment not required to charge the drawer.

Section 79.—Presentment for payment is not required in order to charge the drawer where he has no right to expect or require that the drawee or acceptor will pay the instrument.

When presentment not required to charge the indorser.

Section 80.—Presentment for payment is not required in order to charge an indorser where the instrument was made or accepted for his accommodation and he has no reason to expect that the instrument will be paid if presented.

When delay in making presentment is excused.

Section 81.—Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, presentment must be made with reasonable diligence.

When presentment may be dispensed with.

Section 82.—Presentment for payment is dispensed with:

(1) Where after the exercise of reasonable diligence presentment as required by the act cannot be made:

(2) Where the drawee is a fictitious person;

(3) By waiver of presentment, express or implied.

When instrument dishonored by nonpayment.

Section 83.—The instrument is dishonored by non-payment when:

(1) It is duly presented for payment and payment is refused or cannot be obtained; or

(2) Presentment is excused and the instrument is overdue and unpaid.

Liability of person secondarily liable, when instrument dishonored.

Secton 84.—Subject to the provisions of this act, when the instrument is dishonored by non-payment, an immediate right of recourse to all parties secondarily liable thereon accrues to the holder.

Time of maturity.

Section 85.—Every negotiable instrument is payable at the time fixed therein with eight days' grace. When the day of maturity falls upon Sunday, or a holiday, the instrument is payable on the next succeeding business day. Instruments falling due (or becoming payable) on Saturday are to be presented for payment on the next succeeding business day, except that instruments payable on demand may, at the option of the holder, be presented for payment before twelve o'clock, noon on Saturday when the entire day is not a holiday.

Time; how computed.

Section 86.—Where the instrument is payable at a fixed period after 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 by including the date of payment.

Rule where instrument payable at bank.

Section 87.—Where the instrument is made payable at a bank it is equivalent to an order to the bank to pay the same for the account of the principal debtor thereon.

What constitutes payment in due course.

Section 88.—Payment is made in due course when it is made at or after the maturity of the instrument to the holder thereof in good faith and without notice that his title is defective.

ARTICLE VII.

NOTICE OF DISHONOR.

To whom notice of dishonor must be given.

Section 89.—Except as herein otherwise provided, when a negotiable instrument 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.

By whom given.

Section 90.—The notice may be given by or on behalf of the holder, or by or on behalf of any party to the instrument who might be compelled to pay it to the holder, and who upon taking it up would have a right to reimbursement from the party to whom notice is given.

Section 91.—Notice of dishonor may be given by an agent either in his own name or in the name of any party entitled to give notice, whether the party be his principal or not.

Notice given by agent.

Section 92.—Where notice is given by or on behalf of the holder, it inures for the benefit of all subsequent holders and all prior parties who have a right of recourse against the party to whom it is given.

Effect of notice given on behalf of holder.

Section 93.—Where notice is given by or on behalf of a party entitled to give notice, it inures for the benefit of the holder and all parties subsequent to the party to whom notice is given.

Effect where notice is given by party entitled thereto.

Section 94.—Where the instrument has been dishonored in the hands of an agent, he may either himself give notice to the parties liable thereon, or he may give notice to his principal. If he give notice to his principal, he must do so within the same time as if he were the holder, and the principal upon the receipt of such notice has himself the same time for giving notice as if the agent had been an independent holder.

When agent may give notice.

Section 95.—A written notice need not be signed, and an insufficient written notice may be supplemented and validated by verbal communication. A misdescription of the instrument does not vitiate the notice unless the party to whom the notice is given is in fact misled thereby.

When notice sufficient.

Section 96.—The notice may be in writing or merely oral and may be given in any terms which sufficiently identify the instrument, and indicate that it has been dishonored by non-acceptance or non-payment. It may in all cases be given by delivering it personally or through the mails.

Form of notice.

Section 97.—Notice of dishonor may be given either to the party himself or to his agent in that behalf.

To whom notice may be given.

Section 98. When any party is dead, and his death is known to the party giving notice, the notice must be given to a personal representative, if there be one, and if with reasonable diligence he can be found. If there be no personal representatitve, notice must be sent to the last residence or last place of business of the deceased.

Notice where party is dead.

Section 99.—Where the parties to be notified are partners, notice to any one partner is notice to the firm even though there has been a dissolution.

Notice to partners.

Section 100.—Notice to joint parties who are not partners must be given to each of them, unless one of them has authority to receive such notice for the others.

Notice to persons jointly liable.

Section 101.—Where a party has been adjudged a bankrupt or an insolvent, or made an assignment for the benefit of creditors, notice may be given either to the party himself or to his trustee or assignee.

Notice to bankrupt.

Section 102.—Notice may be given as soon as the instrument is dishonored; and unless the delay is excused as hereinafter provided, must be given within the time fixed by this act.

Time within which notice must be given.

Section 103.—Where the person giving and the person to receive notice reside in the same place, notice must be given within the following times:

Where parties reside in same place.

(1) If given at the place of business of the person to receive notice, it must be given before the close of business hours on the day following.

(2) If given at his residence, it must be given before the usual hours of rest on the day following.

(2) If sent by mail, it must be deposited in the postoffice in time to reach him in usual course on the day following.

Section 104.—Where the person giving and the person to receive notice reside in different places, the notice must be given within the following times:

Where parties reside in different places.

(1) If sent by mail, it must be deposited in the postoffice 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.

(2) If given otherwise than through the postoffice, then within the time that notice would have been received in due course of mail, if it had been deposited in the postoffice within the time specified in the last subdivision.

When sender deemed to have given due notice.

Section 105.—Where notice of dishonor is duly addressed and deposited in the postoffice, the sender is deemed to have given due notice, notwithstanding any miscariage in the mails.

Deposit in post-office; what constitutes.

Section 106. Notice is deemed to have been deposited in the postoffice when deposited in any branch postoffice or in any letter box under the control of the postoffice department.

Notice to subsequent party; time of.

Section 107.—Where a party receives notice of dishonor, he has, after the receipt of such notice, the same time for giving notice to antecedent parties that the holder has after the dishonor.

Where notice must be sent.

Secion 108.—Where a party has added an address to his signature, notice of dishonor must be sent to that address; but if he has not given such address then notice must be sent as follows:

(1) Either to the postoffice nearest to his place of residence, or to the postoffice where he is accustomed to receive his letters; or

(2) If he live in one place, and have his place of business in another, notice may be sent to either place; or

(3) If he is sojourning in another place, notice may be sent to the place where he is sojourning.

But where the notice is actually received by the party within the time specified in this act, it will be sufficient, though not sent in accordance with the requirements of this section.

Waiver of notice.

Section 109.—Notice of dishonor may be waived, either before the time of giving notice has arrived, or after the omission to give due notice, and the waiver may be express or implied.

Whom affected by waiver.

Section 110.—Where the waiver is embodied in the instrument itself, it is binding upon all parties; but where it is written above the signature of an indorser, it binds him only.

Waiver of protest.

Section 111.—A waiver of protest, whether in case of a foreign bill of exchange or other negotiable instrument, is deemed to be a waiver not only of a formal protest, but also of presentment and notice of dishonor.

When notice is dispensed with.

Section 112.—Notice of dishonor is dispensed with when, after the exercise of reasonable diligence, it can not be given to or does not reach the parties sought to be charged.

Delay in giving notice; how excused.

Section 113.—Delay in giving notice of dishonor is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, notice must be given with reasonable diligence.

When notice need not be given to drawer.

Section 114.—Notice of dishonor is not required to be given to the drawer in the following cases:

(1) Where the drawer and drawee are the same person;

(2) When the drawee is a fictitious person or a person not having capacity to contract;

(3) Where the indorser is the person to whom the instrument is presented for payment;—

(4) Where the drawer has no right to expect or require that the drawee or acceptor will honor the instrument;—

(5) Where the drawer has countermanded payment.

Section 115.—Notice of dishonor is not required to be given to an indorser in the following cases:

When notice need not be given to indorser.

(1) Where the drawee is a fictitious person or a person not having capacity to contract, and the indorser was aware of the fact at the time he indorsed the instrument;

(2) Where the indorser is the person to whom the instrument is presented for payment;

(3) Where the instrument was made or accepted for his accomodation.

Section 116.—Where due notice of dishonor by non-acceptance has been given notice of a subsequent dishonor by non-payment is not necessary, unless in the meantime the instrument has been acepted.

Notice of non-payment where acceptance refused.

Section 117.—An omission to give notice of dishonor by non-acceptance does not prejudice the rights of a holder in due course subsequent to the omission.

Effect of omission to give notice of non-acceptance.

Section 118.—Where any negotiable instrument has been dishonored it may be protested for non-acceptance or non-payment, as the case may be; but protest is not required except in the case of foreign bills of exchange.

When protest need not be made; when must be made.

ARTICLE VIII.

DISCHARGE OF NEGOTIABLE INSTRUMENTS.

Section 119.—A negotiable instrument is discharged:

Instrument; how discharged.

(1) By payment in due course by or on behalf of the principal debtor;

(2) By payment in due course by the party accommodated, where the instrument is made or accepted for accommodation;

(3) By the intentional cancellation thereof by the holder;

(4) By any other act which will discharge a simple contract for the payment of money;

(5) When the principal debtor becomes the holder of the instrument at or after maturity on his own right.

Section 120.—A person secondarily liable on the instrument is discharged:

When persons secondarily liable on, discharged.

(1) By any act which discharges the instrument;

(2) By the intentional cancellation of his signature by the holder;

(3) By the discharge of a prior party;

(4) By a valid tender of payment made by a prior party;

(5) By the release of the principal debtor, unless the holder's right of recourse against the party secondarily liable is expressly reserved;

(6) By an agreement binding upon the holder to extend the time of payment, or to postpone the holder's right to enforce the instrument, unless made with the assent of the party secondarily liable, or unless the right of recourse against such party is expressly reserved.

Section 121.—Where the instrument is paid by a party secondarily liable thereon, it is not discharged; but the party so paying it is remitted to his former rights as regards all prior parties, and he may strike out his own and all subsequent indorsements, and again negotiate the instrument, except:

Right of party who discharges instrument.

(1) Where it is payable to the order of a third person, and has been paid by the drawer; and

(2) Where it was made or accepted for accommodation, and has been paid by the party accommodated.

Section 122.—The holder may expressly renounce his rights against any party to the instrument, before, at or after its maturity. An absolute and unconditional renunciation of his rights against the principal debtor made

Renunciation by holder.

at or after the maturtiy of the instrument discharges the instrument. But a renunciation does not effect the rights of a holder in due course without notice. A renunciation must be in writing, unless the instrument is delivered up to the person primarily liable thereon.

Cancellation; untentional; burden of proof.

Section 123.—A cancellation made unintentionally, or under a mistake or without the authority of the holder, is inoperative; but where an instrument or any signature thereon appears to have been cancelled the burden of proof lies on the party who alleges that the cancellation was made unintentionally, or under a mistake or without authority.

Alteration of instrument; effect of.

Section 124.—Where a negotiable instrument is materially altered without the assent of all parties liable thereon, it is voided, except as against a party who has himself made, authorized or assented to the alteration and subsequent indorsers.

But when an instrument has been materially altered and is in the hands of a holder in due course not a party to the alteration he may enforce payment thereof according to its original tenor.

What constitutes a material alteration.

Section 125.—Any alteration which changes:

(1) The date;
(2) The sum payable, either for principal or interest;
(3) The time or place of payment;
(4) The number or the relations of the parties;
(5) 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 alteration.

TITLE II.

BILLS OF EXCHANGE.

ARTICLE I.

FORM AND INTERPRETATION.

Bill of exchange defined.

Section 126.—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 or determinable future time a sum certain in money to order or to bearer.

Bill not an assignment of funds in hands of drawee.

Section 127.—A bill of itself does not operate as an assignment of funds in the hands of the drawee available for the payment thereof and the drawee is not liable on the bill unless and until he accepts the same.

Bill addressed to more than one drawee.

Section 128.—A bill may be addressed to two or more drawees jointly, whether they are partners or not; but not to two or more drawees in the alternative or in succession.

Inland and foreign bills of exchange.

Section 129.—An inland bill of exchange is a bill which is, or on its face, purports to be, both drawn and payable within the Virgin Islands. Any other bill is a foreign bill. Unless the contrary appears on the face of the bill, the holder may treat it as inland bill.

When bill may be treated as promissory note.

Section 130.—Where in a bill drawer and drawee are the same person or where the drawee is a fictitious person, or a person not having capacity to contract, the holder may treat the instrument, at his option, either as a bill of exchange or a promissory note.

Referee in case of need.

Section 131.—The drawer of a bill and any indorser may insert thereon the name of a person to whom the holder may resort in case of need, that is

to say, in case the bill is dishonored by non-acceptance or non-payment. Such person is called the referee in case of need. It is in the option of the holder to resort to the referee in case of need, or not as he may see fit.

ARTICLE II.

ACEPTANCE.

Acceptance; how made, etc.

Setion 132—The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer. The acceptance must be in writing and signed by the drawee. It must not express that the drawee will perform his promise by any other means than the payment of money.

Holder entitled to acceptance on face of bill.

Section 133.—The holder of a bill presenting the same for acceptance may require that the acceptance be written on the bill, and, if such request is refused, may treat the bill as dishonored.

Acceptance by separate instrument.

Section 134.—Where an acceptance is written on a paper other than the bill itself, it does not bind the acceptor except in favor of a person to whom it is shown and who, on the faith thereof, receives the bill for value.

Promise to accept; when equivalent to acceptance.

Section 135.—An unconditional promise in writing to accept a bill before it is drawn is deemed an actual acceptance in favor of every person who upon faith thereof, receives the bill for value.

Time allowed drawee to accept.

Section 136.—The drawee is allowed twenty-four hours after presentment, in which to decide whether or not he will accept the bill; but the acceptance if given, dates as of the day of presentation.

Liability of drawee retaining or destroying bill.

Section 137.—Where a drawee to whom a bill is delivered for acceptance destroys the same, or refuses within twenty-four hours after such delivery, or within such other period as the holder may allow, to return the bill accepted or non-accepted to the holder, he will be deemed to have accepted the same.

Acceptance of incomplete bill.

Section 138.—A bill may be accepted before it has been signed by the drawer, or while otherwise incomplete, or when it is overdue, or after it has been dishonored by a previous refusal to accept, or by non-payment. But when a bill payable after sight is dishonored by non-acceptance and the drawee subsequently accepts it, the holder in the absence of any different agreement, is entitled to have the bill accepted as of the date of the first presentment.

Kind of acceptances.

Section 139.—An acceptance is either general or qualified. A general acceptance assents without qualification to the order of the drawer. A qualified acceptance in express terms varies the effect of the bill as drawn.

What constitutes a general acceptance.

Section 140.—An acceptance to pay at a particular place is a general acceptance, unless it expressly states that the bill is to be paid there only and not elsewhere.

Qualified acceptance.

Section 141.—An acceptance is qualified, which is;

(1) Conditional, that is to say, which makes payment by the acceptor dependent on the fulfillment of a condition therein stated;

(2) Partial, that is to say, an acceptance to pay part only of the amount for which the bill is drawn;

(3) Local, that is to say, an acceptance to pay only at a particular place;

(4) Qualified as to time;

(5) The acceptance of some one or more of the drawees, but not of all.

Rights of parties as to qualified acceptance.

Section 142.—The holder may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance, he may treat the bill as dishonored by non-acceptance. Where a qualified acceptance is taken the drawer and endorser are discharged from liability on the bill, unless they have express-

ly or impliedly authorized the holder to take a qualified acceptance, or subsequently assent thereto. When the drawer or an indorser receives notice of a qualified acceptance, he must, within a reasonable time, express his dissent to the holder, or he will be deemed to have assented thereto.

ARTICLE III.

PRESENTMENT FOR ACCEPTANCE.

When presentment for acceptance must be made.

Section 143.—Presentment for acceptance must be made:

(1) Where the bill is payable after sight, or in any other case, where presentment for acceptance is necessary in order to fix the maturity of the instrument; or

(2) Where the bill expressly stipulates that it shall be presented for acceptance; or

(3) Where the bill is drawn payable, elsewhere than at the residence or place of business of the drawee.

In no other case is presentment for acceptance necessary in order to render any party to the bill liable.

When failure to present releases drawer and indorser.

Section 144.—Except as herein otherwise provided, the holder of a bill which is required by the next preceding section to be presented for acceptance must either present in for acceptance or negotiate it within a reasonable time. If he fails so to do, the drawer and all indorsers are discharged.

Presentment; how made.

Section 145.—Presentment for acceptance must be made by or on behalf of the holder at a reasonable hour, on a business day and before the bill is overdue, to the drawee or some person authorized to accept or refuse acceptance on his behalf; and

(1) Where a bill is addressed to two or more drawees who are not partners, presentment must be made to them all unless one has authority to accept or refuse acceptance for all, in which case presentment may be made to him only.

(2) Where the drawee is dead, presentment may be made to his personal representatives;

(3) Where the drawee has been adjudged a bankrupt or an insolvent or has made an assigment for the benefit of creditors, presentment may be made to him or to his trustees or assignee.

On what days presentment may be made.

Section 146.—A bill may be presented for acceptance on any day on which negotiable instruments may be presented for payment under the provisions of sections seventy-two and eighty-five of this act. When Saturday is not otherwise a holiday, presentment for acceptance may be made before twelve o'clock, noon, on that day.

Presentment where time is insufficient.

Section 147.—Where the holder of a bill drawn payable elsewhere than at the place of business or the residence of the drawee has not time with the exercise of reasonable diligence to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused and does not discharge the drawers and indorsers.

Where presentment is excused.

Section 148.—Presentment for acceptance is excused and a bill may be treated as dishonored by non-acceptance, in either of the following cases:

(1) Where the drawee, is dead, or has absconded, or is a fictitious person or a person not having capacity to contract, by bill.

(2) Where, after the exercise of reasonable diligence presentment cannot be made.

(3) Where, although presentment has been irregular, acceptance has been refused on some other ground.

Section 149.—A bill is dishonored by non-acceptance:

When dishonored by non-acceptance.

(1) When it is duly presented for acceptance and such an acceptance as is prescribed by this act is refused or cannot be obtained; or

(2) When presentment for acceptance is excused and the bill is not accepted.

Section 150.—Where a bill is duly presented for acceptance and is not accepted within the prescribed time, the person presenting it must treat the bill as dishonored by non-acceptance or he loses the right of recourse against the drawer and endorsers.

Duty of holder where bill not accepted.

Section 151.—When a bill is dishonored by non-acceptance an immediate right of recourse against the drawers and indorsers accrues to the holder and no presentment for payment is necessary.

Rights of holder where bill not accepted.

ARTICLE IV.

PROTEST.

Section 152.—Where a foreign bill appearing on its face to be such is dishonored by non-acceptance, it must be duly protested for non-acceptance, and where such a bill which has not previously been dishonored by non-acceptance is dishonored by non-payment it must be duly protested for non-payment. If it is not so protested, the drawer and indorsers are discharged. Where a bill does not appear on its face to be a foreign bill protest thereof in case of dishonor is unnecessary.

In what cases protest neccessary.

Section 153.—The protest must be annexed to the bill, or must contain a copy thereof and must be under the hand and seal of the notary making it, and must specify:

Protest; how made.

(1) The time and place of presentment;
(2) The fact that presentment was made and the manner thereof;
(3) The cause or reason for protesting the bill;
(4) The demand made and the answer given if any, or the fact that the drawee or acceptor could not be found.

Section 154.—Protests may be made by:

Protest; by whom made.

(1) A notary public; or
(2) By any respectable resident of the place where the bill is dishonored, in the presence of two or more credible witnesses.

Section 155.—When a bill is protested, such protest must be made on the day of its dishonor, unless delay is excused as herein provided. When a bill has been duly noted, the protest may be subsequently extended as of the date of the noting.

Protest; when to be made.

Section 156.—A bill must be protested at the place where it is dishonored, except that when a bill payable at the place of business or residence of some person other than the drawee, has been dishonored by non-acceptance, it must be protested for non-payment at the place where it is expressed to be payable, and no further presentment for payment to, or demand on, the drawee is necessary.

Protest; where made.

Section 157.—A bill which has been protested for non-acceptance may be subsequently protested for non-payment.

Protest both for non-acceptance and non-payment.

Section 158.—Where the acceptor has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of his creditors, before the bill matures, the holder may cause the bill to be protested for better security against the drawer and indorsers.

Protest before maturity where acceptor insolvent.

When protest dispensed with.

Section 159.—Protest is dispensed with by any circumstances which would dispense with notice of dishonor. Delay in noting of protesting is excused when delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, the bill must be noted or protested with reasonable diligence.

Protest where bill is lost, etc.

Section 160.—When a bill is lost or destroyed or is wrongfully detained from the person entitled to hold it, protest may be made on a copy or written particulars thereof.

ARTICLE V.

ACCEPTANCE FOR HONOR.

When bill may be accepted.

Section 161.—Where a bill of exchange has been protested for dishonor by non-acceptance or protest for better security, and is not overdue, any person not being a party already liable thereon may, with the consent of the holder, intervene and accept the bill supra protest for the honor of any party liable thereon or for the honor of the person for whose account the bill is drawn; and where there has been an acceptance for honor for one party, there may be a further acceptance by a different person for the honor of another party.

Acceptance for honor; how made.

Section 162.—An acceptance for honor supra protest must be made in writing, and indicate that it is an acceptance for honor, and must be signed by the acceptor for honor.

When deemed to be an acceptance for honor of the drawer.

Section 163.—Where an acceptance for honor does not expressly state for whose honor it is made, it is deemed to be an acceptance for the honor of the drawer.

Liability of the acceptor for honor.

Section 164.—The acceptor for honor is liable to the holder and to all parties to the bill subsequent to the party for whose honor he has accepted.

Agreement of acceptor for honor.

Section 165.—The acceptor for honor, by such acceptance engages that he will on due presentment pay the bill according to the terms of his acceptance, provided, it shall not have been paid by the drawee, and provided also, that it shall have been duly presented for payment and protested for non-payment and notice of dishonor given him.

Maturity of bill payable after sight; accepted for honor.

Section 166.—Where a bill payable after sight is accepted for honor, its maturity is calculated from the date of the noting for non-acceptance and not from the date of the acceptance for honor.

Protest of bill accepted for honor, etc.

Section 167.—Where a dishonorable bill has been accepted for honor supra protest or contains a reference in case of need, it must be protested for non-payment before it is presented for payment to the acceptor for honor or referee in case of need.

Presentment for payment to acceptor for honor; how made.

Section 168.—Presentment for payment to the acceptor for honor must be made as follows:

(1) If it is to be presented in the place where the protest for non-payment was made, it must be presented not later than the day following its maturity.

(2) If it is to be presented in some other place than the place where it was protested, then it must be forwarded within the time specified in section one hundred and four.

When delay in making presentment is excused.

Section 169.—The provisions of section eighty-one apply where there is delay in making presentment to the acceptor for honor or referee in case of need.

Section 170.—When the bill is dishonored by the acceptor for honor it must be protested for non-payment by him.

Dishonor of bill by acceptor for honor.

ARTICLE VI.

PAYMENT FOR HONOR.

Section 171.—Where a bill has been protested for non-payment, any person may intervene and pay it supra protest for the honor of any person liable thereon or for the honor of the person for whose account it was drawn.

Who may make payment for honor.

Section 172.—The payment for honor supra protest in order to operate as such and not as a mere voluntary payment must be attested by a notarial act of honor which may be appended to the protest or form an extension to it.

Payment for honor; how made.

Section 173.—The notarial act of honor must be founded on a declaration made by the payer for honor or by his agent in that behalf declaring his intention to pay the bill for honor and for whose honor he pays.

Declaration before payment for honor.

Section 174.—Where two or more persons offer to pay a bill for the honor of different parties, the person whose payment will discharge most parties to the bill is to be given the preference.

Preference of parties offering to pay for honor.

Section 175.—Where a bill has been paid for honor, all parties subsequent to the party for whose honor it is paid are discharged, but the payer for honor is subrogated for, and succeeds to, both the rights and duties of the holder as regards the party for whose honor he pays and all parties liable to the latter.

Effect on subsequent parties where bill is paid for honor.

Section 176.—Where the holder of a bill refuses to receive payment supra protest, he loses his right of recourse against any party who would have been discharged by such payment.

Where holder refuses to receive payment supra protest.

Section 177.—The payer for honor, on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonor, is entitled to receive both the bill itself and the protest.

Right of payer for honor.

ARTICLE VII.

BILLS IN A SET.

Section 178.—Where a bill is drawn in a set, each part of the set being numbered and containing a reference to the other parts, the whole of the parts constitutes one bill.

Bills in sets constitute one bill.

Section 179.—Where two or more parts of a set are negotiated to different holders in due course, the holder whose title first accrues is as between such holders the true owner of the bill. But nothing in this section affects the rights of a person who in due course accepts or pays the part first presented to him.

Right of holders where different parts are negotiated.

Section 180.—Where the holder of a set endorses two or more parts to different persons he is liable on every such part, and every endorser subsequent to him is liable on the part he has himself endorsed, as if such parts were separate bills.

Liability of holder who indorses two or more parts of a set to different persons.

Section 181.—The acceptance may be written on any part and it must be written on one part only. If the drawee accepts more than one part, and such accepted parts are negotiated to different holders in due course, he is liable on every such part as if it were a separate bill.

Acceptance of bills drawn in sets.

Section 182.—When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that

Payment by acceptor of bills drawn in sets.

part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereon.

Effect of discharging one of sets.

Section 183.—Except as herein otherwise provided where any one part of a bill drawn in a set is discharged by payment or otherwise the whole bill is discharged.

TITLE III.

PROMISSORY NOTES AND CHECKS.

ARTICLE I.

Promissory note defined.

Section 184.—A negotiable promissory note within the meaning of this act is an unconditional promise in writing made by one person to another signed by the maker engaging to pay on demand, or at a fixed or determinable future time a sum certain in money to order or to bearer. Where a note is drawn to the maker's own order, it is not complete until endorsed by him.

A check a bill of exchange.

Section 185.—A check is a bill of exchange drawn on a bank payable on demand. Except as herein otherwise provided, the provisions of this act applicable to a bill of exchange payable on demand apply to a check.

Within what time a check must be presented.

Section 186.—A check must be presented for payment within a reasonable time after its issue or the drawer will be discharged from liability thereon to the extent of the loss caused by the delay.

Certification of check; effect of.

Section 187.—Where a check is certified by the bank on which it is drawn, the certification is equivalent to an acceptance.

Effect where holder of check procures it to be certified.

Section 188.—Where the holder of a check procures it to be accepted or certified the drawer and all endorsers are discharged from liability thereon.

When check operates as an assignment.

Section 189.—A check of itself does not operate as an assigment of any part of the funds to the credit of the drawer with the banks and the bank is not liable to the holder, unless and until it accepts or certifies the check.

TITLE IV.

OF GENERAL PROVISIONS.

ARTICLE I.

Short title.

Section 190.—This act may be cited as the Uniform Negotiable Instrument Act.

Definitions and meaning of terms.

Section 191.—In this act, unless the context otherwise requires,—

"Acceptance" means an acceptance completed by delivery or notification.

"Action" includes counter-claim and set-off.

"Bank" includes any person or association of persons carrying on the business of banking, whether incorporated or not.

"Bearer" means the person in possession of a bill or note which is payable to bearer.

"Bill" means bill of exchange, and "note" means negotiable promissory note.

"Delivery" means transfer of possession, actual or constructive, from one person to another.

"Holder" means the payee or endorsee of a bill or note, who is in possession of it, or the bearer thereof.

"Endorsement" means an endorsement completed by delivery.

"Instrument" means negotiable instrument.

"Issue" means the first delivery of the instrument, complete in form, to a person who takes it as a holder.

"Person" includes a body of persons, whether incorporated or not.

"Value" means valuable consideration.

"Written" includes printed, and "writing" includes print.

Person primarily liable on instrument.

Section 192.—The person "primarily" liable on an instrument is the person who by the terms of the instrument is absolutely required to pay the same. All other parties are secondarily liable.

Reasonable time; what constitutes.

Section 193.—In determining what is a "reasonable time" or an "unreasonable time", regard is to be had to the nature of the instrument, the usage of trade or business (if any) with respect to such instruments, and the facts of the particular case.

Time, how computed; when last day falls on holiday.

Section 194.—Where the day, or the last day, for doing any act herein required or permitted to be done falls on Sunday or a holiday, the act may be done on the next succeeding secular or business day.

Application of act.

Section 195.—The provisions of this act do not apply to negotiable instruments made and delivered prior to the taking effect thereof.

Cases not provided for in act.

Section 196.—In any case not provided for in ths act the rules of the law merchant shall govern.

Provided, however, that any foreign child or children attending any public school within the Municipality of St. Thomas and St. John, whose parent does not own taxable property within said municipality, shall be required to pay a monthly tuition of Francs 5.00 throughout the school year; said tuition to be paid on or before the fifth of each month to the Director, who shall cover the sum into the Colonial Treasury; and Provided further, that the Board of Review may, upon recommendation of the Director, remit such tuition in its discretion.

Special schools.

special schools as in his judgment are necessary to meet the educational needs of the islands; such as night schools, industrial schools, high schools, reform schools, and kindergarten schools.

Employees; appointment of.

(c) The Director shall appoint all employees under his department, except as may otherwise be provided by law.

Courses of study.

(d) The Director shall prescribe the courses of study for all public schools.

School year.

Section 2.—The school year for public schools shall begin the second Monday in August, and end the last Friday in June; and no new pupils shall be admitted after the fourth Monday in August, except by written order from the Director.

Daily attendance hours.

Section 3.—The required attendance shall not exceed six hours per school day, at the discretion of the Director.

Classes of teachers.

Section 4.—(a) Teachers in the public schools shall be designated as (1) assistant graded teachers, (2) graded teachers, (3) principal teachers, and (4) special teachers. They shall be persons of good moral character, and possessed of the necessary requirements for their positions as may be prescribed by regulation, and certified to by the Director.

Assistant graded teachers.

(b) Candidates for licenses as assistant graded teachers shall, after July 1, 1920, pass an examination in (1) English Language, (2) Arithmetic, (3) Geography, (4) History of the United States, (5) Method of Teaching, (6) Nature Study, (7) Elementary Physiology and Hygiene, (8) Penmanship and Drawing.

Graded teachers.

(c) Candidates for licenses as graded teachers shall, after July 1, 1920, pass an examination in (1) English Language, (2) Arithmetic, (3) Geography, (4) History of the United States, (5) Pedagogy, (6) Nature Study, (7) Physiology and Hygiene, (8) Civil Government of the United States, (9) Penmanship and Drawing.

Principal teachers.

(d) Candidates for licenses to teach as principal teachers shall, after July 1, 1920, pass an examination in all of the subjects requiring licenses to teach as graded teachers, and in addition thereto, in (10) Elementary Physics, (11) English Literature, (12) Algebra, (13) Geometry, and such additional subjects as the Director may require; Provided, however, no additional subjects shall be required without giving at least six months' notice of such additional subjects.

When examinations are held.

(e) The time of annual examinations shall be the Monday, Tuesday and Wednesday, of each year, preceding Good Friday, and at such other times as the Director shall prescribe, and the hours and places of holding such examinations shall be set by the Director, and public notice be given at least thirty days before the date of the first examination day (Monday). Upon receiving such public notice, all persons desiring to take these examinations shall apply at the office of the Director or his Assistant for an application blank for teachers' examinations; said blank must be filled out in full, certified to by the applicant, and returned to the office of the Director at least ten days before the time set for the examination. If the Director shall approve such application, he shall thereupon notify the applicant to that effect, and the applicant may then present himself for examination at the time and place designated.

(f) All teachers' examinations shall be held under the supervision of a committee designated for that purpose by the Board. **Teachers' examinations.**

(g) In any case where a person feels that he has been unfairly examined, or that the results of the examination are not correctly reported, he may appeal to the Board for such redress as the Board may deem equitable. **Appeals.**

(h) Licenses to teach as special teachers may be issued, without examination, to those candidates who possess diplomas or certificates from high schools, academies, colleges, normal schools, or universities; and in like manner, to those candidates who are able to present convincing evidence that they are fitted to teach special and authorized subjects. **Special teachers.**

(i) Licenses to teach are to be issued as good for one year and are renewable under such regulations as may be promulgated by the Director and shall only be granted to those candidates who present health certificates, issued by a physician licensed to practice within the Virgin Islands; Provided, however, That said certificate shall contain such information as may be required by the Director. **Licenses; health certificates.**

Section 5.—(a) In the month of May, of each year, all teachers who have been employed during the current year shall be classified by the Director with respect to their proficiency and success as teachers,— **Classification of teachers.**

Class "E" Teachers whose work is "Excellent" in every respect.
Class "G" Teachers who work is "Good" in general, although not of as high a grade as that of Class "E".
Class "F" Teachers whose work is "Fair".
Class "P" Teachers whose work is "Unsatisfactory".

(b) If a teacher, classified as "P", considers that his (or her) classification is unfair, he may appeal to the Board, and after due investigation the Board shall confirm, reclassify, or revoke said classification.
(c) Licenses of teachers who are classed as "P" will be considered as cancelled, and will not be renewed except by reexamination.
(d) Persons upon entering the corps of teachers will remain unclassified until they have had experience as teachers upon which to base a classification.

Section 6.—The salaries of teachers shall be based upon the classifications provided by the Department; Provided, however, That the salary of an assistant graded teacher shall not be less than Francs fifty per month, nor more than Francs one hundred and twenty-five per month; that the salary of a graded teacher shall not be less than Francs one hundred and twenty-five per month, nor more than Francs two hundred and fifty per month; that the salary of a principal teacher shall not be less than Francs two hundred and fifty per month, nor more than Francs three hundred and seventy-five per month; and that the salary of a special teacher shall be fixed by the Director. **Salaries of teachers.**

The provisions of this section shall become effective on the first of July next succeeding the first budget declared after the approved of this code. **When effective.**

Section 7.—Any employee appointed by the Director may be suspended or dismissed from his position by the Director for immorality, cruelty, incompetency, insubordination, negligence, or other good cause, and the Director may cancel his license, but any such person who feels that he has been unjustly suspended or dismissed may appeal to the Board. **Suspension or dismissal.** **Appeal.**

Section 8.—Employees of the Department and teachers in actual service or on leave shall not take an active part in any campaign or election, or canvass or attempt to canvass or to control any vote or votes, other than their own indvidual vote, for or against any candidate or candidates for public office, or to permit their names to be used as members of political committees or subcommittees, without first resigning their position. Any violation of this section shall be considered good and sufficient cause for the cancellation of a teacher's license. **Political activity: forbidden.**

Free school books.

Section 9.—(a) The Department shall supply, free of charge, all books to be used in the public schools.

Teachers' responsibility.

(b) Teachers and principals shall give their receipts for all books delivered to them, specifying the number of new, and the number of old books, and they shall be held financially responsible to the extent of the invoice price of new books, and to the extent of one-half of the invoice price of old books, in case such books are lost or damaged.

Pupils and parents; responsibility.

(c) Teachers may require receipts from parents or guardians for books furnished to pupils, and parents or guardians shall be legally responsible for the return of all books delivered, or financially responsible to the extent of the invoice price of new books, and to the extent of one-half of the invoice price of old books, in case such books be lost or damaged.

Holidays.

Section 10.—Holidays for pupils in public schools shall be as follows:

(a) All legal holidays and all Saturdays.

(b) Two weeks beginning at the close of school on the day preceding Christmas Eve.

(c) Two weeks beginning at the close of school on the Friday preceding Good Friday.

(d) Summer vacation as hereinbefore provided.

(e) Such special holidays as the Governor may order.

SCHOOLS OTHER THAN PUBLIC SCHOOLS.

Schools other than public; establishment.

Section 11.—(a) Schools other than public schools may be established when written permission has been granted by the Director. A request to establish such schools shall be in writing and shall give a full statement regarding facilities, teachers, equipment, building, tuition, and proposed course of study.

Appeal.

(b) If an applicant for permission to establish such a school feels that he has been unjustly prohibited by the Director from establishing a school, an appeal may be made to the Board, and the decision of the Board thereon shall be final.

Closing of.

(c) Schools other than public schools may be closed, upon being given thirty days' notice by the Director; (1) when they are not up to the standard of the public schools; (2) when they repeatedly fail or refuse to give such reports as the Director may request; (3) when the record of attendance of enrolled pupils is poor; (4) when the stated course of study is not being followed; (5) when it is for the public interest.

Appeal.

(d) When a school is ordered closed by the Director an appeal may be made to the Board whose decision shall be final.

Examination in.

(e) The Director or his Assistant may conduct examinations in schools other than public schools, in accordance with rules and regulations approved by the Board.

Teaching at home; permission.

Section 12.—Children may be taught at home, but such children may be examined by the Director or his Assistant.

Fines for absence.

Section 13.—Fines for absence, without good and sufficient excuse, shall be imposed, collected and returned by the Director, the same as in public schools.

Subsidies.

Section 14.—(a) Subsidies from Government funds may be granted to schools other than public schools, for strictly educational purposes, by the Board, upon the recommendation of the Director; Provided, That no subsidy or financial help shall be given by the Government to denominational or sectarian schools or institutions.

Withdrawal of.

(b) Subsidies may be withdrawn at any time by the Board upon the recommendation of the Director.

Inspection of; restricted.

Section 15.—(a) The Director may inspect schools other than Public Schools at any time, for the purpose of determining the the kind of instruction

the pupils are receiving in Reading, Writing, Spelling, Arithmetic, History, Geography and Hygiene, and he may at any time inspect the school register for the purpose of gathering data necessary for the proper enforcement of the Compulsory Attendance Law. Provided however, that this right of inspection shall not be construed as carrying with it the right of supervision or direction of the affairs of any private school; and provided further, that the right of inspection shall not be delegated by the Director to any person other than one of his legally appointed Assistant Directors.

(b) Whenever the Director feels that it is necessary to report on or make recommendation concerning any school other than a public school, he shall immediately forward in writing an exact copy of such report or recommendation to the person in charge of the school concerned. **Report on; copy to be furnished.**

Section 16.—(a) Any applicant for a position in a school other than a public school, who has been refused a license by the Department, may appeal to the Board, and the Director shall issue a license to said applicant if so ordered by the Board. **License refused; appeal.**

(b) Licenses of teachers employed in schools other than public schools may be cancelled for the causes hereinbefore mentioned, Provided, however, That the action of the Director in all such cases may be subject to review and decision by the Board. **Cancellation.**

Section 17.—The schedule of holidays for schools other than public schools shall be arranged by the authorities having charge of such schools; Provided, That there shall be not more than ninety days' vacation in any one **Holidays; restriction.**

And Provided further, that any child twelve years of age or over may be released from further attendance at school by the Board of Review upon recommendation of the Director, under the following circumstances:

1. **When a child has completed the work of the sixth grade and the parent or guardian presents convincing evidence that the work of the child is absolutely necessary for the support of the family.**
2. **When a child has completed the work of the sixth grade and the parent or guardian desires that the child learn some useful and honorable trade by serving as an apprentice.**
3. **When in the opinion of the Director, as demonstrated by some standard mental test, a child is below normal mentally to such an extent that he is unable to successfully pursue further the course of study.**

In any case where a child under fifteen years of age is released from school attendance by the Board of Review, it shall be the duty of the Director to investigate from time to time in order to determine if the cause for which the child was released still exists; and if said cause or reason has ceased to exist, the Director shall make a report thereon to the Board of Review, together with his recommendation, for such action as the Board may deem proper.

Section 20.—(a) Once a year the Director shall give notice to parents or guardians of children who will be of school age during the year, to enter the names of such children on the school lists. **School list.**

(b) Parents, guardians and managers of landed properties shall give to the Police Department, on demand, all school information in their possession regarding children under their control. **School information; furnishing of.**

(c) In the month of May, of each year, the Police Department shall make a list of all the children who are between five and fifteen years of age, with the data as required for school register; this list to be given to the Director by June first of the year in which it is made. **To be made by Police Department.**

Section 21.—Parents or guardians shall be held strictly responsible for the regular attendance of their children in school, and the following fines may be imposed on parents or guardians by the Director. **Fines.**

		Francs.
(a)	Absence of a child for a whole day	.25 to 1.00
(b)	Absence of a child at the opening of school	.05 to .25
(c)	Absence of a child for the first hour or more	.05 to .25
(d)	Absence of a child for more than one day when transferred from one school to another, for each day	.25 to 1.00
(e)	Absence of a child, without permission, on account of being away from the island, for each day	.25 to 1.00
(f)	Absence from an examination, without permission	2.00

Collection of.

(g) All fines not collectable by the Director shall be reported by him to the Police Department and such report shall be filed in the Police Court by the Director of Police; when such report is therein filed an execution shall be issued thereon against each person for such amount as appears to be unpaid, and such execution may be enforced as an execution in a criminal action in the Police Court.

GENERAL PROVISIONS.

School register.

Section 22.—A register shall be kept by the principal teacher of each school, in which shall be entered such data as may be required by the Director.

Non-compliance a misdemeanor.

Section 23—Non-compliance with the provisions of this Ordinance shall be a misdemeanor, and shall be punishable by a fine not to exceed Francs five hundred, or by imprisonment not to exceed six months or by both.

TITLE III.

CIVIL PROCEDURE.

CHAPTER TWO.

OF THE TIME OF COMMENCEMENT OF CIVIL ACTIONS.

Time of commencing actions in general.

Section 1.—Civil actions shall only be commenced within the periods prescribed in this title after the cause of action shall have accrued, except when, in special cases, a different limitation is prescribed by statute. But the objection that the action was not commenced within the time limited shall only be taken by answer or demurrer.

Within twenty years.

Section 2.—The periods prescribed in the preceding section for the commencement of actions shall be as follows:

(A) Within twenty years,—

First. Actions for the recovery of real property, or for the recovery of the possession thereof; and no action shall be maintained for such recovery unless it shall appear that the plaintiff, his ancester, predecessor, or grantor was seized or possessed of the premises in question within twenty years before the commencement of the action: Provided, In all cases where a cause of action has already accrued, and the period prescribed in this secton within which an action may be brought has expired or will expire within twenty years from the approval of this act, an action may be brought on such cause of action within two years from date of the approval of the act.

Second. An action upon a judgment or decree of any court of the United States, or of any State or Territory within the United States.

Third. An action upon a sealed instrument.

Within six years.

(B) Within six years,—

First. An action upon a contract or liability, express or implied, excepting those mentioned in (A Third) of this section.

Second. An action upon a liability created by statute, other than a penalty or forfeiture.

Third. An action for waste or trespass upon real property.

Fourth. An action for taking, detaining, or injuring personal property, including an action for the specific recovery thereof.

Within three years.

(C) Within three years,—

First. An action against a sheriff, peace officer or coroner, upon a liability incurred by the doing of an act in his official capacity or in virtue of his office; or by the omission of an official duty, including the nonpayment of money collected upon an execution. But this section shall shall not apply to an action for an escape.

Second. An action upon a statute for penalty or forfeiture, where the action is given to the party aggrieved, or to such party and the People or Municipality, except where the statute imposing it prescribes a different limitaton.

Within two years.

(D) Within two years,—

First. An action for libel slander, assault, battery, seduction, false imprisonment, or for any injury to the person or rights of another not arising on contract and not herein especially enumerated.

Second. An action upon a statute for a forfeiture or penalty.

Within one year.

(E) Within one year,—

An action against the sheriff, peace officer, or other officer for the escape of a person arrested or imprisoned on civil process.

Actions not before provided for

Section 3.—An action for any cause not hereinefore provided for shall be commenced within ten years after the cause of action shall have accrued.

Section 4.—In an action brought to recover a balance due upon a mutual, open, and current account, where there have been reciprocal demands between the parties, the cause of action shall be deemed to have accrued from the date of the last item proved in the account on either side.

When cause of action accrues upon current accounts.

Section 5.—The limitations prescribed in this chapter shall apply to actions brought in the name of any public corporation in the district, or for its benefit, in the same manner as to actions by private parties.

Limitations in actions by public corporations.

Section 6.—An action shall be deemed commenced when the complaint is filed and the summons issued.

When actions deemed commenced.

Section 7.—If, when the cause of action shall accrue against any person who shall be out of the district or concealed therein, such action may be commenced within the terms herein respectively limited, after the return of such person into the district or the time of his concealment; and if, after such cause of action shall have accrued, such person shall depart from and reside out of the district, or conceal himself, the time of his absence or concealment shall not be deemed or taken as any part of the time limited for the commencement of such action.

Exceptions when defendant out of district.

Section 8.—If any person entitled to bring an action mentioned in this chapter, or to recover real property or for a penalty or forfeiture, or against a sheriff or other peace officer for an escape, be at the time the cause of action accrued, either,—

Exceptions in favor of persons under legal disability.

First. Within the age of twenty-one years; or

Second. Insane; or

Third. Imprisoned on a criminal charge, or in execution under sentence of a court for a term less than his natural life.

The time of such disability shall not be a part of the time limited for the commencement of the action, but the period within which the action shall be brought shall not be extended in any case longer than two years after such disability ceases.

Section 9.—If a person entitled to bring an action die before the expiration of the time limited for the commencement thereof, and the cause of action survive, an action may be commenced by his personal representatives, after the expiration of the time and within one year from his death. If a person against whom an action may be brought die before the expiration of the time limited for the commencement thereof, and the cause of action survives, an action may be commenced against his personal representatives after the expiration of that time, and within six months after the issuing of letters testamentary or of administration.

Provisions when person entitled dies before time expires.

Section 10.—When the commencement of an action is stayed by injunction or a statutory prohibition, the time of the continuance of the injunction or prohibition shall not be a part of the time limited for the commencement of the action.

Time of stay by injunction or statutory prohibition to be deducted.

Section 11.—No person shall avail himself of a disability unless it existed when his right of action accrued.

Disability must exist when right of action accrued.

Section 12.—When two or more disabilities shall exist at the time the right of action accrues the limitation shall not attach until all such disabilities are removed.

When several disabilities, limitation does not attach until all removed.

Section 13.—No acknowledgment or promise shall be sufficient evidence of a new or continuing contract, whereby to take the case out of the operation of this chapter, unless the same is contained in some writing, signed by the party to be charged thereby; but this section shall not alter the effect of any payment of principal or interest.

Acknowledgment or new promise must be in writing.

Limitation to commence from time of last payment.

Section 14.—Whenever any payment of principal or interest has been or shall be made upon an existing contract, whether it be a bill of exchange, promissory note, bond, or other evidence of indebtedness, if such payment be made after the same shall have become due, the limitation shall commence from the time the last payment was made.

Nonresident, cause of action; when barred.

Section 15.—When the cause of action has arisen in any State, Territory, or country between nonresidents of this District, and by the laws of the State, Territory, or country where the cause of action arose an action can not be maintained thereon by reason of the lapse of time, no action shall be maintained thereon in the District.

When action for wrong not to abate.

Section 12.—An action for a wrong shall not abate by the death of any party after the decision has been given therein, but the action shall proceed thereafter in the same manner as in cases where the cause of action survives.

When third persons may be substituted as defendants.

Section 13.—In any action for the recovery of specific personal property, if a third person demand of the defendant the same property, the court, in its discretion, on motion of the defendant, and notice to such person and the adverse party, may, before answer, make an order discharging the defendant from liability to either party and substitute such person in his place as defendant. Such order shall not be made but on condition that the defendant deliver the property or its value to such person as the court may direct, nor unless it appears from the affidavit of the defendant, filed with the clerk by the day he is otherwise required to answer, that such person makes such demand without collusion with the defendant. The affidavit of such third person as to whether he makes such demand of the defendant may be read on the hearing of the motion.

Who may be made parties to action.

Section 14.—All persons having an interest in the subject of the action, and in obtaining the relief demanded, may be joined as plaintiffs, except as in this chapter otherwise provided. Any person may be made a defendant who has or claims any interest in the controversy adverse to the plaintiff or who is a necessary party to the complete determination or settlement of the question involved therein.

Who must be made parties to action.

Section 15.—Of the parties to the action those who are united in interest must be joined as plaintiffs or defendants; but if the consent of anyone who should have been joined can not be obtained, he may be made a defendant, the reason thereof being stated in the complaint; and when the question is one of a common or joint interest of many persons, or when the parties are numerous and it may be impracticable to bring them all into court, one or more may sue or defend for the benefit of the whole.

When court to decide controversy or order other parties brought in.

Section 16.—The court may determine any controversy between parties before it when it can be done without prejudice to the rights of others, or by saving their rights; but when a complete determination of the controversy can not be had without the presence of other parties, the court shall cause them to be brought in.

Who may intervene.

Section 17.—Any person may, before the trial, intervene in an action or proceeding, who has an interest in the matter of litigation, in the success of either of the parties or an interest against both. An intervention takes place when a third person is permitted to become a party to an action or proceeding, either by joining the plaintiff in claiming what is sought by the complaint, or by uniting with the defendant in resisting the claim of the plaintiff, or by demanding anything adversely to both the plaintiff and the defendant, and is made by complaint setting forth the ground upon which the intervention rests, filed by leave of the court and served upon the parties to the action or proceeding who have not appeared, and upon the attorneys of the parties who have appeared, who may answer or demur to it as if it were an original complaint.

CHAPTER FOUR.

OF THE MANNER OF THEIR COMMENCEMENT.

How actions commenced.

Section 1.—Civil actions shall be instituted by filing a complaint with the clerk of the court. At any time after the action is commenced the plaintiff may cause a summons to be served on the defendant.

Requisites of summons.

Section 2.—The summons shall contain the name of the court in which the complaint is filed, the names of the parties to the action, and the title thereof. It shall be issued by the court or the clerk thereof and directed to the defendant, and shall require him to appear and answer the complaint as in this section provided, or judgment for want thereof will be taken against him. The defendant shall appear and answer the complaint within twenty days from the date of the service.

Summons to contain notice of what plaintiff demands.

Section 3.—There shall also be inserted in the summons a notice in substance as follows:

First. In any action for the recovery of money or damages only that the plaintiff will take judgment for a sum specified therein if the defendant fail to answer the complaint.

Second. In other actions, that if the defendant fail to answer the complaint the plaintiff will apply to the court for the relief demanded therein.

By whom served and and where and when returned.

Section 4.—The summons shall be served by the sheriff or any other deputy or peace officer. The summons shall be returned to the court or the clerk thereof with whom the complaint is filed within ten days after its delivery to the officer for service, with proof of such service of that the defendant can not be found. The sheriff or other officer to whom the summons is delivered shall indorse thereon the date of such delivery.

How served and upon whom.

Section 5.—The summons shall be served by delivering a copy threof, together with a copy of the complaint prepared and certified by the plaintiff, his agent, or attorney, or by the clerk of the court as follows:

First. If the action be against a private corporation, to the president or other head of the corporation, secretary, cashier, or managing agent, or, in case none of the officers of the corporation above named shall reside or have an office in the District, then to any clerk or agent of such corporation who may reside or be found in the District, or if no such officer be found, then by leaving a copy thereof at the residence or usual place of abode of such clerk or agent.

Second. If against a person judicially declared to be of unsound mind, or incapable of conducting his own affairs and if a guardian has been appointed, to such guardian and to the defendant personally.

Third. If against a minor to such minor personally, and also to his father, mother, or guardian, or if there be none within the District then to any person having the care or control of such minor, or with whom he resides, or in whose service he is employed.

Fourth. In all cases, to the defendant personally, or if he is not found, to some person of the family above the age of fourteen years at the dwelling house or usual place of abode of the defendant or at the defendant's place of business to the manager thereof.

When order for publication may be made.

Section 6.—When service of the summons can not be made as prescribed in the last preceding section, and the defendant after due diligence can not be found within the District, and when that fact appears by affidavit to the satisfaction of the court or judge thereof, or police judge in an action in a police court, and it also appears, that a cause of action exists against the defendant, or that he is a proper party to an action relating to real or personal property in the District the court or judge thereof shall grant an order that

the service be made by publication of the summons in either of the following cases:

First. When the defendant is a foreign corporation, and has property within the District, or the cause of action arose therein;

Second. When the defendant, being a resident of the District, has departed therefrom with intent to defraud his creditors or to avoid the service of the summons, or with like intent keeps himself concealed therein, or has departed from the District and remained absent therefrom six consecutive weeks;

Third. When the defendant is not a resident of the District, but has property therein, and the court has jurisdiction of the subject of the action;

Fourth. When an action is to have a marriage declared void, or for a divorce in the cases prescribed by law;

Fifth. When the subject of the action is personal property in the District, and the defendant has a claim or lien, of interest, actual or contingent, therein, or the relief demanded consists wholly or partly in excluding the defendant from any interest or lien therein;

Sixth. When the action is to foreclose, satisfy, or redeem from a mortgage, or to enforce a lien of any kind on real estate in said District, or satisfy or redeem from the same. The summons published shall contain the name of the court and the title of the cause, a succinct statement of the relief demanded, the date of the order for service by publication, and the time within which the defendant is required to answer the complaint.

Publication, how made, personal service out of the District.

Section 7.—The order shall direct the publication to be made in a newspaper designated by the court or judge as the most likely to give notice to the person to be served, and for such length of time as may be deemed reasonable, not less than once a week for six weeks. In case of publication, the court or judge shall also direct a copy of the summons and complaint to be forthwith deposited in the post office, directed to the defendant at his place of residence, unless it shall appear that such residence is neither known to the party making the application nor can with reasonable diligence be ascertained by him. When publication is ordered, personal service of a copy of the summons and complaint out of the District shall be equivalent to publication and deposit in the post office. In either case, the defendant shall appear and answer within thirty days after the completion of such period of publication. In case of personal service out of the District, the summons shall specify the time prescribed in the other for duplication.

When defendant may be allowed to defend after judgment.

Section 8.—The defendant against whom publication is ordered, or his personal representatives, on application and sufficient cause shown, at any time before judgment shall be allowed to defend the action; and the defendant against whom publication is ordered, or his representatives, may in like manner, upon good cause shown, and upon such terms as may be proper, be allowed to defend after judgment and within one year after the entry of such judgment on such terms as may be just; and if the defense be successful, and the judgment or any part thereof have been collected or otherwise enforced, such restitution may thereupon be compelled as the court shall direct. But the title to property sold upon execution issued on such judgment to a purchaser in good faith shall not be thereby affected.

When the summons is returned not found, how plaintiff may proceed.

Section 9.—Whenever it shall appear by the return of the sheriff or officer that the defendant is not found, the plaintiff may deliver another summons to be served, and so on, until service be had; or the plaintiff may proceed by publication, as in this chapter provided, at his election.

When summons not served on all the defendants

Section 10.—When the action is against two or more defendants, and the summons is served on one or more but not all of them, the plaintiff may proceed as follows:

First. If the action be against defendants jointly indebted upon a contract, he may proceed against the defendants served, unless the court otherwise direct; and if he recover judgment, it may be entered against all the defendants thus jointly indebted so far only as that it may be enforced against the joint property of all and the separate property of the defendant served, and if they are subject to arrest, against the persons of the defendants served; or,

Second. If the action be against the defendants severally liable, he may proceed against the defendants served in the same manner as if they were the only defendants; or,

Third. If all the defendants have been served, judment may be taken against any or either of them severally, when the plaintiff would be entitled to judgment against such defendant or defendants, if the action had been against them, or any of them alone.

Proof of service of summons.

Section 11.—Proof of the service of the summons, or of the deposit thereof in the post office, shall be as follows:

First. If the service or deposit in the post office be by the sheriff or officers, the certificate of such officer, or,

Second. If by any other person, his affidavit thereof, or,

Third. In case of publication, the affidavit of the publisher or his representative, together with a copy of the publication, or,

Fourth. The written admission of the defendant in case of service otherwise than by publication; the certificate, affidavit, or admission must state the time and place of service; and in case of deposit in the post office, the time and place thereof.

When court acquires jurisdiction.

Section 12.—From the time of the service of the summons or the allowance of a provisional remedy the court shall be deemed to have acquired jurisdiction and to have control of all the subsequent proceedings. A voluntary appearance of the defendant shall be equivalent to personal service of the summons upon him.

CHAPTER FIVE.

OF THE PLEADINGS.

Pleadings admiralty omitted.

Section 1.—All the forms of pleading heretofore existing in actions at law and suits in equity are abolished, and hereafter the forms of pleading in causes in law and equity in courts of record and the rules by which the sufficiency of such pleadings is to be determined shall be those prescribed by this code.

Pleadings on the part of plaintiff-defendant.

Section 2.—The only pleadings on the part of the plaintiff shall be—

First. The complaint; or,
Second. The demurrer; or,
Third. The reply,

And on the part of the defendant—
First. The demurrer; or,
Second. The answer.

CHAPTER SIX.

OF THE COMPLAINT.

First pleading to be complaint.

Section 1.—The first pleading on the part of the plaintiff shall be the complaint.

What complaint to contain.

Section 2.—The complaint shall contain;

First. The title of the cause, specifying the name of the court and the names of the parties to the action, plaintiff and defendant.

Second. A plain and concise statement of the facts constituting the cause of action, without unnecessary repetition.

Third. A demand of the relief which the plaintiff claims. If the recovery of money or damages be demanded the amount thereof shall be stated.

CHAPTER SEVEN.

OF THE DEMURRER.

When defendant may demur and for what.

Section 1.—The defendant may demur to the complaint within the time required by law to appear and answer, when it appears upon the face thereof, either,—

First. That the court has no jurisdiction of the person of the defendant of the subject of the action; or,

Second. That the plaintiff has no legal capacity to sue; or,

Third. That there is another action pending between the same parties for the same cause; or,

Fourth. That there is a defect of parties plaintiff or defendant; or,

Fifth. That several causes of action have been improperly united; or,

Sixth. That the complaint does not state facts sufficient to constitute a cause of action; or,

Seventh. That the action has not been commenced within the time limited by this code.

Demurrer must specify ground of of objection.

Section 2.—The demurrer shall distinctly specify the grounds of objection to the complaint; unless it does so it may be disregarded. It may be taken to the whole complaint or to any of the alleged causes of action stated therein.

How to proceed if complaint be amended.

Section 3.—If the complaint be amended, a copy thereof shall be served on the defendant or his attorney, and the defendant shall answer the same within such time as may be prescribed by the court, and if he omit to do so the plaintiff may proceed to obtain judgment as in other cases of failure to answer.

Objection when taken by answer.

Section 4.—When any of the matters enumerated in section one of this chapter do not appear upon the face of the complaint the objection may be taken by answer.

Objection when deemed waived.

Section 5.—If no objection be taken, either by demurrer or answer, the defendant shall be deemed to have waived the same, excepting only the objection to the jurisdiction of the court and the objection that the complaint dose not state facts sufficient to constitute a cause of action.

CHAPTER EIGHT.

OF THE ANSWER.

Section 1.—The answer of the defendant shall contain:—

What the answer shall contain.

First. A general or specific denial of each material allegation of the complaint controverted by the defendant, or of any knowledge or information thereof sufficient to form a belief.

Second. A statement of any new matter constituting a defense or counterclaim in ordinary and concise language without repetition.

Section 2.—The counterclaim mentioned in the last preceding section must be one existing in favor of the defendant and against a plaintiff, between whom a several judgment might be had in the action, and arising out of the following causes of action:

Nature of counter claim and how stated.

First. A cause of action arising out of the contract or transaction set forth in the complaint as the foundation of the plaintiff's claim.

Second. In an action arising on the contract, any other cause of action arising on contract, and existing at the commencement of the action.

The defendant may set forth by answer as many defenses and counterclaims as he may have. They shall each be separately stated and refer to the causes of action which they are intended to answer in such manner that they may be intelligibly distinguished.

Section 3.—The defendant may demur to one or more of several causes of action stated in the complaint and answer the residue.

The defendant may demur to one or more of several causes of action and answer the rest.

Section 4.—Sham, frivolous, and irrelevant answers and defenses may be striken out on motion, and upon such terms as the court may in its discretion impose.

Sham and irrelevant answers stricken out on motion.

CHAPTER NINE.

OF THE REPLY.

Reply, when made and what to contain.

Section 1.—When the answer contains new matter, constituting a defense or counterclaim, the plaintiff may reply to such new matter, denying generally or specifically each allegation controverted by him or any knowledge or information thereof sufficient to form a belief; and he may allege in ordinary and concise language, without repetition, any new matter not inconsistent with the complaint, constituting a defense to such new matter in the answer.

When plaintiff may demur to new matter in answer.

Section 2.—The plaintiff may demur to an answer containing new matter when it appears upon the face thereof that such new matter does not constitute a defense or counterclaim; or he may, for like cause, demur to one or more of such defenses or counterclaims and reply to the residue.

When defendant may move for judgment on answer.

Section 3.—If the answer contain a statement of new matter, constituting a defense of counterclaim, and the plaintiff fail to reply or demur thereto within the time prescribed by law or rule of the court, the defendant may move the court for such judgment as he is entitled to on the pleadings.

When defendand may demur to reply.

Section 4.—The defendant may demur to any new matter contained in the reply when it appears upon the face thereof that such matter is not a sufficient reply to the facts stated in the answer. Sham, frivolous, and irrelevant replies may be striken out in like manner and on the same terms as like answers and defenses.

CAPTER TEN.

OF THE GENERAL RULES OF PLEADING.

Verification of pleadings.

Section 1.—Every pleading shall be subscribed by the party or his attorney, and, except a demurrer, shall also be verified by the party, his agent or attorney, to the effect that he believes it to be true. The verification must be made by the affidavit of the party, or, if there be several parties united in interest and pleading together, by one, at least, of such parties, if such parties be within the district and capable of making the affidavit; otherwise the affidavit may be made by the agent or attorney of the party. The affidavit may also be made by the agent or attorney if the action or defense be founded on a written instrument for the payment of money only, and such instrument be in the possession of the agent or attorney, or if all the material allegations of the pleading be within the personal knowledge of the agent or attorney. When the affidavit is made by the agent or attorney, it must set forth the reason of his making it. When a corporation is a party, the verification may be made by any officer thereof upon whom service of a summons might be made, and when the People or Municipality, or any officer thereof in its behalf, is a party, the verification may be made by any person to whom all the material allegations of the pleading are known.

When verification may be omitted.

Section 2.—When, in the judgment of the court, an answer to an allegation in any pleading might subject the party answering to a prosecution for felony, the verification of the answer to such allegation may be omitted.

When pleadings filed.

Section 3.—The answer or demurrer to the complaint shall be filed with the clerk by the time required to answer, and the demurrer, or reply thereto, as the case may be, must in like manner be filed by the first day of the next term of the court, or within such time as the court may allow after the filing of the answer to the complaint, if the same be filed in term time. A demurrer to a reply must be filed in the manner and within the time required to file a demurrer to an answer. A motion to strike out a pleading for want of verification or subscription, or because several causes of action or defense therein are not pleaded separately, or for other cause, or a sham, frivolous, or irrelevant pleading or redundant matter therein, shall be made within the time for answering such pleading.

Motion to strike out.

Manner of pleading an account.

Section 4.—A party may set forth in a pleading the items of any account therein alleged, or file a copy thereof, with the pleading verified by his own oath, or that of his agent or attorney, if within the personal knowledge of such agent or attorney, to the effect that he believes it to be true. If he do neither, he shall deliver to the adverse party, within five days after a demand thereof in writing, a copy of the account, verfied as in this section provided, or be precluded from giving evidence thereof. The court or judge thereof may order a further account when the one filed or delivered is defective.

How pleadings construed.

Section 5.—In the construction of a pleading for the purpose of determining its effect, its allegation shall be liberally construed, with a view of substantial justice between the parties.

Irrelevant and redundant matter may be be stricken out.

Section 6.—If irrelevant or redundant matter be inserted in the pleading, it may be stricken out on motion of the adverse party; and when the allegations of a pleading are so indefinite or uncertain that the precise nature of the charge or defense is not apparent the Court may require the pleading to be made definite and certain by amendment.

Judgment, how pleaded.

Section 7.—In pleading a judgment or other determination of a court or officer of special jurisdiction it shall not be necessary to state the fatcs conferring jurisdiction, but such judgment or determination may be stated to have been duly given or made. If such allegation be controverted, the party pleading shall be bound to establish on the trial the facts conferring jurisdiction.

Conditions precedent, how pleaded.

Section 8.—In pleading the performance of a condition precedent in a contract it shall not be necessary to state the facts showing such performance, but it may be stated generally that the party duly performed all the conditions on his part; and if such allegations be controverted the party pleading shall be bound to establish on the trial the facts showing such performance.

Private statute, how pleaded.

Section 9.—In pleading a private statute, or a right derived therefrom, it shall be sufficient to refer to such statute by its title and the day of its passage, and the court shall thereupon take judicial notice thereof.

Libel or slander, how pleaded.

Section 10.—In an action for libel or slander it shall not be necessary to state in the complaint any extrinsic facts for the purpose of showing the application to the plaintiff of the defamatory mater out of which the cause of action arose, but it shall be sufficient to state generally that the same was published or spoken concerning the plaintiff, and if such allegation be controverted the plaintiff shall be bound to establish on trial that it was so published or spoken.

What may be pleaded in answer in such case.

Section 11.—In the actions mentioned in the last section the defendant may, in his answer, allege both the truth of the matter charged as defamatory and any mitigating circumstances to reduce the amount of damages; and whether he prove the justification or not he may give in evidence the mitigating circumstances.

Answer in action to recover the possession of property distrained.

Section 12.—In an action to recover the possession of property distrained doing damage, an answer that the defendant or person by whose command he acted was lawfully possessed of the real property upon which the distress was made, and that the property distrained was at the time doing damage thereon, shall be good without setting forth the title to such real property.

What causes of action may be united in same complaint.

Section 13.—The plaintiff may unite several causes of action in the same complaint when they all arise out of—

First. Contract, express or implied; or

Second. Injuries, with or without force, to the person; or

Third. Injuries, with or without force, to property; or

Fourth. Injuries to character; or

Fifth. Claims to recover real property, with or without damages for the withholding thereof; or

Sixth. Claims to recover personal property, with or without damages, for the withholding thereof; or

Seventh. Claims against a trustee by virtue of a contract or by operation of law.

But the causes of action so united must all belong to one only of these classes, must effect all the parties to the action, and must be separately stated.

Material allegation not denied to be deemed true.

Section 14.—Every material allegation of the complaint not controverted by the answer, and every material allegation of new matter in the answer not controverted by the reply, shall, for the purpose of the action, be taken as true; but the allegation of new matter in a reply is to be deemed controverted by the adverse party as upon a direct denial or the avoidance, as the case may require.

What is material allegation.

Section 15.—A material allegation in a pleading is one essential to the claim or defense, and which could not be striken from the pleading without leaving it insufficient as to such claim or defense.

CHAPTER ELEVEN.

OF MISTAKES IN PLEADINGS AND AMENDMENTS.

When variance deemed material.

Section 1.—No variance between the allegation in a pleading and the proof shall be deemed material, unless it shall have actually misled the adverse party to his prejudice in maintaining his action or defense upon the merits. Whenever it shall be alleged that a party has been so misled, that fact shall be proved to the satisfaction of the court, and in what respect he has been misled; and thereupon the court may order the pleading to be amended upon such terms as shall be just.

When variance not material.

Section 2.—When the variance is not material, as provided in the last section, the court may direct the fact to be found according to the evidence, or may order an immediate amendment, without costs.

What deemed a failure of proof.

Section 3.—When, however, the allegation of the cause of action or defense to which the proof is directed is unproved, not in some particular or particulars only, but in its entire scope and meaning, it shall not be deemed a case of variance within the last two sections, but a failure of proof.

What pleading may be amended of course.

Section 4.—Any pleading may be once amended by the party, of course, without costs and without prejudice to the proceedings already had, at any time before the period for answering it shall expire; in such a case a copy of the amended pleading shall be served on the adverse party before the expiration of said period.

Amendments and pleading over after demurrer.

Section 5.—After the decision upon a demurrer, if it be overruled, and it appears that such demurrer was interposed in good faith, the court may, in its discretion, allow the party to plead over, upon such terms as may be proper. If the demurrer be sustained the court may, in its discretion, allow the party to amend the pleading demurred to, upon such terms as may be proper.

Amendments allowed by court before trial or submission.

Section 6.—The court may, at any time before trial, in furtherance of justice, and upon such terms as may be proper, allow any pleading or proceeding to be amended by adding the name of a party, or other allegation material to the cause, and in like manner and for like reasons it may, at any time before the cause is submitted, allow such pleading or proceeding to be amended, by striking out the name of any party, or by correcting a mistake in the name of a party, or a mistake in any other respect, or when the amendment does not substantially change the cause of action or defense, by conforming the pleading or proceeding to the facts proved.

Court may enlarge time to plead, or relieve party from judgment.

Section 7.—The court may likewise, in its discretion and upon such terms as may be just, allow an answer or reply to be made or other act to be done after the time limited by this code, or by an order enlarge such time; and may also, in its discretion, and upon such terms as may be just, at any time within one year after notice thereof, relieve a party from a judgment, order, or other proceeding taken against him through his mistake, inadvertence, surprise, or excusable neglect.

When defendant may be sued by fictitious name.

Section 8.—When the plaintiff shall be ignorant of the name of a defendant, such defendant may be designated in any pleading or proceeding by any name; and when his true name shall be discovered, the pleading or proceeding may be amended accordingly.

Amended pleadings before trial to be new pleadings.

Section 9.—When any pleading or proceeding is amended before trial, mere clerical errors excepted, it shall be done by filing a new pleading, to be called the amended complaint, or otherwise, as the case may be. Such amended pleading shall be complete in itself without reference to the original or any preceding amended one.

Pleading not verified, or containing several causes of action or defense not separately stated, may be stricken out.

Section 10.—Any pleading not duly verified and subscribed may, on motion of the adverse party, be stricken out of the case. When any pleading contains more than one cause of action or defense, if the same be not pleaded separately, such pleading may, on motion of the adverse party, be striken out of the case. When a motion to strike out is allowed, the court may, upon such terms as may be proper, allow the party to file an amended pleading, or if the motion be disallowed, and it appear to have been made in good faith, the court may, upon like terms, allow the party to plead over.

No error to be regarded unless it affect substantial rights.

Section 11.—The court shall, in every stage of an action, disregard any error or defect in the pleadings or proceedings which shall not affect the substantial rights of the adverse party.

Supplemental pleadings.

Section 12.—The plaintiff and defendant, respectively may be allowed on motion to make a supplemental complaint, answer, or reply, alleging facts material to the case occurring after the former complaint, answer, or reply. Copies of all pleading subsequent to the complaint must be served upon the adverse party or his attorney.

CHAPTER TWELVE.

OF ARREST AND BAIL.

Section 1.—No person shall be arrested in any civil action at law, except as provided in this section, provided, however, that no person shall be detained in custody for a longer period than three months on civil arrest. The defendant may be arrested in the following cases:

When defendant may be arrested.

First. In an action for the recovery of money or damages when the defendant is about to remove from the District with intent to defraud his creditors, or when the action is for any injury to person, or for wilfully injuring or wrongfully taking, detaining, or converting property.

Second. In an action for a fine or penalty, or for money, or property embezzled or fraudulently missaplied or converted to his own use by a public officer, or by an attorney, or by an officer or agent of a corporation in the course of his employment as such, or by any factor, agent, broker, or other person in a fiduciary capacity, or for any misconduct or neglect in office or in a professional employment.

Third. In an action to recover the possession of personal property unjustly detained, when the property or any part thereof has been concealed, removed, or disposed of, so that it can not be found or taken by the sheriff, and with intent that it should not be so found or taken, or with the intent to deprive the plaintiff of the benefit thereof.

Fourth. When the defendant has been guilty of a fraud in contracting a debt, or incurring the obligation for which the action is brought, or in concealing or disposing of the property for the taking, detention, or conversion of which the action is brought.

Fifth. When the defendant has removed or disposed of his property, or is about to do so, with intent to defraud his creditors.

But no female shall be arrested in any action except for injury to person, character or property.

Section 2.—The mode of proceeding to obtain the arrest of the defendant for any of the causes specified in the section last preceding shall be as provided in this section:

Proceeding to obtain an arrest.

First.—At any time after the commencement of an action at law, and before judgment, the plaintiff in such action shall, in the discretion of the court, or the judge thereof be entitled to a writ of arrest for such defendant whenever he shall make and file with the clerk of the court in which such action is commenced, or is at the time pending, an affidavit that the plaintiff has a sufficient cause of action therein, and that the case is one of those mentioned in the section last preceding; and shall also make and file with such clerk an undertaking with sufficient sureties, in a sum not less than one hundred dollars, and equal to the amount for which the plentiff prays judgment.

Such undertaking shall be conditioned that the plaintiff will pay all costs that may be adjudged to the defendant and all damages which he may sustain by reason of the arrest if the same be wrongful or without sufficient cause, not exceeding the amount specified in the undertaking.

Second. The affidavit may be either positive or upon information and belief; but if the latter, it shall state the facts upon which the belief is founded. The plentiff shall also file with his undertaking the affidavits of the sureties therein, from which it must appear that such sureties are residents of the District, and that they are, taken together, worth double the amount of the sum specified in the undertaking over all debts and liabilities and property exempt from execution. No person not qualified to become bail upon arrest is qualified to become surety in an undertaking for an arrest.

Third. The writ of arrest shall be issued by the court or judge, in his or its discretion, and shall require the sheriff forthwith to arrest the defendant and hold him to bail in the amount specified in the undertaking, and that in default thereof he keep him in custody until discharged by law, and to return the writ to the court from which it issued, with his doings indorsed thereon, when required by the plaintiff at any time before the defendant may be arrested, or afterwards whenever the defendant shall have been discharged from the arrest on bail or otherwise.

Fourth. The plaintiff shall deliver or cause to be delivered to the sheriff with the writ a copy of the affidavit upon which the warrant was issued, subscribed by himself or attorney. The sheriff, upon the delivery of the writ, shall endorse thereon the date of the receipt and upon the arrest of the defendant shall deliver to him a copy of the writ and such copy of the affidavit. The sheriff shall execute the writ by arresting the defendant and keeping him in custody until discharged by law.

Defendant may be discharged on bail or deposit.

Section 3.—The defendant, at any time before execution, shall be discharged from the arrest, either upon giving bail or upon depositing the amount mentioned in the writ of arrest, as provided in this chapter.

Bail, how given.

Section 4.—The defendant may give bail by causing a written undertaking to be executed in favor of the plaintiff by sufficient sureties, stating their places of residence, to the effect that the defendant shall at all times render himself amenable to the process of the court during the pendency of the action, and to such as may be issued to enforce the judgment therein, or if he be arrested for the cause mentioned in the third subdivision of section one of this chapter, an undertaking to the same effect as that provided by section five of chapter thirteen of this Title.

Bail, how proceeded against.

Section 5.—In case of the failure to comply with the undertaking, the bail may be proceeded against by action only.

How exonerated.

Section 6.—The bail may be exonerated, either by the death of the defendant or his imprisonment in the penitentiary, or by his legal discharge from the obligation to render himself amenable to the process.

Delivery of copy of undertaking.

Section 7.—Within three days after the execution of the undertaking of the bail the sheriff or deputy having the defendant in custody shall deliver to the plaintiff or his attorney, or such other person as the plaintiff may direct, a certified copy of the undertaking, with the date of the arrest indorsed thereon. In any other case the sheriff may mail such copy within the same time to the plantiff or his attorney, within the district, or to either of them as the plaintiff may direct. The plaintiff, within ten days from the delivery of such copy, or fifteen days from the mailing of the same, if sent by mail, may serve upon the sheriff or deputy for the defendant in custody a notice that he does not accept the bail, or he shall be deemed to have accepted it, and the sheriff shall be exonerated from liability. If no notice be served within ten days, the original undertaking shall be filed with the court where the action is pending.

Notice of justification of bail.

Section 8.—On the receipt of such notice the sheriff or defendant may, within ten days thereafter, give to the plaintiff or his attorney notice of the justification of the same or other bail, specifying the place of residence and occupation of the latter, before the Judge of the District Court or clerk of the court where the action is pending, at a specified time and place, the time to be not less than five nor more than ten days thereafter. In case other bail be given, there shall be a new undertaking, in the form and to the effect prescribed in section four of this chapter.

Qualifications of bail.

Section 9.—The qualifications of bail shall be as follows:

First.—Each of them shall be a resident within the district; but no counselor or attorney-at-law, sheriff, deputy sheriff, police officer, clerk of any

court, or other officer of any court shall be permitted to become bail in any action.

Second. Each of them shall be worth the amount specified in the writ of arrest, or the amount to which the same may be reduced as provided in this chapter, over and above all debts and liabilities, and exclusive of property exempt from execution; but the judge, or clerk on justification may allow more than two sureties to justify severally in amounts less than that expressed in the writ, if the whole justification shall be equivalent to that of two sufficient bail.

Justification of bail.

Section 10.—For the purpose of justification each of the bail shall attend before the judge, or clerk at the time and place mentioned in the notice, and may be examined on oath, on the part of the plaintiff, touching his sufficiency, in such manner as the judge, or clerk in his discretion may think proper. The examination shall be reduced to writing and subscribed by the bail, if required by the plaintiff.

Allowance of bail.

Section 11.—If the judge, or clerk shall find the bail sufficient, he shall annex the examination to the undertaking, indorse his allowance thereon, and cause them to be filed with the clerk of the court in which the action is pending; and the sheriff shall thereupon be exonerated from liability.

Deposit of money in lieu of bail.

Section 12.—The defendant may at the time of his arrest, instead of giving bail, deposit with the sheriff the amont mentioned in the writ. Thereupon the sheriff shall give the defendant certificate of the deposit made and the defendant shall be discharged out of custody.

Payment by sheriff of deposit to clerk.

Section 13.—The sheriff shall, within ten days after the deposit, pay the same into the court, and take from the clerk receiving the same two certificates of such payment, the one of which he shall deliver to the plaintiff or his attorney and the other to the defendant. For any default in making such payment, the same proceedings may be had on the official bond of the sheriff to collect the sum deposited as in other cases of delinquency.

Bail may be given and deposit refunded.

Section 14.—If money be deposited, as provided in the last two sections, bail may be given and justified upon notice, as prescribed in section four of this chapter, at any time before judgment, and on the filing of the undertaking and justification with the clerk the money deposited shall be refunded by such clerk to the defendant.

Deposit, how applied or disposed of.

Section 15.—When money shall have been deposited, if it remain on deposit at the time of an order or judgment for the payment of money to the plaintiff, the clerk shall, under the direction of the court apply the same in satisfaction thereof, and, after satisfying the judgment, shall refund the surplus, if any, to the defendant. If the judgment be in favor of the defendant the clerk shall refund to him the whole sum deposited and remaining unapplied.

Plaintiff liable in the first instance for the maintenance of defendant.

Section 16.—There shall be allowed to the sheriff for the food and maintenance of any defendant arrested under the provisions of this chapter one dollar per day, and the plaintiff shall be liable in the first instance for such expense, and if required by the sheriff shall pay the same weekly in advance; and such expense so paid shall be added to the disbursements taxed or accruing in the case, and be collected as other disbursements.

When sheriff may discharge defendant for non-payment of maintenance.

Section 17.—If the plantiff shall neglect to pay such expense for three days after a demand of payment, the sheriff may discharge the defendant out of custody.

Motion to vacate writ of arrest.

Section 18.—A defendant arrested may, at any time before judgment, apply on motion to the court or judge thereof in which the action is pending, upon notice to the plaintiff, to vacate the writ of arrest.

Proceedings thereon.

Section 19.—If a motion be made upon affidavits or other proofs on the part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavits or other proofs in addition to those upon which the writ was issued. If upon the hearing of such motion it shall satisfactorily appear that there was not sufficient cause to allow the writ, or other good cause which would entitle him to be discharged on habeas corpus, the same shall be vacated, or in case he has given bail the court may discharge the same or reduce the amount thereof on good cause shown.

CHAPTER THIRTEEN.

OF THE RECOVERY OF PERSONAL PROPERTY.

When delivery may be claimed in an action for the possession of personal property.

Section 1.—In an action to recover possession of personal property the plaintiff, at any time after the action is commenced, and before judgment, may claim the immediate delivery of such property, as provided in this chapter.

Affidavit therefor, what it must show.

Section 2.—When a delivery is claimed an affidavit shall be made by the plaintiff, or by some one in his behalf, showing:—

First. That the plaintiff is the owner of the property claimed (particularly describing it) or is lawfully entitled to the possession thereof by virtue of a special property therein, the facts in respect to which shall be set forth;

Second. That the property is wrongfully detained by the defendant;

Third. The alleged cause of the detention thereof, according to his best knowledge, information and belief;

Fourth. That the same has not been taken for a tax, assesment or fine, pursuant to a statute, or seized under an execution or attachment against the property of the plaintiff; or, if so seized, that it is by statute exempt from such seizure; and

Fifth. The actual value of the property.

Endorsement thereon, requiring the sheriff to take property.

Section 3.—The plaintiff may thereupon by an indorsement in writing upon the affidavit, require the sheriff to take the property from the defendant and deliver it to the plaintiff.

Undertaking to sheriff on the part of plaintiff.

Section 4.—Upon the receipt of the affidavit and indorsement thereon, with a written undertaking executed by two or more sufficient sureties approved by the sheriff, to the effect that they are bound in double the value of the property as stated in the affidavit for the prosecution of the action for the return of the property to the defendant, if return thereof be adjudged, and for the payment to him of such sum as may for any cause be recovered against the plaintiff, the sheriff shall forthwith take the property described in the affidavit, if it be in the possession of the defendant or his agent, and retain it in his custody. He shall also, without delay, serve on the defendant a copy of the affidavit, indorsement thereon, and undertaking, by delivering the same to him personally, if he can be found, or to his agent from whose possession the property is taken; or, if neither can be found, by leaving them at the usual place of abode of either with some person of suitable age and discretion; or, if neither have any known place of abode, by putting them in the post office directed to the defendant at the post office nearest to him.

Exception to securities by defendant, proceedings thereon.

Section 5.—The defendant may, within three days after the service of a copy of the affidavit and undertaking give notice to the sheriff that he excepts to the sufficiency of the sureties. If he fail to do so, he shall be deemed to have waived all objection to them. When the defendant excepts, the sureties shall justify on notice in like manner as upon bail on arrest. And the sheriff shall be responsible for the sufficiency of the sureties until the objection to them is either waived, as above provided, or until they shall justify or new sureties shall be substituted and justified. If the defendant except to the sureties, he cannot reclaim the property, as provided in the next section.

How and when defendant entitled to redelivery.

Section 6.—At any time before the delivery of the property to the plaintiff the defendant may, if he do not except to the sureties of the plaintiff, require the return thereof upon giving to the sheriff a written undertaking, executed by two or more sufficient sureties, to be approved by the sheriff, to the effect that they are bound in double the value of the property as stated

in the affidavit of the plaintiff, for the delivery thereof to the plaintiff, if such delivery be adjudged, and for the payment to him of such sum as may, for any cause, be recovered against the defendant. If a return of the property be not so required within three days after the taking and service of a copy of the affidavit and undertaking of a defendant, it shall be delivered to the plaintiff, except as provided in section ten of this chapter.

Justification of sureties on defendant's untertaking.

Section 7.—The defendant's sureties, upon a notice to the plaintiff or his attorney of not less than two nor more than six days, shall justify before a Judge of the District Court, or the clerk of the court in which the action is pending, in the same manner as upon bail on arrest. Upon such justification the sheriff shall deliver the property to the defendant. The sheriff shall be responsible for the defendant's sureties until they justify, or until justification is completed or expressly waived, and may retain the property until that time; but if they or others in their place fail to justify at the time and place appointed he shall beliver the property to the plaintiff.

Qualification and justification of sureties.

Section 8.—Qualifications of sureties and their justification shall be the same as prescribed in respect to bail upon an order of arrest.

Power of sheriff when property concealed in building or inclosure.

Section 9.—If the property or any part thereof be concealed in a building or inclosure the sheriff shall publicly demand its delivery. If it be not delivered he shall cause the building or inclosure to be broken open and take the property into his possession, and if necessary he may call to his aid the power of the district.

Property, how kept and when delivered to plaintiff.

Section 10.—When the sheriff shall have taken the property as in this chapter provided, he shall keep it in a secure place and deliver it to the party entitled thereto upon receiving his lawful fees for taking and his necessary expenses for keeping the same.

Proceedings when property claimed by third persons.

Section 11.—If the property taken be claimed by any other person than the defendant or his agent, and such person made affidavit of his title thereto or his right, to the possession thereof, stating the grounds of such title or right, and serve the same upon the sheriff before the delivery of the property to the plaintiff, the sheriff shall not be bound to keep the property or deliver it to the plaintiff unless the plaintiff, on demand of him or his agent, shall indemnify the sheriff against such claim by an undertaking, executed by two sufficient sureties, accompanied by their affidavits that they are each worth double the value of the property as specified in the affidavit of the plaintiff, over and above their debts and liabilities, exclusive of property exempt from execution. And no claim to such property by any other person than the defendant or his agent shall be valid against the sheriff unless made as aforesaid; and notwithstanding such claim when so made he may retain the property a reasonable time to demand such indemnity.

Return of affidavit by sheriff.

Section 12.—The sheriff shall file the affidavit, with his proceedings thereon including an inventory of the property taken, with the clerk of the court in which the action is pending within twenty days after taking the property mentioned therein, or he may mail or forward the same to the clerk within that time.

CHAPTER FOURTEEN.

OF ATTACHMENT.

When plaintiff may have property of defendant attached.

Section 1.—The plaintiff, at the time of issuing the summons, or at any time afterwards, may have the property of the defendant attached as security for the satisfaction of any judgment that may be recovered, unless the defendant give security to pay such judgment, as in this chapter provided, in the following cases:

First. In an action upon a contract, express or implied for the direct payment of money, and which is not secured by mortgage, lien, or pledge upon real or personal property, or, if so secured, when such security has been rendered nugatory by the act of the defendant.

Second. In an action upon a contract, express or implied, against a defendant not residing in the District.

Writ of attachment, by whom issued, and for what causes.

Section 2.—A writ of attachment shall be issued by the clerk of the court in which the action is pending, whenever the plaintiff or anyone in his behalf shall make and file an affidavit showing:

First. That the defendant is indebted to the plaintiff (specifying the amount of such indebtedness over and above all legal set-offs or counterclaims) upon a contract, express or implied, for the direct payment of money, and that the payment of the same has not been secured by any mortgage, lien, or pledge upon real or personal property; and

Second. That the sum for which the attachment is asked is an actual, *bona fide*, existing debt, due and owing from the defendant to the plaintiff, and that the attachment is not sought nor the action prosecuted to hinder, delay, or defraud any creditor of the defendant.

Undertaking of plaintiff to be filed before writ issues.

Section 3.—Upon filing the affidavit with the clerk, the plaintiff shall be entitled to have the writ issued as soon thereafter as he shall file with the clerk his undertaking, with one or more sureties, in a sum not less than one hundred dollars, and equal to the amount for which the plaintiff demands judgment, and to the effect that the plaintiff will pay all costs that may be adjudged to the defendant, and all damages that he may sustain by reason of the attachment if the same be issued wrongfully or without sufficient cause, not exceeding the sum specified in the undertaking. With the undertaking the plaintiff shall also file the affidavits of the sureties from which affidavits it must appear that such sureties are qualified, and that, taken together, they are worth double the amount of the sum specified in the undertaking, over all debts and liabilities and property exempt from execution. No person not qualified to become bail upon an arrest is qualified to become surety in an undertaking for an attachment.

Writ to whom directed and what it shall require.

Section 4.—The writ shall be directed to the sheriff and shall require him to attach and safely keep all the property of such defendant not exempt from execution, or so much thereof as may be sufficient to satisfy the plaintiff's demand, the amount of which shall be stated in conformity with the complaint, together with costs and expenses.

What property may be attached.

Section 5.—The rights or shares which such defendant may have in the stock of any association or corporation, together with the interest and profits thereon, and all other property in the District of such defendant, not exempt from execution, shall be liable to be attached. The sheriff shall note upon the writ the date of its delivery to him, and shall make a full inventory of the property attached, and return the same with the writ.

Writ, how executed.

Section 6.—The sheriff or deputy to whom the writ is delivered shall execute the same without delay, as follows:

First. Real property shall be attached by leaving with the occupant thereof, or if there be no occupant, in a conspicuous place therein, a copy of the writ certified by the sheriff.

Second. Personal property capable of manual delivery to the sheriff, and not in the possession of a third person, shall be attached by taking it into his custody.

Third. Other personal property shall be attached by leaving a certified copy of the writ, and a notice specifying the property attached, with the person having possession of the same, or if it be a debt, then with the debtor, or if it be rights or shares in the stock of an association or corporation or interest or profits thereof, then with such person or officer of such association of corporation as this code authorizes a summons to be served upon.

Effect of attachment to third persons.

Section 7.—From the date of the attachment until it be discharged or the writ executed, the plaintiff as against third persons shall be deemed a purchaser in good faith and for a valuable consideration of the property, real or personal, attached, subject to the conditions prescribed in the next section as to real property. Any person, association, or corporation mentioned in subdivision three of the section last preceding, from the service of a copy of the writ and notice as therein provided, shall, unless such property, stock or debts be delivered, transferred, or paid to the sheriff, be liable to the plaintiff for the amount thereof until the attachment be discharged or any judgment recovered by him be satisfied.

When real property attached; certificate of sheriff.

Section 8.—If real property be attached, the sheriff shall make a certificate containing the title of the cause, the names of the parties, a description of such real property and a statement that the same has been attached at the action of the plantiff and the date thereof. Within ten days from the date of attachment, the sheriff shall deliver such certificate to the recorder of deeds for the district who shall file the same in his office and record it. When such certificate is so filed for record the lien in favir of the plantiff shall attach to the real property described in the certificate from the date of the attachment, but if filed afterwards it shall only attach, as against the third persons from the date of such subsequent filing.

Whenever such lien shall be discharged it shall be the duty of the recorder, when requested, to record the transcript of any order, entry of satisfaction of judgment, or other proceeding of record whereby it appears that such lien has been discharged in the records. The recorder shall also enter on the margin of the page on which the certificate is recorded a minute of the discharge, and the page and book where recorded.

When third persons must furnish certificate to sheriff.

Section 9.—Whenever the sheriff, with a writ of attachment against the defendant, shall apply to any person or officer mentioned in subdivision three of section six of this chapter, for the purpose of attaching any property mentioned therein, such person or officer shall furnish him with a certificate designating the amount and shall give a description of any property in his possession belonging to the defendant or any debt owing to the defendant, or the number of rights or shares of the defendant in the stock of the association or corporation, with any interest or profits or encumbrance thereon. If such person or officer refuse to do so, or if the certificate when given be unsatisfactory to the plaintiff, he may be required by the court or judge thereof, where the action is pending, to appear before him and be examined on oath concerning the same, and disobedience to such order may be punished as contempt.

Perishable property may be sold.

Section 10.—If any of the property attached be perishable, the sheriff shall sell the same in the manner in which property is sold on execution. The proceeds thereof and other property attached shall be retained by him to answer any judgment that may be recovered in the action, unless sooner subjected to execution upon another judgment. Personal property mentioned in subdivision three of section six of this chapter, may be delivered, transferred, or paid to

the sheriff without an action, and his receipt therefor shall be a sufficient discharge accordingly.

When sheriff may deliver property to defendant.

Section 11.—The sheriff may deliver any of the property attached to the defendant, or to any other person claiming it, upon his giving a written undertaking thereof, executed by two or more sufficient sureties, engaging to redeliver it or pay the value thereof to the sheriff, to whom execution upon a judgment obtained by the plaintiff in that action may be issued.

Defense to action upon such undertaking.

Section 12.—If an action be brought upon such undertaking against the principal or his sureties, it shall be a defense that the property for which the undertaking was given did not, at the execution of the writ of attachment, belong to the defendant against whom it was issued.

If judgment recovered by plaintiff, sheriff to apply property upon execution; remainder to be delivered to defendant.

Section 13.—If judgment be recovered by the plantiff, and it shall appear that the property has been attached in the action and has not been sold as perishable property or discharged from the attachment as provided by law, the court shall order and adjudge the property to be sold to satisfy the plaintiff's demands, and if execution issue thereon, the sheriff shall apply the property attached by him, or the proceeds thereof, upon the execution, and if there be any such property or proceeds remaining after satisfying such execution, he shall, upon demand, deliver the same to the defendant.

If judgment not recovered by plaintiff property returned to defendant.

Section 14.—If judgment be not recovered by the plaintiff, all the property attached; or the proceeds thereof, or the undertaking thereof, shall be returned to the defendant upon his serving upon the sheriff a certified copy of the order discharging the attachment.

How defendant may have an order for the return of the property.

Section 15.—Whenever the defendant shall have appeared in the action he may apply upon notice to the plaintiff to the court or judge where the action is pending or to the clerk of such court, for an order to discharge the attachment upon the execution of the undertaking mentioned in the next section; and if the application be allowed, all the proceeds of sales of property remaining in his hands shall be released from the attachment and delivered to the defendant upon his serving a certified copy of the order on the sheriff.

Undertaking of the defendant upon such order.

Section 16.—Upon such application the defendant shall deliver to the court or judge to whom the application is made an undertaking executed by one or more sureties, to the effect that the sureties will pay to the plaintiff the amount of the judgment that may be recovered against the defendant in the action. If the plaintiff demand it, the sureties shall be required to justify in the same manner as bail upon an arrest.

When the defendant may move to discharge the attachment.

Section 17.—The defendant may, at any time before judgment, except where the cause of attachment and the cause of action are the same, apply to the court or judge thereof where the action is pending, to discharge the attachment, in the manner and with the effect as provided in sections eighteen and nineteen of chapter twelve for the discharge of a defendant from arrest.

When writ to be returned.

Section 18.—When the writ of attachment shall be fully executed or discharged, the sheriff shall return the same, with his proceedings indorsed thereon to the clerk of the court where the action was commenced.

What order upon garnishee shall require.

Section 19.—The order provided for in section nine of this chapter shall require such person or officer to appear before such court or judge at a time and place therein stated. In the proceedings thereafter, upon such order such person or association or corporation shall be known as the garnishee.

When plaintiff may serve interrogatories on garnishee.

Section 20.—After the allowance of the order and before such garnishee or officer thereof shall be thereby required to appear, or within a time to be specified in the order, the plaintiff may serve upon such garnishee or officer thereof written allegations and interrogatories touching any of the property liable to attachment as the property of the defendant, as provided in subdivision three of section six of this chapter and to which such garnishee or

officer thereof is required to give a certificate as provided in section nine of this chapter.

Answer of the garnishee.

Section 21.—On the day when the garnishee or officer thereof shall be required to appear before the court or judge thereof, he shall return the allegations and interrogatories of the plaintiff to the court or judge with his written answer thereto, unless for good cause shown a further time be allowed. Such answer shall be on oath, and shall contain a full and direct response to all the allegations and interrogatories.

Plaintiff may have judgment for want of answer, or garnishee may be compelled to answer.

Section 22.—If the garnishee or officer thereof fail to answer, the court or judge thereof, on motion of the plaintiff, may compel him to do so, or the plaintiff may, at any time after the entry of judgment against the defendant in the action have judgment against the garnishee for want of such answer. In no case shall judgment be given against the garnishee for a greater amount than the judgment against the defendant in the action.

Exceptions to answer.

Section 23.—The plaintiff may except to the answer of the garnishee or officer thereof for insufficiency, within such time as may be prescribed or allowed, and if the same he adjudged insufficient, such garnishee or officer may be allowed to amend his answer on such terms as may be proper, or judgment may be given for the plaintiff as for want of answer, or such garnishee or officer may be compelled to give a sufficient answer.

Reply against the garnishee upon answer or trial.

Section 24.—The plaintiff may reply to the whole or part of the answer within such time as may be prescribed or allowed, and the issues arising thereon shall be tried as ordinary issues of fact between plaintiff and defendant. If the answer be not excepted or replied to within the time prescribed or allowed, it shall be taken to be true and sufficient.

Judgment against the garnishee upon answer or trial.

Section 25.—If by the answer it shall appear, or if upon trial it shall be found, that the garnishee, at the time of the service upon him or the officer thereof of the copy of the writ of attachment and notice, had any property of the defendant liable to attachment as provided in subdivision three of section six of this chapter, and as to which such garnishee or officer thereof is required to give a certificate as provided in section nine of this chapter beyond the amount admitted in the certificate, or in any amount if the certificate was refused, judgment may be given against such garnishee for the value thereof in money. The garnishee may at any time before judgment discharge himself by delivering, paying, or transferring the property to the sheriff.

Execution against garnishee; witnesses on trial.

Section 26.—Executions may issue upon judgments against a garnishee as upon ordinary judgments between plaintiff and defendant, and cost and disbursements shall be allowed and recovered in like manner. Witnesses including the defendant and garnishee or office thereof, may be required to appear and testify upon such proceeding against a garnishee, as upon the trial of an issue of fact.

When restraining order may be allowed against garnishee.

Section 27.—The court or judge thereof in its discretion may, at the time of the application of the plaintiff for the order provided for in section nine of this chapter and at any time thereafter before judgment against the garnishee, or by order restrain the garnishee from paying, transferring, or in any manner disposing of or injuring any of the property of the defendant, alleged by the plaintiff to be in the garnishee's possession, control, or owing by him to the defendant, and disobedience to such order may be punished as a contempt.

What proceedings know as provisional remedies.

Section 28.—The proceedings provided for in chapters twelve, thirteen, and fourteen of this title shall be known as provisional remedies.

CHAPTER FIFTEEN.

OF ISSUES AND THE MODE OF TRIAL.

Section 1.—Issues arise upon the pleadings when a fact or conclusion of law is maintained by the one party and controverted by the other. They are of two kinds:

Different finds of issues.

First. Of Law; and,

Second. Of Fact.

Section 2.—An issue of law arises upon a demurrer, to the complaint, answer, or reply, or to some part thereof.

Issues of law.

Section 3.—An issue of fact arises:

Issues of fact.

First. Upon a material allegation in the complaint controverted by the answer; or,

Second. Upon new matter in the answer controverted by the reply; or,

Third. Upon new matter in the reply, except an issue of law is joined thereon.

Section 4. Issues both of law and of fact may arise upon different parts of the pleadings in the same action In such cases the issues of law shall be first tried, unless the court otherwise direct.

When both issue of law and fact arise, issue of law to be first tried.

Section 5.—A trial is the judicial examination of the issues between the parties, whether they be issues of law or of fact.

Trial defined.

Section 6.—An issue of law shall be tried by the court, unless referred as provided in chapter nineteen. An issue of fact shall be tried by a jury, unless tried by the court or referred as provided in chapter nineteen.

Issue how tried.

Section 7.—A motion to postpone a trial on the ground of the absence of evidence shall only be made upon affidavit showing the materiality of the evidence expected to be obtained, and a statement of facts showing that due diligence has been used to procure it, and also the name and residence of the witness or witnesses. The court may also require the moving party to state upon affidavit the evidence which he expects to obtain, and if the adverse party thereupon admit that such evidence would be given, and that it be considered as actually given on the trial, or offered and overruled as improper, the trial shall not be postponed. The court, when it allows the motion, may impose such conditions or terms upon the moving party as may be just.

Motion to postpone trial on account of absent evidence.

Section 8.—Jurors for the trial of issues of fact in civil causes shall be selected and summoned in the manner prescribed by Chapter Twelve of Title Five of this Ordinance, and shall have the same qualifications and be entitled to the same exemptions, it being the intent and meaning of this section that but one jury shall be summoned for the trial of all actions, civil and criminal, triable by the district court of the district.

Trial jurors, how selected.

Section 9.—Trial juries in civil actions shall be formed in the same manner as provided in Chapter Thirteen of Title Five of this Ordinance. When the action is called for trial, the clerk shall draw from the trial jury box of the court, one by one, the ballots containing the names of the jurors until the jury is completed or the ballots are exhausted. If the ballots become exhausted before the jury is complete, the marshal, under the direction of the court, shall summon from the bystanders, or the body of the district, as the court may direct, so many qualified persons as may be necessary to complete the jury.

Formation of jury.

Number of challenges.

Section 10.—A peremptory challenge or a challenge for cause may be taken by either party. When there are two or more parties, plaintiffs or defendants, they must join in the challenge or it can not be taken. Either party shall be entitled to three peremtory challenges and no more.

Request for jury in civil actions.

Section 11.—Before a jury is impaneled in a civil action a request for a jury shall be made by made by the party desiring a jury, which request shall also be accompanied by the fees for such jury, provided however that the court may, on its own motion, order a jury impaneled in any civil action.

CHAPTER SIXTEEN.

CONDUCT OF THE TRIAL.

Section 1.—When the jury has been completed and sworn, the trial shall proceed in the order prescribed in this section, unless the court for special reasons otherwise direct.

Order of proceedings of the trial.

First. The plaintiff shall state briefly his cause of action, and the issue to be tried; the defendant shall then in like manner state his defense or counterclaim.

Second. The plaintiff shall then introduce the evidence on his part, and when he has concluded the defendant shall do the same.

Third. The parties may then respectively introduce rebutting evidence only, unless the court, for good reason and in furtherance of justice, permit them to introduce evidence upon the original cause of action, defense, or counterclaim.

Fourth. Not more than two counsel sh all be allowed to address the jury or court on behalf of the plaintiff or defendant, unless otherwise allowed by the court; and the court may limit the time to be consumed by counsel in arguing the cause.

Fifth. When the evidence is concluded, unless the case is submitted by both sides without argument, the plaintiff shall commence and conclude the argument. If the plaintiff waive the opening argument, and the defendant then argue the case, the plaintiff shall not be permitted to reply to the argument of the defendant.

Sixth. The court shall then charge the jury, and, if either party require it, and shall at the commencement of the trial give notice of his intention so to do, the charge of the court, so far as it relates to the law and the facts of the case, shall be reduced to writing and given to the jury by the court as written, without any oral explanation. The charge, when reduced to writing, must be filed with the clerk.

Section 2.—Whenever, in the opinion of the court, it is proper that the jury should have a view of real property which is the subject of the latigation, or of the place in which any material fact occurred, it may order the jury to be conduct in a body, in the custody of a proper officer, to the place, which shall be shown to them by the judge, or by a person appointed by the court for that purpose. While the jury are thus absent no person shall speak to them on any subject connected with the trial.

When a view may be ordered.

Section 3.—The jurors may be kept together in charge of a proper officer, or may, in the discretion of the court, at any time before the submission of the cause to them, be permitted to separate; in either case they may be admonished by the court that it is their duty not to converse with any other person, or among themselves, on any subject connected with the trial, or to express any opinion thereon, until the case is finally submitted to them.

Manner of keeping jury.

Section 4.—If, after the formation of the jury, and before verdict, a juror becomes sick, so as to be unable to perform his duty, the court may order him to be discharged. In that case, unless the parties agree to proceed with the other jurors, a new juror may be sworn, and the trial may begin anew; or the jury may be discharged, as the court shall direct, and a new jury then or afterwards formed.

When juror taken sick, how to proceed.

Section 5.—In charging the jury the court shall state to them all matters, of law which it thinks necessary for their information in giving their verdict, but it shall not present the facts of the case, but shall inform the jury that they are the exclusive judges of all questions of fact.

The charge to the jury.

How jury kept while deliberating; officer to be sworn.

Section 6.—After hearing the charge the jury may either decide in the jury box or retire for deliberation. If they retire they must be kept together in a room provided for them, or some other convenient place, under the charge of one or more officers, until they agree upon their verdict or are discharged by the court. The officer shall, to the utmost of his ability, keep the jury thus together separate from other persons, without drink, except water, and without food, except ordered by the court. He must not suffer any communication to be made to them, nor make any himself unless by the order of the court, except to ask them if they have agreed upon their verdict, and he shall not, before the verdict is rendered, communicate to any prson the state of their deliberation or the verdict agreed on. Before any officer takes charge of a jury this section shall be read to him, and he shall be then sworn to conduct himself according to its provisions, to the utmost of his ability.

Food and lodging of jurors.

Section 7.—If while the jury are kept together, either during the progress of the trial or after their retirement for deliberation, the court order them to be provided with suitable and sufficient food and lodging, they shall be so provided by the sheriff, at the expense of the District, which expense shall be taxed in the cost of the case.

What papers jury may take.

Section 8.—Upon retiring for deliberation the jury may take with them the pleadings in the cause, and all papers which have been received as evidence on the trial (except depositions, or copies of such parts of public records or private documents given in evidence as ought not, in the opinion of the court, to be taken from the person having them in possesion). They may also take with them notes of the testimony or other proceedings on the trial taken by themselves, or any of them, but none taken by any other person.

When jury may return for information.

Section 9.—After the jury have retired for deliberation, if they desire to be informed on any point of law arising in the case, they may require the officer having them in charge to conduct them into court. Upon their being brought into court the instruction required shall be given by the court in the presence of or after notice to the parties or their attorneys.

When jury may be discharged without giving verdict.

Section 10.—Except as provided in sections three and four of this chapter, or in case of some accident or calamity requiring their discharge, the jury shall not be discharged after the cause is submitted to them until they have agreed upon a verdict and given it in open court, unless by the consent of both parties entered in the journal or unless at the expiration of such period as the court deem proper it satisfactorily appears that there is no probability of an agreement of five-sixths of them and it is hereby declared that five-sixths of the jury may render a verdict in civil actions the same as in criminal actions.

When new trial may be had if jury discharged.

Section 11.—In all cases where a jury are discharged or prevented from giving a verdict by reason of accident or other cause during the progress of the trial, or after the cause is submitted to them, the action may be again tried immediately, or at a future time, as the court directs.

Court deemed open until jury gives verdict or is discharged.

Section 12.—While the jury are absent the court may adjourn from time to time, in respect to other business, but it is nevertheless to be deemed open for every purpose connected with the cause submitted to the jury until a verdict is rendered or the jury discharged. A final adjournment of the court discharges the jury.

Manner of giving verdict.

Section 13.—When five-sixths of the jury have agreed upon their verdict they shall be conducted into court by the officer having them in charge. They shall be asked by the court or the clerk whether they have agreed upon their verdict, and if the foreman answer in the affirmative he shall, on being required, declare the same.

CHAPTER SEVENTEEN.

OF THE VERDICT.

Definition of verdict; general or special.

Section 1.—The verdict of a jury is either general or special. A general verdict is that by which the jury pronounce generally upon all or any of the issues, either in favor of the plaintiff or defendant. A special verdict is that by which the jury find the facts only, leaving the judgment to the court.

In actions for the recovery of specific personal property.

Section 2.—In an action for the recovery of specific personal property, if the property have not been delivered to the plaintiff, or the defendant by his answer claim a return thereof, the jury shall assess the value of the property, if their verdict be in favor of the plaintiff or if they find in favor of the defendant and that he is entitled to a return thereof, and may at the same time assess the damages, if any are claimed in the complaint or answer, which the prevailing party has sustained by reason of the detention or taking and witholding such property.

When jury may give general or special verdict.

Section 3.—In every action for the recovery of money only or specific real property, the jury in their discretion may render a general or special verdict. In all other cases the court may direct the jury to find a special verdict upon all or any of the issues; and in all cases may instruct them if they render a general verdict, to find upon particular questions of fact, to be stated in writing. The special verdict or finding shall be filed with the clerk and entered in the journal as provided in chapter sixteen.

Special verdict to control general.

Section 4.—When a special finding of facts shall be inconsistent with the general verdict, the former shall control the latter, and the court shall give judgment accordingly.

When counterclaim pleaded in the answer.

Section 5.—When a verdict is found for the plaintiff in an action for the recovery of money or for the defendant when a counterclaim for the recovery of money is established beyond the amount of the plaintiff's claim as established, the jury shall also assess the amount of recovery; they may also, under the direction of the court assess the amount of the recovery when the court gives judgment for the plaintiff on the answer.

CHAPTER EIGHTEEN.

TRIAL BY THE COURT.

Decision of the court, how made and when filed.

Section 1.—Upon the trial of an issue of fact by the court, its decision shall be given in writing and filed with the clerk during the term or within six weeks thereafter. The decision shall state the facts found and the conclusion of law separately, without argument or reason therefor. Such decision shall be entered in the journal and judgment entered thereon aruordingly. The court may deliver any argument or reason in support of such decision, either orally or in writing, separate from the decision, and file the same with the clerk.

Order of proceedings, and effect of findings.

Section 2.—The finding of the court upon the fact shall be deemed a verdict, and may be set aside in the manner and for the reasons so far as applicable, and a new trial granted.

CHAPTER NINETEEN.

TRIAL BY REFEREES

The trial of any issue may be referred by consent.

Section 1.—All or any of the issues of fact in an action may be referred to a referee or referees upon the written consent of the parties.

When reference may be ordered by the court.

Section 2.—When the parties do not consent in an action at issue and to be tried without a jury, the court may, upon the application of either, or of its own motion, direct a reference in the following cases:

First. When the trial of an issue of fact shall require the examination of a long account on either side, in which case the referees may be directed to hear and decide the whole issue or to report upon any specific question of fact involved therein; or,

Second. When the taking of an account shall be necessary for the information of the court, before judgment upon an issue of law, or for carrying a judgment or order into effect; or,

Third. When a question of fact other than upon the pleadings shall arise, upon motion or otherwise, in any stage of the action; or,

Fourth. When it is necessary for the information of the court in a special proceeding.

Number of references and how chosen.

Section 3.—A reference may be ordered to any person or persons, not exceeding three, agreed upon by the parties. If the parties do not agree, the court or judge may appoint one or more, not exceeding three.

When chosen by the court; qualifications of.

Section 4.—When the appointment of referees is made by the court or judge, each referee shall be a competent person not interested in the cause at issue and possessing the qualifications of a juror.

Right and mode of challenge to referees when chosen by the court.

Section 5.—When the referees are chosen by the court each party shall have the right of challenge as to such referees for the cause set out in the preceding, section, except that neither party shall be entitled to a peremptory challenge.

Proceedings same as in trial by court.

Section 6.—Subject to the limitations and directions prescribed in the order of reference, the trial by referee shall be conducted in the same manner as a trial by the court. They shall have the same power to grant adjournments, administer oaths, to preserve order, and to punish all violation thereof upon such trial, and to compel the attendance of witnesses and to punish them for non-attendance or refusal to be sworn or testify, as is possessed by the court.

What report to contain; evidence to accompany it.

Section 7.—The report of the referee shall state the facts found. The referees shall file with their report the evidence received upon the trial. If evidence offered by either party shall not be admitted on the trial and the party offering the same except to the decision rejecting such evidence at the time, the exception shall be noted by the referees, and they shall take and receive such testimony and file it with the report. Whatever judgment the court may give upon the report, it shall, when it appears that such evidence was frivolous or inadmissible, require the party at whose instance it was taken and reported to pay all costs and disbursements thereby incurred.

Motion to set aside report or for judgment thereon.

Section 8.—The report shall be filed with the clerk. If it be filed in term time, either party may, within such time as may be prescribed by the rules of the court or by special order, move to set the same aside or for judgment thereon, or such order or proceedings as the nature of the case may require. If the report be filed in vacation, the like proceedings may be had at the next term following.

Section 9.—The court may affirm or set aside the report either in whole or in part. If it affirm the report, it shall give judgment accordingly. If the report be set aside either in whole or in part, the court may make another order of reference as to all or so much of the report as is set aside to the original referees or others, or it may find the facts and determine the law itself and give judgment accordingly. Upon a motion to set aside a report, the conclusions thereof shall be deemed and considered as the verdict of a jury.

Proceedings thereon.

CAPTER TWENTY.

OF EXCEPTIONS.

Definition of exception; must be material.

Section 1.—An exception is an objection taken at the trial to a decision upon a matter of law, whether such trial be by jury or court, and whether the decision be made during the formation of a jury, or in the admission of evidence, or in the charge to the jury, or time from the calling the action for trial to the rendering the final verdict or decision. But no exception shall be regarded on a motion for a new trial, or on an appeal, unless the exception be material and affect the substantial rights of the parties.

Exceptions, how stated and settled.

Section 2.—The point of the exception shall be particularly stated, and may be delivered, in writing to the judge or entered in his minutes, and at the time or afterwards be corrected until made conformable to the truth.

No particular form required.

Section 3.—No particular form of exception shall be required. The objection shall be stated with so much of the evidence or other matter as is necessary to explain it, but no more.

To be signed by the judge and filed; when exceptions need not be taken or allowed.

Section 4.—The statement of the exception, when settled and allowed, shall be signed by the judge and filed with the clerk and thereafter it shall be deemed and taken to be a part of the record of the cause. No exception need be taken or allowed to any decision upon a matter of law when the same is entered in the journal or made wholly upon matters in writing and on file in the court.

What deemed excepted to.

Section 5.—The verdict of the jury, or any order or decision, partially or finally determining the rights of the parties, or any of them or affecting the pleadings, or granting or refusing a continuance or granting or refusing a new trial, or admiting or rejecting evidence, provided objection be made to its admission or rejection at the time of its offer, or made upon *ex parte* application or in the absence of a party, are deemed excepted to without the exception being taken or stated, or entered in the journal.

CHAPTER TWENTY-ONE.

OF NEW TRIAL.

Section 1.—A new trial is a re-examanation of an issue of fact in the same court after a trial and decision or verdict.

Definition of new trial.

Section 2.—The former verdict or other decision may be set aside and a new trial granted, on the motion of the party aggrieved, for any of the following causes materially affecting the substantial rights of such party.

New trial, for what causes granted.

First. Irregularity in the proceedings of the court, jury or adverse party, or any order of the court, or abuse of discretion by which such party was prevented from having a fair trial;

Second. Misconduct of the jury or prevailing party;

Third. Accident or suprise which ordinary prudence could not have guarded against;

Fourth. Newly discovered evidence, material for the party making the application, which he could not with reasonable diligence have discovered and produced at the trial;

Fifth. Insufficiency of the evidence to justify the verdict or other decision, or that it is against law;

Sixth. Error in law occurring at the trial and excepted to by the party making the application;

Seventh. Excessive damages appearing to have been given under the influence of passion or prejudice.

Section 3.—A motion for a new trial, with the affidavits, if any in support thereof, shall, except as hereinafter provided, be filed within three days after giving the verdict or other decision sought to be set aside; but the court may, upon satisfactory showing, extend the time for filing such affidavits. When the adverse party is entitled to oppose the motion by counter affidavits, he shall file the same within three days after the filing of the motion. A motion shall be heard and determined within ten days unless the court continue the same for advisement or want of time to heart it.

Motion for, when filed and determined.

Section 4.—In all cases of motion for a new trial the grounds thereof shall be plainly specified, and no cause of new trial not so stated shall be considered or regarded by the court. When the motion is made for cause mentioned in subdivision one, two, three, or four of section two of this chapter, it shall be upon affidavits setting forth the facts upon which such motion is based unless they appear of record in the cause.

Motion must state ground thereof; when supported by affidavit.

Section 5.—If the motion be supported by affidavits, counter affidavits may be offered by the adverse party; and if the cause be newly discovered evidence, the affidavits of any witness or witnesses showing what their testimony will be shall be produced or good reason shown for their nonproduction; and in the consideration of any motion for a new trial reference may be had to any proceedings in the case prior to the verdict or other decisions sought to be set aside.

When counter affidavits allowed.

CHAPTER TWENTY-TWO.

OF GENERAL PROVISIONS.

Questions of law and fact; how submitted and when.

Section 1.—Any party may, when the evidence is closed, or at such time thereafter as the court may grant, submit in distinct and concise propositions the conclusions of fact which he claims to be established or the conclusions of law which he desires to be adjudged, or both. They shall be written and handed to the court.

Question of law and of fact to be decided by the court.

Section 2.—All questions of law, including the admissibility of testimony, the facts preliminary to such admission, and the construction of statutes and other writings and other rules of evidence, are to be decided by the Court, and all discussions of law addressed to it; and whenever the court is by this code made evidence of fact, the court is to declare such knowledge to the jury, which must be accepted as conclusive.

Section 3.—All questions of fact other than those mentioned in the preceding section shall be decided by the jury and all evidence thereon addressed to them.

CHAPTER TWENTY-THREE.

OF JUDGMENT IN GENERAL.

Definition of judgment.

Section 1.—A judgment is the final determination of the rights of the parties in the action.

Judgment may be given for or against any of the parties.

Section 2.—Judgment may be given for or against one or more of several plaintiffs, and for or against one or more of several defendants; and it may, when the justice of the case requires it, determine the ultimate rights of the parties on each side as between themselves.

When judgments may be given against one or more defendants and action remain pending as to others.

Section 3.—In an action against several defendants, the court may, in its discretion, render judgment against one or more of them, whenever a several judgment is proper, leaving the action to proceed against the others.

CHAPTER TWENTY-FOUR.

OF JUDGMENT OF NONSUIT.

When judgment of nonsuit maybe given.

Section 1.—A judgment of nonsuit may be given against the plaintiff as provided in this chapter:—

First. On motion of the plaintiff, at any time before trial, unless a counterclaim has been pleaded as a defense;

Second. On motion of either party, upon the written consent of the other filed with the clerk;

Third. On motion of the defendant, when the action is called for trial and the plaintiff fails to appear; or when, after the trial has begun and before the final submission of the cause, the plaintiff abandons it, or when upon the trial, the plaintiff fails to prove a cause sufficient to be submitted to the jury.

What is a cause not sufficient to be submitted.

Section 2.—A cause not sufficient to be submitted to the jury is one where it appears that the jury were to find a verdict for the plaintiff upon any or all of the issues to be tried, the court ought, if required, to set it aside for want of evidence to support it.

Effect of judgment of nonsuit.

Section 3.—When a judgment of nonsuit is given the action is dismissed, but such judgment shall not have the effect to bar another action for the same cause.

CHAPTER TWENTY-FIVE.

OF JUDGMENT ON FAILURE TO ANSWER.

When judgment may given for want of answer.

Section 1.—Judgment may be had upon failure to answer as follows:

When the time for answering the complaint has expired and it appears that the defendant, or one or more of several defendants in the cases mentioned in section ten of chapter four of this title has been duly served with the summons and has failed to answer the complaint, the plaintiff shall be entitled to have judgment against such defendant or defendants.

First. In an action arising upon contract for the recovery of money or damages only; if no answer has been filed with the clerk of the court within the time specified in the summons, or such further time as may have been granted by the court or judge thereof, the court upon the application of the plaintiff made in writing and filed with the clerk, shall enter the default of the defendant, and immediately thereafter enter judgment for the amount specified in the summons, including the costs of the defendant, or against one or more of several defendants, in cases provided for in section ten of chapter four of this title;

Second. In other actions, if no answer has been filed with the clerk of the court within the time specified in the summons or such further time as may have been granted by the court or judge thereof, the court shall, upon the written motion of the plaintiff being filed, enter the default of the defendant, and thereafter the plaintiff may apply at any time for the relief demanded in the complaint; and the court shall upon such demand, give judgment for the amount claimed in the summons, or the relief demanded in the complaint, unless it be necessary, to enable the court to give judgment or carry the same into effect, to take proof of any matter of fact, in which case the court may order the entry of judgment to be delayed until such proof be taken. The court may hear the proof itself or make an order of reference, or order that a jury be called to inquire thereof. The defendant shall not be precluded, by reason of his default, from offering proof in mitigation of damages;

Third. When the defendant has answered, and admits the plaintiff's claim, but sets up a counterclaim amounting to less than the plaintiff's claim, the plaintiff, on motion, shall have judgment for the excess of his claim over such counterclaim, as for want of answer thereto;

Fourth. When in any action the service of the summons appears to have been made by publication, the court may, in its discretion, order the entry of judgment to be delayed until the plaintiff file with the clerk an undertaking, with one or more sureties, to be approved by the clerk, in an amount equal to the sum for which jugdment may be given, upon the condition that the plaintiff will abide by and perform any order of the court requiring restitution to be made to the defendant or his representative in case either of them shall afterwards be admitted to defend the action. The surieties in the undertaking shall have the qualifications of bail and justify as provided in section seven of chapter twelve of this title.

CHAPTER TWENTY-SIX.

OF JUDGMENT BY CONFESSION.

Judgment by confession where action pending.

Section 1.—On the confession of the defendant, with the assent of the plaintiff or his attorney, judgment may be given against the defendant in any action, before or after answer, for any amount or relief not exceeding or different from that demanded in the complaint.

Who to make confession.

Section 2.—When the action is against a public corporation or a private corporation, the confession shall be made by the person who at the time sustains the relation to such corporation as would authorize the service of a summons upon him. In all other cases the confession shall be made by the defendant in person.

When judgment may be given against several defendants on the confession of one.

Section 3.—When the action is upon a contract, and against one or more defendants jointly liable, judgment may be given on the confession of one or more defendants against all the defendants thus jointly liable, whether such defendants have been served with the summons or not to be enforced only against their joint property and against the joint and separate property of the defendant making the confession.

Confession to be in writing; how judgment given.

Section 4.—The confession and assent thereto shall be in writing, and subscribed by the parties or their attorneys making the same, and acknowledged by each before some officer authorized to take acknowledgments of deeds, but such acknowledgment is not required when the parties or their attorney shall appear in court when the judgment is given. In all cases the confession and assent thereto and the acknowledgment, if any, shall be filed with the clerk.

Judgment by confession without action.

Section 5.—On the confession of any person capable by this code of being made a party defendant to an action, judgment may be given against such person without action, in favor of anyone, either for money due or to become due, or to secure any person against contingent liability on behalf of the defendant in such judgment, or both, if it be in favor of the same person.

How confession made in such cases.

Section 6.—The confession shall be made, assented to and acknowleged, and judgment given in the same manner as a confession in an action pending; besides which, the confession shall be verified by the oath of the party making it, and shall authorize a judgment to be given for a particular sum. If it be for money due or to become due it shall state plainly and concisely the facts out of which such indebtedness arose, and shall show that the sum confessed therefor is justly due or to become due.

Same subject. Execution when judgment for installments.

Section 7.—If it be for the purpose of securing the plaintiff in the judgment against a contingent liability, it shall state plainly and concisely the facts constituting such liability and shall show that the sum confessed therefor does not exceed the same. When judgment is given so as to be payable in installments, executions may issue to enforce the payment of such installments, as they become due.

CHAPTER TWENTY-SEVEN.

OF SUBMITTING CONTROVERSY WITHOUT ACTION.

Controversy may be submitted without action.

Section 1.—Parties to a question in controversy which might be the subject of an action in a court of record with such parties plaintiff or defendants, may submit the same to the determination of such court without action, as in this chapter provided.

Statement of the case and verification thereof.

Section 2.—The parties as plaintiff and defendant shall state, in writing, a case containing the facts upon which the controversy depends, and subscribe the same in person or by their attorneys. Such statement shall be verified by the oaths of the parties, or, where there is more than one plaintiff or defendant, by at least one of each, to the effect that the controversy is real, and the proceeding is taken in good faith to determine the rights of the parties. Where either party to the controversy is a public corporation, or a private corporation, the statement of the case may be subscribed and verified by any person who at the time sustains the relation to such corporation as would authorize the service of a summons upon him.

Statement to be filed with the clerk. Jurisdiction of court.

Section 3.—The statement shall be filed with the clerk of the court and from the date of such filing the court shall have jurisdiction of the controversy as if the same were an action pending after a special verdict found, and shall proceed to hear and determine the same accordingly.

CHAPTER TWENTY-EIGHT.

OF THE MANNER OF GIVING AND ENTERING JUDGMENT.

Judgment to be entered in journal; manner of entry.

Section 1.—All judgments shall be entered by the clerk in the journal, and shall specify clearly the amount to be recovered, the relief granted, or other determination of the action. If entered in vacation, the entry shall be entiled and dated substantially as follows;

Virgin Islands of the United States }
Municipality of ..... }

District Court for the District at.....
In vacation, after the..... term, A. D. 19.....
..... the....., A. D. 19.....

As the fact may be, and such entry shall have the same effect as if entered in term time. In the entry of all judgments, except judgments by default for want of an answer, the clerk shall be subject to the direction of the court.

If counterclaim exceeds plaintiff's demand, judgment for defendant.

Section 2.—If a counterclaim established at the trial exceed the plaintiff's demand so established, judgment for the defendant shall be given for the excess, or if it appear that the defendant is entitled to any other affirmative relief, judgment shall be given accordingly.

Judgment in actions for the recovery of personal property.

Section 3.—In an action to recover the possession of personal property judgment for the plaintiff may be for the possession, or the value thereof in case a delivery can not be had, and damages for the detention thereof. If the property has been delivered to the plaintiff and defendant claim a return thereof, judgment for the defendant may be for a return of the property, or the value thereof in case a return can not be had, and damages for taking and withholding the same.

What entry to state in judgment for want of answer.

Section 4.—When judgment is given for want of answer, the entry shall state substantially that the defendant has been duly served with he summons and has failed to answer the complaint. When judgment is given on confession, with or without action, on the report of referees, or on a controversy, submitted without action the entry shall state in like manner the confession and assent thereto, the report of the referees, or agreed case, as the case may be.

Judgment on demurrer.

Section 5.—When a decision has been made sustaining or overruling a demurrer, unless the party against whom the decision is made be allowed to amend or plead over, judgment shall be given for the plaintiff or defendant, as the case may be, for such amount or relief or to such effect, as it appears from the pleadings he is entitled to; but if the case is otherwise at issue upon a question of fact, the court may order the entry of judgment to be delayed until such issue be tried or otherwise disposed of.

When entry of judgment made.

Section 6.—When judgment is given in any of the cases mentioned in the two sections last preceding, unless otherwise ordered by the court, it shall be entered by the clerk within the day it is given. Except as in this section hereinafter provided, when a trial by the court has been had judgment shall be entered by the clerk in conformity with the decision within two days from the time the same is filed; or if the trial be by jury, judgment shall be given by the court in conformity therewith and entered by the clerk within two days from the time the verdict has been received; and in either case within the term at which such judgment is given.

First. When the court is in doubt what judgment ought to be given, it may order the question to be reserved for argument or further consideration

and thereupon the entry of judgment shall be delayed until judgment be given;

Second. When, within the time allowed to file a motion for new trial, either party shall file a motion for a particular judgment or for judgment notwithstanding the verdict or decision;

Third. When a motion for new trial is filed within the time prescribed, the entry of judgment shall be thereby delayed until the motion is disposed of;

Fourth. When, upon a trial by the court, its decision is filed in vacation, the entry of judgment shall be delayed until the expiration of the time prescribed to file a motion for a new trial.

Judgment notwithstanding the verdict.

Section 7.—When it appears from the pleadings that the court has not jurisdiction of the subject of the action or the person of the defendant, or that the facts stated in the pleadings of the plaintiff or defendant, as the case may be, do not constitute a cause of action or defense thereto, on motion judgment shall be given for the plaintiff or defendant, as the case may be, notwithstanding the verdict or decision.

When entry of judgment made after motion for new trial decided in vacation.

Section 8.—When a motion for new trial, for a particular judgment, or for a judgment notwithstanding the decision is decided in vacation, the decision shall be in writing and filed with the clerk.

CHAPTER TWENTY-NINE.

OF LIEN JUDGMENT AND FINAL RECORD.

Judgment to be lien from time of docketing.

Section 1.—Immediately after the entry of judgment in any action the clerk shall docket the same in the judgment docket. At any time thereafter, while an execution might issue upon such judgment, and the same remains unsatisfied in whole or in part, the plaintiff, or in case of his death his representative, may file a certified transcript of the original docket in the office of the recorder of the recording district. Upon the filing of such transcript the recorder shall docket the same in the judgment docket of his office and note the same in the property register against such property or properties as requested by the judgment creditor. From the date of docketing a judgment, as in this chapter provided, or the transcript thereof, such judgment shall be a lien upon such real property of the defendant, and also provided; that such judgment may be recorded against all after acquired property with like effect, upon the request of the judgment creditor.

Expiration of lien.

Section 2.—Whenever, after the entry of judgment a period of ten years shall elapse without an execution being issued on such judgment, the lien thereof shall expire.

Conveyance; when void as against lien.

Section 3.—A conveyance of real property or any portion thereof or interest therein shall be void against the lien of a judgment unless such conveyance be recorded at the time of docketing such judgment or the transcript thereof, as the case may be.

Clerk must make judgment roll.

Section 4.—Within thirty days after docketing the judgment, the clerk shall prepare and file in his office the judgment roll, as provided in this section:

First. If the complaint has not been answered by any defendant he shall attach together, in the order of their filing, issuing, and entry, the complaint, summons, and proof of service, and a copy of the entry judgment.

Second. In all other cases he shall attach together in like manner the summons and proof of service, the pleadings, bill of exceptions, all orders relating to change of parties, together with a copy of the entry of judgment, and all other journal entries or orders in any way involving the merits and necessarily affecting the judgment.

Third. In all cases the clerk shall attach upon the outside of the judgment roll a blank sheet of paper upon which he shall indorse the name of the court, the term at which judgment was given, the names of the parties to the action and the title thereof, for whom judgment was given, and the amount or nature thereof, and the date of its entry and docketing.

Final record in what cases required.

Section 5.—Instead of the judgment roll prescribed in the section last preceding, there shall be a final record made of the cause, as provided in this section:

First. When in any action it shall appear that the title to real property, or any interest therein, or any easement, franchise, or right in or to the same, is directly determined or affected by the judgment therein, on motion of either party the court shall order that a final record be made of the case and the expense of such record shall be taxed as other disbursements of the action.

Second. In all other actions, on motion of either party, the court shall order that a final record be made of the case at the cost of the party moving for the same.

When a final record is ordered, it shall be made by the clerk within the time prescribed to prepare a judgment roll, by recording the papers and journal entries required in such roll in the order prescribed therefor.

CHAPTER THIRTY.

OF THE ENFORCEMENT OF JUDGMENT.

Section 1.—The person in whose favor a judgment is given which requires the payment of money, the delivery of real or personal property, or either of them, may at any time after the entry thereof have a writ of execution issued for its enforcement, as provided in this chapter.

When judgment may be enforced by execution.

Section 2.—There shall be three kinds of executions; One against the property of the judgment debtor, another against his person, and the third for the delivery of the possession of real or personal property, or such delivery with damages for withholding the same.

Different kinds of executions.

Section 3.—The writ of execution shall be issued by the clerk and directed to the sheriff. It shall contain the name of the court, the names of the parties to the action, and the title thereof. It shall substantially describe the judgment, and if it be for money, shall state the amount actually due thereon and shall require the sheriff substantially as follows:

By whom issued, what to contain and require.

First. If it be against the property of the judgment debtor and the judgment directs particular property to be sold, it shall require the sheriff to sell such property and apply the proceeds as directed by the judgment; otherwise it shall require the sheriff to satisfy the judgment, with interest out of the personal property of such debtor and if sufficient personal property cannot be found, then out of the real property belonging to him on the day when the judgment was docketed in the recording district or at any time thereafter;

Second. If it be issued after the death of the judgment debtor and be against real or personal property, it shall require the sheriff to satisfy the judgment, with interest out of any property belonging to the deceased debtor in the hands of the debtor's personal representatives, heirs, devisees, legatees, tenants of real property, or trustees as such;

Third. If it be against the person of the judgment debtor, it shall require the sheriff to arrest such debtor and commit him to jail until he shall pay the judgment, with interest, or be discharged according to law;

Fourth. If it be for the delivery of the possession of real or personal property, it shall require the sheriff to deliver the possession of the same, particularly describing it, to the party entitled thereto any may at the same time require the sheriff to satisfy any costs, damages, charges, or rents, and profits recovered by the same judgment out of the personal property of the party against whom it was rendered, and the value of the property wor which the judgment was recovered to be specified thereof, if a delivery thereof cannot be had; and if sufficient personal property cannot be found, then out of the real property as provided in the first subdivision of this section, and in that respect it is to be deemed an execution against property.

Section 4.—The sheriff shall indorse upon the writ of execution the time when he received the same, and such execution shall be returnable, within thirty days after its receipt by the sheriff, to the clerk's office from whence it issued.

How indorsed by sheriff and when returnable.

Section 5.—If the action be one in which the defendant might have been arrested, as provided by section one of chapter twelve of this title, an execution against the person of the judgment debtor may be issued after the return of the execution against his property unsatisfied in whole or in part as follows:

When execution issued against the person.

First. When it appears from the record that the cause of action is also a cause of arrest, as prescribed in said section one of chapter twelve, such execution may issue of course;

Second. When no such cause of arrest appears from the record, such execution may issue for any of the causes prescribed in said section one of chapter twelve that may exist at the time of the application therefor upon leave of the court or judge thereof;

Third. When the defendant has been provisionally arrested in the action, or an order has been made allowing such arrest, and in either case the order has not been vacated, such execution may issue of course;

Fourth. When execution is issued against the person of the defendant by leave of the court, it shall be applied for and allowed in the manner provided in section two of chapter twelve of this title, for allowing a writ, of arrest, except that the undertaking need not be for an amount exceeding the judgment. A defendant arrested on execution, who has not been arrested provisionally, may at any time be discharged from such arrest for the causes and in the manner provided in sections seventeen and eighteen of chapter twelve of this title for the discharge of a defendant who has been provisionally arrested.

How person arrested on execution imprisoned.

Section 6.—A person arrested on execution shall be imprisoned in jail, and kept at his own expense until satisfaction of the execution, or his legal discharge, but the plaintiff shall be liable in the first instance for such expense, as in other cases of arrest, in the same manner and to the same extent as prescribed in section sixteen of chapter twelve of this title.

Execution against property may issue after death of judgment debtor; exception.

Section 7.—Notwithstanding the death of a party after judgment, execution thereon against his property or for the delivery of real or personal property may be issued, and executed in the same manner and with the same effect as if he were still living, but such execution shall not issue within six months from the granting of letters testamentary or of administration upon the estate of such party without leave of the court having authority to issue letters testamentary or of administration upon said estate.

Exemption of homestead from judicial sale.

Section 8.—The homestead of any family, or the proceeds thereof, shall be exempt from judicial sale for the satisfaction of any liability hereafter contracted or for the satisfaction of any judgment hereafter obtained on such debt. Such homestead must be the actual abode of and owned by such family or some members thereof. It shall not exceed two hundred dollars in value, nor exceed ten acres in extent if not located in a town laid off into blocks or lots, or if located in any such town, then it shall not exceed one-fourth of one acre. This act shall not apply to decress for the foreclousure of any mortgage properly executed; but if the owners of such homestead be married, then it shall be executed by husband and wife. When any officer shall levy upon such homestead, the owner thereof, or the wife, husband, agent, or attorney of such owner, may notify such officer that he claims such premises as his homestead, describing the same by metes and bounds, lot or block, whereupon such officer shall notify the creditor of such claim, and if such homestead shall exceed the maximum in this section, and he deem it of greater value than two hundred dollars, then he may direct the sheriff to sell such property and pay to the creditor such amount received in excess of two hundred dollars after first defraying the costs.

What property liable to execution and what exempt.

Section 9.—All other property, including franchises or rights or interests therein, of the judgment debtor shall be liable to an execution, except as in this section provided. The following property shall be exempt from execution if selected and reserved by the judgment debtor or his agent at the time of the levy, or as soon thereafter before sale thereof as the same shall be known to him, and not otherwise:

First. Necessary wearing apparel owned by any person for the use of himself or his family: Provided, watches, or jewelry shall not be exempt by virtue of this subdivision;

Second. The tools, implements, apparatus or library necessary to enable any artisan, mechanic or professional person to carry on the trade, occupation or profession by which such person habitually earns his living;

Third. The following property, if owned by the head of a family and in actual use or kept for use by and for his family, or when being removed from one habitation to another on a change of residence: Household goods, furniture, and utensils to the value of twenty dollars.

Fourth. All property of any public or municipal corporation;

Fifth. No article of property or if the same has been sold or exchanged, then neither the proceeds of such sale nor the articles received in exchange therefor, shall be exempt from execution issued on a judgment recovered for its price.

Execution against property, how executed.

Section 10.—When a writ of execution is against the property of the judgment debtor, it shall be executed by the sheriff as follows:

First. If property has been attached, he shall indorse on the execution, and pay to the clerk forthwith the amount, if any, of the proceeds of sales of perishable property, or debts due the defendant received by him, sufficient to satisfy the judgment;

Second. If the judgment is not then satisfied and property has been attached and remains in his custody he shall sell the same or sufficient thereof to satisfy the judgment;

Third. If then any portion of the judgment remains unsatisfied, or if no property has been attached, or the same has been discharged, he shall levy on the property of the judgment debtor sufficient to satisfy the judgment;

Fourth. Property shall be levied on in like manner and with like effect as similar property is attached, as provided in sections six and seven and nine, of chapter fourteen of this title, omitting the filing of the certificate provided for in section eight of said chapter fourteen.

Fifth. Until a levy, property shall not be affected by the execution. When property has been sold or debts received by the sheriff on execution, he shall pay the proceeds thereof, or sufficient to satisfy the judgment, to the clerk by the day on which the writ is returnable;

Sixth. When property has been attached, and it is probable that such property will not be sufficient to satisfy the judgment, the execution may be levied on other property of the judgment debtor without delay. If after satisfying the judgment any property or the proceeds remain in the custody of the sheriff he shall deliver the same to the judgment debtor.

Same subject.

Section 11.—In the case of property in the possession of or owing from any garnishee mentioned in section nine of chapter fourteen of this title, the sheriff shall proceed as follows:

First. If it appear from the certificate of the garnishee that he is owing a debt to the judgment debtor, which is then due, if such debt is not paid by such garnishee to the sheriff on demand, he shall levy on the property of the garnishee for the amount thereof, in all respects as if the execution was against the property of the garnishee. But is such debt be not then due, the sheriff shall sell the same according to the certificate, as other property;

Second. If in like manner it appear that the judgment debtor has rights or shares in the stock of the garnishee, as provided in section nine of said chapter fourteen, the sheriff shall sell the same according to the certificate as other property;

Third. If in like manner it appear that the garnishee has other personal property of the judgment debtor in his possession, and the same has not been

bailed to such garnishee for a period then unexpired, unless the same be delivered to the sheriff on demand he shall levy upon the same wherever he maw find it. But if such property is in the possession of such garnishee, upon a bailment then unexpired, the sheriff shall sell the same, or the interest of the judgment debtor therein, according to the certificate, as other property.

When garnishee gives sheriff certificate, how sheriff to proceed.

Section 12.—When a sheriff with an execution levies upon any of the personal property mentioned in subdivision three of section six of chapter fourteen of this title, and if the same is not delivered, paid, or transferred to him at the time, and the garnishee furnish him the certificate required in section nine of said chapter fourteen, he shall proceed thereafter in reference to such property as provided in section ten of this chapter. Such property may be delivered, paid, or transferred to the sheriff at the time of levy or sufficient thereof to satisfy the execution and the sheriff's receipt to the person, association, or corporation, as the case may be, shall be a sufficient discharge therefor.

When sheriff may leave personal property in possession of judgment debtor.

Section 13.—When the sheriff shall levy upon personal property by virtue of an execution, he may permit the judgment debtor to retain the same or any part thereof in his possession until the day of sale upon the defendant executing a written undertaking to the sheriff with sufficient surety in double the value of such property to the effect that it shall be delivered to the sheriff at the time and place of sale, and for nondelivery thereof an action may be maintained upon such undertaking by the sheriff or the plaintiff in the execution, but the sheriff shall not thereby be discharged from his liability to the plaintiff for such property.

Notice of sale on execution, how given.

Section 14.—Before the sale of property on execution notice thereof shall be given, as follows:

First. In case of personal property, by posting a written or printed notice of the time and place of sale in three public places within five miles of the place where the sale is to take place, not less than ten days prior to the day of sale; one of said notices shall be posted on the door of the post office nearest to the place where the sale is to take place and publishing a copy thereof in a newspaper, published nearest to the place of sale.

Second. In case of real property by posting a similar notice particularly describing the property for four weeks prior to the day of sale in three public places, as provided in the first subdivision of this section, and publishing a copy thereof once a week for the same period in a newspaper published nearest to the place of sale.

Sales, where and how made.

Section 15.—All sales of property upon execution shall be made by auction at any time between nine o'clock in the morning and four o'clock in the afternoon. After sufficient property has been sold to satisfy the execution no more shall be sold. Neither the officer holding the execution nor his deputy shall become a purchaser or be interested in any purchase at such sale. When the sale is of personal property capable of manual delivery and not in the possession of a third person, association or corporation it shall be within view of those who attend the sale and be sold in such parcels as are likely to bring the highest price, and when the sale is of real property and consists of several known lots or parcels they shall be sold separately or otherwise, as is likely to bring the highest price, or when a portion of such real property is claimed by a third person and he requires it to be sold separately, such portion of it shall be sold separately.

When sheriff may adjourn sale.

Section 16.—If, at the time appointed for the sale, the sheriff should be prevented from attending at the place appointed, or, being present, should deem it for the advantage of all concerned to postpone the sale for want of purchasers, or other sufficient cause, he shall postpone the sale giving notice of every adjournment by public proclamation made at the same time. The sheriff for like causes may also adjourn the sale from time to time, not exceeding thirty days beyond the day at which the writ is made returnable, with

the consent of the plaintiff, indorsed upon the writ and approved by the District Court.

Bill of sale and delivery by sheriff of personal property.

Section 17.—When the purchaser of any personal property capable of manual delivery, and not in the possesion of a third person, association, or corporation, shall pay the purchase money, the sheriff shall deliver to him the property, and if desired shall give him a bill of sale containing an acknowledgment of the payment. In all other sales of personal property the sheriff shall give the purchaser a bill of sale with the like acknowledgment.

When execution not to issue except by leave of the court and how leave obtained.

Section 18.—Whenever, after the entry of judgment, a period of five years shall elapse without an execution being issued on such judgment, thereafter an execution shall not issue execept as in this section provided:

First. The party in whose favor a judgment is given shall file a motion with the clerk of the court where the judgment is entered for leave to issue an execution. The motion shall state the names of the parties to the judgment, the date of its entry, and the amount claimed to be due thereon, or the particular property on which the possession was thereby adjudged to such party remaining undelivered. The motion shall be subscribed and verified in like manner as a complaint in an action.

Second. At any time after filing such motion the party may cause a summons to be served on the judgment debtor in like manner and with like effect as in an action. In case such judgment debtor be dead, the summons may be served upon his representative by publication as in the case of a non-resident, or by actual service of the summons.

Third. The summons shall be substantially the same as in an action, but instead of a notice therein required it shall state the amount claimed or the property sought to be recovered, in the manner prescribed in subdivision one of this section.

Fourth. The judgment debtor, or, in case of his death his representatives, may file an answer to such motion within the time allowed to answer a complaint in an action, alleging any defense to such motion which may exist. If no answer be filed within the time prescribed the motion shall be allowed of course. The moving party may demur or reply to the answer. The party opposed to the motion may demur to the same or to the reply. The pleading shall be subscribed and verified and the proceedings conducted as in an action;

Fifth. The word "representative" in this section shall be deemed to include any or all of the persons mentioned in subdivision two of section three of this chapter, in whose possession property of the judgment debtors may be which is liable to be taken and sold or delivered in satisfaction of the execution and not otherwise.

Sixth. The order shall specify the amount for which execution is to issue, or the particular property possession of which is to be delivered; it shall be entered in the journal and docketed as a judgment, and a roll thereafter prepared and filed, or a final record made of the proceedings, as the case may be, in the same manner as a judgment.

Confirmation of sale of real estate, proceedings thereon.

Section 19.—Whenever real property is sold on execution the provisions of this section shall apply to the subsequent proceedings.

First. The plaintiff in the writ of execution shall be entitled, on motion therefor, to have an order confirming the sale at the term next following the return of the execution, or if it be returned in term time, then at such term, unless the judgment debtor, or, in case of his death, his representative, shall file with the clerk ten days before such term, or if the writ be returned in term time, then five days after the return thereof, his objections thereto;

Second. If such objections be filed, the court shall notwithstanding, allow the order confirming the sale, unless on the hearing of the motion it

shall satisfactorily appear that there were substantial irregularities in the proceedings concerning the sale, to the probable loss or injury of the party objecting. In the latter case, the court shall disallow the motion and direct that the property be resold, in whole or in part, as the case may be, as upon an execution received of that date;

Third. Upon the return of the execution the sheriff shall pay the proceeds of the sale to the clerk, who shall then apply the same, or so much thereof as may be necessary, in satisfaction of the judgment. If an order of resale be afterwards made, and the property sell for a greater amount to any person other than the former purchaser, the clerk shall first repay to such purchaser the amount of his bid out of the proceeds of the latter sale;

Fourth. Upon a resale the bid of the purchaser at the former sale shall be deemed to be renewed and continue in force, and no bid shall be taken except for a greater amount. If the motion to confirm be not heard and decided at the term at which it is made, it may be continued and heard and determined before the judge, or at any term thereafter. An order confirming a sale shall be a conclusive determination of the regularity of the proceedings concerning such sale, as to all persons, in any other action, or proceeding whatever;

Fifth. If, after the satisfaction of the judgment, there be any proceeds of the sale remaining, the clerk shall pay such proceeds to the judgment debtor, or his representatives, as the case may be, at any time before the order is made, upon the motion to confirm the sale, provided such party file with the clerk a waiver of all objections made or to be made to the proceedings concerning the sale; but if the sale be confirmed, such proceeds shall be paid to such party of course, otherwise, they shall remain in the custody of the clerk until the sale of the property has been disposed of.

Who liable for purchase money in case of eviction of purchaser.

Section 20.—If the purchaser of real property sold on execution, or his successors in interest, be evicted therefrom in consequence of the reversal of the judgment, he may recover the price paid, with legal interest and the costs and disbursements of the action by which he was evicted, from the plaintiff in the writ of execution.

Contribution among joint judgment debtors.

Section 21.—When property liable to an execution against several persons is sold thereon, and more than a due proportion of the judgment is levied upon the property of one of them, or one of them pays without a sale more than his proportion, he may compel contribution from the others; and when a judgment is against several, and is upon an obligation or contract of one of them as security for another, and the surety pays the amount, or any part thereof, either by sale of his property or before sale, he may compel repayment from the principal. In such cases the person so paying or contributing shall be entitled to the benefit of the judgment to enforce contribution or repayment, if within thirty days after his payment he file with the clerk of the court where the judgment was rendered notice of his payment and claim to contribution or repayment; upon filing such notice the clerk shall make an entry thereof in the margin of the docket where the judgment is entered.

Sale of real property, when absolute and when subject to redemption.

Section 22.—Upon a sale of real property, when the estate is less than a leasehold of two years' unexpired term, the sale shall be absolute. In all other cases such property shall be subject to redemption as hereinafter provided in this chapter. At the time of sale the sheriff shall give to the purchaser a certificate of the sale containing:

First. A particular description of the property sold;

Second. The price bid for each distinct lot or parcel;

Third. The whole price paid;

Fourth. When subject to redemption, it shall be so stated.

The matters contained in such certificate shall be substantially stated in the sheriff's return of his proceedings upon the writ.

Section 23.—Property sold subject to redemption, as provided in the last section, or any part thereof separately sold, may be redeemed by the following persons, or their successors in interest:

Who may redeem.

First. The judgment debtor, or his successor in interest, in the whole or any part of the property separately sold;

Second. A creditor having a lien by judgment, or mortgage, on any portion of the property, or any portion of any part thereof, separately sold, subsequent in time to that on which the property was sold.

The persons mentioned in subdivision two of this section after having redeemed the property, are to be termed redemptioners.

Section 24.—A lien creditor may redeem the property within sixty days from the date of the order confirming the sale by paying the amount of the purchase money with interest at the legal rate per annum thereon from the time of sale, together with the amount of any taxes which the purchaser may have paid thereon; and if the purchaser be also a creditor having a lien prior to that of the redeptioner, the amount of such lien with interest.

When lien creditor may redeem from purchaser.

Section 25.—If the property be so redeemed, any other lien creditor may, within sixty days from the last redemption, again redeem it on paying the sum paid on the last redemption, with interest at the legal rate per annum thereon from the date of the last preceding redemption in addition, together with any taxes which the last redemptioner may have paid thereon and, unless his lien be prior to that of such redemptioner, the amount of such lien, with interest. The property may be again, and as often as any lien creditor or redemptioner is disposed, redeemed from the last previous redemptioner, within sixty days from the date of the last redemption, on paying the sum paid on the last previous redemption, with interest at the legal rate per annum thereon from the date of such previous redemption, together with the amount of any taxes paid thereon by such last redemptioner, and the amount of any liens held by such last redemptioner prior to his own, with interest.

When lien creditor may redeem from redemptioner.

Section 26.—The judgment debtor or his successor in interest may redeem the property at any time prior to the confirmation of sale on paying the amount of the purchase money, with interest at the legal rate per annum thereon from the date of sale, together with the amount of any taxes which the purchaser may have paid thereon after the purchase; but if the judgment debtor do not redeem until after the confirmation of the sale, thereafter he shall redeem within twelve months from such order of confirmation and not otherwise.

When judgment debtor may redeem.

Section 27.—If redemption be not made as prescribed in this act, or when redemption is made and a period of sixty days shall have elapsed without any other redemption, the purchaser or the redemptioner, as the case may be, shall be entitled to a conveyance from the sheriff. If the judgment debtor redeem at any time before the time for redemption expires, the effect of the sale shall terminate, and he shall be restored to his estate.

Purchaser or redemptioner when entitled to conveyance.

Section 28.—The mode of redeeming shall be as provided in this section.

Mode of proceeding to redeem.

The person seeking to redeem may redeem by paying to the sheriff the sum required. The sheriff shall give the person redeeming a certificate, as in case of sale on execution, adding therein the sum paid on redemption, from whom redeemed, and the date thereof and shall at once give notice of such redemption to the party from whom redeemed. A party seeking to redeem shall submit to the sheriff the evidence of his right thereto, as follows:

First. If he be a lien creditor, a copy of the docket of the judgment under which he claims the right to redeem, certified by the clerk of the court

where such judgment is docketed, or if he seek to redeem upon a mortgage, the certificate of the record thereof.

Second. A copy of any assignment necessary to establish his claim, verified by the affidavit of himself or agent showing the amount then actually due on the judgment or mortgage.

Third. If the redemptioner or purchaser have a lien prior to that of the lien creditor seeking to redeem, such redemptioner or purchaser shall submit to the sheriff the like evidence thereof and of the amount due thereon, or the same may be disregarded.

When two or more persons apply to the sheriff to redeem at the same time he shall allow the person having the prior lien to redeem first, and so on. The sheriff shall immediately pay the money over to the person from whom the property is redeemed, if he attend at the redemption, or if not, at any time thereafter when demanded. Where a sheriff shall wrongfully refuse to allow any person to redeem, his right thereto shall not be prejudiced thereby and upon the submission of the evidence and the tender of the money to the sheriff as herein provided, he may be required by order of the court or judge thereof to allow such redeption.

Court may restrain waste prior to conveyance.

Section 29.—Until the expiration of the time allowed for redemption, the court or judge thereof may restrain the commission of waste on the property by order granted with or without notice, on the application of the purchaser or judgment creditor; but it shall not be deemed waste for the person in possession of the property at the time of sale or entitled to possession afterwards during the period allowed for redemption to continue to use it in the same manner in which it was previously used, or to use it in the ordinary course of husbandry, or to make the necessary repairs to buildings thereon, or to use wood or timber on the property therefor or for the repair of fences, or for fuel in his family while he occupies the property.

Who entitled to possession from time of sale to conveyance.

Section 30.—The purchaser from the day of sale until a resale or a redemption, and a redemptioner from the day of his redeption until another redemption, shall be entitled to the possession of the roperty purchased or redeemed, unless the same be in the possession of a tenant holding under an unexpired lease, and in such case shall be entitled to receive from such tenant the rents or the value of the use and occupation thereof during the same period, and provided further, that any purchaser or redemptioner or both as the case may be, shall be entitled to cultivate and to reap, harvest, cut, etc., the first crop or any crops which he may have planted prior to the redemption.

Order to examine judgment debtor.

Section 31.—After the issuing of an execution against property; and upon proof by the affidavit of the plaintiff in the writ, or otherwise, to the satisfaction of the court or judge thereof that the judgment debtor has property liable to execution which he refuses to apply toward the satisfaction of the judgment, such court or judge may, by an order, require the judgment debtor to appear and answer under oath concerning the same before such court or judge or before a referee appointed by such court or judge, at a time and place specified in the order.

Examination of judgment debtor; Proceedings thereon.

Section 32.—Either party may examine witnesses in his behalf, and if by such examination it appear that the judgment debtor has any property liable to execution the court or judge thereof, before whom the proceeding takes place, or to whom the report of the referee is made, shall make an order requiring the judgment debtor to apply the same in satisfaction of the judgment, or that such property be levied on, by execution, in the manner and with the effect as provided in this chapter or both, as may seem most likely to effect the object of the proceeding.

Restraining order against judgment debtor.

Section 33.—At the time of allowing the order prescribed in the section next preceding, or at any time thereafter pending the proceeding, the court or judge may make an order restraining the judgment debtor from selling,

transferring, or in any manner disposing of any of his property liable to execution pending the proceeding. For disobeying any order or requirement authorized by this section and the two next preceding sections, the judgment debtor may be punished as for a contempt.

When judgment may be arrested.

Section 34.—Instead of the order requiring the attendance of the judgment debtor, as provided in the last two sections, the court or judge may, upon proof by affidavit of the party, or otherwise to his satisfaction that there is danger of the debtor leaving the district, or concealing himself therein, and that there is reason to belive he has property which he unjustly refuses to apply to such judgment, issue a warrant requiring the sheriff to arrest him and bring him before the court or judge. Upon being brought before the court or judge be may be examined on oath, and if it then appear that there is danger of the debtor leaving the district, and that he has property which he unjustly refuses to apply to such judgment, he may be ordered to enter into an undertaking with one or more sureties that he will from time to time attend before the court or judge, as may be directed, and that he will not, during the pendency of the proceedings, dispose of any portion of his property not exempt from execution. In default of entering into such undertaking he may be committed to jail by warrant of the judge.

Order to examine garnishee, proceedings thereon.

Section 35.—Whenever the sheriff with an execution against the property of the judgment debtor, shall apply to any person or officer mentioned in subdivision three of section six of chapter fourteen of this title for the purpose of levying on any property therein mentioned, such person or officer shall forthwith give to the sheriff a certificate in the manner prescribed in section eight of said chapter fourteen. If such person or officer refuses to do so, or if the certificate be unsatisfactory to the plaintiff in the writ, he may in like manner have the order prescribed in such section against such person or officer. Thereafter the proceedings upon such order shall be conducted in the manner prescribed from section eighteen to section twenty-six inclusive, of said chapter fourteen.

What officers not liable to answer as garnishee.

Section 36.—No public officer shall be liable as garnishee for moneys in his possession as such officer, belonging to or claimed by any judgment debtor.

CHAPTER THIRTY-ONE.

OF ACTIONS TO RECOVER THE POSSESSION OF REAL PROPERTY.

Who may bring such action and against whom.

Section 1.—Any person who has a legal estate in real property, and a present right to the possession thereof, may recover such possession, with damages for withholding the same, by an action. Such action shall be commenced against the person in the actual possession of the property at the time, or, if the property be not in the actual possession of anyone, then against the person acting as the owner thereof.

When landlord may be made defendant in place of tenant.

Section 2.—A defendant who is in actual possession may, for answer; plead that he is in possession only as tenant of another, naming him and his place of residence; and thereupon the landlord, if he apply therefor, shall be made defendant in place of the tenant, and the action shall proceed in all respects as if originally commenced against him. If the landlord do not apply to be made defendant within the day the tenant is allowed to answer, thereafter he shall not be allowed to, but he shall be made defendant if the plaintiff require it. If the landlord be made defendant on motion of the plaintiff he shall be required to appear and answer within twenty days from notice of the pendency of the action and the order making him defendant, or such further time as the court or judge may prescribe.

What to be pleaded in complaint.

Section 3.—The plaintiff in his complaint shall set forth the nature of his estate in the property, whether it be in fee, for life, or for a term of years, and for whose life, or the duration of such term, and that he is entitled to the possession thereof, and that the defendant wrongfulyy withholds the same from him to his damage in such sum as may be therein claimed. The property shall be described with such certainty as to enable the possession thereof to be delivered if a recovery be had.

Defendant not to be allowed to give evidence in certain matters unless same pleaded in answer.

Section 4.—The defendant shall not be allowed to give in evidence any estate in himself, or another in the property, or any license or right to the possession thereof, unless the same be pleaded in his answer. If so pleaded, the nature and duration of such estate, or license, or right to the possession shall be set forth with the certainty and particularity required in a complaint. If the defendant does not defend for the whole of the property he shall specify for what particular part he does defend. In an action against a tenant the judgment shall be conclusive against the landlord who has been made defendant in place of the tenant to the same extent as if the action had been originally commenced against him.

What the jury shall find by their verdict.

Section 5.—The jury by its verdict shall find as follows:

First. If the verdict be for the plaintiff, that he is entitled to the possession of the property described in the complaint, or some part thereof, or some undivided share or interest in either, and the nature and duration of his estate in such property, part thereof, or undivided share or interest in either, as the case may be;

Second. If the verdict be for the defendant, that the plaintiff is not entitled to the possession of the property described in the complaint, or to such part thereof as the defendant defends for, and the estate in such property or part thereof, or license or right to the possession of either, established on the trial by the defendant, if any, in effect as the same required to be pleaded.

What damages may be recovered, and when the value of permanent improvements may be set off against such damages.

Section 6.—The plaintiff shall only be entitled to recover damages for withholding the property for the term of three years next preceding the commencement of the action, and for any period that may elapse from such commencement to the time of giving a verdict therein, exclusive of the use of permanent improvements made by the defendant. When permanent improvements have been made upon the property by the defendant, or those under whom he claims, holding under color of title adversely to the claim of plain-

tiff, in good faith, the value thereof at the time of trial, not exceeding such damages, shall be allowed as a set-off.

Verdict when right of possession expires after commencement of action.

Section 7.—If the right of the plaintiff to the possession of the property expire after the commencement of the action, and before the trial, the verdict shall be given according to the fact, and judgment shall be given only for the damages.

Order to make survey of the property.

Section 8.—The court or judge thereof, on motion, and after notice to the adverse party, may, for cause shown, grant an order allowing the party applying therefor to enter upon the property in controversy, and make survey and admeasurement thereof, for the purposes of the action.

Same subject.

Section 9.—The order shall describe the property, and a copy thereof shall be served upon the defendant, and thereupon the party may enter upon the property and make such survey and admeasurement, but if any unnecessary injury be done to the premises he shall be liable therefor.

Action not to be prejudiced by alienation of person in possession.

Section 10.—An action for the recovery of the possession or real property against a person in possession cannot be prejudiced by any alienation made by such person either before or after the commencement of the action; but if such alienation be made after the commencement of the action, and the defendant does not satisfy the judgment recovered for damages for withholding the possession, such damages may be recovered by action against the purchaser.

Mortgagee cannot maintain action against mortgagor.

Section 11.—A mortgage of real property shall not be deemed a conveyance so as to enable the owner of the mortgage to recover possession of the real property without a foreclosure and sale according to law, and a judgment thereon.

Action by tenant in common or for dower; what must be shown.

Section 12.—In an action for the recovery of dower before admeasurement, or by a tenant in common of real property against a cotenant, the plaintiff shall show, in addition to the evidence of his right of possession, that the defendant either denied the plaintiff's right or did some act amounting to such denial.

Action against lessee on failure to pay rent.

Section 13.—When in case of a lease of real property and the failure of tenant to pay rent, the landlord has a subsisting right to reenter for such a failure, and may bring action to recover the possession of such property, and such action is equivalent to a demand of the rent and a reentry upon the property. But if at any time before judgment in such action the lessee or his successor in interest as to the whole or a part of the property pay to the plaintiff or bring into court the amount of rent then in arrear, with interest, and the costs of the action, and perform the other covenants or agreements on the part of the lessee, he shall be entitled to continue in the possession according to the terms of the lease.

When judgment conclusive, and upon whom.

Section 14.—In an action to recover the possession of real property the judgment therein shall be conclusive as to the estate in such property and the right to the possession thereof, so far as the same is thereby determined, upon the party against whom the same is given and against all persons claiming from, through, or under such party after the commencement of such action, except as in this section provided. When service of the summons is made by publication and judgment is given for want of answer at any time within two years from the entry thereof the defendant or his successors in interest as to the whole or any part of the property shall, upon application to the court or judge thereof, be entitled to an order vacating the judgment and granting him a new trial upon the payment of the costs of the action.

Possession not to be affected by order allowing new trial.

Section 15.—If the plaintiff has taken possession of the property before the judgment is set aside and a new trial granted, as provided in the section last preceding, such possession shall not be thereby affected in any way, and if judgment be given for the defendant in the new trial he shall be entitled to restitution by execution in the same manner as if he were plaintiff.

Admeasurement of dower after judgment.

Section 16.—In an action to recover the possession of real property by a tenant in dower or his successor in interest if such an estate in dower has not been admeasured before the commencement of the action, the plaintiff shall not have execution to deliver the possession thereof until the same be admeasured, as follows:

First. At any time after the entry of judgment in favor of the plaintiff, he may, upon notice to the adverse party, move the court for the appointment of referees to admeasure the dower out of the real property of which the possession is recovered by the action. The court shall allow such motion unless it appear probable on the hearing that a partition of such property cannot be made without prejudice to the interests of the other owners. In the latter case the court shall disallow the motion, and thereafter the plaintiff shall only proceed for partition or sale of such real property as provided in the chapter of this code entitled "Of Actions for the Partition of Real Property";

Second. If the court allow the motion, thereafter the proceedings shall be conducted as provided in such chapter. At any time after the confirmation of the report of the referees the plaintiff may have execution for the delivery of the possession of the property according to the admeasurement thereof, and for the damages recovered, if any, for withholding the same, if such damages remain unsatisfied;

Third. If the motion for admeasurement be made at the term at which judgment was given, the notice thereof shall be served on the adverse party at such time as the court by general rule or special order may prescribe.

CHAPTER THIRTY-TWO.

OF ACTIONS FOR NUISANCE, WASTE, AND TRESPASS ON REAL PROPERTY.

Private nuisance, and action therefor; when warrant allowed to abate it.

Section 1.—Any person whose property is affected by a private nuisance, or whose personal enjoyment thereof is in like manner thereby affected, may maintain an action for damages therefor. If judgment be given for the plaintiff in such action, he may, in addition to the execution to enforce the same on motion, have an order allowing the warrant to issue to the sheriff to abate such nuisance. Such motion must be made at the term at which judgment is given, and shall be allowed of course, unless it appear on the hearing that the nuisance has ceased, or that such remedy is inadequate to abate or prevent the continuance of the nuisance in which latter case the plaintiff may proceed to have the defendant enjoined.

How warrant issued, and mode of proceeding under.

Section 2.—If the order be made, the clerk shall thereafter, at any time within sixty days, when requested by the plaintiff, issue such warrant directed to the sheriff requiring him forthwith to abate the nuisance at the expense of the defendant, and return the warrant as soon thereafter as may be, with his proceedings indorsed thereon. The expenses of abating the nuisance may be levied by the sheriff on the property of the defendant, and in this respect the warrant is to be deemed an execution against property.

When defendant may have stay of warrant.

Section 3.—At any time before the order is made, or the warrant issues, the defendant may, on motion to the court or judge thereof, have an order to stay the issue of such warrant for such period as may be necessary, not exceeding sixty days and to allow the defendant to abate the nuisance himself, upon his giving an undertaking to the plaintiff in a sufficient amount, with one or more sureties, to the satisfaction of the court or judge thereof, that he will abate it within the time and in the manner specified in such order.

Sureties in undertaking, when to justify.

Section 4.—If the plaintiff is not notified of the time and place of the application for the order provided for in the section last preceding, the sureties therein provided for shall justify as bail upon arrest, otherwise such justification may be omitted, unless the plaintiff require it. If such order be made and undertaking given, and the defendant fails to abate such nuisance within the time specified in said order, thereafter, at any time within sixty days, the warrant for the abatement of the nuisance may issue as if the same had not been stayed.

Action for waste and judgment thereon.

Section 5.—If a guardian, tenant in severalty or in common for life or for years, of real property, commit waste thereon, any person injured thereby may maintain an action for damages therefor against such guardian or tenant, in which action there may be judgment for treble damages, forfeiture of the estate of the party committing or permitting the waste, and of eviction from the property. But judgment of forfeiture and eviction shall only be given in favor of the person entitled to the reversion against the tenant in possession when the injury to the estate in reversion is determined in the action to be equal to the value of the tenant's estate or unexpired term, or to have been done or suffered in malice.

Action for trespass in particular cases, and of judgment thereon.

Section 6.—Whenever any person shall cut down, girdle, or otherwise injure, or carry off any tree, timber, or shrub on the land of another person, or on the street or highway in front of any person's house, village, town, or city lot, or cultivated grounds, or on the commons or public grounds of the District or highway in front thereof, without lawful authority, in an action by such person, village, town, or city or district, such trespasses, or any of them, if judgment be given for the plaintiff it shall be given for treble the amount of damages allowed or assessed therefor, as the case may be.

Same subject.

Section 7.—If upon the trial of such action it shall appear that the trespass was casual or involuntary, or that the defendant has probable cause to belive that the land on which such trespass was committed was his own or that of the person in whose service or by whose direction the act was done, or that such tree, or timber was taken from uninclosed woodland for the purpose of repairing any public highway or brigde upon the land or adjoining it, judgment shall only be given for single damages.

CHAPTER THIRTY-THREE.

ACTIONS ON OFFICIAL UNDERTAKINGS AND FOR FINES AND FORFEITURES.

Official undertakings to whom deemed a security.

Section 1.—The official undertaking or other security of a public officer of the District or other municipal or public corporation therein, shall be deemed a security to all persons severally for the official delinquency against which it is intended to provide.

Who may maintain action thereon.

Section 2.—When a public officer, by official misconduct or neglect of duty, shall forfeit his official undertaking or other security, or render his sureties therein liable upon such undertaking or other security, any person injured by such misconduct or neglect, or who is by law entitled to the benefit of the security may maintain an action thereon in his own name against the officer and his sureties to recover the amount to which he may by reason thereof be entitled.

When leave must be obtained before action can be commenced.

Section 3.—Before such action can be commenced by a plaintiff other than the Municipality or other municipal or public corporation, leave shall be obtained of the court or judge thereof where the action is triable. Such leave shall be granted upon the production of a certificed copy of the undertaking or other security and an affidavit of the plaintiff, or some person in his behalf, showing the delinquency. But if the matters set forth in the affidavit be such that, if true, the party applying would clearly not be entitled to recover in the action, the leave shall not be granted. If it does not appear from the complaint that the leave herein provided for has been granted, the defendant on motion shall be entitled to judgment for nonsuit; if it does, the defendant may controvert the allegation, and if the issue be found in his favor judgment may be given accordingly.

Judgment no bar to action for another delinquency.

Section 4.—A judgment in favor of a party for one delinquency shall not preclude the same or another party from maintaining another action on the same undertaking, or other security, for another delinquency.

Amount of judgment.

Section 5.—In an action upon an official undertaking or other security, if judgment has already been recovered against the surety therein, other than by confession, equal in the aggregate to the penalty or any part thereof of such undertaking or other security, and if such recovery be established on the trial, judgment shall not be given against such surety for an amount exceeding such penalty, or such portion thereof as is not already recovered against him.

Who may maintain action for fines. and forfeitures.

Section 6.—Fines and forfeitures may be recovered by an action in the name of the officer or person to whom they are by law given, or in the name of the officer who by law is authorized to prosecute for them.

Actions for penalties not to exceed certain amount.

Section 7.—When an action shall be commenced for a penalty which by law is not to exceed a certain amount, the action may be commenced for that amount, and if judgment be given for the plaintiff, it may be for such amount or less, in the discretion of the court, in proportion to the offense.

Judgment by collusion between plaintiff and defendant.

Section 8.—A recovery of a judgment for a penalty or forfeiture by collusion between the plaintiff and defendant, with intent to save the defendant, wholly or partially, from the consequences contemplated by law, in case where the penalty or forfeiture is given, wholly or partly, to the person who prosecutes, shall not bar the recovery of the same by another person.

Disposition of fines and forfeitures.

Section 9.—Fines and forfeitures not specially granted or otherwise appropriated by law, when recovered shall be paid to the clerk of the District Court. Whenever, by the provisions of law, any property, real or personal, shall be forfeited to the Municipality or to any officer for its use, the action for the recovery of such property may be commenced wherever the defendant may be found, or wherever such property may be.

CHAPTER THIRTY-FOUR.

ACTIONS BY AND AGAINST PUBLIC CORPORATIONS AND OFFICERS.

How actions may be maintained by public corporations, and for what causes.

Section 1.—An action may be maintained by any public corporation in the District, and upon a cause of action accruing to it, in either of the following cases:

First. Upon a contract made with such public corporation;

Second. Upon a liability prescribed by law in favor of such public corporation;

Third. To recover a penalty or forfeiture given to such public corporation;

Fourth. To recover damages for an injury to the corporate rights or property of such public corporation.

Actions against public corporations, and for what causes.

Section 2.—An action may be maintained against any public corporation in the district within the scope of its authority, or for an injury to the rights of the plaintiff arising from some act or omission of such public corporation.

How pleadings of public corporations are verified.

Section 3.—In such actions the pleadings of the public corporation shall be verified by the chief officer representing it in its corporate capacity or by such other officer, agent, or attorney as he may designate, in the same manner as if such officer were a defendant in the action.

CHAPTER THIRTY-FIVE.

OF ACTIONS TO AVOID CHARTERS, LETTERS PATENT AND TO PREVENT THE USURPATION OF AN OFFICE OR FRANCHISE AND TO DETERMINE THE RIGHT THERETO.

Scire facies and quo warranto abolished.

Section 1.—The writ of *scire facias*, the writ of *quo warranto*, and proceedings by information in the nature of *quo warranto* shall not apply in this District but the remedies obtainable under those forms may be obtained by an action in the mode prescribed in this chapter.

Action against public of private corporation to be commenced on the direction of the Governor.

Section 2.—An action may be maintained in the name of the People, whenever the Governor shall so direct, against a corporation either public or private, for the purpose of avoiding the act of incorporation, or the act renewing or modifying its corporate existence, on the ground that such act or either of them was procured upon some fraudulent suggestion or concealment of a material fact by the persons incorporated, or some of them, or with their knowledge and consent; or for annulling the existence of such corporation, when the same has been formed under any general law operating in this district therefor, on the ground that such incorporation, or any renewal or modification thereof, was procured in like manner.

Action to annul the existence of corporation.

Section 3.—An action may be maintained in the name of the People against a corporation other than a public one on leave granted by the court or judge thereof where the action is triable, for the purpose of avoiding the charter or annulling the existence of such corporation, whenever it shall:

First. Offend against any of the provisions of the acts, or either of them, creating, renewing, or modifying such corporation or the provisions of any general law under which it became incorporated; or,

Second. Violate the provisions of any law by which such corporation forfeits its charter by abuse of its powers; or

Third. Whenever it has forfeited its privileges or franchises by failure to exercise for a period of one year its powers; or,

Fourth. Whenever it has done or omitted any act which amounts to a surrender of its corporate rights, privileges, and franchise; or,

Fifth. Whenever it exercises a franchise or privilege not conferred upon it by law; or

Sixth. Whenever any such corporation or association of persons shall combine for the purpose of forming a trust or agreement to prevent competition or to control the price, production or sale of any goods, products, or merchandise.

Action for the usurpation of office or franchise.

Section 4.—An action may be maintained in the name of the People upon the information of the Government Attorney or upon the relation of a private party against the person offending in the following cases:

First. When any person shall usurp, intrude into, or unlawfully hold or exercise any public office, or any franchise within the District, or any office in a corporation, either public or private, created or formed by or under the authority of the District; or,

Second. When any public officer has done or suffered an act to be performed which, by the provisions of law, makes a forfeiture of his office; or,

Third. When any association or number of persons act within the district as a corporation without being duly incorporated.

Who to prosecute actions, pleadings by whom verified, how leave granted and who deemed coplaintiff.

Section 5.—The actions provided for in this chapter shall be commenced and prosecuted by the Government Attorney. When the action is upon the relation of a private party, as allowed in the section last preceding, the pleadings on behalf of the district shall be verified by such relator as if he were the plaintiff in the action, or otherwise as provided in section one of chapter ten of this title; in all other cases such pleading shall be verified by the attorney in like manner, or otherwise as provided in such section. When an action can only be commenced by leave, as provided in the section last preceding, such leave shall be granted when it appears by affidavit that the acts or omissions in such section specified have been done or suffered by such corporation. When an action is commenced on the information of a private person, as allowed in the section last preceding, having an interest in the question, such party, for all the purposes of the action, and as to the effect of any judgment that may be given therein, shall be deemed a coplaintiff.

Duty of Government Attorney as to commencing action.

Section 6.—When directed by the Governor, as prescribed in section two of this chapter, it shall be the duty of the Government Attorney to commence the action therein provided for accordingly. In all other actions provided for in this Chapter it shall be his duty to commence such action upon leave given where leave is required in every case of public interest, whenever he has reason to believe that a cause of action exists and can be proven, and also for like reasons in every case of private interest only in which satisfactory security is given to the district to indemnify it against the costs and expenses that may be incurred thereby.

When relator's right may be pleaded and determined in the action.

Section 7.—Whenever an action is brought against a person for any of the causes specified in subdivision one of section four of this chapter, the Government Attorney, in addition to the statement of the cause of action, may also seperately set forth in the complaint the name of the person rightfully entitled to the office or franchise, with a statement of the facts constituting his rights thereto. In such case, judgment may be given upon the right of the defendant, and also upon the right of the person so alleged to be entitled, or only upon the right of the defendant as justice may require.

If judgment be given in favor of relator what he may do.

Section 8.—If judgment be given upon the right of the person so alleged to be entitled, and the same be in favor of such person, he shall be entitled to the possession and enjoyment of such franchise, or to take upon himself the execution of such office, after qualifying himself as required by law, and to demand and receive the possession of all the books, papers, and property of whatever nature belonging thereto.

Relator after judgment may have action for damages.

Section 9.—If judgment be given upon the right and in favor of the person so alleged to be entitled, he may afterwards maintain an action to recover the damages which he may have sustained by reason of the premises. In such action the defendant may be arrested and held to bail in the same manner and with the like effect as in other actions where the defendant is subject to arrest.

Actions against several persons claiming office or franchise.

Section 10.—Several persons may be joined as defendants in an action for the causes specified in subdivision one of section four of this chapter, and in such action their respective rights to such office or franchise may be determined.

Judgment against usurper. Court may fine him.

Section 11.—When a defendant, whether a natural person or a corporation, against whom an action has commenced for any of the causes specified in subdivision one of section four of this chapter, is determined to be guilty of usurping or intruding into, or unlawfully holding or exercising any office or franchise, judgment shall be given that such defendant be excluded therefrom. The court may also in its discretion impose a fine upon the defendant not exceeding five hundred dollars.

Judgment against corporation.

Section 12.—If it be determined that a corporation against which an action has been commenced pursuant to this chapter has forfeited its corporate

rights, privileges, and franchises, judgment shall be given that such corporation be excluded therefrom, and that the corporation be dissolved.

Copy of the judgment roll to be filed.

Section 13.—If judgment be given against a corporation the effect of which is that such corporation ceases to exist, or whereby any letters patent are determined to be vacated or annulled, it shall be the duty of the Government Attorney to cause a copy of the judgment roll to be filed with the officer issuing the certificate of corporation or the letters patent to such corporation.

How judgment enforced.

Section 14.—A judgment given in any action provided for in this chapter in respect to costs and disbursements, may be enforced by execution as a judgment which requires the payment of money, and in all other respects obedience thereto may be enforced by attachment of the body of the defendant, or, if the defendant be a corporation, the body of any or all of the officers or members of such corporation refusing or neglecting obedience thereto.

CHAPTER THIRTY-SIX.

OF ACTIONS BY AND AGAINST EXECUTORS OR ADMINISTRATORS.

What causes of action do not survive.

Section 1.—A cause of action arising out of an injury to the person dies with the person of either party, except as provided in section three of this chapter, but the provisions of this chapter shall not be construed so as to abate, or to defeat or prejudice the right of action given by section seven of chapter three of this title.

What causes of action do survive.

Section 2.—All other causes of action by one person against another, whether arising on contract or otherwise, survive to the personal representatives of the former and against the personal representatives of the latter. When the cause of action survives, as herein provided, the executors or administrators may maintain an action thereon against the party against whom the cause of action accrued, or, after his death, against his personal representatives.

When death ensues from an injury.

Section 3.—When the death of a person is caused by the wrongful act or omission of another, the personal representatives of the former may maintain an action therefor against the latter, if the former might have maintained an action, had he lived, against the latter for an injury done by the same act or omission. Such action shall be commenced within two years after the death, and the damages therein shall not exceed ten thousand dollars, and the amount recovered, if any, shall be exclusively for the benefit of the decedent's husband or wife and children when he or she leaves a husband, wife, or children, him or her surviving; and when any sum is collected it must be distributed by the plaintiff as if it were unbequeathed assets left in his hands, after payment of all debts and expenses of administration, and when he or she leaves no husband, wife, or children, him or her surviving, the amount recovered shall be administered as other personal property of the deceased person; but the plaintiff may deduct therefrom the expenses of the action, to be allowed by the proper court upon notice, to be given in such manner and to such persons as the court deems proper.

Representatives regarded as one person.

Section 4.—In an action against several executors or administrators they shall be considered as one person, representing their testator or intestate, and judgment may be given and execution issued against all of them who are defendants in the action, although the summons be served only on part of them, in the same manner and with the like effect as if served on all, except as provided in the next section.

Judgment for want of answer is not evidence of assets.

Section 5.—When a judgment is given against an executor or administrator for want of an answer such judgment is not to be deemed evidence of assets in his hands unless it appears that the complaint alleged assets and that the summons was served upon him.

Effect of inventory as evidence and how it may be contracted or avoided.

Section 6.—In an action against executors or administrators in which the fact of their having administered the estate of their testator or intestate or any part thereof is put in issue and the inventory of the property of the deceased returned by them is given in evidence the same may be contradicted or avoided by evidence:

First. That any property has been omitted in such inventory or was not returned therein at its full value or that since the return thereof such property has increased in value.

Second. That such property has perished or been lost without the fault of such executors or administrators or that it has been fairly and duly sold by them at a less price than the value so returned, or that since the return of the inventory such property has deteriorated in value. In such action the defendants can not be charged for any things in action specified in their

inventory unless it appear that they have been collected or with due diligence might have been.

Executor of his own wrong not liable as such.

Section 7.—No person is liable to an action as executor of his own wrong for having taken, received, or interfered with the property of a deceased person, but is responsible to the executors or administrators of such deceased person for the value of all property so taken or received and for all injury caused by his interference with the estate of the deceased.

When action may be commenced against executor or administrator.

Section 8.—An action may be commenced against an executor or administrator at any time after the expiration of twelve months from the granting of letters testamentary or of administration and until the final settlement of the estate and discharge of such executor or administrator from the trust, and not otherwise.

Claim must be presented before action can be commenced.

Section 9.—Such action shall not be commenced until the claim of the plaintiff has been duly presented to such executor or administrator and by him disallowed. If such claim is presented after the expiration of the period of six months mentioned in sections one and two of chapter 75 of this title, the executor or administrator in an action therefor shall only be liable to the extent of the assets in his hands at the time the summons is served upon him.

When provisional remedies allowed against executors or administrators.

Section 10.—In an action against an executor or administrator as such the provisional remedies of arrest and attachment shall not be allowed on account of the acts of his testator or intestate, but for his own acts as such executor or administrator such remedies shall be allowed for the same causes and in like manner and with like effect as in actions generally.

CHAPTER THIRTY-SEVEN.

GENERAL PROVISIONS RELATING TO ACTIONS OF AN EQUITABLE NATURE.

Limitation of actions.

Section 1.—An action of an equitable nature shall only be commenced within the time limited to commence an action as provided in chapter two of this title, and an action for the determination of any right or claim to or interest in real property shall be deemed within the limitations provided for actions for the recovery of the possession of real property. In an action upon a new promise, fraud, or mistake the limitation shall only be deemed to commence from the making of the new promise or the discovery of the fraud or mistake: Provided, This section shall not be construed so as to bar an equitable owner in possession of real property from defending his possession by means of his equitable title; and in any action for the recovery of any real property, or the possession thereof, by any person or persons claiming or holding the legal title to the same under such patent against any person or persons in possession of such real property under any equitable title, or having in equity the right to the possession thereof as against the plaintiff in such action, such equitable right of possession may be pleaded by answer in such action or set up by complaint to enjoin such action or execution upon any judgment rendered therein; and the right of such equitable owner to defend his possession in such action, or by complaint for injunction shall not be barred by lapse of time while an action for the possession of such real property is not barred by the provisions of chapter two of this title.

Construction, etc.

In whose name an action to be prosecuted.

Section 2.—Every action of an equitable nature shall be prosecuted in the name of the real party in interest, except as in this section otherwise provided. An executor or an administrator, a trustee of an express trust, or a person expressly authorized to sue by statute, may sue without joining with him the person for whose benefit the action is prosecuted. A trustee of an express trust within the meaning of this section shall be construed to include a person with whom and in whose name a contract is made for the benefit of another.

Plaintiffs and defendants; who may be.

Section 3.—All persons having an interest in the subject of the action and in obtaining the relief demanded may be joined as plaintiffs, except as in this chapter otherwise provided. Any person may be made a defendant who has or claims an interest in the controversy adverse to the plaintiff, or who is a necessary party to a complete determination or settlement of the question involved therein.

Same subject.

Section 4.—Of the parties to the action, those who are united in interest must be joined as plaintiffs or defendants; but if the consent of anyone who should have been joined as plaintiff can not be obtained, he may be made a defendant, the reason thereof being stated in the complaint; and when the question is one of a common or general interest of many persons, or when the parties are very numerous and it may be impracticable to bring them all before the court, one or more may sue or defend for the benefit of the whole.

Service of the summons.

Section 5.—When there is more than one defendant in the action, service of only one copy of the complaint shall be required, the same to be served on the defendant designated by the plaintiff or his attorney by a direction indorsed on such summons, but the summons served on the other defendants shall contain a brief statement of the cause of action and relief demanded.

Service of the summons by publication.

Section 6.—In addition to the causes enumerated in the subdivisions of section six of chapter four of this title service of the summons may be made by publication in the following cases:

First. When the subject of the action is real or personal property in the District, and the defendant has or claims a lien or interest actual or

contingent therein, or the relief demanded consists wholly or partly in excluding the defendant from any lien or interest therein.

Second. When the action is for divorce, as hereinafter provided.

What objections not taken by demurrer or answer may be made on the trial.

Section 7.—The objection to the jurisdiction of the court, or that the complaint does not state facts sufficient to constitute a cause of action, if not taken by demurrer or answer, may be made on the trial.

Counterclaim of defendant.

Section 8.—The counterclaim of the defendant shall be one upon which an action might be maintained by the defendant against the plaintiff in the action; and in addition to the cases specified in the subdivisions of section two of chapter eight of this title, it is sufficient if it be connected with the subject of the action.

What causes of action may be united.

Section 9.—The plaintiff in an action of an equitable nature may unite several causes of action in the same complaint, where they all arise out of:

First. The same transaction, or transactions connected with the same subject of action;

Second. Contract, express or implied;

Third. Injuries, with or without force, to property;

Fourth. Claims to real property, or any interest therein, with or without an account for the rents and profits thereof;

Fifth. Claims to personal property, or any interest therein, with or without an account for the use thereof;

Sixth. Claims against a trustee by virtue of a contract or by operation of law.

But the causes of action so united must all belong to one of these classes, and must affect all the parties to the action, and not require different places of trial, and shall be separately stated.

Arrest and bail in actions of equitable nature.

Section 10.—The plaintiff in an action may have the defendant arrested and held to bail in like manner and with like effect as provided in the chapter of this title "Of arrest and bail". A cause of arrest in an action shall be the same as those specified, in section one of chapter twelve of this title, so far as the same may exist, and not otherwise.

CHAPTER THIRTY-EIGHT.

OF THE TRIAL OF ISSUES IN ACTIONS OF AN EQUITABLE NATURE.

Certain provisions to apply.

Section 1.—The provisions of chapter fifteen of this title shall apply to actions of an equitable nature except as in this chapter otherwise or specially provided. Both issues of law and fact shall be tried by the court, unless referred, provided however, the court may, in its discretion, order a jury to inquire into a fact and render a verdict as to such fact.

How and when testimony taken.

Section 2.—All issues of fact in actions of an equitable nature may be tried by the court, and the evidence shall be presented and the trial conducted in the same manner as other actions; Provided, The court in its discretion, refer the case to a referee pursuant to the provisions of this title. In all such actions the court, in rendering its decision therein, shall set out in writing its findings of fact upon all the material issues of fact presented by the pleadings, together with its conclusions of law thereon; but such findings of fact and conclusions of law shall be separate from the judgment, and shall be filed with the clerk; and shall be incorporated in, and constitute a part of, the judgment roll of the case; and such findings of fact, shall be conclusive. Exceptions may be taken during the trial to the ruling of the court, and also to its findings of fact, and a statement of such exceptions prepared and settled as in an action, and the same shall be filed with the clerk within ten days from the entering of the decree, or such further time as the court may allow.

Conduct of the trial.

Section 3.—When the action is called for trial, the trial shall proceed in the order prescribed in subdivisions one, two, three, four and five of section one of chapter sixteen, unless the court for special reasons otherwise directs.

Objections to depositions, when and how made.

Section 4.—Upon the trial either party may object to the reading of a deposition or any part thereof, when offered by the other because the witness is incompetent or the testimony is so, or irrelevant, and not otherwise.

Same subject.

Section 5.—When it appears from the deposition that a party was present at the examination of a witness, such party shall not be heard to object to anything in or concerning such depositions not excepted to at the time of taking the same, except the objections allowed to be taken on the trial as provided in section two of this chapter. When any part of the examination of a witness is excluded for any reason, so much of the cross-examination as relates to the same matter is excluded also.

Chapters nineteen and twenty-three shall apply.

Section 6.—The provisions of chapters nineteen (19) and twenty-three (23) of this little shall apply to actions of an equitable nature, but the final determination of the rights of the parties thereto is called a judgment, and any intermediate determination is called an order.

Judgment of dismissal before trial and effect thereof.

Section 7.—A judgment dismissing an action may be given against the plaintiff in any of the cases specified in subdivisions one, two, and three of section one of chapter twenty-four of this title, except the last clause of subdivision three. Such judgment is a determination of the action, but shall not have the effect to bar another action for the same cause or any part thereof.

Same after trial.

Section 8.—Whenever upon the trial it is determined that the plaintiff is not entitled to the relief claimed, or any part thereof, a judgment shall be given dismissing the action and such judgment shall have the effect to bar another action for the same cause or any part thereof, unless such determination be on account of a failure of proof on the part of the plaintiff, in which case the court may, on motion of such plaintiff, give such judgment without prejudice to another action by the plaintiff for the same cause or any part thereof.

Section 9.—The provisions of chapter twenty-five and of sections one, two, three and four of chapter twenty-six of this title shall apply to actions of an equitable nature. The provisions of chapter twenty-seven shall apply to controversies which might be the subject of such action.

Chapters 25, 26 and 27 to apply.

Section 10.—When upon the submission of such an action the court is unadvised as to what judgment ought to be given therein, it may reserve the case for further consideration, and may decide the same and give such judgment in vacation by filing the same with the clerk. When a judgment is given in an action of an equitable nature, unless otherwise ordered by the court, it shall be entered by the clerk within the day it is given. Sections one, two, four and five of chapter twenty-eight of this title shall apply to actions of an equitable nature. The provisions of chapter twenty-nine of this title shall apply to judgments and the final record or roll thereof.

When judgment may be given in vacation; entry, roll, and final record thereof.

CHAPTER THIRTY-NINE.

OF THE MODE OF ENFORCING A JUDGMENT IN ACTIONS OF AN EQUITABLE NATURE.

When equivalent to performance.

Section 1.—A judgment requiring a party to make a conveyance, transfer, release, acquittance, or other like act within a period therein specified shall, if such party do not comply therewith, be deemed and taken to be equivalent thereto. The court or judge thereof may enforce an order or judgment in an action of an equitable nature, other than for the payment of money, by punishing the party refusing or neglecting to comply therewith, as for a contempt.

Certain chapters to apply.

Section 2.—The provisions of chapter thirty of this title shall apply to the enforcement of judgment so far as the nature of the judgment may require or admit of it, but the mode of trial of an issue of fact in a proceeding against a garnishee shall be according to the mode of trial of such issue in an action.

CHAPTER FORTY.

OF INJUNCTION.

Definition of, and how permanent injunction enforced.

Section 1.—An injunction is an order requiring a defendant in an action to refrain from a particular act. It is only allowed as a provisional remedy, and when a judgment is given enjoining a defendant, such judgment shall be effectual and binding on such defendant without other proceeding or process, and may be enforced, if necessary, by punishing the party refusing or neglecting to comply therewith, as for a contempt.

Allowance of injunction.

Section 2.—An injunction may be allowed by the court or judge thereof at any time after the commencement of the action and before judgment. Before allowing the same the court or judge shall require of the plaintiff an undertaking, with one or more sureties, to the effect that he will pay all costs and disbursements that may be decreed to the defendant, and such damages, not exceeding an amount therein specified, as he may sustain by reason of the injunction if the same be wrongful or without sufficient cause.

Service of the order allowing the injunction.

Section 3.—The undertaking and affidavits, if any, upon which the injunction is allowed, shall be filed with the clerk. The order may be served as a summons and returned to the clerk with a proof of service indorsed thereon, except that the service shall be made upon the defendant personally. The order may be filed with the clerk at once, and shall be deemed to be served upon the defendant from the date of its allowance, if it appear therefrom that the defendant appear before the court or judge at the allowance thereof.

When defendant may be restrained during the pendency of the action.

Section 4.—When it appears by the complaint that the plaintiff is entitled to the relief demanded, and such relief, or any part thereof, consists in restraining the commission or continuance of some act the commission or continuance of which during the litigation would produce injury to the plaintiff; or when it appears by the affidavit that the defendant is doing, or threatens or is about to do, or is procuring or suffering to be done, some act in violation of the plaintiff's rights concerning the subject of the action, and tending to render the judgment ineffectual, or when it appears by affidavit that the defendant threatens or is about to remove or dispose of his property, or any part thereof, with intent to delay or defraud his creditors, an injunction may be allowed to restrain such act, removal, or disposition.

Allowance of injunction after answer.

Section 5.—An injunction shall not be allowed after the defendant has answered, except upon notice, but in such case the defendant may be restrained until the decision of the court or judge allowing or refusing the injunction; and before answer, if the court or judge deem it proper that the defendant should be heard before allowing an injunction, an order may be made requiring the defendant to show cause, at a specified time and place, why the injunction should not be allowed, and in the meantime the defendant may be restrained.

Motion to vacate or modify injunction.

Section 6.—If the injunction be allowed without notice, the defendant may, at any time after answer, and before trial, apply, upon notice, to the court or judge thereof, to vacate or modify the same. The application may be made upon affidavits in addition to the answer, and if so, the plaintiff may oppose the same by affidavit, or other evidence, in addition to those upon which the injunction was allowed. If, upon the hearing of the motion, it satisfactorily appear that the injunction should not have been allowed, either in whole or in part, it shall be vacated or modified accordingly.

CHAPTER FORTY-ONE.

OF THE FORECLOSURE OF LIENS UPON REAL PROPERTY.

Liens upon real property; how foreclosed.

Section 1.—A lien upon real property, other than that of a judgment, whether created by mortgage or otherwise, shall be foreclosed, and the property adjudged to be sold to satisfy the debt secured thereby, by an action of an equitable nature. In such action, in addition to the judgment of foreclosure and sale, if it appear that a promissory note or other personal obligation for the payment of the debt has been given by the mortgagor or other lien debtor, or by any other person as principal or otherwise, the court shall also adjudge a recovery of the amount of such debt against such person or persons, as the case may be, as in the case of an ordinary judgment for the recovery of money.

Parties defendant.

Section 2.—Any person having a lien subsequent to the plaintiff upon the same property or any part thereof, or who has given a promissory note or other personal obligation for the payment of the debt or any part thereof, secured by the mortgage or other lien which is the subject of the action, shall be made a defendant in the action, and any person having a prior lien may be made defendant at the option of the plaintiff, or by the order of the court when deemed necessary.

Where two or more liens upon the same property.

Section 3.—When it is adjudged that any of the defendants have a lien upon the property, the court shall make a like judgment in relation thereto and the debt secured thereby as if such defendant were a plaintiff in the action; and when a judgment is given foreclosing two or more liens upon the same property or any portion thereof in favor of different persons not united in interest such judgment shall determine and specify the order of time, according to their priority, in which the debts secured by such lien shall be satisfied out of the proceeds of the sale of the property.

How judgment enforced.

Section 4.—The judgment may be enforced by execution as an ordinary judgment for the recovery of money, except as in this section otherwise or specially provided:

First. When a judgment of foreclosure and sale is given, an execution may issue thereon against the property adjudged to be sold. If the judgment is in favor of the plaintiff only, the execution may issue as in ordinary cases, but if it be in favor of different persons not united in interest, it shall issue upon the joint request of such persons, or upon the order of the court or judge thereof, on the motion of either of them.

Second. When the judgment is also against the defendant or any one of them in person, and the proceeds of the sale of the property upon which the lien is foreclosed is not sufficient to satisfy the judgment as to the sum remaining unsatisfied to either, the judgment may be enforced by execution as in ordinary cases. When in such case the judgment is in favor of different persons not united in interest, it shall be deemed a separate judgment as to such persons, and may be enforced accordingly.

Property sold upon foreclosure, how redeemed.

Section 5.—A judgment of foreclosure shall have the effect to bar the equity of redemption, and property sold on execution issued upon such judgment may be redeemed in like manner and with like effect as real property sold on an execution issued on a judgment.

Action for foreclosure cannot be maintained during pendancy of action for the debt.

Section 6.—During the pendency of an action for the recovery of a debt secured by any lien mentioned in section one of this chapter, an action cannot be maintained for the foreclosure of such lien, nor thereafter, unless judgment be given in such action that the plaintiff recover such debt or some part thereof, and any execution thereon against the property of the defendant in the judgment is returned unsatisfied in whole or in part.

Section 7.—When an action is commenced to foreclose a lien by which a debt is secured, which debt is payable in installments, either of interest or principal, and any of such installments is not then due, the court shall adjudge a foreclosure of the lien, and may also adjudge a sale of the property for the satisfaction of the whole of such debt, or so much thereof as may be necessary to satisfy the installment then due, with costs of action; and in the latter case the judgment of foreclosure as to the remainder of the property may be enforced by an order of sale, in whole or in part, whenever default shall be made in the payment of the installments not then due.

Future of judgment where debt payable in installments some of which not due.

Section 8.—If, before a judgment is given, the amount then due, with the costs of action, is brought into court, and paid to the clerk, the action shall be dismissed, and if the same be done after judgment and before sale, the effect of the judgment as to the amount then due and paid shall be terminated and the execution if any have issued be recalled by the clerk. When an installment not due is adjudged to be paid, the court shall determine and specify in the judgment what sum shall be received in satisfaction thereof, which sum may be equal to such installment or otherwise, according to the present value thereof. The provisions of this chapter as to liens upon personal property are not to be construed so as to exclude a person having such a lien from any other remedy or right in regard to such property.

Effect of payment before sale.

CHAPTER FORTY-TWO.

OF ACTIONS FOR THE PARTITION OF REAL PROPERTY.

Who may maintain an action for partition.

Section 1.—When several persons hold and are in possession of real property as tenants in common, in which one or more of them have an estate of inheritance, or for life or years, or when several persons hold as tenants in common a vested remainder or reversion in any real property, any one or more of them may maintain an action of an equitable nature for the partition of such real property according to the respective rights of the persons interested therein, and for a sale of such property, or a part of it, if it appears that a partition cannot be had without great prejudice to the owners.

Complaint, what it shall contain.

Section 2.—The interest of all persons in the property, whether such persons be known or unknown, shall be set forth in the complaint, specifically and particularly, as far as known to the plaintiff; and if one or more of the parties, or the share or quantity of interest of any of the parties, be unknown to the plaintiff, or be uncertain or contingent, or the ownership of the inheritance depend upon an executory devise, or the remainder be a contingent remainder, so that such parties cannot be named, that fact shall be set forth in the complaint.

What lien creditors may be made defendants.

Section 3.—The plaintiff shall make creditors having liens upon the property or any portion thereof, defendants in the action. When the lien is upon an undivided interest or estate of any of the parties, such lien if a partition be made, is thenceforth a lien only upon the share assigned to such party, but such share shall be first charged with its just proportion of the costs of the partition, in preference to such lien.

Summons, how directed.

Section 4.—The summons shall be directed by name to all the tenants in common who are known, and in the same manner to all lien creditors who are made parties to the action, and generally to all persons unknown, having or claiming an interest or estate in the property.

Upon whom summons may be served by publication.

Section 5.—If a party having a share or interest in or lien upon the property be unknown, or either of the known parties reside out of the district or cannot be found therein, and such fact be made to appear by affidavit, the summons may be served upon such absent or unknown party by publication, directed by the court or judge, as in ordinary cases. When service of the summons is made by publication, it must be accompanied by a brief description of the property which is the subject of the action.

Answer, what to contain.

Section 6.—The defendant shall set forth in his answer the nature and extent of his interest in the property, and if he be a lien creditor, how such lien was created, the amount of the debt secured thereby, and remaining due, and whether such debt is secured in any other way, and if so, the nature of such other security.

Rights of the parties may be put in issue, etc.

Section 7.—The rights of the several parties, plaintiffs as well as defendants, may be put in issue, tried, and determined in such action, and where a defendant fails to answer, or where a sale of the property is necessary, the title shall be ascertained by proof to the satisfaction of the court before the judgment for partition or sale is given.

When order of sale may be made instead of partition.

Section 8.—If it be alleged in the complaint and established by evidence, or if it appear by the evidence, without such allegation in the complaint, to the satisfaction of the court, that the property, or any part of it, is so situated that partition cannot be made without great prejudice to the owners, the court may order a sale thereof, and for that purpose may appoint one or more referees. Otherwise, upon the requisite proofs being made, it shall adjudge a partition according to the respective rights of the parties, as ascertained by the court, and appoint three referees therefor, and shall designate

the portion to remain undivided for the owners whose interest remain unknown or not ascertained.

How referees to make partition.

Section 9.—In making the partition the referees shall divide the property and allot the several portions thereof to the respective parties, quality and quantity relatively considered, according to the respective rights of the parties as determined by the court, designating the several portions by proper landmarks, and may employ a surveyor with the necessary assistants to aid them therein. The referees shall make a report of their proceedings specifying therein the manner of executing their trust, describing the property divided and the shares allotted to each party. with a particular descriptions of each share.

Proceedings on report of referees.

Section 10.—The court may confirm or set aside the report in whole or in part and if necessary appoint new referees. Upon the report being confirmed, a judgment shall be given that such partition be effectual forever, which judgment shall be binding and conclusive:

First. On all parties named therein, and their legal representatives, who have at the time any interest in the property divided, or any part thereof, as owners in fee, or as tenant for life or for years, or as entitle to the reversion, remainder or interitance of such property, or any part thereof after the termination of a particular estate therein of who by any contingency may be entitled to a beneficial interest in the propery, or who have an interest in any undivided share thereof as tenants for years or for life.

Second. On all persons interested in the property who may be unknown, to whom notice shall have been given of the application for partition by publication, as directed by section five of this chapter.

Third. On all other persons claiming from such parties or persons, or either of them.

Who not affected thereby.

Section 11.—But such judgment and partition shall not affect any tenants for years or for life of the whole of the property which is the subject of partition; nor shall such judgment or partition preclude any person, except such as are specified in the last section, from claiming title to the property in question, or from controverting the title of the parties between whom the partition shall have been made.

Expenses of referees.

Section 12.—The expenses of the referees, including those of a surveyor and his assistants, when employed, shall be ascertained and allowed by the court, and the amount thereof, together with the fees allowed by law to the referees, shall be paid by the plaintiff, and may be allowed as part of the charges.

When order of sale may be made upon report of referees.

Section 13.—If the referees report to the court that the property of which partition shall have been adjudged, or any separate portion thereof, is so situated that a partition thereof cannot be made without great prejudice to the owners and the court is satisfied that such report is correct, it may thereupon, by an order, direct the referees to sell the property or separate portion thereof so situated.

In case of partial sale how estate for life or years set off.

Section 14.—When a part of the property only is ordered to be sold, if there be an estate for life or years in an undivided share of the property, the whole of such estate may be set off in any part of the property not ordered to be sold.

When referee ordered to as certain lien creditors.

Section 15.—If an order of sale be made, and before a distribution of the proceeds thereof, the plaintiffs shall produce to the court a certificate showing the liens remaining unsatisfied, if any, by judgment upon the property, or any portion thereof, and unless he do so the court shall order a referee to ascertain them.

Referees to ascertain amount of liens.

Section 16.—If it appear by such certificate, or reference in case the certificate is not produced, that any such liens exist, the court shall appoint a referee to ascertain what amount remains due thereon or secured thereby, respectively, and the order of priority in which they are entitled to be paid out of the property.

Notice to lien creditors.

Section 17.—The plaintiff must cause a notice to be served, at least ten days before the time for appearance, on each person having such lien by judgment to appear before the referee at a specified time and place to make proof by his own affidavit or otherwise of the true amount due, or to become due, contingently or absolutely, on his judgment.

Duties of referee.

Section 18.—The referee shall receive the evidence and report the names of the creditors whose liens are established, the amounts thereon or secured thereby, and their priority, respectively, and whether contingent or absolute. He shall attach to his report the proof of service of the notices and the evidence before him.

Exceptions to report.

Section 19.—The report of the referee may be excepted to by either party to the action or to the proceedings before the referee, in like manner and with like effect as in ordinary cases. If a lien creditor be absent from the district, or his residence therein be unknown, and that fact appear by affidavit, the court or judge thereof may by order direct that service of the notice may be made upon his agent or attorney of record or by publication thereof for such time and in such manner as the order may prescribe.

Effect of confirmation of report.

Section 20.—If the report of the referee be confirmed, the order of confirmation is binding and conclusive upon all parties to the action and upon the lien creditors who have been duly served with the notice to appear before the referee as provided in section seventeen of this chapter.

Distribution of proceeds of sale.

Section 21.—The proceeds of the sale of the incumbered property shall be distributed by the judgment of the court as follows:

First. To pay its just proportion of the general cost of the action;

Second. To pay the costs of the reference;

Third. To satisfy the several liens, in their order of priority, by payment of the sums due and to become due, according to the judgment.

Fourth. The residue among the owners of the property sold, according to their respective shares.

When party may be required to exhaust other securities.

Section 22.—Whenever any party to the action or who holds a lien upon the property or any part thereof has other securities for the payment of the amount of such lien, the court may, in its discretion, order such securities to be exhausted before a distribution of the proceeds of sale, or may order a just deduction to be made from the amount of the lien on the property on account thereof.

Proceedings not to delay or affect certain parties.

Section 23.—The proceedings to ascertain the amount of the liens and to determine their priority, as above provided, or those hereinafter authorized to determine the rights of parties to funds paid into court, shall not delay the sale nor affect any other party whose rights are not involved in such proceedings.

Proceeds of sale to be distributed or paid into court.

Section 24.—The proceeds of sale and the securities taken by the referees, or any part thereof, shall be distributed by them to the persons entitled thereto whenever the court so directs. But if no such direction be given all such proceeds and securities shall be paid into court or deposited as directed by the court.

When action to continue.

Section 25.—When the proceeds of sales of any shares or parcel belonging to persons who are parties to the action and who are known, are paid into court the action may be continued as between such parties for the de-

termination of their respective claims thereto, which shall be ascertained and adjudged by the court. Further testimony may be taken in court, or by a referee, at the discretion of the court, and the court may, if necessary, require such parties to present the facts or law in controversy, by pleading, as in an original action.

Sale by referees, how made.

Section 26.—All sales of real property made by the referee shall be made by public auction to the highest bidder, in the manner required for the sale of real property on execution. The notice shall state the time, place, and terms of sale, and if the property or any part of it is to be sold subject to a prior estate, charge, or lien, that shall be stated in the notice.

Court may direct sale to be made on credit.

Section 27.—The court shall, in the order of sale, direct the terms of credit which may be allowed for the purchase money of any portion of the premises of which it may direct a sale on credit; and for that portion of which the purchase money is required by the provisions hereinafter contained to be invested for the benefit of unknown owners and parties out of the district.

Mortgages and other securities, how taken by referees.

Section 28.—The referees may take separate mortgages and other securities for the whole or convenient portions of the purchase money of such parts of the property as are directed by the court to be sold on credit, in the name of the clerk of the court, and his successors in office; and for the shares of any known owner of full age, in the name of such owner.

Estate for life or years, how disposed of.

Section 29.—When the estate of any tenant for life or years, in any undivided part of the property in question, shall have been admitted by the parties, or ascertained by the court to be existing at the time of the order of sale, and the person entitled to such estate shall have been made a party to the action, such estate may be first set off out of any part of the property, and a sale made of such parcel, subject to the prior unsold estate of such tenant therein; but if in the judgment of the court a due regard to the interest of all the parties require that such estate be also sold, the sale may be so ordered.

Compensations for such estate in in case of sale.

Section 30.—Any person entitled to an estate for life or years in any undivided part of the property, whose estates shall have been sold, shall be entitled to receive such sum in gross as may be deemed upon principles of law applicable to annuities a reasonable satisfaction for such estate, and which the person so entitled shall consent to accept instead thereof, by an instrument duly acknowledged or proved in the same manner as deeds for the purpose of record, and filed with the clerk.

If consent not given, court to determine the value of such estate.

Section 31.—If such consent be not given, as provided in the last preceding section, before the report of sale the court shall ascertain and determine what proportion of the proceeds of the sale, after deducting expenses, will be a just and reasonable sum to be invested for the benefit of the person entitled to such estate for life or years, and shall order the same to be deposited in court for that purpose.

Rule for the determination of the value.

Section 32.—The proportion of the proceeds of the sale to be invested as provided in the section last preceding shall be ascertained and determined in the several cases as follows:

First. If an estate in dower be included in the order of sale, its proportion shall be one-third of the proceeds of the sale of the property, or of the sale of the undivided share in such property upon which the claim of dower existed;

Second. If an estate by curtesy, or other estate for life or years, be included in the order of sale, its proportion shall be the whole proceeds of the sale of the property, or of the sale of the undivided share thereof in which such estate may be.

And in all cases the proportion of the expenses of the proceeding shall be deducted from the proceeds of the sale.

Rights of unknown tenants to be protected.

Section 33.—If the persons entitled to such estate for life or years be unknown, the court shall provide for the protection of their rights in the same manner, as far as may be, as if they were known and had appeared.

Inchoate or contingent interests, how provided for.

Section 34.—In all cases of sales in partition, when it appears that a married woman has an inchoate right of dower in any of the property sold, or that any person has a vested or contingent future right or estate therein, the court shall ascertain and settle the proportional value of such inchoate, contingent, or vested right or estate according to the principles of law applicable to annuities and survivorship, and shall direct such proportion of the proceeds of sale to be invested, secured or paid over in such manner as to protect the rights and interests of the parties.

Terms of sale to be made known at the time of sale.

Section 35.—In all cases of sales of property, the terms shall be made known at the time; and if the premises consist of distinct farms or lots, they shall be sold separately, or otherwise if the court so directs.

Referee not to purchase.

Section 36.—Neither of the referees, nor any person for the benefit of either of them, shall be interested in any purchase; nor shall the guardian of an infant party be interested in the purchase of any real property, being the subject of the action, except for the benefit of the infant. All sales contrary to the provisions of this section shall be void.

Report of referees, what to contain.

Section 37.—After completing the sale, the referees shall report the same to the court, with a description of the different parcels of lands sold to each purchaser, the name of the purchaser, the price paid or secured, the terms and conditions of the sale, and the securities, if any, taken. The report shall be filed with the clerk.

Report may be excepted to; effect of confirmation.

Section 38.—The report of sale may be excepted to by any part entitled to a share of the proceeds, in like manner and with like effect as in ordinary cases. If the sale be confirmed, the order of confirmation shall direct the referees to execute conveyances and take securities pursuant to such sale, which acts they are hereby authorized to do. Such order shall have the effect to discharge the property of the estate or interest of every person mentioned in section ten of this chapter, and of tenants for life or years of the property sold, and shall be binding and conclusive upon all such persons, as if the same were a decree for the partition of such property, and upon all persons whomsoever as to the regularity of the proceedings concerning such sale, except as provided in section thirty-six of this chapter.

Proceedings when a party or incumbrancer becomes purchaser.

Section 39.—When a party entitled to a share of the property or an incumbrancer entitled to have his lien paid out of the sale becomes a purchaser, the referees may take his receipt for so much of the proceeds of the sale as belongs to him.

When and what proceeds of sale to be invested.

Section 40.—When there are proceeds of sale belonging to an unknown owner, or to a person without the district who has no legal representatives within it, or when there are proceeds arising from the sale of an estate subject to the prior estate of a tenant for life or years, which are paid into the court or otherwise deposited by order of the court, the same may be invested under such order in securities on interest for the benefit of the persons entitled thereto.

In whose name securities taken or investments made.

Section 41.—When the security for the proceeds of sale is taken, or when an investment of any such proceeds is made, it shall be done, except as herein otherwise provided, in the name of the clerk of the court and his successors in office who shall hold the same for the use and benefit of the parties interested, subject to the order of the court.

Same subject.

Section 42.—When security is taken by the referees on a sale, and the parties interested in such security, by an instrument in writing under their hands delivered to the referee, agree upon the shares and proportions to which they are respectively entitled, or when shares and proportions have been

previously adjudged by the court, such securities shall be taken in the names of and payable to the parties respectively entitled thereto, and shall be delivered to such parties upon their receipt therefor. Such agreement and receipt shall be returned and filed with the clerk.

When clerk to keep account and receive interest.

Section 43.—The clerk in whose name a security is taken or by whom an investment is made, and his successors in office, shall receive the interest and principal as it becomes due, and apply and invest the same as the court may direct; and shall file in his office all securities taken and keep an account in a book provided and kept for that purpose in the clerk's office, free for inspection by all persons, of investments and moneys received by him thereon and the disposition thereof.

When equal partition cannot be made court court may adjudge compensation.

Section 44.—When it appears the partition cannot be made equal between the parties, according to their respective rights, without prejudice to the rights and interests of some of them, the court may adjudge compensation to be made by one party to another on account of inequality of partition; but such compensation shall not be required to be made to others by owners unknown nor by infants unless in case of an infant it appears that he has personal property sufficient for that purpose, and that his interest will be promoted thereby.

When proceeds of sale paid to guardian of infant.

Section 45.—When the share of an infant is sold the proceeds of the sale may be paid by the referees making the sale to his general guardian, or the special guardian appointed for him in the action, upon such guardian giving the security required by law or directed by order of the court.

When paid to guardian of insane person.

Section 46.—The guardian who may be entitled to the custody and management of the estate of an insane person, or other person adjudged incapable of conducting his own affairs, whose interest in real property shall have been sold, may receive in behalf of such person his share of the proceeds of such real property from the referees on executing, with sufficient sureties, an undertaking, approved by the judge of the court, that he will faithfully discharge the trust reposed in him, and will render a true and just account to the person entitled, or to his legal representatives.

Costs of partition, how apportioned.

Section 47.—The costs of partition, including fees, of referees and other disbursements, shall be paid by the parties respectively entitled to share in the lands divided, in proportion to their respective interest therein, and may be included and specified in the judgment. In that case they shall be a lien on the several shares, and the judgment may be enforced by execution against the parties separately. When, however, a litigation arises between some of the parties only, the court may require the expenses of such litigation to be paid by the parties thereto, or any of them.

CHAPTER FORTY-THREE.

OF ACTIONS OF AN EQUITABLE NATURE BY AND AGAINST EXECUTORS, ADMINISTRATORS, LEGATEES, HEIRS AND DEVISEES.

In what actions chapter 36 shall apply.

Section 1.—The provisions of chapter thirty-six of this title shall, excepting sections one, two and three, apply to actions of an equitable nature by and against executors and administrators, except as in this chapter otherwise or specially provided. All causes of action of an equitable nature by one person against another, however arising, survive to the personal representatives of the former and against the personal representatives of the latter. When the cause of action survives, as herein provided, the executors or administrators may maintain an action of an equitable nature thereon against the party against whom the cause of action accrued, or after his death against his personal representatives.

An action against next of kin by creditor of the estate.

Section 2.—The next of kin of a deceased person are liable to an action by a creditor of the estate to recover the distributive shares received out of such estate, or to so much thereof as may be necessary to satisfy his debt. The action may be against all the next of kin jointly or against any one or more of them severally.

Each liable for the whole amount received.

Section 3.—In such action the plaintiff may recover the value of all the assets received by all the defendants in the action if necessary to satisfy the debt; and the amount of the recovery shall be apportioned among the defendants, in proportion to the value of the assets received by each; and no allowance or deduction shall be made from such amount on account of there being other next of kin to whom assets have also been delivered.

Next of kin may maintain an action to compel contribution.

Section 4.—Any one of the next of kin against whom a recovery is had pursuant to section three of this chapter may maintain an action against all the other next of kin of the deceased person to whom any such assets have been delivered jointly, or against any of them separately for a just and equal contribution.

An action against legatees by creditor of the testator.

Section 5.—Legatees are liable to an action by a creditor of the testator to recover the value of any legacy received by them. The action may be maintained against all the legatees jointly or against any one or more of them severally. In such action the plaintiff shall not recover unless he shows:

First. That no assets were delivered by the executor or administrator of the testator to his next of kin; or,

Second. That the value of such assets has been recovered by some other creditor; or,

Third. That such assets are not sufficient to satisfy the demand of the plaintiff.

And in the last case he shall recover only the deficiency. The whole amount which the plaintiff shall recover shall be apportioned among all the legatees of the testator in proportion to the value of their legacies, respectively, and his proportion shall only be recovered of each legatee.

Apportionment of costs in an action against next of kin or legatees.

Section 6.—In an action against several next of kin or legatees jointly for assets delivered to them, if a recovery be had against such next of kin or legatees, the cost of such action shall be apportioned among the several defendants in proportion to the amount recovered against each of them.

Payment of the amount recovered against any one satisfies the judgment as to such person.

Section 7.—A decree against several next of kin or legatees shall be satisfied as to any one of them by the payment or satisfaction of the amount recovered against such defendant.

Section 8.—Heirs and devisees are liable to an action by a creditor of a deceased person to recover the debt of their ancestor or testator to the extent of the value of any real property inherited by or devised to them. If such action be against the heirs, all the heirs who are liable shall be made parties to the action.

Heirs or devisees liable for the debts of their ancestor or testator.

Section 9.—But the heirs are not liable for the debt unless it appear that the personal assets of the deceased were insufficient to discharge it, or that after due proceedings the creditor has been unable to collect the debt from the personal representatives of the deceased, or from his next of kin or legatees. If the personal assets were sufficient to pay a part of the debt, or in case a part thereof shall have been collected the heirs of such deceased person are liable for the residue.

In what cases and to what extent not liable.

Section 10.—The section last preceding shall not affect the liability of heirs for a debt of their ancestors where such debt was by his will expressly charged exclusively on the real properties descended to such heirs, or where such debt is by the will expressly directed to be paid out of the real property descended before resorting to the personal property.

Section 9 not to affect a case where debt charged upon real real estate by will.

Section 11.—In cases where the next of kin, legatees, heirs, and devisees are liable for the debts of their ancestors, as herein provided, they shall be liable therefor without other priority or preference than such ancestors would be. The word "debt", as used in this chapter, shall be construed to include all claims for the payment of money which survive against the personal representatives of the deceased, as provided in section one of this chapter.

Preference of debts, and definition thereof.

Section 12.—A judgment against an heir or devisee on account of the debt of his ancestor or testator may be enforced by execution against the real property shown to have descended to the heir or devisee, and not otherwise. Such judgment shall have preference as a lien on such real property to any judgment or decree obtained against such heir or devisee on account of a debt or demand due in his own right.

How judgment against heir or devisee enforced.

Section 13.—When it appears in the action that before the commencement thereof the heir or devisee has aliened the real property descended to him, or any part thereof, he shall be personally liable for the value of the property so aliened, and a judgment may be given against him therefor, to be enforced by execution, as if the judgment were for his own debt. No real property aliened in good faith and for a valuable consideration by an heir or devisee before action commenced against him is liable to an execution for the debt of his ancestor or testator, or in any manner affected by the judgment therefor against such heir or devisee.

When heirs or devisees personally liable.

Section 14.—In an action against several heirs jointly or several devisees jointly, the amount which the plaintiff recovers must be apportioned among all the heirs of the ancestor or devisees of the testator in proportion to the value of the real property descended or devised, and such proportion only can be recovered of each heir or devisee.

Judgment against several heirs or devisees jointly to be apportioned among them.

Section 15.—A devisee shall not be liable to the creditor of his testator unless it appear that the personal assets of the testator and the real property descended to his heirs were insufficient to discharge the debt, or unless it appear that after due proceedings the creditor has been unable to recover the debt, or any part thereof from the personal representatives of the testator or from his next of kin, legatees, or heirs.

Devisee not liable when there are assets.

Section 16.—In either of the cases specified in the section last preceding the amount of the deficiency of the personal assets, and of the real property descended to satisfy the debt of the plaintiff, or the amount which such plaintiff may have failed to recover from the personal representatives of the testator, his next of kin, legatees, and heirs, may be recovered of the devisees of such testator, to the extent of the value of the real property devised to them respectively.

Liable for deficiency only.

Two preceding sections not to effect a case where the debt is charged upon the real property by the will.

Section 17.—The two sections last preceding shall not affect the liability of devisees for a debt of their testator where such debt was by his will expressly charged exclusively upon the real property devised, or by the terms of the will made payable by the devisee, or out of the real property devised, before resorting to the personal property or to any other real property descended or devised.

CHAPTER FORTY-FOUR.

ACTIONS TO DECLARE VOID OR DISSOLVE THE MARRIAGE CONTRACT.

Section 1.—A husband or wife may maintain an action of equitable nature against the other for the dissolution of the marriage contract, or to have the same declared void, as provided in this chapter.

Husband or wife may maintain action.

Section 2.—All marriages which are prohibited by law on account of consanguinity between the parties, or on account of either of them having a husband or wife then living shall, if solemnized within the district, be absolutely void.

What marriages absolutely void.

Section 3.—When either of the parties to a marriage shall be incapable of making such contract or assenting thereto for want of legal age or sufficient understanding, or when the consent of either party shall be obtained by force or fraud, such marriage shall be void from the time it is so declared by the decree of a court having jurisdiction thereof.

What marriages void when so declared.

Section 4.—A marriage may be declered void from the beginning at the action of either party, for any of the causes specified in section two of this chapter, and whether so declared or not shall be deemed and held to be void in any action or proceeding whatever in which the same may come in question; but a marriage once declared to be valid by the judgment of a court having jurisdiction thereof, in an action for that purpose, can not afterwards be questioned for the same cause, directly or otherwise.

At whose action marriage declared void.

Section 5.—A marriage shall not be declared void for any of the causes specified in section three of this chapter, except at the action or claim of the party laboring under the disability, or upon whom the force or fraud was imposed or practised; not at the action or claim of such party if it appears that the parties freely cohabited together as husband and wife after the party had arrived at legal age, acquired sufficient understandng, been restored to reason, freed from the force, or discovered the fraud, as the case may be.

At whose action marriage declared voidable.

Section 6.—When either husband or wife shall claim or pretend that the marriage is void or voidable, as provided in sections two and three of this chapter, the same may be declered valid and lawful at the action of the other, and in such action the court shall have power, if the pleadings and proof authorize it, to declare such marriage void from the beginning or from the time of the judgment, or that it is valid and lawful, and binding on the parties thereto.

Action to declare marriage valid.

Section 7.—The dissolution of the marriage contract may be declared at the action of the injured party for any of the following causes:

For what causes marriage may be dissolved.

First. Impotency existing at the time of the marriage and continuing to the commencement of the action;

Second. Adultery.

Third. Conviction of felony;

Fourth. Wilful desertion for the period of two years;

Fifth. Cruel and inhuman treatment calculated to impair health or endanger life;

Sixth. Insanity of either spouse occurring after marriage;

Seventh. Habitual gross drunkeness contracted since marriage and continuing for one year prior to the commencement of the action;

Eighth. Incompatibility of temperament.

Residence of parties.

Section 8.—When a marriage has been solemnized in the district an action may be maintained to declare it void if the plaintiff is an inhabitant of the district at the commencement of the action. If the marriage has not been solemnized in the district, such action can only be maintained when the plaintiff has been an inhabitant thereof for six months prior to the commencement of the action.

Divorces, residence of parties for one year.

Section 9.—In an action for the dissolution of the marriage contract the plaintiff therein must be an inhabitant of the district at the commencement of the action and for six months prior thereto, which residence shall be sufficient to give the court jurisdiction without regard to the place where the marriage was solemnized or the cause of action arose.

Pleas in bar by defendant.

Section 10.—In an action for the dissolution of the marriage contract on account of adultery the defendant may admit the adultery and shown in bar of the action:

First. That the act was committed by the procurement or with the connivance of the plaintiff; or,

Second. That the act had been expressly forgiven or impliedly so, by the voluntary cohabitation of the parties after knowledge thereof; or,

Third. That the plaintiff has been guilty of adultery also without the procurement or connivance of the defendant and not forgiven as provided in subdivision second of this section; or,

Fourth. That the action has not been commenced within one year after the discovery of the act by the plaintiff.

When the action is for any of the causes specified in subdivisions third, fourth, fifth, or seventh of section seven of this chapter, the defendant may admit the charge and show in bar of the action that the act was committed by the procurement of the plaintiff, or that it has been expressly forgiven; and in case the action is founded on subdivision third of said section, the defendant may also show in bar thereof that the action was not prosecuted within one year after the same occurred to the plaintiff.

Maintainance and custody of children pending action.

Section 11.—After the commencement of an action, and before a judgment therein, the court or judge thereof may, in its discretion, provide by order as follows:

First. That the husband pay, or secure to be paid, to the clerk of the court such an amount of money as may be necessary to enable the wife to prosecute or defend the action, as the case may be;

Second. For the care, custody, and maintenance of the minor children of the marriage during the pendency of the action;

Third. For the freedom of the wife from the control of the husband during the pendency of the action, and the court may restrain either or both parties from disposing of the property of either party pending the action.

Judgment for maintenance and for the custody of children.

Section 12.—Whenever a marriage shall be declared void or dissolved the court shall have power to further decree as follows:

First. For the future care and custody of the minor children of the marriage as it may deem just and proper having due regard to the age and sex of such children and unless otherwise manifestly improper giving the preference to the party not in fault;

Second. For the recovery from the party in fault, and not allowed the care and custody of such children, such an amount of money, in gross or installments, as may be just and proper for such party to contribute toward the nurture and education thereof;

Third. For the recovery from the party in fault such an amount of money, in gross or in installments, as may be just and proper for such party to contribute to the maintenance of the other;

Fourth. For the delivery to the wife when she is not the party in fault, of her personal property in the possession or control of the husband at the time of giving the judgment;

Fifth. For the appointment of one or more trustees to collect, receive, expend, manage, or invest, in such manner as the court shall direct, any sum of money adjudjed for the maintenance of the wife or the nurture and education of minor children committed to her care and custody;

Sixth. To change the name of the wife when she is not the party in fault.

Power of court to modify decree.

Section 13.—At any time after a judgment is given the court or judge thereof, upon the motion of either party on notice shall have power to set aside, alter, or modify so much of the judgment as may provide for alimony or for the appointment of trustees for the care and custody of the minor children, or the nurture and education thereof, or the maintenance of either party to the action.

Right to remarry.

Section 14.—A judgment declaring a marriage void or dissolved by the action or claim of either party shall have the effect to terminate such marriage as to both parties, except that neither party shall be capable of contracting marriage with a third person, until the action has been heard and determined on appeal, and if no appeal be taken, and if he or she does so contract, such party shall be liable therefor as if such judgment had not been given.

CHAPTER FORTY-FIVE.

OF ACTIONS TO DETERMINE ADVERSE CLAIMS AND BOUNDARIES.

An action to determine adverse claims.

Section 1.—Any person in possession, by himself or his tenant, of real property, may maintain an action of an equitable nature against another who claims an estate or interest therein adverse to him, for the purpose of determining such claim, estate, or interest.

An action to establish boundaries.

Section 2.—In any case where any dispute or controversy exists, or may hereafter arise, between two or more owners of adjacent or contiguous lands in the district, concerning the boundary lines thereof, or the location of the lnes dividing such lands, either party or any party to such dispute or controversy may bring and maintain an action of an equitable nature in the district court of the district, for the purpose of having such controversy or dispute determined, and such boundary line or lines, or dviding lines, ascertained and marked by proper monuments, upon the ground where such line or lines may be ascertained to be, and established in such action.

Pleading in such action.

Section 3.—The complaint in such action shall be sufficient if it appears therefrom that the plaintiff and defendant or defendants are owners of adjacent lands; that there is a controversy or dispute between the parties concerning their boundary or dividing line or lines, and it shall not be necessary to set forth the nature of such dispute or controversy further than that the plaintiff shall describe the boundary or dividing line as he shall claim it to be. The defendant, in his answer, shall set forth the nature of his claim with reference to the location of the lines in controversy.

Mode of proceeding thereafter.

Section 4.—The mode of proceeding under this act shall be analogous to that of other actions of an equitable nature; Provided, At the time to entering the judgment fixing the true location of the disputed boundary or dividing line the court shall appoint three disinterested commissioners, one of whom shall be a practical surveyor, and shall direct the commissioners to go upon the lands of the parties and establish and mark out upon the grounds, by proper marks and monuments, the boundary or dividing line as ascertained and determined by the court in its judgment.

Oath and duties of commissioners.

Section 5.—Before entering upon the discharge of their duties the commissioners shall make and file their oath, in writing, to faithfully and impartially perform their dutes as such commissioners, and after designating the line by proper marks and monuments, they shall file in the court a report of their doings as such commissioners, and the same shall be, when approved or confirmed by the court, a part of the judgment roll in the cause.

Their report.

Section 6.—The report of the commissioners may be confirmed by the court, upon written motion of either party to such action, whenever it shall appear to the court that the motion was served upon the adverse party two days before the presentation thereof, and that no exceptions have been filed to the report within two days after the service. If exceptions are filed as aforesaid to the report, the exceptions may be heard with the motion to confirm, and the court may confirm, modify, or set aside the report, as shall seem just, and in the latter case may appoint a new commission or refer the matter to the same commissioners with appropriate instructions.

CHAPTER FORTY-SIX.

GENERAL PROVISIONS CONCERNING ACTIONS.

Lost papers; how supplied.

Section 1.—If an original paper or pleading be lost or withheld by any person, the court or judge thereof may order a verified copy thereof to be filed and used instead of the original.

Successive actions.

Section 2.—Successive actions may be maintained upon the same contract or transaction whenever, after the former action, a new cause of action arises therefrom.

Consolidations of actions.

Section 3.—Whenever two or more actions are pending at one time between the same parties and in the same court upon causes which might have been joined, the court may upon the motion of the defendant, order the same to be consolidated. An action is deemed to be pending from the commencement thereof until its final determination upon appeal, or until the expiration of the period allowed to take an appeal.

When court has jurisdiction.

Section 4.—No natural person is subject to the jurisdiction of the district court of the district unless he appear in the court, or be found within the district, or be a resident thereof, or have property therein; and in the last case only to the extent of such property at the time the jurisdiction attached. But this section is not to be construed to limit the power of the said court to declare a marriage void or a dissolution thereof when the defendant is a nonresident of the district.

Jurisdiction over corporation.

Section 5.—No corporation is subject to the jurisdiction of the district court of the district unless it appear in the court, or have been created by or under the laws of the district, or have an agency established therein for the transaction of some portion of its business, or have property therein; and in the last case only to the extent of such property at the time the jurisdiction attached.

Exercise of jurisdiction.

Section 6.—When the court has jurisdiction of the parties it may exercise it in respect to any cause of action, wherever arising, except for the specific recovery of real property situated without the district or for injury thereto.

When majority of referees may act.

Section 7.—Whenever there is more than one referee all must meet, but a majority of them may do any act which might be done by all; and whenever any authority is conferred on three or more persons it may be exercised by a majority of them, upon the meeting of all, unless expressly otherwise provided.

Computation of time.

Section 8.—The time within which an act is to be done, as provided in this code, shall be computed by excluding the first day and including the last, unless the last day fall upon a Sunday or other legal holiday, in which case the last day shall also be excluded. The time for the publication of legal notices shall be computed so as to exclude the first day of publication and to include the day on which the act or event of which notice is given is to happen or which completes the full period required for publication.

CHAPTER FORTY-SEVEN.

OF OFFERS TO COMPROMISE AND THE INSPECTION OF WRITINGS.

Offers to compromise, how accepted and effect thereof.

Section 1.—The defendant may, at any time before trial, serve upon the plaintiff and offer to allow judgment to be given against him for the sum, or the property, or to the effect therein specified. If the plaintiff accept the offer, he shall, by himself or attorney, indorse such acceptance thereon, and file the same with the clerk before trial and within three days from the time it was served upon him, and thereupon judgment shall be given accordingly as in case of a confession.

If the offer be not accepted and filed within the time prescribed, it shall be deemed withdrawn, and shall not be given in evidence on the trial; and if the plaintiff fail to obtain a more favorable judgment he shall not recover costs accruing after the service of the notice of the offer, but the defendant shall recover of him costs and disbursements from the time of such service.

Order for the inspection of papers.

Section 2.—The court, or judge thereof, while an action is pending, may order either party to give the other, within a specified time, an inspection and copy or permission to take a copy, of any book, document, or paper in his possession, or under his control, containing evidence or matters relating to the merits of the action, or the defense therein. If obedience to the order be neglected or refused, the court may exclude the book, document, or paper from being given in evidence, or, if wanted as evidence by the party applying therefor, may direct the jury to presume it to be such as he alleges it to be; and the court may also punish the party so neglecting or refusing as for contempt. This section is not to be construed to prevent a party from compelling another to produce books, documents, or papers when he is examined as a witness.

CHAPTER FORTY-EIGHT.

OF MOTIONS AND ORDERS.

Order and motion; definition of

Section 1.—Every direction of a court or judge made or entered in writing, and not included in a judgment is denominated an order. An application for an order is a motion.

Motions, to whom and where made.

Section 2.—Motions shall be made to the court or judge, as provided in other parts of this code. They shall be made at the place where the action is triable, except when made to a judge of the court before whom the action is pending and without notice, in which case an order may be made by such judge in any part of the district.

Notice of motion, time of, and when necessary.

Section 3.—When a notice of a motion is necessary, it shall be served five days before the time appointed for the hearing; but the court, or judge thereof, may prescribe, by order indorsed upon the notice, a shorter time. Notice of a motion is not necessary, except when this code requires it, or when directed by the court or judge in pursuance thereof.

CHAPTER FORTY-NINE.

OF NOTICE AND THE SERVICE AND FILING OF PAPERS.

Notice to be in writing.

Section 1.—Notices shall be in writing, and notices and other papers shall be served on the party or attorney in the manner prescribed in this chapter when not otherwise provided by this code.

Notices and other papers; how served and upon whom.

Section 2.—The service or deposit in the post-office, when served by mail, may be made by any person other than the party himself. The proof of service shall be the same as proof of service of a summons, and shall be returned with the original notice, or other paper of which service is made, at the time and place therein prescribed for the hearing or other proceeding to be had thereon. The service may be personal by delivery of a copy of the notice or other paper to the party or attorney on whom the service is required to be made, or it may be as follows:

First. If upon an attorney, it may be made during his absence from his office by leaving the copy with his clerk therein, or with the person having charge thereof; or when there is no person in the office, by leaving it between the hours of nine in the morning and four in the afternoon in a conspicuous place in the office, or if it be not open to admit of such service, then by leaving it at the attorney's residence with some person of suitable age and discretion.

Second. If upon a party, it may be made by leaving the copy at his residence between the hours of nine in the morning and nine in the evening with some person of suitable age and discretion.

When service may be made by mail; time allowed for distance; how copy deposited and when service made.

Section 3.—Service by mail may be made when the person for whom the service is made and the person on whom it is made reside in different places, between which there is a communication by mail and, in such case, the copy must be deposited in the post office, registered and addressed to the person on whom it is to be served at his place of residence, and the postage paid. The service shall be deemed to be made on the tenth day after the deposit in the post office that the mail leaves the place of deposit for the place of the address, and not otherwise.

Appearance how made; defendant not to be heard before appearance.

Section 4.—A defendant appears in an action when he answers, demurs, or gives the plaintiff written notice of his appearance, and until he does so appear he shall not be heard in such action or in any proceeding pertaining thereto, except the giving of the undertakings allowed to the defendant in the provisional remedies of arrest, attachment, and the delivery of personal property. When the defendant has not appeared, notice of a motion or other proceeding need not be served upon him, unless he be imprisoned for want of bail, or unless directed by the court, or judge thereof, in pursuance of this title.

When party absent from district; when service made on attorney.

Section 5.—When a party is absent from the District and has no attorney in the action, service may be made by mail if his residence be known; if not known, on the clerk for him. When a party, whether absent or not from the district has an attorney in the action, service of notice or other papers shall be made upon the attorney.

Foregoing provisions not to apply to summons.

Section 6.—The foregoing provisions do not apply to the service of summons or other process, nor so much thereof as allows service to be made of any notice or other paper to bring a party into contempt, otherwise than upon such party personally.

Notice is valid though defective in form.

Section 7.—A notice or other paper is valid and effectual either in respect to the title of the action in which it is made, or the name of the court or the parties, if it intelligently refer to such action.

Section 8.—All undertakings, affidavits, or other papers required by or provided for in this code shall be filed with the clerk, except when this code otherwise specially provides. A pleading or paper shall be filed by delivering the same to the clerk at his office, who shall indorse upon it the day of the month and the year and subscribe his name thereto. The clerk shall not be required to receive for filing any paper unless the name of the court, the title of the cause and the paper, and the names of the parties, and the attorney, if there be one, is intelligibly indorsed on the back of it, or unless the contents thereof can be read by a person of ordinary skill.

Filing of papers.

CHAPTER FIFTY.

OF COSTS AND DISBURSEMENTS.

Costs; compensations of attorney.

Section 1.—The measure and mode of compensation of attorneys shall be left to the agreement, expressed or implied, of the parties; but there may be allowed to the prevailing party in the judgment certain sums by way of indemnity for his attorney fees in maintaining the action or defenses thereto, which allowances are termed costs.

When cost allowed to plaintiff.

Section 2.—Costs are allowed, of course, to the plaintiff upon a judgment in the District Court in his favor in the following cases:

First. In an action for the recovery of the possession of real property, or where a claim of title or interest in real property, or right to the possession thereof, arises upon the pleadings, or is certified by the court to have come in question upon the trial;

Second. In actions for fines and forfeitures and in actions to avoid charters, letters patent, and to prevent the usurpation of an office or franchise and to determine the rights thereto;

Third. In an action involving an open mutual account;

Fourth. In an action for the recovery of personal property;

Fifth. In an action for the recovery of money or damages.

But in an action for assault, battery, false imprisonment, libel, slander, malicious prosecution, criminal conversation, seduction, or breach of promise of the marriage, if the plaintiff recovers less than fifty dollars damages, he shall recover no more costs and disbursements than damages; and in an action to recover the possession of personal property, if the plaintiff recover property or the value thereof, as established on the trial, and damages for the detention of the same, in all less than fifty dollars, he shall recover no more costs and disbursements than the sum of such value and damages.

Costs in several actions on same cause.

Section 3.—When several actions shall be prosecuted for the same cause of action, against several parties who might have been joined as defendants in the same action, disbursements shall be allowed the plaintiff in each action if he prevail therein; but costs shall not be allowed such plaintiff in more than one of such actions, which shall be at his election, unless the party or parties prosecuted in such other action or actions shall at the time of the commencement of the previous action have been without the District or secreted therein.

Costs when allowed to defendant.

Section 4.—Costs are allowed, of course, to the defendant in the actions mentioned in the section last preceding unless the plaintiff be entitled to costs therein; and when there are several defendants not united in interest and making separate defenses by separate answers, costs shall be allowed or not to each of such defendants as if the action were commenced against him separately.

Disbursements when allowed.

Section 5.—A party entitled to costs shall also be allowed for all necessary disbursements, including the fees of officers and witnesses, the necessary expenses of taking depositions by commission or otherwise, the expenses of publication of the summons or notices, and the postage where the same are served by mail, the compensation of referee, and the necessary expense of copying any public record, book, or document used as evidence on the trial.

Costs and disbursements in action of equitable nature.

Section 6.—In an action of equitable nature costs and disbursements shall be allowed to a party in whose favor a judgment is given in like manner and amount as in other actions, without reference to the amount recovered or the value of the subject of the action, unless the court otherwise directs.

Section 7.—Every officer, or other person required to do or perform any act or service for any party to any action or proceeding whatever, except a witness shall be entitled to demand and receive from such party the compensation which the law allows therefor in advance; but a party to any action or proceeding in any court of justice in the district may, at his option, pay the fees of the officers thereof in advance or give such officers an undertaking with sufficient sureties therefor. The costs and disbursements which a party is entitled to recover from another may be collected by the execution to enforce the judgment as a part thereof. The fees secured by the officers of the court, or either of them, by any party to the judgment may be collected by an execution against the property of such party and that of his sureties in the undertaking therefor. Such officers' execution may issue in the name of the clerk as plaintiff in the writ and for the benefit of all officers of the court to whom fees are so due and secured whenever an execution might issue to enforce the judgment at the instance of the prevailing party therein.

Who liable for fees.

Section 8.—Costs and disbursements shall be taxed and allowed by the clerk. No disbursements shall be allowed any party unless he shall file with the clerk within five days from the entry of judgment a statement of the same, which statement must be verified except as to fees of officers. A statement of disbursements may be filed with the clerk at any time after five days, but in such case a copy thereof must be served upon the adverse party. A disbursement which a party is entitled to recover must be taxed, whether the same has been paid or not by such party. The statement of disbursements thus filed, and costs, shall be allowed of course unless the adverse party, within two days from the time allowed to file the same shall file his objection thereto, stating the particulars of such objections.

Costs and disbursements; how taxed.

Section 9.—When objections are made to the claim for costs and disbursements, the clerk shall forthwith pass upon the same, and indorse upon the verified statement, or append thereto, the charges allowed or disallowed. Any party aggrieved by the decision of the clerk in the allowance of costs or disbursements may appeal from such decision to the court within five days from the date of such decision, by serving a notice of such appeal, and in what particulars, upon the adverse party or his attorney which appeal shall be heard and determined by such court or judge thereof, as soon thereafter as convenient.

When objections made.

Section 10.—Such appeal shall stay the proceedings as to the costs and disbursements to which the appeal is taken or relates, unless the respondent file with the clerk an undertaking, with one or more sureties, to the effect that if the decision of the clerk be reversed or modified he will make such restitution as the court or judge may direct. The sufficiency of the sureties in the undertaking may be excepted to by the appellant, and they be required to justify in like manner and with like effect as in an ordinary undertaking for an appeal.

Effect of such appeal.

Section 11.—The fees of referees shall be four dollars per day to each for every day spent in the business of the reference, but the parties may agree in writing upon any other rate of compensation, and thereupon such rates shall be allowed.

Fees of referees.

Section 12.—When in any action for the recovery of money or damages only the defendant shall allege in his answer that before the commencement thereof he tendered to the plaintiff a certain amount of money in full payment or satisfaction of the cause of action, and now brings the same into court and deposits it with the clerk for the plaintiff, if such allegation of tender be found true, and the plaintiff do not recover a greater sum than the amount so tendered, he shall not recover costs of the defendant, but the defendant shall recover them of him.

Plea of tender and effect as to costs.

Section 13.—When costs or disbursements are adjudged against an infant plaintiff, the guardian by whom he appeared in the action shall be responsible

Guardian of an infant plaintiff liable.

therefor, as if he were the actual plaintiff in such action, and payment thereof may be enforced against him accordingly.

Costs where person sues or defends in the right of another.

Section 14.—In an action prosecuted or defended by an executor, administrator, trustee of an express trust, or a person expressly authorized by a statute to prosecute or defend therein, costs shall be recovered as in ordinary cases, but such costs shall only be chargeable upon or collected of the estate, fund, or party represented, unless the court or judge thereof shall order the same to be recovered of the plaintiff or defendant personally for mismanagement or bad faith in such action or the defense thereto.

Costs in certain cases.

Section 15.—In all actions prosecuted or defended in the name and for the use of any public corporation in the District the public corporation shall be liable for and may recover costs in like manner and with like effect as in the case of natural persons. When the action is upon the information of any natural person, he shall be liable in the first instance for the defendant's costs; and such costs shall not be recovered from the District until after execution issued therefor against such person and returned unsatisfied in whole or in part.

Security for costs.

Section 16.—The attorney or plaintiff who resides out of the District, or is a foreign corporation, against whom costs are adjudged in favor of the defendant, is liable to such defendant therefor, and if he neglect to pay the same upon the information of such defendant, shall be punished as for a contempt. The attorney may relieve or discharge himself from such liability by filing an undertaking at the commencement of the action or at any time thereafter before judgment, for the payment to the defendant of the costs and disbursements that may be adjudged to him, executed by one or more sufficient sureties.

Same subject.

Section 17.—The sureties in such undertaking shall possess the qualifications of sureties in an undertaking for bail on arrest, and their sufficiency may be excepted to by the defendant at any time within five days from notice of filing the same, and if so, they shall justify in an amount not less than two hundred dollars in like manner and with like effect as such sureties for bail on arrest. Until the time for excepting to the sufficiency of the sureties has expired, or if excepted to, until they be found sufficient, the attorney is liable as if no undertaking had been given. A deposit of such sum as the court or judge may direct, with the clerk may be made in lieu of such undertaking.

Costs on motion, etc.

Section 18.—The court may allow to the prevailing party on a motion, such sum as costs as it may deem reasonable which sum may be absolute or directed to abide the event of the action. In any action or proceeding as to which the allowance and recovery of costs may not be provided for in this title, costs may be allowed or not, according to the measure herein prescribed and apportioned among the parties, in the discretion of the court.

CHAPTER FIFTY-ONE.

GENERAL PROVISIONS CONCERNING SPECIAL PROCEEDINGS.

Parties to special proceedings, how designated.

Section 1.—The party prosecuting a writ of mandamus, writ of habeas corpus, or a proceeding for contempt shall be known as the plaintiff, and the adverse party as the defendant.

Judgments, orders, and motions.

Section 2.—A judgment in a special proceeding is the final determination of the rights of the parties therein. The definition of a motion and an order in an action are applicable to similar acts in a special proceeding.

CHAPTER FIFTY-TWO.

OF THE WRIT OF REVIEW.

Writ for certiorari to be known as writ of review.

Section 1.—The writ formerly known as the writ of certiorari is known in this title as the writ of review.

Who may prosecute.

Section 2.—Any party to any process or proceeding before or by any officer, or tribunal may have the decision or determination thereof reviewed for errors therein as in this chapter prescribed. Upon the review, the Court may review any intermediate order involving the merits necessarily affecting the decision or determination sought to be reviewed.

By whom allowed and how applied for.

Section 3.—The writ shall be allowed by the district court or judge thereof, upon the petition of the plaintiff, describing the decision or determination sought to be reviewed with convenient certainty, and setting forth the errors alleged to have been committed therein. Such petition shall be signed by the plaintiff or his attorney, and verified by the certificate of any attorney of the court, to the effect that he had examined the process or proceeding and the decision or determination therein, and that the same is erroneous, as alleged in the petition.

When allowed.

Section 4.—The writ shall be allowed in all cases where there is no appeal or other plain, speedy, and adequate remedy, and where the inferior court officer, or tribunal in the exercise of judicial functions appears to have exercise such functions erroneously, or to have exceeded it or his jurisdiction, to the injury of some substantial right of the plaintiff.

Undertaking of plaintiff.

Section 5.—Before allowing the writ the court or judge shall require the party applying therefor to give an undertaking, with one or more sureties, subject to its or his approval, in the amount to be fixed by it or him conditioned that he will perform the judgment or decision sought to be reviewed in case the District Court shall so order, and judgment may be given by said court against the applicant and his surety or sureties in case the judgment or decision sought to be reviewed shall be affirmed for the amount thereof, and the cost of said proceeding.

To whom directed.

Section 6.—The writ shall be directed to the inferior court officer, or tribunal whose decision or determination is sought to be reviewed, or to the clerk or other person having the custody of its records or proceedings, requiring it or them to return the writ to the district court, within a time therein specified, with a certified copy of the record of proceedings in question annexed thereto, the same may be reviewed by such district court, and requiring the defendant to desist from further proceeding in the matter to be reviewed.

Stay of proceedings, when returnable.

Section 7.—The words in the writ requiring the stay of proceedings may be inserted or omitted in the discretion of the court or judge issuing the same, and the proceeding shall be stayed or not, accordingly. The writ shall be made returnable at the next term of the District Court, or in vacation, and if the latter, the same may be tried and judgment given therein, by the judge thereof, in like manner and with like effect as in term time.

When and by whom writ issued; how served.

Section 8.—Upon the filing of the order allowing the writ, and petition and undertaking of the plaintiff, the clerk shall issue the writ, according to the direction of the order. The writ shall be served by delivering a copy of the original to the opposite party in the action or proceeding sought to be reviewed, at least ten days before the return of the original writ, and may be served by an officer or person authorized to serve a summons, who shall indorse on the original writ the manner of service thereof.

Incomplete return; limitation of writ.

Section 9.—If the return of the writ be incomplete, the court may order a further return to be made. In no case shall a writ be allowed unless the

application thereof be made within six months from the date of the decision or determination complained of.

Power of court to review.

Section 10.—Upon the review the court shall have power to affirm, modify, reverse, or annul the decision or determination reviewed, and, if necessary, to award restitution to the plaintiff, or, by mandate, direct the inferior court, officer or tribunal to proceed in the matter reviewed according to its decision. From the judgment of the district court on review an appeal may be taken in like manner and with like effect as from a judgment of such district court in an action.

CHAPTER FIFTY-THREE.

OF THE WRIT OF MANDAMUS.

Mandamus to be known as in this chapter.

Section 1.—The writ of mandamus is known in this code as prescribed and regulated in this chapter.

To whom writ may issue; not to control judicial discretion.

Section 2.—It may be issued to any inferior court, corporation, board, officer, or person, to compel the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station. But though the writ may require such court, corporation, board, officer, or person to exercise its or his judgment, or proceed to the discharge of any of its or his functions, it shall not control judicial discretion. The writ shall not be issued in any case where there is a plain, speedy, and adequate remedy in the ordinary course of the law.

How writ applied for and by whom allowed and issued.

Section 3.—The writ shall be allowed by the court, or judge thereof, upon the petition, verified as a complaint in an action, and the party beneficially interested. It may be allowed with or without notice to the adverse party in the discretion of the Judge of the District Court. Upon the filing of the petition and order of allowance, the writ shall be issued by the clerk in accordance therewith.

How directed and served.

Section 4.—The writ shall be directed to the court, corporation, board, officer, or person mentioned or designated in the order of allowance, and may be served thereon by any officer or person authorized to serve a summons by delivery of a copy of the orginal to such officer or person, or to any member of such court, or to any officer of such corporation upon whom this code authorizes a summons to be served. The proof of servic shall be the same as in a writ of review, and obedience to the writ may be enforced in such manner as the court or judge thereof, shall direct.

Either alternative or peremptory; what to contain.

Section 5.—The writ is either alternative or peremptory. When it is alternative, it shall state concisely the facts according to the petition, showing the obligation of the defendant to perform the act, and his omission to perform it, and command him that immediately after the receipt of the writ, or at some other specified time, he do the act required to be performed, or show cause before the court or judge thereof by whom the writ was allowed, at a time and place therein specified why he has not done so; and that he then and there return the writ, with his certificate annexed, of having done as he is commanded, or the cause of his omission thereof. When peremptory, the writ shall be in similar form, except that the words requiring the defendant to show cause why he has not done as commanded, and to return the cause therefor, shall be omitted.

When peremptory writ shall be issued in first instance.

Section 6.—When the right to require the performance of the act is clear, and it is apparent that no valid excuse can be given for not performing it, a peremtory mandamus shall be allowed in the first instance; in all other cases the alternative writ shall be first issued.

When defendant may show cause, and how.

Section 7.—On the return day of the alternative writ, or such further day as the court or judge thereof may allow, the defendant on whom the writ shall have been served may show cause by demurrer or answer to the writ in the same manner as to a complaint in an action.

If defendant fail to show cause, peremptory writ to issue.

Section 8.—If the defendant do not show cause by demurrer or answer, a peremptory mandamus shall be allowed against him. If the answer contain new matter, the same may be demurred or replied to by the plaintiff within such time as the court or judge may prescribe. If the replication contain new matter, the same may be demurred to by the defendant within such time as the court or judge may prescribe, or he may countervail such matter on the trial or other proceedings by proof, either in direct denial or by way of avoidance.

Section 9.—The pleadings in the proceedings by mandamus are those mentioned in the two sections last preceding. They are to have the same effect, and to be construed and may be amended in the same manner, as pleadings in an action. Either party may move to strike out, or be allowed to plead over after motion or demurrer allowed or disallowed, and the issues joined shall be tried and the further proceedings thereon had in like manner and with like effect as in an action.

Pleadings and mode of proceedings therein.

Section 10.—If judgment be given for the plaintiff, he shall recover the damages which he shall have sustained by reason of the premises, to be ascertained in the same manner as in an action, together with costs and disbursements, and a peremptory mandamus shall be awarded without delay.

Recovery of damages.

Section 11.—A recovery of damages by virtue of this chapter against a party who shall have made a return to a writ of mandamus is a bar to any other action against the same party for the same cause.

Recovery of damages a bar to other suit or action.

Section 12.—Whenever a peremptory mandamus is directed to a public officer or body commanding the performance of any public duty specially enjoined by law, if it appear to the court or judge thereof that such officer or any member of such body has without just excuse refused or neglected to perform the duty so enjoined, the court or judge may imprison, or impose a fine, not exceeding one thousand dollars upon every such officer or member of such body for each refusal.

When court may impose fine upon defendant.

Section 13.—In the district court the writ may be made returnable either in term time or vacation, and if the latter, may be tried and determined before the judge thereof in like manner and with like effect as in term time.

How tried.

Section 14.—From the judgment of the District Court or judge thereof, refusing to allow a mandamus, or directing a peremptory mandamus, an appeal may be taken in like manner and with like effect as in an action.

Appeal from judgment of District Court.

CHAPTER FIFTY-FOUR.

HABEAS CORPUS.

Habeas corpus. Who may prosecute a writ of.

Section 1.—Every person unlawfully imprisoned or restrained of his liberty, under any pretense whatever, may prosecute a writ of habeas corpus, to inquire into the cause of such imprisonment or restraint.

Application; by whom made and contents.

Section 2.—Application for the writ is made by petition signed either by the party for whose relief it is intended or by some person in his behalf, and must specif,—

(1) That the person in whose behalf the writ is applied for is imprisoned or restrained of his liberty, the officer or person by whom he is so confined or restrained and the place where, naming all the parties, if they are known, or describing them, if they are not known;

(2) If the imprisonment is alleged to be illegal, the petition must also state in what the alleged illegality consists;

(3) The petition must be verified by the oath of the party making the application.

By whom may be granted.

Section 3.—The writ of habeas corpus may be granted by the district court, or a judge thereof, upon petition by or on behalf of any person restrained of his liberty.

To be granted without delay.

Section 4.—The court or judge authorized to grant the writ, to whom a petition thereof is presented must, if it appear that the writ ought to issue, grant the same without delay.

To whom directed and contents of writ.

Section 5.—The writ must be directed to the person having custody of or restraining the person on whose behalf the application is made, and must command him to have the body of such person before the court or judge before whom the writ is returnable, at a time and place therein specified.

Delivery to whom and how made.

Section 6.—If the writ is directed to any ministerial officer of the court out of which it issues, it must be delivered by the clerk to such officer without delay, as other writs are delivered for service. If it is directed to any other person it must be delivered to such officer and be by him served upon such person by delivering the same to him without delay. If the person to whom the writ is directed can not be found, or refuses admittance to the officer or person serving or delivering such writ it may be served or delivered by leaving it at the residence of the person to whom it is directed, or by affixing it to some conspicuous place on the outside either of his dwelling house or of the place where the party is confined or under restraint.

Warrant to issue in case of refusal to obey.

Section 7.—If the person to whom the writ is directed refuses, after service, to obey the same, the court or judge, upon affidavit, must issue an attachment against such person, directed to any officer, commanding him forthwith to apprehend such person and bring him immediately before such court or judge; and upon being so brought, he must be committed to jail until he makes due return to such writ, or is otherwise legally discharged.

Contents of return.

Section 8.—The person upon whom the writ is served must state in his return, plainly and unequivocally;

(1) Whether he has or has not the party in his custody or under his power or restraint;

(2) If he has the party in his custody or power, or under his restraint, he must state the authority and cause of such imprisonment or restraint;

(3) If the party is detained by virtue of any writ, warrant, or other written authority, a copy thereof must be annexed to the return, and the original produced and exhibited to the court or judge on the hearing of such return;

(4) If the person upon whom the writ is served had the party in his power or custody, or under his restraint at any time prior or subsequent to the date of the writ of habeas corpus but has transferred such custody or restraint to another, the return must state particularly to whom, at what time and place, for what cause, and by what authority, such transfer took place;

(5) The return must be signed by the person making the same, and, except when such person is a sworn public officer, and makes such return in his official capacity, it must be verified by his oath.

Person to be produced.

Section 9.—The person or officer on whom the writ shall have been served, must bring the body of the party in his custody or under restraint, according to the command of the writ, except in the cases specified in the next section.

When cause to be inquired into.

Section 10.—The court or judge where the writ is returned must immediately after the return, proceed to hear and examine the return, and such other matters as may be properly submitted to the hearing and consideration.

Procedure for hearing of cause.

Section 11.—The party brought before the court or judge on the return of the writ, may deny or controvert any of the material facts or matters set forth in the return, or except to the sufficiency thereof, or allege any fact to show either that his imprisonment or detention is unlawful, or that he is entitled to his discharge. The court or judge must thereupon proceed in a summary way to hear such proof as may be produced against such imprisonment or detention, or in favor of the same, and to dispose of such party as the justice of the case may require, and have full power and authority to require and compel the attendance of witnesses, by process of subpoena and attachment, and to do and perform all other acts and things necessary to a full and fair hearing and determination of the case.

If no legal cause shown, discharge granted.

Section 12.—If no legal cause is shown for such imprisonment or restraint, or for the continuation thereof, such court or judge must discharged such party from the custody or restraint under which he is held.

When party to be remanded.

Section 13.—The court or judge, if the time during which such party may be legally detained in custody has not expired, must remand such party if it appears, that he is legally detained in custody:

(1) By virtue of proceess issued by a court or judge in a case where such court or judge has jurisdiction, or

(2) By virtue of a warrant or final judgment or decree of any competent court of criminal jurisdiction, or of any process issued upon such warrant, judgment or decree.

When prisoner to be discharged.

Section 14.—If it appears on the return of the writ that the prisoner is in custody by virtue of process from any court or judge or officer thereof, such prisoner may be discharged in any of the following cases, subject to the restriction of the preceding section:

(1) When the jurisdiction of such court or officer has been exceeded;

(2) When the imprisonment was at first lawful, yet by some act, omission, or event which has taken place afterwards, the party has become entitled to a discharge;

(3) When the process is defective in some matter of substance required by law rendering such process void;

(4) When the process, though proper in form, has been issued in a case not allowed by law;

(5) When the person having custody of the prisoner is not the person allowed by law to detain him;

(6) Where the process is not authorized by any order, jugment or decree of any court, nor by any provision of law;

(7) Where a party has been committed on a criminal charge without reasonable or probable cause.

Not to be discharged on ground of mere defect of form in warrant.

Section 15.—If any person is committed to prison, or is in custody of any officer on any criminal charge, by virtue of any warrant of commitment of a magistrate, such person must not be discharged on the ground of any mere defect of form in the warrant of commitment.

On commitment for criminal offense, how to proceed.

Section 16.—If it appears to the court or judge, by affidavit or otherwise, or upon the inspection of the process or warrant of commitment, and such other papers in the proceedings as may be shown to the court or judge that the party is guilty of a criminal offense, or ought not to be discharged, such court or judge, although the charge is defective or unsubstantially set forth in such process or warrant of commitment, must cause the complainant or other necessary witnesses to be subpœnaed to attend at such time as ordered, to testify before the court or judge, and upon the examination he may discharge such prisoner, let him to bail, if the offenses be bailable, or recommit him to custody, as may be just and legal.

Person committed on criminal charge, when writ may be issued.

Section 17.—Any person who has been committed on a criminal charge may be brought before a judge on a writ of habeas corpus, if the writ issues out of the proper court.

When party to be remanded.

Section 18.—If a party brought before the court or judge on the return of the writ is not entitled to his discharge, and is not bailed where such bail is allowable the court or judge must remand him to custody or place him under the restraint from which which he was taken, if the person under whose custody or restraint he was is legally entitled thereto.

Recommitment.

Section 19.—In cases where any party is held under illegal restraint or custody, or any other person is entitled to the restraint or custody of such party, the judge or court may order such party to be committed to the restraint or custody of such person as is by law entitled thereto.

Custody of party pending judgment.

Section 20.—Until judgment is given on the return, the court or judge before whom any party may be brought on such writ may commit him to the custody of the warden of the jail, or place him in such care or under such custody as his age or circumstances may require.

Not to be disobeyed for want of form.

Section 21.—No writ of habeas corpus can be disobeyed for defect in form, if it sufficiently appear therefrom in whose custody or under whose restraint the party imprisoned or restrained is, the officer or person detaining him, and the court or judge before whom he is to be brought.

Person once discharged not to be again imprisoned.

Section 22.—No person who has been discharged by order of the court or judge upon habeas corpus can be again imprisoned or restrained, or kept in custody for the same cause, except in the following cases:

(1) If he has been discharged from custody on a criminal charge, and is afterwards committed for the same offense, by legal order or process.

(2) If, after a discharge for defect or proof, or for any defect of the process, warrant, or commitment in a criminal case, the prisoner is again arrested on sufficient proof and committed by legal process for the preceding offense.

When warrant may issue in lieu of habeas corpus.

Section 23.—When it appears to the court or judge, that any one is illegally held in custody, confinement or restraint and that there is reason to believe that such person will be carried out of the jurisdiction of the court or judge before whom the application is made, or will suffer some irreparable injury before compliance with the writ of habeas corpus can be enforced, such court or judge may cause a warrant to be issued, reciting the facts, and directed to any officer, commanding such officer to take such person thus held in custody, confinement, or restraint and forthwith bring him before such court or judge, to be dealth with according to law.

Section 24.—The court or judge may also insert in such warrant a command for the apprehension of the person charged with such illegal detention and restraint.

Arrest of person having custody of party.

Section 25.—The officer to whom such warrant is delivered must execute it by bringing the person therein named before the court or judge who directed the issuing of such warrant.

Warrant, now executed, and the proceeding thereon.

Section 26.—The person alleged to have such party under illegal confinement or restraint may make return to such warrant, as in case of a writ of habeas corpus, and the same may be denied, and like allegations, proofs, and trial may thereupon be had as upon a return to a writ of habeas corpus.

Return to warrant.

Section 27.—If such party is held under illegal restraint or custody, he must be discharged, and if not, he must be restored to the care or custody of the person entitled thereto.

Discharge or committment of party.

Section 28.—Any writ or process authorized by this chapter may be issued and served on any day or at any time.

Writ of process, time of service.

Section 29.—All writs, warrants, process, and subpœnas authorized by the provisions of this chapter, must be issued by the clerk of the court, and except subpœnas, must be sealed with the seal of such court, and served and returned forthwith, unless the court or judge shall specify a particular time for any such return.

Service and return.

Section 30.—All such writs and process, when made returnable before a judge, must be returned before him at the place of holding court, and there heard and determined.

Return to whom and where made.

CHAPTER FIFTY-FIVE.

OF THE PUNISHMENTS OF CONTEMPTS.

Contempts defined.

Section 1.—The following acts or omissions, in respect to a court of justice or proceedings therein are deemed to be contempts of the authority of the court:

First. Disorderly, contemptuous, or insolent behavior toward the judge while holding the court, tending to impair its authority or to interrupt the due course of a trial or other judicial proceeding.

Second. A breach of the peace, boisterous conduct, or violent disturbance, tending to interrupt the due course of a trial or other judicial proceeding.

Third. Misbehavior in office or other wilful neglect or violation of duty by an attorney, clerk, marshal, sheriff or peace officer, or any deputy or other person appointed or selected to perform a judicial or ministerial service.

Fourth. Deceit or abuse of the process or proceedings of the court by a party to an action or special proceeding.

Fifth. Assuming to be an attorney or other officer of the court and acting as such without authority in a particular instance.

Sixth. Disobedience of any lawful judgment, order, or process of the court.

Seventh. Rescuing any person or property in the custody of an officer by virtue of an order or process of such court.

Eighth. Unlawfully detaining a witness or party to an action or proceeding while going to, remaining at, or returning from the court where the same is for trial.

Ninth. Any other unlawful interference with the process or proceedings of the court.

Tenth. Disobedience of a subpœna duly served or refusing to be sworn or answer as a witness.

Eleventh. When summoned as a juror in a court, improperly conversing with a party to an action or proceeding to be tried at such court, or with any other person in relation to the merits of such action, or proceeding, or receiving a communication from a party or other person in respect to it without immediately disclosing the same to the court.

Twelfth. Disobedience by an inferior tribunal, magistrate, or officer of the lawful judgment, order, or process of a superior court, or proceeding in an action or proceeding contrary to law, after such action or proceeding shall have been removed from the jurisdiction of such inferior tribunal, magistrate, or officer. The conduct specified in subdivisions first and second of this section, when committed before a judicial officer, or disobedience to the lawful order or process of such officer made in the cases specified in section twenty-three of chapter one, title one, hereof is also to be deemed a contempt of the authority of such officer.

Punishment for contempt.

Section 2.—Every court of justice and every judicial officer has power to punish contempt by fine or imprisonment, or both. But such fine shall not exceed three hundred dollars nor the imprisonment six months; and when the contempt is not one of those mentioned in subdivisions first and second and fifth of the last section, or in subdivision first of section twenty-three of chapter one, title one, it must appear that the right or remedy of a party to an action or proceeding was defeated or prejudiced thereby before the contempt can be punished otherwise than by fine not exceeding one hundred dollars.

Section 3.—When a contempt is committed in the immediate view and presence of the court or officer, it may be punished summarily for which an order must be made reciting the facts as occurring in such immediate view and presence, determining that the person proceeded against is thereby guilty of a contempt, and that he be punished as therein prescribed. In other cases of contempt the trial shall proceed as in criminal cases.

In presence of court, how punished.

Section 4.—In cases other than those mentioned in the section last preceding, before any proceedings can be taken therein the facts constituting the contempt must be shown by n affidavit presented to the court or judicial officer, and thereupon such court or officer may either make an order upon the person charged to show cause why he should not be arrested to answer, or issue a warrant of arrest to bring such person to answer in the first instance.

In other cases, mode of proceeding.

Section 5.—If the party charged be in the custody of an officer, by virtue of a legal order or process, civil or criminal, except upon a sentence for a felony, an order may be made for the production of such person by the officer having him in custody, that he may answer, and he shall thereupon be produced and held, until an order be made for his disposal.

If defendant imprisoned, may be brought out.

Section 6.—In the proceeding for a contempt the People is the plaintiff. In all cases the proceeding must be prosecuted by the Government Attorney on behalf of the People, and in all cases where the proceeding is commenced upon the relation of a private party such party shall be deemed a coplaintiff with the People of the Municipality.

The People is plaintiff; Government attorney to prosecute.

Section 7.—Whenever a warrant of arrest is issued pursuant to this chapter the court or judicial officer shall direct therein whether the person charged may be let to bail for his appearance upon the warrant or detained in custody without bail and, if he may be bailed, the amount in which he may be let to bail. Upon executing the warrant of arrest, the sheriff must keep the person in actual custody, bring him before the court or judicial officer, and detain him until an order be made in the premises, unless the person arrested entitle himself to be discharged, as provided in the next section.

When defendant bailed; how warrant executed.

Section 8.—The defendant shall be discharged from the arrest upon executing and delivering to the sheriff at any time before the return day of the warrant, an undertaking, with two sufficient sureties, to the effect that the defendant will appear on such return day and abide the order or judgment of the court or officer thereupon, or pay, as may be directed, the sum specified in the warrant.

Bail, how given.

Section 9.—The sheriff shall return the warrant of arrest and the undertaking, if any, given him by the defendant by the return day therein specified. When the defendant has been brought up or has appeared, the court or judicial officer shall preceed to investigate the charge, by examining such defendant and witnesses for or against him, for which an adjournment may be had from time to time if necessary.

Return of warrant and proceedings on appearance.

Section 10.—Upon the evidence so taken the court or judicial officer shall determine whether or not the defendant is guilty of the contempt charged and, if it be determined that he is so guilty, shall sentence him to be punished as provided in this chapter.

Determination of sentence.

Section 11.—If any loss or injury to a party in an action or proceeding, prejudicial to his rights therein have been caused by the contempt, the court or judicial officer, in addition to the punishment imposed for the contempt, may give judgment that the party aggreived recover of the defendant a sum of money sufficient to indemnify him and to satisfy his costs and disbursements, which judgment and the acceptance of the amount thereof, is a bar to any action or proceeding by the aggrieved party for such loss or injury.

Judgment to indemnity party injured.

When party may be imprisoned.

Section 12.—When the contempt consists in the omission or refusal to perform an act which is yet in the power of the defendant to perform, he may be imprisoned until he shall have performed it; and in such case the act must be specified in the warrant of commitment.

Person also liable toindictment.

Section 13.—Persons preceeded against according to the provisions of this chapter are also liable to presentment for the same misconduct, if it be a presentable offense; but the court, before his conviction is had on the presentment in passing sentence, shall take into consideration the punishment before inflicted.

If party do not appear, proceedings thereon.

Section 14.—When a warrant of arrest has been returned served if the defendant do not appear on the return day, the court or judicial officer may issue another warrant of arrest, or may order the undertaking to be prosecuted, or both. If the undertaking be prosecuted and the aggrieved party join in the action, and the sum specified therein be recovered, so much thereof as will compensate such party for the loss or injury sustained by reason of the misconduct for which the warrant was issued shall be deemed to be recovered for such party exclusively.

Appeal from judgment.

Section 15.—Either party to a judgment in a proceeding for a contempt may appeal therefrom in like manner and with like effect as from a judgment in an action; but such appeal shall not have the effect to stay the proceeding in any other action or proceeding, or upon any judgment, decree, or order therein concerning which or wherein such contempt was committed.

CHAPTER FIFTY-SIX.

OF THE MEANS OF THE PRODUCTION OF EVIDENCE.

Section 1.—The process by which the attendance of a witness is required is a suœna. It is a writ directed to a person and requiring his attendance at a particular time and place, to testify as a witness in a particular action, suit, or proceeding therein specified on behalf of a particular party therein mentioned. It may also require him to bring with him any books, documents, or other things under his control which he is bound by law to produce in evidence.

Subpoena for witness defined.

Section 2.—A subpœna may be issued by any judge, magistrate or clerk of any court of record.

Who may issue subpoena.

Section 3.—The subpœna is as follows:

Subpoena, how and by whom issued.

First. To require attendance before a court or at the trial of an issue therein, or out of such court in an action, suit, or proceeding pending therein;

Second. To require attendance before a commissioner appointed to take testimony by a court of the United States, or any State or Territory, or any foreign country, in places within the jurisdiction of a local court;

Third. To require attendance before the judge, or other person authorized by law to take the testimony or affidavit of another, by such judge, within their respective jurisdicition.

Section 4.—The subpœnas authorized by subdivisions first and second of the last section, upon the request of a party and an attorney of the court, shall be issued by the clerk in blank, and delivered to such party or attorney, who may thereafter fill up such blank with the name of the witness or witnesses that he may desire to be subpœnaed, and cause the same to be served as in this chapter required.

Subpoena, when and to whom issued in blank.

Section 5.—A subpœna may be served by the party or any other competent person over eighteen years of age. The service is made by reading and showing the original and delivering a copy to the witness personally. Such service must be made so as to allow the witness a reasonable time for preparation and travel to the place of attendance.

Subpoenas, how served.

Section 6.—The Sheriff or any deputy person specially appointed by him, but none other, is authorized and required to break into any building or vessel in which a witness may be concealed, so as to prevent the service of a subpœena, and serve the same upon such witness.

How served if witness concealed.

Section 7.—Proof of service of a subpœna shall be made in the same manner as in the service of a summons.

Proof of service.

Section 8.—A person present in court or before a judicial officer may be required to testify in the same manner as if he were in attendance before such court or officer on a subpœna.

Person present compelled to testify.

Section 9.—Disobedience to a subpoena, or refusal to be sworn, or to answer as a witness, or to subscribe an affidavit or deposition when required, may be punished as a contempt by the court or officer before whom he is required to attend or the refusal takes place, and if the witness be a party his complaint, answer, or reply may be striken out.

Disobedience to subpoena how punished.

Section 10.—A witness disobeying a subpœna duly served shall forfeit to the party requiring his attenddance all damages which he may sustain by the failure of the witness to attend, which forfeiture and damages may be recovered by an action at law.

Forfeiture therefor.

When warrant may be issued to bring witness.

Section 11.—In case of the failure of a witness to attend, the court or officer before whom he is required to attend, upon proof of the due service of the subpœna may issue a warrant to the sheriff requiring him to arrest the witness and bring him before the court or officer where his attendance was required

Warrant of arrest or commitment.

Section 12.—Every warrant of commitment issued by a court or officer pursuant to this chapter shall specify therein the cause of the commitment; and if it be for refusing to answer a question such question shall be stated in the warrant.

If witness be a prisoner, how produced or examined.

Section 13.—If the witness be a prisoner, confined in a prison within the district, an order for his examination in the prison upon a deposition, or for his temporary removal and production, before a court or officer, for the purpose of being orally examined, may be made by the District court or judge thereof.

Such order shall only be made upon the affidavit of the party desiring the order, or some one on his behalf, showing the nature of the action or proceeding, the testimony expected from the witness, and its materiality.

CHAPTER FIFTY-SEVEN.

OF THE MODE OF TAKING THE TESTIMONY OF WITNESS.

How authenticated if taken outside the district.

Section 1.—An affidavit or deposition taken in any State, Territory or Possession of the United States, the District of Columbia, or in a foreign country, otherwise than upon commission, must be authenticated as follows before it can be used in the District:

First. It must be certified by a commissioner appointed by the Governor of the District to take affidavits and depositions in such State, Territory, Possession, District or country, or

Second. It must be certified by a judge of a court having a clerk and a seal to have been taken and subscribed before him at a time and place therein specified, and the existence of the court, the fact that such judge is a member thereof, and the genuiness of his signature shall be certified by the clerk of the court, under the seal thereof.

Affidavit; when may be used.

Section 2.—An affidavit may be used to prove the service of a summons, notice, or other paper in an action, or proceeding to obtain a provisional remedy the examination of a witness, or a stay of proceedings, or upon a motion, and in any other case expressly provided for by law, except as provided in the next section.

When deponent to be produced for cross—examination.

Section 3.—Whenever a provisional remedy has been allowed upon affidavit, the party against whom it is allowed may serve upon the party by whom it was obtained a notice requiring any person making the affidavit to be produced before some officer authorized to administer oaths, therein named, for cross-examination. Thereupon the party to whom the remedy was allowed shall lose the benefit of the affidavit and all proceedings founded thereon, unless within eight days, or such other time as the court or judge thereof may direct, upon a previous notice to his adversary of at least three days, he produce the deponent for examination before the officer mentioned in the notice, or some other of like authority, provided for in the order of the court or judge. Upon such production the deponent may be examined by either party.

Proof of publication by affidavit.

Section 4.—Proof of the publication of a document or notice required by law, or by an order of court or a judge, to be published in a newspaper, may be made by the affidavit of the printer of the newspaper or his foreman or principal clerk, annexed to a copy of the document or notice, specifying the times when and the paper in which the publication was made. But such affidavit must be made within six months after the dast day of publication.

Where affidavit may be filed, and effect thereof.

Section 5.—If such affidavit be made in an action or proceeding pending in a court, it may be filed with the clerk thereof; and the same is primary evidence of the facts therein stated.

CHAPTER FIFTY-EIGHT.

OF DEPOSITIONS.

Deposition; when used.

Section 1.—In all cases other than those mentioned in section two of chapter fifty-seven, where a written declaration under oath is used, it must be a deposition.

Testimony of witnesses out of district.

Section 2.—The testimony of a witness out of the District may be taken by desposition in an action at any time after the service of the summons or the the appearance of the defendant, and in a special proceding at any time after a question of fact has arisen therein.

When deposition taken of witness within District.

Section 3.—The testimony of a witness in the District may be taken by deposition, in an action, at any time after the service of the summons, or the appearance of the defendant; and in a special proceeding after a question of fact has arisen therein, in the following cases:

First. When the witness is a party to the action or proceeding, by the adverse party;

Second. When the witness is about to go more than five hundred miles beyond the place of trial;

Third. When the witness, otherwise liable to attend the trial, is nevertheless too infirm to attend;

Fourth. When the testimony is required upon a motion, or in any other case where the oral examination of the witness is not required.

CHAPTER FIFTY-NINE.

OF THE MANNER OF TAKING DEPOSITIONS OUT OF THE DISTRICT.

Testimony of a witness out of the District, how taken.

Section 1.—The deposition of a witness out of the district may be taken upon a commission issued from the court, or without commission before a commissioner appointed by the Governor of the District to take depositions in any State, Territory, Possession, or District, of the United States, or in any foreign country.

Commission, how and by whom issued.

Section 2.—The commission may be issued by the Judge, or clerk of the District Court, on the application of either party upon five days' previous notice to the other. It shall be issued to a person agreed upon by the parties, or if they do not agree, to a judge, justice of the peace, notary public, or clerk of a court selected by the officer issuing it.

Interrogatories may be annexed.

Section 3.—Such interrogatories, direct and cross, as the respective parties may prepare, to be settled by the clerk or justice in a summary manner as to the form thereof, if the parties disagree, may be annexed to the commission, or when the parties agree to that mode, the examination may be without written interrogatories.

Contents of commission.

Section 4.—The commission shall authorize the commissioner to administer an oath to the witness and to take his deposition in answer to the interrogatories, or when the examination is to be without them, in respect to the question in dispute, and to certify the deposition to the court in a sealed envelope, directed to the judge or clerk of the District Court who issued the commission, or other person designated and agreed upon, and forward it to him by mail or other usual channel of conveyance.

Trial, when postponed therefor.

Section 5.—A trial or other proceeding shall not be postponed by reason of a commission not being returned, except it appear by affidavit that the testimony of the witness is material and necessary, and that proper diligence has been used to obtain it.

Deposition taken out of District before commission.

Section 6.—The deposition of a witness out of the District, and in any State, Territory, Possession, or District of the United States, may also be taken before a commission appointed by the Governor of the District to take depositions in such State, Territory, Possession or District, upon giving to the adverse party eight days' notice of the time and place of examination, the name of the commissioner, and the witness, if the distance of the place of examination from the place where the testimony is to be used does not exceed five hundred miles, and one day in addition for every additional twenty-five miles.

Either party may attend or require written interrogatories.

Section 7.—Either party may attend upon such examination and examine the witnesses upon oral interrogatories but if either party by a written notice to the other within three days from the service of the original notice, require it, it shall be taken upon written interrogatories, to be settled, if not agreed upon, by the same officer and in the same manner as in case of a deposition upon commission; and in such cases the deposition shall be taken, certified, and directed by the commissioner in the same manner as a deposition upon commission.

CHAPTER SIXTY.

OF THE MANNER OF TAKING DEPOSITIONS IN THE DISTRICT.

Deposition in the District, when taken, and notice thereof.

Section 1.—Either party may take the testimony of a witness in the district by deposition in the cases allowed by this code, before the clerk of the District Court, or other person authorized to administer oaths, on giving the adverse party previous notice of the time, and place of the examination, the name of the officer, and the witness; such notice shall be given at least three days before the day of the examination.

How taken; either party may attend.

Section 2.—Either party may attend upon such examination and examine the witness upon oral interrogatories. The deposition shall be written by the officer taking the same, or by the witness, or by some desinterested person, in the presence and under the direction of such officer. When completed it shall be read to or by the witness and subscribed by him. Before subscribing it the witness shall be allowed, if he desire it, to correct or explain any statement in the deposition, but such statement, although corrected and explained, shall remain a part of the deposition.

Certificate of officer.

Section 3.—The officer taking the deposition shall append thereto his certificate, under the seal of his office, if there be a seal, to the effect that the deposition was taken before him, at a place mentioned, between certain hours of the day or days mentioned, and reduced to writing by a person therein named; that, before proceding to the examination, the witness was duly sworn to tell the truth, the whole truth, and nothing but the truth, that the deposition was read to or by the witness and then by him subscribed.

Deposition to whom forwarded.

Section 4.—The officer taking the deposition shall inclose the same in a sealed envelope, directed to the clerk of the District Court, or such other person as may by writting be agreed upon, and deliver or forward the same accordingly by mail or other usual channel of conveyance.

May be used by either party; objections to relevancy or form.

Section 5.—A deposition taken pursuant to the provisions of this chapter may be used by either party upon the trial or proceeding against any party giving or receiving the notice, subject to all legal exceptions. But no objections can be made at the trial to the relevancy of the testimony or the form of the interrogatory, unless the same appear by the deposition or written interrogatories to have been taken at the time of the examination or the setting of such interrogatories. Sections two, three and four of this chapter, shall apply to depositions taken out of the district, on oral interrogatories.

Proof before using certain depositions; insufficient notice.

Section 6.—If a deposition be taken under subdivisions two or three of section three of chapter fifty-eight before the same can be used proof shall be made that the witness still continues absent or infirm, as the case may be. A deposition taken, whether in the district or without, upon insufficient notice or otherwise not substantially in conformity with the provisions of this chapter, may be excluded from the case, unless such insufficient notice or other omission has been waived by the consent or conduct of the adverse party.

Depositions may be read at any time; exclusion of a portion.

Section 7.—When a deposition has once been taken it may be read in the same action or proceeding, or in any other action or proceeding between the same parties or their representatives upon the same subject, and is then to be deemed the evidence of the party reading it. When any portion of a deposition is excluded from a case so much of the adverse examination as relates thereto is excluded also.

CHAPTER SIXTY-ONE.

OF THE GENERAL RULES OF EXAMINATION.

Order of proof, how regulated.

Section 1.—The order of proof shall be regulated by the sound discretion of the court. Ordinarily the party beginning the case shall exhaust his evidence before the other begins.

Witness not under examination may be excluded.

Section 2.—If either party require it, the judge may exclude from the court room any witness of the adverse party not at the time under examination, so that he may not hear the testimony of other witnesses.

Interpreter, sworn when used.

Section 3.—When a witness does not understand and speak the English language, an interpreter shall be sworn to interpret for him.

Court may control mode of interrogation.

Section 4.—The court may exercise a reasonable control over the mode of interrogation, so as to make it as rapid, as distinct, as little annoying to the witness, and as effective for the extraction of the truth as may be; but, subject to this rule, the parties may put such legal and pertinent questions as they see fit. The court, however, may stop the production of further evidence, upon any particular point, when the evidence upon it is already so full as to preclude reasonable doubt.

Direct and cross—examination defined.

Section 5.—The examination of a witness by the party producing him is denominated the direct examination; the examination of the same witness upon the same matter by the adverse party, the cross-examination. The direct examination must be completed before the cross-examination begins, unless the court otherwise direct.

Leading questions defined.

Section 6.—A question which suggests to the witness the answer which the examining party desires is denominated a leading or suggestive question. On a direct examination, leading questions are not allowed, unless merely formal or preliminary, except in the sound discretion of the court under special circumstances, making it appear that the interests of justice require it.

When witness may testify or refresh his memory from writing.

Section 7.—A witness is allowed to refresh his memory, respecting a fact, by anything written by himself, or under his direction, at the time when the fact occurred or immediately thereafter, or at any other time when the fact was fresh in his memory and he knew that the same was correctly stated in the writing. But in either case the writing must be produced, and may be inspected by the adverse party, who may, if he choose, cross-examine the witness upon it. So, also, a witness may testify from such a writing, though he retain no recollection of the particular facts; but such evidence shall be received with caution.

Scope of cross—examination.

Section 8.—The adverse party may cross-examine the witness as to any matter stated in his direct examination or connected therewith, and in so doing may put leading questions; but if he examine him as to other matters, such examination is to be subject to the same rules as a direct examination.

Party not to impeach his own witness.

Section 9.—The party producing a witness is not allowed to impeach his credit by evidence of bad character, but he may contradict him by other evidence, and may also show that he has made at other times statements inconsistent with his present testimony, as provided in section twelve of this chapter.

Witness, how examined.

Section 10.—A witness once examined shall not be reexamined as to the same matter without leave of the court; but he may be reexamined as to any new matter upon which he has been examined by the adverse party. After the examination on both sides are concluded the witness shall not be recalled without leave of the court. Leave is granted or withheld in the exercise of a sound discretion.

How witness impeached

Section 11.—A witness may be impeached by the party against whom he was called, by contradictory evidence or by evidence that his general reputation for truth is bad, or that his moral character is such as to render him unworthy of belief, but not by evidence of particular wrongful acts; except that it may be shown by the examination of the witness or the record of the judgment that he has been convicted of a crime.

Same subject.

Section 12.—A witness may also be impeached by evidence that he has made at other times statements inconsistent with his present testimony; but before this can be done statements must be related to him, with the circumstances of times, places, and persons present; and he shall be asked whether he has made such statements, and, if so, allowed to explain them. If the statements be in writing they shall be shown to the witness before any question is put to him concerning them.

Evidence of good character, when allowed.

Section 13.—Evidence of the good character of a party is not admissible in a civil action or proceering unless the issue therein involve his character, nor of a witness in any action or proceeding until the character of such witness had been impeached.

Writing shown to witness may be inspected by adverse party.

Section 14.—Whenever a writing is shown to a witness it may be inspected by the adverse party, and if proved by the witness shall be read by the court before his testimony is closed.

CHAPTER SIXTY-TWO.

OF THE EFFECT OF EVIDENCE.

On what points jury to be instructed.

Section 1.—The jury, subject to the control of the court in the cases specified in this code, are the judges of the effect and value of evidence addressed to them, except when it is thereby declared to be conclusive. They are, however, to be instructed by the court on all proper occasions:

First. That their power of judging the effect of evidence is not arbitrary, but to be exercised with legad discretion and in subordination to the rules of evidence.

Second. They are not bound to find in conformity with the declarations of any number of witnessess which do not produce conviction in their minds against a less number, or against a presumption or other evidence satisfying their minds.

Third. That a witness wilfully false in one part of his testimony may be distrusted in others.

Fourth. That the testimony of an accomplice ought to be viewed with distrust and of the oral admissions of a party with caution.

Fifth. That in civil cases the affirmative of the issue shall be proved, and when the evidence is contradictory the finding shall be according to the preponderance of evidence; that in criminal cases guilt shall be established beyond reasonable doubt.

Sixth. That evidence is to be estimated not only by its own intrinsic weight, but also according to the evidence which it is in the power of one side to produce and of the other to contradict; and, therefore,

Seventh. That if the weaker and less satisfactory evidence is offered when it appears that stronger and more satisfactory was within the power of the party, the evidence offered should be viewed with distrust.

CHAPTER SIXTY-THREE.

OF THE RIGHT AND DUTIES OF WITNESSES.

Witnesses bound to attend when subpoenaed.

Section 1.—It is the duty of a witness, duly served with a subpœna to attend at the time appointed, with any papers, books, documents, or other things under his control required by the subpœna, to answer all pertinent and legal questions, and, unless sooner discharged, to remain until the testimony is closed.

What questions witness bound to answer.

Section 2.—A witness shall answer questions legal and pertinent to the matter in issue, though his answer may establish a claim against himself. But he need not give an answer which will have a direct tendency to subject him to criminal prosecution, or to degrade his character unless, in the latter case, it be as to the very fact in issue, or to a fact from which the fact in issue would be presumed. This privilege is the privilege of the witness, but a witness must answer as to the fact of his previous conviction for crime.

Right of witness to protection.

Section 3.—It is the right of the witness to be protected from irrelevant, insulting, or improper questions or from harsh or insulting demeanor; to be detained only so long as the interests of justice require it; to be examined only as to matters legal and pertinent to the issue.

When witness protected from arrest.

Section 4.—Every person who has been, in good faith, served with a subpœna to attend as witness before a court, judge, commissioner, referee, or other officer, is exonerated from arrest in a civil case while going to the place of attendance, necessarily remaining there, and returning therefrom. The arrest of a witness contrary to this section is void, and when willfully made is a contempt of court; and the officer making it is responsible to the witness arrested for double the amount of damages which may be assessed against him therefor, and is also liable to an action at the suit of the party serving the witness with the subpœna for the damages substained by him in consequence of the arrest.

Court may discharge witness from arrest

Section 5.—The court, judge, or officer before whom, the attendance of the witness is required may discharge a witness from an arrest made in violation of the section preceding.

CHAPTER SIXTY-FOUR.

OF EVIDENCE IN PARTICULAR CASES.

Whoever pays or delivers entitled to receipt.

Section 1.—Whoever pays money, or delivers an instrument or property, is entitled to a receipt therefor from the person to whom the payment or delivery is made, and may demand a proper signature to such receipt as a condition of the payment or delivery.

Objections to tender must be specified.

Section 2.—The person to whom a tender is made shall at the time specify any objection he may have to the money, instrument, or property, or he must be deemed to have waived it; and if the objection be to the amount of money, the terms of the instrument or the amount or kind of property, he must specify the amount, terms, or kind which he requires, or be precluded from objecting afterwards.

Rules for construing description of real property.

Section 3.—The following are the rules for construing the descriptive part of a conveyance of real property when the construction is doubtful and there are no other sufficient circumstances to determine it:

First. Where there are certain definite and ascertained particulars in the description, the addition of others which are indefinite, unknown, or false does not frustrate the conveyance, but it is to be construed by such particulars, if they constitute a sufficient description to ascertain its application;

Second. When permanent and visible or ascertained boundaries or monuments are inconsistent with the measurement, either of lines, angles, or surfaces, the boundaries or monuments are paramount;

Third. Between different measurements which are inconsistent with each other that of angles is paramount to that of surfaces and that of lines paramount to both;

Fourth. When a road or stream of water not navigable is the boundary, the rights of the grantor to the middle of the road or the thread of the stream are included in the conveyance, except where the road or bed of the stream is held under another title;

Fifth. When tidewater is the boundary, the rights of the grantor to low-water mark are included in the conveyance;

Sixth. When the description refers to a map, and that reference is inconsistent with other particulars, it controls them, if it appear that the parties acted with reference to the map; otherwise the map is subordinate to other definite and ascertained particulars.

Offer of compromise not an admission.

Section 4.—An offer of compromise is not an admission that anything is due and no evidence thereof shall be permitted.

Confession of adultery in divorce cases.

Section 5.—In an action for the dissolution of the marriage contract on the ground of adultery, a confession of adultery, whether in or out of the pleadings, is not of itself sufficient to justify a decree of dissolution.

CHAPTER SIXTY-FIVE.

OF PROCEEDINGS TO PERPETUATE TESTIMONY.

Evidence may be perpetuated.

Section 1.—The testimony of a witness may be taken conditionally and perpetuated as provided in this chapter.

Order for examination, how obtained.

Section 2.—The order for taking the testimony may be made by the judge of the district court upon the application of the party desiring it, when it appears from the petition of such party, verified as a complaint:—

First. That the applicant is a party or expects to be a party to an action or proceeding in a court in the District, or that he has an interest in real property or some easement or franchise therein about which a controversy may arise which would be the subject of such an action or proceeding;

Second. That the testimony of a witness, whose name and place of residence are stated, is material to the prosecution or defense, as the case may be, of such action or proceeding, or possible controversy, and generally the question involved therein, and the facts expected to be proved by the witness;

Third. The names and residence of the adverse parties or persons adversely interested, so far as the applicant knows or can ascertain them.

The judge may thereupon in his discretion make an order allowing the examination, prescribing therein the place thereof, and how long before the examination the order and notice of the time and place therefor shall be served.

Service of the order and notice in case of nonresidents.

Section 3.—If it appear that the adverse parties or persons adversely interested, or any of them, reside out of the District, or are unknown, the judge shall direct that, as to such parties or persons, service of the order and notice shall be made by publication, in the same manner as a summons. Upon proof of the service, the deposition may be taken conditionally by the judge who made the order of examination, or by any other officer or person therein designated.

How taken and where filed.

Section 4.—Every interrogatory or answer, or declaration of the witness, shall be taken down, unless the parties otherwise agree. The deposition, when completed, shall be carefully read to and subscribed by the witness, and then certified by the judge or other officer or person taking the same and immediately thereafter filed in the office of the clerk of the court, together with the order for the examination of the witness, the petition on which the same was granted, the notice, and the proof of service of the order and notice.

Papers filed with deposition, primary evidence.

Section 5.—The papers filed with the deposition, as required by the last section, or a certified copy thereof, are primary evidence of the facts stated therein to show compliance with the provisions of this chapter.

When the deposition may be used.

Section 6.—If thereafter a trial be had between the persons named in the petition as parties actual, expectant, or possible, or their representatives or successors in interest, upon proof of the death or insanity of the witness, or that he is beyond the District and his residence unknown, or of his inhability to attend the trial by reason of age, sickness, or settled infirmity, the deposition or a certified copy thereof may be given in evidence by either party.

How objected to when produced.

Section 7.—The deposition when so taken, when produced in evidence, may be objected to as if it was the oral testimony of the witness, except that the form of the interrogatory shall not be objected to.

Section 8.—The judge, officer, or other person taking the deposition shall control the examination, to the end that the whole truth may be declared by the witness, and if no one appears other than the applicant, he shall prevent leading and suggestive interrogatories by such applicant, except when the same may be necessary or merely formal, and shall himself cross-examine the witness, concluding with the general interrogatory to the effect whether the witness knows anything further in relation to the matter which would be of benefit to either party.

Power and duty of the officer taking deposition.

CHAPTER SIXTY-SIX.

OF OATHS AND AFFIRMATIONS.

Who authorized to take testimony and administer oaths.

Section 1.—Every court, judge, clerk of a count, commissioner, or notary public is authorized to take testimony in any action or proceeding, and such other person in particular cases as this code elsewhere authorizes. Every such court or officer is authorized to administer oaths and afirmations generally, and every such other person in the particular case authorized.

Form may be varied to suit belief of witness.

Section 2.—Whenever the court or officer before which a person is offered as a witness is satisfied that he has a peculiar mode of swearing, connected with or in addition to the usual form of administration, which, in his opinion, is more solemn or obligatory, the court or officer may in its discretion adopt that mode.

Same subject.

Section 3.—When a person is sworn who believes in any other than the Christian Religion, he may be sworn according to the peculiar ceremonies of his religion, if there be any such ceremonies.

Who may affirm.

Section 4.—Any person who has conscientious scruples against taking an oath may make his solemn affirmation.

Affirmation equivalent to oath; when false to be deemed perjury.

Section 5.—Whenever by any provision of this title an oath is required an afirmation is to be deemed equivalent thereto, and a false affirmation is to be deemed perjury equally with a false oath.

CHAPTER SIXTY-SEVEN.

MISCELLANEOUS PROVISIONS RESPECTING THE COURTS AND JUDICIAL OFFICERS.

Sittings of court to be public; exceptions.

Section 1.—The sittings of every court of justice are public, except as provided in this section. Upon the agreement of the parties to a civil action or proceeding, filed with the clerk or entered upon the journal the court may direct the trial of an issue of law or fact, or any other proceeding therein, to be private; and upon such order being made all persons shall be excluded except the officers of the court, the parties, their witnesses, and counsel.

Nonjudicial days; what legal business may be done.

Section 2.—Courts of justice may be held and judicial business transacted on any day, except as provided in this section. No court can be opened, nor can any judicial business be transacted, on a Sunday, on a legal holiday, or on a day oppinted by the Executive authority of the United States or of the District as a day of fasting or thanksgiving, except for the following purposes:

First. For the exercise of the powers of a magistrate in criminal actions, or in proceedings of a criminal nature: Provided, That this section shall not be so construed as to prevent the issuance of any writ or order for which the judge granting the same may think an emergency exists.

If court appoint or adjourn for such day to be deemed for next judicial day.

Section 3.—If any of the days mentioned in the last section happen to be a day appointed for holding a court, or to which it is adjourned, it is deemed appointed for or adjourned to the next judicial day.

When judge does not attend.

Section 4.—If no judge attend on the day appointed for holding a court before four o'clock in the afternoon, the court shall stand adjourned until the next day at nine o'clock, and if no judge attend on that day before four o'clock in the afternoon it shall then stand adjourned for the term.

Proceedings not affected by failure of term or vacancy.

Section 5.—No proceeding in a court of justice, in any action or proceeding pending therein, is affected by a vacancy in the office of the judge or by the failure of a term thereof.

Application to court or judge, how addressed.

Section 6.—An application or other proceeding addressed to a court shall be addressed to it by its style, as given in this code; an application or other proceeding addressed to a judicial officer shall be addressed to him by his name, without any other title than his style of office.

Proceedings to be in English.

Section 7.—Every writing in any action or proceeding whatever, in a court of justice of the District, or before a judicial officer, shall be in the English language; but such abbreviations as are now commonly used in that language may be used, and numbers may be expressed by figures or numerals in the customary manner.

Power of court to adjourn proceedings.

Section 8.—A court or judicial officer has power to adjourn any proceeding before it or him from time to time, as may be necessary, unless otherwise expressly provided by this code.

Means to be used by court to execute its powers.

Section 9.—When jurisdiction is by any law of the United States conferred on a court or judicial officer, all the means to carry it into effect are also given; and in the exercise of the jurisdiction, if the course of proceedings be not specially pointed out by this code, any suitable process or mode of proceeding may be adopted which may appear most conformable to the spirit of this code.

CHAPTER SIXTY-EIGHT.

REFEREES.

Referee, definition of.

Section 1.—A referee is a person appointed by the court or a judicial officer, with power:

First. To try an issue of law or of fact in a civil action or proceeding, and report thereon;

Second. To ascertain any other fact in a civil action or proceeding when necessary for the information of the court, and report the fact, or to take and report the evidence in an action of an equitable nature;

Third. To execute an order, judgment, or decree, or to exercise any other power or perform any other duty expressly authorized by this code.

CHAPTER SIXTY-NINE.

OF THE CLERK OF THE DISTRICT COURT.

Office hours.

Section 1.—The clerk of the district court shall keep his office open for the transaction of business on every business day from nine to twelve in the forenoon and from one to four in the afternoon.

Deputy clerks; duties.

Section 2.—Each deputy clerk has the power to perform any act or duty relating to the clerk's office that his principal has, and his principal is responsible for his deputy's conduct and for all money received by such deputy in his official capacity.

Powers and duties of clerks.

Section 3.—The clerk of the district court has power to take and certify the proof and acknowledgment of a conveyance of real property or any other written instrument authorized or required to be proved or acknowledged, and it is the duty of such clerk:

First. To keep the seal of the court and affix it in all cases where he is required by law;

Second. To record the proceedings of the court;

Third. To keep the records, files, and other books and papers appertaining to the court;

Fourth. To file all papers delivered to him for that purpose in any action or proceeding in the court;

Fifth. To attend the terms of the court of which he is clerk; to administer oaths;

Sixth. To keep the journal of the proceedings of the court at its terms and under the direction of the court to enter its orders and judgments;

Seventh. To authenticate by certificate or transcript as may be required, the records, files, or proceedings of the court or any other paper appertaining thereto and filed with him;

Eighth. To exercise the powers and perform the duties conferred and imposed upon him elsewhere by this code or other statute;

Ninth. In the performance of his duties to conform to the direction of the court.

CHAPTER SEVENTY.

OF RECEIVERS.

In what cases he may be appointed.

Section 1.—A receiver may be appointed in any civil action or proceeding, other than an action for the recovery of specific personal property:

First. Provisionally, before judgment, on the application of either party, when his right to the property which is the subject of the action or proceeding, and which is in the possession of an adverse party, is probable, and the property or its rents or profits are in danger of being lost or materially injured or impaired;

Second. After judgment, to carry the same into effect;

Third. To dispose of the property according to the judgment, or to preserve it during the pendency of an appeal, or when an execution has been returned unsatisfied and the debtor refuses to apply his property in satisfaction of the judgment;

Fourth. In cases provided in this code, or by other statutes when a corporation has been dissolved, or is insolvent or in imminent danger of insolvency, or has forfeited its corporate rights;

Fifth. In the cases when a debtor has been declared insolvent.

His oath and undertaking.

Section 2.—A receiver, before entering upon his duties, shall be sworn faithfully to perform his trust to the best of his ability, and shall also file with the clerk of the court an undertaking, with one or more sufficient sureties, in a specified sum, to be fixed by the court, or judge thereof, to the affect that he will faithfully discharge the duties of receiver and will obey the orders of the court or judge thereof in respect thereto. The sureties must justify in the same manner as bail upon an arrest.

CHAPTER SEVENTY-ONE.

OF GENERAL PROVISIONS RESPECTING THE ADMINISTRATION OF ESTATES.

Probate jurisdiction in District Court.

Section 1.—The District Court has jurisdiction in all testamentary and probate maters; that is:

First. To take proof of wills;

Second. To grant and revoke letters testamentary, of administration, and of guardianship;

Third. To direct and control the conduct and settle the accounts of executors, administrators, and guardians;

Fourth. To direct the payment of debts and legacies and the distribution of the estates of intestates;

Fifth. To order the sale and disposal of the real and personal property of deceased persons;

Sixth. To order the renting, sale, or other disposal of the real and personal property of minors;

Seventh. To take the care and custody of the person and estate of a lunatic and to appoint and remove guardians therefor; to direct and control the conduct of such guardians and to settle their accounts;

Eighth. To direct the admeasurement of dower.

Forms of pleadings.

Section 2.—There are no particular pleadings or forms thereof in proceedings in probate matters, as specified in the section last preceding, other than as provided in this chapter.

Nature of procedure.

Section 3.—The mode of proceeding is in the nature of a suit in equity. The proceedings are in writing, and are had upon the application of a party or the order of the court. The court exercises its powers by means of:

First. A citation to the party;

Second. An affidavit or the verified petition or statement of a party;

Third. A subpœna to a witness;

Fourth. Orders, judgments, and decrees;

Fifth. An execution of warrant to enforce them.

Books and records.

Section 4.—The proceedings in probate matters shall be entered and recorded in the following books;

First. A register, in which shall be entered a memorandum of all official business transacted by the court or judge thereof appertaining to the estate of each person deceased under the name of such person; that pertaining to the guardianship of an infant under the name of such infant; that pertaining to an insane person under his name;

Second. A record of wills, in which shall be recorded all wills proven before the court or judge thereof, with the order of probate thereof, and of all wills proved elsewhere upon which letters of administration are issued by the direction of such court or judge;

Third. A record of the appointment of administratiors, whether general or special, or of a partnership and of executors;

Fourth. A record of the appointment of guardians of infants and insane persons;

Fifth. A record of accounting and distribution, in which shall be entered a summary balance sheet of the accounts of administrators, executors, and guardians, with the orders and decrees relating to the same; a memoradum of executions issued thereon, with a note of satisfaction when satisfied; also orders and decrees relating to the sale of real property and to the distribution of the proceeds thereof, and notices of all money or securities paid or deposited in court as proceeds of such sales or otherwise, and a statement showing the names of creditors, and the debts established and entitled to distribution, the amount to which each person in entitled out of such fund, and the amount actually paid to each person, and when paid;

Sixth. A record of the appointment of admeasurer of dower, with all orders and decrees relating to the same, and the admeasurer's report;

Seventh. An order book, in which shall be entered orders directing the conduct of executors, administrators or guardians, orders for publication of notice to creditors; orders in behalf of creditors, directing debts to be paid or allowing an execution to be issued; appointment of special guardians, appraisers, and referees; orders relating to the production of a will, to removal of executors, administrators, or guardians, or to sureties therefor, and generally all other orders not required to be entered in some other book.

Index to such books.

Section 5.—To each of such books there shall be attached an index, securely bound in the volume, referring to the entries or records, in alphabetical order, under the name of the person to whose estate or business they relate and naming the page of the book where the entry or record is made.

Costs and disbursements.

Section 6.—Costs may be awarded in favor of one party against another, to be paid personally or out of the estate or fund, in any proceedings contested adversely but such costs cannot exceed those allowed in the trial of a civil action in the district court. Witness fees and other disbursements similar to those allowed on the trial of a civil action may also be allowed, to be paid in like manner.

Orders and decrees for the payment of money, how enforced.

Section 7.—Orders, judgments, or decrees for the payment of money may be enforced, by execution or otherwise, in the same manner as orders, judgments, or decrees for the payment of money in the District Court.

CHAPTER SEVENTY-TWO.

OF THE PROOF OF WILLS AND THE APPOINTMENT OF EXECUTORS AND ADMINISTRATORS.

Section 1.—Proof of a will shall be taken as follows:

Proofs of wills.

First. When the testator, at or immediately before his death, was an inhabitant of the district and leaves assets therein;

Second. When the testator not being an inhabitant of the District, shall have died in the District leaving assets therein;

Third. When the testator, not being an inhabitant of the District, shall have died out of the District, leaving assests in the District;

Fourth. When the testator, not being an inhabitant of the District, shall have died out of the District not leaving assets therein, but where assets thereafter came into the District.

Letters testamentary with the will annexed.

Section 2.—When a will is proven, letters testamentary shall be issued to the person or persons therein named as executors or to such of them as give notice of their acceptance of the trust and are qualified. If all the persons therein named decline to accept or be disqualified, letters of administration, with the will annexed shall be issued to the person to whom the administration would have been granted if there had been no will.

Who entitled to letter of administration.

Section 3.—Administration of the estate of an intestate shall be granted and letters thereof issued, as follows:

First. To the widow or next of kin, or both, in the discretion of the court;

Second. To one or more of the principal creditors; or

Third. To any other person competent and qualified whom the court may select.

When person entitled must apply.

Section 4.—The person named in the subdivisions of the last section, if qualified and competent for the trust shall be entitled to the administration in the order therein named. If those names in subdivision one do not apply for the administration within thirty days from the decease of the intestate, they shall be deemed to have renounced their right thereto; but the court in its discretion may, if they reside within the District, direct, that a citation issue to them, requiring them within such period to apply for or renounce their right of administration; and if the persons named in subdivision two do not make such application within forty days from such decease, they shall be deemed to have renounced their right to the administration also.

Administration to be granted to husband; exceptions.

Section 5.—If the deceased were a married woman the administration of her estate shall in all cases be granted to her husband, if he be qualified and competent for the trust and apply therefor within thirty days from her decease, unless by force of a marriage settlement or otherwise she shall have made some testamentary disposition of her property which shall render it necessary and propor to grant the administration to some other person.

Undertaking of executor or administrator.

Section 6.—No executor or administrator is authorized to act as such until he shall file with the court an undertaking in a sum not less than the probable value of the estate with one or more sufficient sureties, to be approved by the court, to be void upon condition that such executor or administrator shall faithfully perform the duties of his trust according to law: Provided, When by the terms of his will a testaor shall expressly declare that no bonds shall be required of his executor such executor may act upon taking an oath to

faithfully fulfill his trust without filing the undertaking in this section mentioned; Provided further, Such executor shall be criminally and civilly liable as other executors and administrators are for any dereliction of duty.

Qualifications and justification of sureties.

Section 7.—Whenever the penal sum mentioned in the undertaking prescribed in the preceding section exceeds two thousand dollars, three or more sureties may become severally liable for portions of the sums if the aggregate sum for which such sureties became liable shall equal the penal sum required in the undertaking.

Nonresidents and minors as executors.

Section 8.—If a person be named in a will as executor who is a nonresident of the district or a minor, upon the removal of such disability he is entitled to qualify as such executor, if he apply therefor within thirty days from the removal of such disability, if otherwise competent. If in the meantime an administrator with the will annexed has been appointed, his powers and duties cease with the qualificaton of such executor; but if another executor has qualified and is acting as such they thereby become joint executors.

Special administrators.

Section 9.—When for any reason there shall be a delay in issuing letters testamentary or of administration, and the property of the deceased is in danger of being lost, injured, or depreciated, the court may appoint a special administrator to take charge of the estate, who shall qualify in like manner and have the powers and perform the duties of an administrator generally, except that he is not authorized to pay the debts of or otherwise discharge any obligation against the deceased. Upon the issuing of letters testamentary or of administration the powers of the special administrator cease.

Petition to state facts.

Section 10.—In an application to prove a will or for the appointment of an executor or administrator the petition shall set forth the facts necessary to give the court jurisdiction, and also sate whether the deceased left a will or not, and the names, age, and residence, so far as known, of his heirs.

When will found after administration granted.

Section 11.—If, after administration has been granted upon an estate, a will of the deceased be found and proved, the letters of administration shall be revoked and letters testamentary or of administration with the will annexed shall be issued; and if, after a will has been proven and letters testamentary or of administration with the will annexed have been issued thereon, such will should be set aside, declared void or inoperative, and such letters shall be revoked and letters of administration issued.

Who may apply for removal of executor or administrator.

Section 12.—Any heir, legatee, devisee, creditor, or other person interested in the estate may apply for the removal of an executor or administrator who has become of unsound mind or been convicted of any felony or a misdemeanor involving moral turpitude, or who has in way been unfaithful to or neglectful of his trust, to the probable loss of the applicant. Such application shall be by petition and upon notice to the executor or administrator, and if the court find the charge to be true it shall make an order removing such executor or administrator and revoke his letters.

Nonresident executor or administrator may be removed.

Section 13.—If any executor or an administrator become a nonresident of the district he may be removed and his letters revoked in the manner prescribed in the last section, except that the notice may be given by publication or posting for such time as the court or judge thereof may direct.

New undertaking, when old insufficient.

Section 14.—Whenever the amount of an executor's or administrator's undertaking is insufficient, or the sureties therein, or either of them, have become nonresidents of the District, or are likely to or have become insolvent, such executor or administrator shall be required to give a new and sufficient undertaking. The application for such new undertaking may be made by any heir, legatee, devisee, creditor, or other person interested in the estate, and in the manner prescribed in section twelve of this chapter for the removal of executors and administrators.

Section 15.—Such new undertaking, when given and received shall discharge the sureties in the former undertaking from any liabilities on account of their principal arising from his acts or omissions subsequent thereto. When a new undertaking is ordered, if the executor or administrator fail to comply therewith within five days from the entry thereof, or such further time as the order may prescribe, thenceforward the authority of such executor or administrator shall cease, and he shall be deemed removed and his letters revoked.

Effect of new undertaking or failure to give it.

Section 16.—Whenever an executor or administrator shall die, resign, or be removed, if there be a coexecutor or coadministrator, he shall thenceforward exercise the powers and perform the duties of the trust; and if all the executors or administrators shall die, resign, or be removed, administration of the estate remaining unadministered shall be granted to those next entitled, if they be competent and qualified.

Effect of vacancy.

Section 17.—The surviving or remaining executor or administrator, or the new administrator, as the case may be, is entitled to the exclusive administration of the estate, and for that purpose may maintain any necessary and proper action or proceeding on account thereof against the executor or administrator ceasing to act, or against his sureties or representatives.

New administrator may maintain action against former one.

Section 18.—Whenever it appears probable to the court that any of the causes for removal of an executor or administrator exist or have transpired, as specified in section twelve of this chapter, it shall be the duty of the court to cite such executor or administrator to appear and show cause why he should not be removed, and if he fail to appear or show sufficient cause an order shall be made removing him and revoking his letters; and it is the duty of the court to exercise a supervisory control over the executor or administrator, to the end that he faithfully and diligently perform the duties of his trust according to law.

Power of the court over an administrator.

Section 19.—The executor or administrator of a deceased person who was a member of a copartnership shall include in the inventory of such person's estate, in a separate schedule, the whole of the property of such partnership; and the appraisers shall estimate the value thereof and also the value of such person's individual interest in the partnership property after the payment or satisfaction of all the debts and liabilities of the partnership.

When deceased a member of a copartnership.

Section 20.—After the inventory is taken the partnership property shall be in the custody and control of the executor or administrator for the purpose of administration, unless the surviving partner shall, within five days from the filling of the inventory, or such further time as the court may allow, apply for the administration thereof and give the undertaking therefor hereinafter prescribed.

Partnership property may be administered by surviving partner.

Section 21.—If the surviving partner apply therefor, as provided in the last section, he is entitled to the administration of the partnership estate if he have the qualifications and competency required for a general administrator. He is denominated an administrator of the partnership, and his powers and duties extend to the settlement of the partnership business generally and the payment or transfer of the interest of the deceased in the partneship property remaining after the payment or satisfaction of the debts and liabilities of the partnership to the executor or general administrator within six months from the date of his appointment, or such further time, if necessary, as the commissioner may allow. In the exercise of his powers and the performance of his duties the administrator of the partnership is subject to the same limitations and liabilities and control and jurisdiction of the court as a general administrator.

His power and duties in such cases.

Undertaking of administrator of the partnership.

Section 22.—The undertaking of the administrator of the partnership shall be in a sum not less than the value of the partnership property and shall be given in the same manner and be to the same effect as the undertaking of a general administrator.

When administration of partnership property devolves upon the general administrator.

Section 23.—In case the surviving partner is not appointed administrator of the partnership, the administration thereof devolves upon the executor or general administrator; but, before entering upon the duties of such administration, he shall give an additional undertaking in the value of the partnership property.

Duty of surviving partner toward administrator.

Section 24.—Every surviving partner, on the demand of an executor or administrator of a deceased partner, shall exhibit and give information concerning the property of the partnership at the time of the death of the deceased partner, so that the same may be correctly inventoried and appraised; and in case the administration thereof shall devolve upon the executor or administrator such survivor shall deliver or transfer to him on demand all the property of the partnership, including all books, papers, and documents pertaining to the same, and shall afford him all reasonable information and facilities for the performance of the duties of his trust.

How last section may be enforced.

Section 25.—And surviving partner who shall refuse or neglect to comply with the requirements of thé last section may be cited to appear before the court and unless he show cause to the contrary the court shall require him to comply with such section in the particular complained of.

Who not qualified to act as executor or administrator.

Section 26.—The following persons are not qualified to act as executors or administrators; Nonresidents of the District, minors, judicial officers of the District Court, persons of unsound mind, or who have been convicted of any felony or of a misdemeanor, involving moral turpitude.

Resignation of executor or administrator.

Section 27.—The court in its discretion, may allow an executor or administrator to resign when it appears that such executor or administrator is not in default in any matter connected with the duties of his trust. Such executor or administrator shall pay the cost of the proceeding, and, if the application is allowed, he shall surrender his letters to be cancelled, and his powers as such shall cease from that time forward.

CHAPTER SEVENTY-THREE.

OF THE INVENTORY OF THE ESTATE.

When and how made and verified.

Section 1.—An executor or administrator shall within one month from the date of his appointment, or such further time as the court may allow, make and file with the clerk of the court an inventory, verified by his oath, of all the real and personal property of the deceased which shall come to his possession or knowledge.

What to contain.

Section 2.—The inventory shall contain an account of all money belonging to the deceased, or a statement that none has come to the possession or knowledge of the executor or administrator; also a statement of all debts due the deceased, the written evidence thereof, and the security therefor, if any exists, specifying the name of each debtor, the date of each written evidence of debt, the security therefor, the sum originally payable, the indorsements thereon, if any, and their dates, and the sum appearing then to be due thereon.

Appraisement and appointment of appraisers.

Section 3.—Before the inventory is filed the property therein specified which is in the District shall be appraised at its true cash value by three disinterested and competent persons, who shall be appointed by the court.

Oath of appraisers.

Section 4.—Before making the appraisement the appraisers shall each make and subscribe an affidavit, to be filed with the inventory, to the effect that he will honestly and impartially appraise the property which shall be exhibited to him according to the best of his knowledge and ability.

Appraisement of money and debts.

Section 5.—The appraisers shall appraise each article of property separately and set down the value thereof in dollars and cents opposite the entry of the article in the inventory. Money, of whatever nature, that is a legal tender is to be appraised at its nominal value; but debts of all descriptions or kinds are to be appraised at that sum which, in the judgment of the appraisers, may be realised from them by due process of law. When the appraisement is completed, the inventory shall be signed by the appraisers.

Debt due by person named in will as executor.

Section 6.—The naming of any one as executor in a will shall not operate to discharge such executor from any claim which the testator had against him, but the claim shall be included in the inventory; and if the person so named afterwards takes upon himself the administration of the estate he shall be liable for such sum as for so much money in his hands at the time the claim became due and payable; otherwise he is liable for such claim as any other debtor of the deceased.

Discharge or bequest of a claim by will.

Section 7.—The discharge or bequest in a will of any claim of the testator against a person named as executor therein, or against any other person, shall, as against the creditors of the deceased, be invalid; such claim shall be included in the inventory, and for all purposes of administration is to be deemed and treated as a specific legacy of that amount.

Property discovered after filing inventory.

Section 8.—If after the filing of the inventory, property not mentioned therein shall come to the knowledge or possession of the executor or administrator, it is his duty immediately to make an inventory thereof and cause the same to be appraised in the manner prescribed in this title and file the same with the clerk of the court.

Who entitled to possession and control of property.

Section 9.—The executor or administrator is entitled to the possession and control of the property of the deceased both real and personal and to receive the rents and profits thereof until the administration is completed, or the same is surrendered to the heirs or devisees by order of the court or judge thereof; but where such property, or any portion thereof, is in the possession of a third person, by virtue of a valid subsisting lease or bailment, the pos-

session and control of the executor or administrator is subordinate to the right of the lessee or bailee. During the time the property is in the possession or control of the executor or administrator, it is his duty to keep the same in repair and preserve it from loss or decay as far as possible.

When person charged with secreting property or writings.

Section 10.—Whenever it appears probable from the affidavit of an executor or administrator, or of an heir or other person interested in the estate, that any person has concealed or in any way secreted or disposed of any property of the estate, or any writing relating or pertaining thereto, or that such person has knowledge of any such property or writing being so concealed, secreted or disposed of, and refuses to disclouse the same to the executor or administrator, the court upon the application of such executor or administrator, may cite such person to appear and answer under oath concerning the matter charged.

Mode of examination of such person.

Section 11.—Such examination may be oral or upon written interrogatories filed by the applicant, but in either case the answers of the person cited shall be reduced to writing and subscribed by him and filed.

Proceeding in case such person refuses to appear.

Section 12.—If the person so cited refuses to appear or answer such interrogatories as may be allowed to be put to him touching the matter charged, he may be punished for a contempt or may at once be committed, by the warrant of the judge, to jail, there to remain in close custody until he submits to the order of the commissioner.

Proceeding to compel account.

Section 13.—The court, upon the application of the executor or administrator, may cite any person who has been intrusted with any of the property of the deceased to appear and answer concerning the same when it appears probable that such person refuses or neglects to render to the executor or administrator a true account thereof. The application shall be made and the proceeding conducted in a manner prescribed in sections ten, eleven and twelve of this chapter.

Damages for conversions before administration.

Section 14.—If any person shall, before administration is granted embezzle, alien, or in any way convert to his own use any of the property of a deceased person, he shall be liable to the executor or administrator in double the amount of damages which may be assessed.

CHAPTER SEVENTY-FOUR.

OF THE SUPPORT OF THE WIDOW AND MINOR CHILDREN

Provision for widow and minor children before administration.

Section 1.—Until administration of the estate has been granted and the inventory filed the widow and minor children of the deceased are entitled to remain in possession of the homestead, all the wearing apparel of the family, and household furniture of the deceased and also to have a reasonable provision allowed for their support during such period, to be allowed by the court.

Property to be set apart, and effect of.

Section 2.—Upon the filing of the inventory, the court shall make an order setting apart for the widow or minor children of the deceased, if any, all the property of the estate by law exempt from the execution. The property thus set apart, if there be a widow, is her property, to be used or expended by her in the maintenance of herself and minor children, if any; or if there be no widow, it is the property of the minor child or, if more than one, of the minor children, in equal shares, to be used and expended in the nurture and education of such child or children by the guardian thereof as the law directs.

Further order for support, when made.

Section 3.—If the property so exempt is insufficient for the support of the widow and minor children, according to their circumstances and condition in life, for one year after the filing of the inventory, the court, may order that the executor or administrator pay to such widow, if any and if not, then to the guardian of such minor children, an amount sufficient for that purpose.

When the whole of estate to be set appart to widow and children.

Section 4.—If from the inventory of an intestate's estate. who died leaving a widow or minor children, it appears that the value of the estate does not exceed property exempt from execution, upon the filing of the inventory, the court shall make a decree providing that the whole of the estate, after the payment of funeral expenses and expenses of administration, be set apart for such widow or minor children in like manner, and with like effect as in case of property exempt from execution. There shall be no further proceeding in the administration of such estate unless further property be discovered.

When estate all deemed assests.

Section 5.—If an intestate leave neither widow nor minor children, all the property of the estate is assets in the hands of the administrator, for the payment of funeral expenses, expenses of administration, payment of the debts of the deceased, or distribution according to law.

CHAPTER SEVENTY-FIVE.

OF CLAIMS AGAINST THE ESTATE.

Publication of notice and contents thereof.

Section 1.—Every executor or administrator shall, immediately after his appointment, publish a notice thereof in some newspaper published in the District, as may be designated by the court, as often as once a week for four successive weeks, and oftener if the court shall so direct. The executor or administrator shall also post a notice in at least three public places, to be designated by the court in its order, one of which shall be at or immediately adjacent to the post office nearest the residence of the decedent at the time of his death. Such notice shall require all persons having claims against the estate to present them, with the proper voluchers, within six months from the date of such notice, to the executor or administrator, at a place within the District therein specified.

Proof of publcation; effect of not presenting claim.

Section 2.—Before the expiration of the six months mentioned in the last section, a copy of the notice as published, with the proper proof of publication, shall be filed with the court. A claim not presented within six months after the first publication of the notice is not barred, but it can not be paid until the claims presented within that period have been satisfied, and if the claim be not then due, or if be contingent, it shall nevertheless be presented as any other claim. Until the administration has been completed a claim against the estate not barred by the statute of limitations may be presented, allowed, and paid out of any assests then in the hands of the executor or administrator not otherwise appropriated or liable.

Claim, how presented and verification of.

Section 3.—Every claim presented to the executor or administrator shall be verified by the affidavit of the claimant of some one on his behalf who has personal knowledge of the facts, to the effect that the amount claimed is justly due; that no payments have been made thereon, except as stated; and that there is no just counterclaim to the same, to the knowledge of the affiant. When it appears or is allged that there is any written evidence of such claim the same may be demanded by the executor or administrator, or that its nonproduction be accounted for.

Claim to be allowed or rejected; if barred, not to be allowed.

Section 4.—When the claim is presented to the executor or administrator, as prescribed in the last section, if he shall be satisfied that the claim thus presented is just, he shall indorse upon it the words "Examined and approved", with the date thereof, and sign the same officially, and shall pay such claim in due course of administration; but if he shall not be so satisfied he shall indorse thereon the words "Examined and rejected", with the date thereof, and sign the same officially. Every executor or administrator shall keep a list of all demands legally exhibited against the state of the testator or intestate, and shall every three months file with the court a statement of all such claims as have been presented, and whether the same have been allowed or rejected by him. If any executor or administrator shall refuse to allow any claim or demand against the deceased after the same may have been exhibited to him in accordance with the provisions of this act, the claimant may present his claim to the court or the judge thereof for allowance, giving the executor or administrator thirty days' notice of such application to the court. The district court or judge thereof shall hear and determine in a summary manner all demands against any estate agreeable to the provisions of this chapter, and which have been so rejected by the executor or administrator, and shall cause a concise entry of the order of allowance or rejection to be made on the record, which order shall have the force and effect of a judgment, from which an appeal may be taken as in ordinary cases: Provided, No claim which shall have been rejected by the executor or administrator as aforesaid, shall be allowed by the court or judge, except upon some competent or satisfactory evidence other than the testimony of the claimant. No claim shall be allowed

by the executor or administrator or the district court or judge which is barred by the statute of limitations.

Effect of judgment against executor or administrator.

Section 5.—The effect of a judgment against an executor or administrator, on account of a claim against the estate of his testator or intestate, is only to establish the claim as if it had been allowed by him, so as to require it to be satisfied in due course of administration unless it appear that the complaint alleged assets in his hands applicable to the satisfaction of such claim and that such allegation was admitted or found to be true, in which case the judgment may be enforced against such executor or administrator personally.

Judgment against deceased in his life-time.

Section 6.—A claim established by judgment against the deceased in his lifetime need not be verified by affidavit, but it is sufficient to present a certified copy of the judgment docket thereof to the executor or administrator for allowance or rejection, as in other cases; but this section is not to be construed to prevent an execution from being issued upon such judgment as elsewhere provided in this code.

Claim of executor or administrator.

Section 7.—If the executor or administrator is himself a creditor of the testator or intestate, his claim, duly verified, may be presented to the court for allowance or rejection; but the allowance of such claim by the court does not preclude a creditor, heir, or other person interested in the estate in any action or proceeding between such executor or administrator and such creditor, heir or other person.

CHAPTER SEVENTY-SIX.

OF THE SALE OF PROPERTY BY EXECUTORS OR ADMINISTRATORS

Sale of property, how made and application therefor.

Section 1. No sale of the property of an estate is valid unless made by order of the District court, as in this chapter prescribed, unless herein otherwise provided. The application for an order of sale shall be by the petition of the executor or administrator and in case of real property a citation to the heirs and others interested in such property.

Order of sale of personal property.

Section 2.—Upon the filing of the inventory the executor or administrator may make an application to sell the personal property of the estate for the purpose of paying the funeral charges, expenses of administration, the claims, if any, against the estate, and for the purposes of distribution; and it shall be the duty of the court to grant such order if, in its judment, it is for the best interest of the estate, and to direct and prescribe the terms of sale upon which such property shall be sold, whether for cash or on credit.

Sales of property thereunder.

Section 3.—Thereafter the executor or adminstrator shall sell such personal property from time to time for the purpose specified in the last section, and as often and as much thereof as may be necessary. Such sale shall be conducted in the same manner as a sale of personal property on execution, unless otherwise provided in this chapter.

May be sold at private sale.

Section 4.—If, upon the application for an order of sale, or upon a subsequent application for that purpose, it appears to the court that it would be for the interest of the estate, it may order that the executor or administrator may sell all the personal property of the estate or any article thereof at private sale. If any articles of personal property have been specially bequeathed, they are to be exempt from the operation of the order of sale so long as any property of the estate not specially devised or bequeathed remains unsold or appropriated to the purpose specified in section ten of chapter seventy-seven of this title.

When real property may be sold where specially devised.

Section 5.—When the proceeds of the sale of personal property have been exhausted, and the charges, expenses, and claims specified in section two of this chapter, have not all been satisfied, the executor or administrator shall sell the real property of the estate, or so much thereof as may be necessary for that purpose. If any of such real property have been specially devised, it shall be exempt from the operation of the order of sale in the same manner as personal property specially bequeathed.

Petition for order of sale of real property.

Section 6.—The petition for the order of sale of real property shall state the amount of the sales of personal property, the charges, expenses, and claims still unsatisfied, so far as the same can be ascertained, a description of the real property of the estate, the condition and probable value of the different portions or lots thereof, the amount and nature of any liens thereon, the names, ages, and residence of the devisees, if any, and of the heirs of the deceased, so far as known.

Citation to heirs and devisees to show cause.

Section 7.—Upon the filing of the petition a citation shall issue to the devisees and heirs therein mentioned and to all others unknown, if any such there be, to appear at a time therein mentioned, not less than thirty days after the service of such citation, to show cause, if any exist, why an order of sale should not be made as in the petition prayed for.

Service of citation.

Section 8.—Upon the heir or devisee known and resident within the district such citation shall be served and returned as a summons, and upon an heir or devisee unknown or non-resident it may be served by publication or posting, or both, not less than four weeks, or for such further time as the court may prescribe. When service is had by posting, the citation shall be

posted at not less than three public places within the District, one of which shall be the post office nearest to the place where the decedent resided at the time of his death. When service of the citation is made by publication or posting, there shall be given with it a brief description of the property described in the petition.

Hearing and order of sale.

Section 9.—If, upon the hearing, the court find that it is necessary that the real property, or any portion thereof, should be sold it shall make the order accordingly, and prescribe the terms thereof, whether of cash or credit, or both; and if such property can not be divided without probable injury and loss to the estate it may order that it, or any specific lot or portion thereof, shall be sold wholly, whether otherwise necessary or not.

Sale how made; Security for purchase money.

Section 10.—Upon the order being made, the executor or administrator shall sell the property therein specified upon the terms directed and in the manner herein otherwise provided. Such sale shall be made in the same manner as like property is sold on execution: Provided, however, the court may, if thought best, order said property to be sold on the premises. When the sale is upon credit the executor or administrator shall take the note of the purchaser for the purchase money, or such part thereof as is not required to be in cash, with a mortgage upon the property to secure the payment thereof.

Return of sale and objections thereto.

Section 11.—Within ten day after the sale of real property the executor or administrator shall make a return of his proceedings concerning such sale. Upon such return any of the persons cited to appear on the application for the the order of sale file his objections to the confirmation of such sale.

When sale confirmed and when vacated.

Section 12.—Upon the hearing the court shall confirm the sale and decree that the executor or administrator make a conveyance to the purchaser, unless it appear that there were irregularities in the sale, or that the sum bidden for the property is disproportionate to the value thereof, and that a sum exceeding such bid at least ten *per centum*, exclusive of the expenses of a new sale, may be obtained therefor, in either of which cases the court shall make an order vacating the sale and directing that the property be resold; and upon such second sale the property, or any specific portion or lot thereof, ordered to be resold shall be sold as if no previous sale had taken place. In case no objectons are made to the confirmation of the sale as provided in the section last preceding, the court shall nevertheless examine the proceedings concerning such sale, and, if it appear proper, may make the order of resale provided for in this secton in the same manner and and with like effect as if objections had been filed thereto.

Recitals in conveyance and effect thereof.

Section 13.—A conveyance executed by an executor or administrator shall set forth the date of the order directing the sale, and the book, number thereof, and page containing the same, and the date of the order confirming the sale and directing the conveyance, and the book, number thereof, and page containing the same, and the title of the court making such orders, and shall operate to convey all the estate, right, and interest of the testator or intestate in the premises at the time of his death.

When real property may be sold to pay legacy, etc.

Section 14.—When a testator shall have specially bequeathed any specific article of personal property, or given any legacy by will, and there shall not be sufficient personal property, besides such specific article or the value of such legacy, to pay the funeral charges, expenses of administration, and claims against the estate, the executor or administrator shall obtain an order to sell the real property sufficient to make up the delinquency, in the manner hereinbefore provided.

Bequests and legacies, when liable for debts.

Section 15.—The property, real and personal, given by the will to any devisee or legatee is liable for the payment of the funeral charges, expenses of administration, and of claims against the estate; and if there be more than one such devisee or legatee, then in proportion to the value or amount of the

several devises and legacies; except that specific devises and legacies shall be exempt from such liability if such appear to have been the intention of the testator and there be other sufficient property to satisfy such charges, expenses, and claims.

Sale of contract for the purchase of real property.

Section 16.—If the deceased was, at the time of his death, a party to a contract for the purchase of real property, his interest in such real property by virtue of such contract may be sold in the same manner as if such contract had been executed in the lifetime of the deceased, by a conveyance to him of such property according to the legal effect and terms of such contract.

Sale subject to payments to be made on contract.

Section 17.—If there be any payments due, or to become due, on such contract, to the vendor of the deceased, sale is made subject thereto, and before the same can be confirmed or the contract assigned to the purchaser such purchaser shall execute an undertaking, with one or more sureties, in an amount not less than double the value of all the payments then due or to become due, for the benefit of whom it may concern, to be void upon the condition that such purchaser will make all such payments according to the terms of such contract, and indemnify the executor or administrator or others whom it may concern against all damages, costs, and expenses by reason of any covenant or agreement contained in such contract.

Assignment of contract and effect thereof.

Section 18.—The order of confirmation of such sale shall direct the executor or administrator to make an assignment of such contract to the purchaser, which assignment shall vest in the purchaser, his heirs and assigns, all the estate, right, and interest of the deceased at the time of his death in such real property and give to the purchaser the same rights and remedies against the vendor thereof as the deceased would have had or been entitled to if living.

Order to redeem mortgaged property.

Section 19.—If the deceased left any property, real or personal, under mortgage, and did not devise or provide for the redemtion of the same by will, the court, upon the application of the executor or administrator, or the application of an heir or creditor or other person interested in the estate, may order the executor or administrator to redeem such property out of the proceeds of the other personal property, if it appear that such redemption would be for the interest of the estate, and not prejudicial to creditors.

Order for the sale of mortgaged property.

Section 20.—If, upon such application, such redemption be deemed not proper or inexpedient, the court shall order such property to be sold in like manner and with like effect as is provided in other cases of the sale of real property by this chapter; and the conveyance to the purchaser shall operate to convey to him all the estate, right, and interest which the deceased would have had in the property had not the same been mortgaged by him.

Application of proceeds of sale.

Section 21.—Ten days before making an order for the application of the proceeds of such sale, the mortgagee or other person to whom the debt which is secured by such mortgage is payable shall be cited to appear and show the amount of his debt, and make his objections, if any, to the report of the expenses of the proceeding and sale as claimed by the executor or administrator; and thereupon the court shall order that the proceeds of the sale be first applied to the payment of the proper expenses of the proceeding and sale, and secondly, to the satisfaction of such debt, and the residue, if any, in due course of administration.

When mortgage foreclosed or suit commenced for that purpose.

Section 22.—The three sections last preceding shall not be construed to include a mortgage which has been foreclosed, or upon which a suit has been commenced for foreclosure before the application for the order of redemption or sale is made, nor to any other lien arising upon judgment or decree given against the deceased in his lifetime.

When debt not due, how satisfied.

Section 23.—If the debt secured by the mortgage mentioned in section nineteen of this chapter be not due at the time of the making of the order for redemption or application of the proceeds of sale, the party to whom it is

payable shall be entitled to receive in satisfaction thereof such sum as may be ascertained to be equal to the present value thereof.

Effect of order concerning sale.

Secton 24.—The order of confirmation of sale in this chapter mentioned is conclusive as to the regularity of the sale and no further. All purchases of the property of the estate by an executor or administrator, however made, whether directly or indirectly, are prohibited and if made are void.

Fraudulent or void conveyance of judgments of the deceased.

Section 25.—Whenever the assets of the estate are insufficient to satisfy the funeral charges, expenses of administration, and claims against the estate, and the deceased shall in his lifetime have made or suffered any conveyance, transfer, or sale of any property, real or personal, or any right or interest therein, with intent to delay, hinder, or defraud creditors, or when such conveyance, transfer, or sale has been so made or suffered that the same is void in law as against creditors, or when the deceased in his lifetime has suffered, consented or procured any judgment or decree to be given against him with such intent or in such manner as to be likewise void, it is the duty of such executor or administrator to make application by petition to the court for leave to commence and prosecute to final judgment or decree the necessary and proper actions or proceedings to have such conveyance, transfer, sale, or judgment declared void, and the property affected thereby discharged from the effect thereof.

Order allowing proceedings to vacate.

Section 26.—If upon the application it appear to the court that the assets are insufficient for the purposes specified in the last section, and that it is probable that the conveyance, transfer, or judgment was made, suffered, consented to, or procured with the intent or in the manner specified in the last section, it shall make the order directing the proceedings to be commenced and prosecuted as to any or all of the matters alleged in the petition and necessary to supply the deficiency in the assets.

Disposition of property recovered on such proceedings.

Section 27.—The property recovered by means of any proceeding in pursuance of the last two sections is to be sold and appropriated to supply the deficiency mentioned in section twenty-five of this chapter in the same manner as other like property; but the right to or interest in the surplus, if any, remains as if such proceeding had not been allowed or commenced.

CHAPTER SEVENTY-SEVEN.

OF THE ACCOUNTS OF EXECUTORS AND ADMINISTRATORS.

When filed and what to contain.

Section 1.—An executor or administrator shall, within three months from the date of the notice of his appointment, and every three months thereafter until the administration is completed and he is discharged from his trust, render an account, verified by his own oath, and file the same with the court, showing the amount of the money received and expended by him, from whom received and to whom paid, with the proper vouchers for such payments, the amount of the claims presented against the estate and allowed or disallowed and the name of the claimants of each, and any other matter necessary to show the condition of the affairs thereof.

Proceedings if administrator neglect to file account.

Section 2.—An executor or administrator who shall fail to file and account, as required in the last section, may be required by a citation, or ordered by the court to appear and do so, either upon the application of an heir or creditor, or other person interested in the estate, or without it. If the executor or administrator refuses or neglects to appear when cited, or to file the account as required, he may be punished as for a contempt, or by warrant of the court be committed to close custody in jail until he consents to do so.

Order for the payment of expenses, charges and claims.

Section 3.—Within thirty days after the filing of the first quarterly account, and at each quarterly account thereafter, the court shall ascertain and determine if the estate be sufficient to satisfy the claims allowed by the executor or administrator, within the first three months or any succeeding period of three months thereafter, after the date of the notice of his appointment, after paying the funeral charges and expenses of administration; and if so it shall so order and direct; but if the estate be insufficient for that purpose it shall ascertain what *per centum* of such claims it is sufficient to satisfy, and order and direct accordingly.

Final account when filed and what to contain.

Section 4.—When the estate is fully administered it shall be the duty of the executor or administrator to file his final account. Such account shall be verified and contain a detailed statement of the amount of money received and expended by him, from whom received and to whom paid, and refer to the vouchers for such payments, and the amount of money and property, if any remaining unexpended or unappropriated. Upon the filing of the final account, the court shall make an order directing notice thereof to be given in the same manner as the notice of an appointment of an executor or administrator, and appoint a day not less than thirty days subsequent thereto for the hearing of objections to such final account and the settlement thereof.

Objections to final account by whom and when made.

Section 5.—An heir, creditor, or other person interested in the estate may, on or before the day appointed for such hearing and settlement, file his objections thereto, or to any particular item thereof, specifying the particulars of such objection; but no creditor shall be allowed to object to such account whose claim has been satisfied as allowed by the executor or administrator or established by judgment.

Decree upon final account and effect thereof.

Section 6.—Upon the hearing the court shall give a decree allowing or disallowing the final account, either in whole or in part, as may be just and right; and such decree in any other action or proceeding between the parties interested or their representatives is primary evidence of the correctness of the account as thereby allowed and settled.

Administrator chargeable with amount of inventory.

Section 7.—An executor or administrator is chargeable in his account with all the property of the estate which may come into his passession at the value of the appraisement contained in the inventory, except as in this chapter otherwise provided.

Section 8.—He shall not make profit by the increase in value of the property of the estate or suffer loss for the decrease in value or the destruction thereof without his fault; and if any of the property of the estate sell for more than its appraised value he shall account for the excess, and if any such property sell for less than its appraised value he shall not be responsible for the loss, unless occasioned by his fault. He shall not be accountable for the debts due the estate if it appear that they remain uncollected without his fault. He shall not purchase any claim against the estate which he represents, and if he satisfy any such claim for less than its nominal value he is only entitled to charge in his account the sum actually paid.

For what administrator responsible.

Section 9.—An executor or administrator shall be allowed in the settlement of his account, all necessary expenses incurred in the care, management, and settlement of the estate, including reasonable attorney's fees in any necessary litigation or matter requiring legal advice or counsel. For his services he shall receive such compensation as the law provides; but when the deceased by his will, has made special provision for the compensation of his executor, such executor is not entitled to any other compensation for his services unless he shall within ten days after his appointment subscribe and file with the court a written declaration renouncing the compensation provided by the will.

Expenses and compensations of administrator.

Section 10.—Notwithstanding the provision in the will for the compensation of an executor, if the estate be insufficient to satisfy the claims against it, the court shall reduce such compensation, so far as may be necessary to satisfy such claims, to an amount equal to what the executor would have been entitled to if no such provision had been made.

Same subject.

Section 11.—The compensation provided by law for an executor or an administrator is a commission upon the whole estate accounted for by him, as follows:

Amount of compensation.

First. For the first thousand dollars, or any less sum, at the rate of five *per centum* thereof.

Second. For all above that sum and not exceeding two thousands dollars, at the rate of four *per centum* thereof;

Third. For all above two thousand and not exceeding four thousand dollars, at the rate of three *per centum* thereof.

Fourth. For all above four thousand dollars and not exceeding ten thousand dollars at the rate of two *per centum* thereof;

Fifth. For all above ten thousand dollars at the rate of one *per centum* thereof.

In all cases such further compensation as is just and reasonable may be allowed by the court for any extraordinary and unusual service not ordinarily required of an executor or administrator in the discharge of his trust.

Section 12.—Before the time appointed for the hearing and settlement of a final account the executor or administrator shall file with the court a copy of the notice thereof, with the proper proof of its publication or posting as directed. An executor or administrator who shall fail to file his final account as provided in section four of this chapter may be proceeded against in like manner and with like effect as provided in section two of this chapter in case of failure to file a quarterly account.

Proceeding in case of neglect to file final account.

Section 13.—Whenever a debtor of a deceased person is unable to pay all his debts, an executor or administrator, by an order of the court may compound with him and give him a discharge upon receiving a full and just proportion of his effects; but if such compounding is procured or produced by the fraudulent representations or conduct of such debtor, such payment shall only operate to discharge a like amount of the debt.

Administrator may compound for debt due estate.

CHAPTER SEVENTY-EIGHT.

OF THE PAYMENT OF CLAIMS AND CHARGES.

Order of payment of charges and claims.

Section 1.—The charges and claims against the estate which have been presented and allowed, or presented and disallowed but subsequently established by judgment within the first three months, after the date of the notice of appointment of the executor or administrator, shall be paid in the following order, and those presented and allowed or established in like manner with each succeeding period of three months thereafter during the continuance of the administration in the same manner:

First. Funeral charges;

Second. Taxes of whatever nature;

Third. Expenses of last sickness;

Fourth. Debts preferred by the law;

Fifth. Debts which at the death of the deceased were a lien upon his property or any right or interest therein according to the priority of their several liens;

Sixth. Debts due employees of decedent for wages earned within the ninety days immediately preceding the death of the decedent;

Seventh. All other claims against the estate.

Proceeds of real property to be applied in satisfaction of lien.

Section 2.—The preference given by subdivision fifth of the last preceding section shall extend only to the proceeds of the property upon which the lien exists and as to such proceeds such debts are to be preferred to any of the classes mentioned in such section other than the taxes upon such property.

How judgment or decree satisfied when given in lifetime of deceased.

Section 3.—If such debt has been established by judgment against the deceased in his lifetime, such judgment, if the proceeds of the personal property be not sufficient to satisfy it, may, in the discretion of the court, be either satisfied from the proceeds of the sale of the property by the executor or administrator upon which it is a lien, or enforced by execution against such property. Such sale by the executor or administrator discharges the property from the lien of the judgment but the same attaches to the proceeds thereof, after deducting therefrom the expenses of sale.

If estate insufficient, payment to be in proportion.

Section 4.—Except as specially provided in the last three sections, if the estate be insufficient to pay all the claims and charges of any one class, payable within any period of three months during the administration as provided in section one of this chapter, each creditor of such class shall be paid in proportion to the amount of his claim, and not otherwise.

Funeral charges; who may incur and when allowed.

Section 5.—The executor named in the will, or if there be none, or if he do not attend to it, then the husband, widow, or next of kin, in the order herein named, are authorized to incur funeral charges on account of the estate in the burial of the deceased before administration of the estate is granted, and the burial of the deceased may be in a manner and at a cost according to his circumstances and condition in life; but no funeral charges except those necessary to give the deceased a plain and decent burial, shall be allowed out of the estate where the assets are not sufficient to satisfy all other claims against it, including the legacies and devises, if there be any.

Administrator may retain compensation and expenses.

Section 6.—The executor or administrator may retain in his hands in preference to any claim or charge against the estate, the amount of his own compensation and the necessary expenses of administration.

Debts not due or contingent.

Section 7.—A debt due and payable is not entitled to preference over one of the same class not due if the latter be presented within the same period. A debt not due, whether contingent or absolute, upon being presented shall, if

absolute, be satisfied by the payment of such sum as the court may prescribe by order to be equal to its present value, and if contingent, by the payment into court for the benefit of the creditor, subject to the contingency, of a sum, to be ascertained in like manner, equal to its present value.

When administrator liable to creditor personally.

Section 8.—When, upon the filing of a quarterly account an order is made determining and prescribing the amount of assets applicable to the claims then presented, as provided in section three of chapter seventy-seven, the executor or administrator is thereafter personally liable to each creditor included in such order for such amount.

Distribution and payment of legacies.

Section 9.—If all the charges and claims shall have been satisfied upon the first distribution of the assets or as soon thereafter as they may be, the court shall direct the payment of legacies and the distribution of the remaining proceeds of the personal property among the heirs or other persons entitled thereto.

When real property discharged from administration.

Section 10.—The real property of the deceased is the property of those to whom it descends by law or is devised by will, subject to the possession of the executor or administrator, and to be applied to the satisfaction of claims against the estate, as by this chapter provided; but upon the settlement of the estate and the termination of the administration thereof so much of such real property as remains unsold or unappropriated is discharged from such possession and liability without any order or decree therefor. But if there be any surplus of the proceeds of sale of such real property or any part thereof, the court shall order and direct a distribution of such surplus among those who would have been entitled to such land if the same had not been sold.

Application of heir or other person for share of estate.

Section 11.—At any time after the filing of the first quarterly account any heir, devisee, or legatee may apply to the court by petition for an order that he have the possession and rents and profits thereof of the portion of the real property to which he may be entitled and that payment be made to him of his legacy or distributive share of the personal property of such estate, as the case may be.

Notice and proceedings thereon.

Section 12.—Notice of the application shall be given to the executor or administrator thirty days before the time at which it is made. If upon the hearing it appear that the estate is but little in debt, the court may, in its discretion, grant the petition or some part thereof upon the condition that such applicant file with the court within a time in the order specified, an undertaking, with one or more sufficient sureties, for the benefit of whom it may concern, in a sum double the value of such real property, legacy, or distributive share, to be void upon the condition that such heir, legatee, or devisee will pay, when required, his portion toward satisfying any claim against the estate.

Qualifications of sureties in undertaking and costs.

Section 13.—The sureties in such undertaking shall have the same qualifications as sureties in bail upon arrest, and shall justify in like manner. The costs of the proceeding shall be paid by the applicant.

Application for decree to refund.

Section 14.—If after the giving of such undertaking it shall become necessary, to satisfy and claim against the estate, to require the payment of all or any part of the sum therein specified, it shall be the duty of the executor or administrator to apply by petition to the court for a decree to that effect. Notice of the application shall be given to the party filing the undertaking twenty days before the time at which the application is made.

Proceedings thereon and how decree enforced.

Section 15.—If upon the hearing it appear necessary and proper that such payment should be made, the court shall decree accordingly, specifying therein the amount to be paid and within what time; and if the amount be not paid, within the time specified the decree may be enforced against such party and the sureties in the undertaking by execution, in the same manner as a judgment in the District Court.

CHAPTER SEVENTY-NINE.

OF GUARDIANS AND WARDS.

Next of kin to be guardian.

Section 1.—Whenever it becomes the duty of the court to appoint a guardian for a minor, the relatives of such minor, whether male or female, upon application to the court shall in all cases be appointed, the nearest relative having precedence; Provided, Said applicant shall be of good moral character and be otherwise competent to discharge the duties of guardian to such ward.

Court to appoint guardian.

Section 2.—The District Court, when it shall appear necessary and convenient, may appoint guardians to minors and others being inhabitants or residents in the District and also such as shall reside without the district and have any estate within the same.

Who to nominate guardian.

Section 3.—If the minor is under the age of fourteen years the court may nominate and appoint his guardian and if he be above that age he may nominate his own guardian, who, if approved by the court, having jurisdiction of the estate, shall be appointed accordingly; and if the guardian nominated by such minor shall not be approved by the court, or if the minor shall reside without the district, or if, after having been cited by the court, he shall neglect to nominate a suitable person, the court may nominate and appoint the guardian in the name manner as if the minor were under fourteen years of age.

Powers and duties of guardian.

Section 4.—Every guardian so appointed shall have the custody and tuition of the minor and the care and management of his estate, and shall continue in office until the minor shall have arrived at the age of twenty-one years, or until the guardian shall have been discharged according to law: Provided, however, The father of the minor, if living, and in case of his death the mother, while she remains unmarried, being themselves respectively competent to transact their own business, shall be entitled to the custody of the person of the minor and the care of his education.

Same.

Section 5.—Every such guardian shall:

First. Make a true inventory of all the real estate and of all goods, chattels, rights, and credits of the ward that shall come to his possession or knowledge, and to return the same to the court at such time as the latter may order;

Second. Dispose of and manage all such estate and effects according to law and for the best interest of the ward, and faithfully to discharge his trust in relation thereto, and in relation to the custody, education, and maintenance of the ward;

Third. Render, on oath, an account of the property in his hands, including the proceeds of all real estate sold by him, and of the management and disposition of all such property, within six months after his appointment, and at such other times as the court shall direct;

Fourth. At the expiration of his trust, settle his accounts in the court with the ward or his legal representatives, and to pay and deliver over all the estate and effects remaining in his hands, or due from him on such settlement, to the person or persons who shall be legally entitled thereto.

Testamentary guardian.

Section 6.—Every father may, by his last will in writing, appoint a guardian or guardians for any of his children, whether born at the time of making the will or afterwards, to continue during the minority of the child or for a less time. And every mother may, by her last will in writing, appoint a guardian or guardians for any of her children, to continue during the minority of the child or for a less time: Provided, The father of such child or children is dead and has not appointed a guardian, or whenever, by judgment of divorce between such father and mother, the custody of such child or children

has been awarded to the mother; and every such testamentary guardian shall have the same powers and perform the same duties with regard to the person and estate of the ward as a guardian appointed by the court: Provided, Nothing in this section shall be construed to deprive either the suviving father or mother of the custody of the person of his or her children, such surviving parent being competent to transact his or her own business.

Guardian in judicial proceeding.

Section 7.—Nothing contained in this chapter shall impair the power of the district court or any court of justice to appoint a guardian to defend the interests of any minor impleaded in such courts or interested in any suit or matter therein pending, nor their power to appoint or allow any person as next friend for a minor to commence, prosecute, or defend any suit in his behalf.

Guardians for insane persons, etc.

Section 8.—The District Court shall have power to appoint guardians to take care, custody, and management of the estates, real and personal, of all insane persons, idiots, and all who are incapable of conducting their own affairs, and the maintenance of their families and the education of their children.

Application for guardian for insane person.

Section 9.—When the relatives or friends of any insane person, or any other persons inhabitants of the District in which such insane person resides, shall apply to the court by petition in writing to have a guardian appointed for him, the court shall cause notice to be given to the supposed insane person of the time and place appointed for hearing the case, not less than ten days before the time so appointed; and if, after a full hearing, it shall appear to the court that the person in question is incapable of taking care of himself, the court shall appoint a guardian of his person and estate with the powers and duties hereinafter specified.

Powers and duties of guardian of insane person.

Section 10.—Every guardian so appointed for an insane person shall have the care and custody of the person of the ward and the management of all his estate.

Guardian for spendthrift.

Section 11.—When any person resident of the District by excesive drinking, gaming, idleness, or debauchery of any kind, shall so spend, waste, or lessen his estate as to expose himself or his family to want or suffering, the District Court shall cause notice to be given to such supposed spendthrift of the time and place appointed for hearing the case, not less than ten days before the time so appointed; and if, after a full hearing, it shall appear to the court that the person complained of comes within the description contained in this section, it shall appoint a guardian of his person and estate, with the powers and duties hereinafter specified.

Order of notice to be filed with the clerk of District Court.

Section 12.—After the order of notice has been issued and if a guardian shall be appointed on such application all contracts, excepting for necessaries, and all gifts, sales, or transfers of real or personal estate made by such spendthrift after such filing of the order of notice in the office of the clerk of the District Court, and before the termination of the guardianship, shall be null and void.

Allowance for defense of ward.

Section 13.—When a guardian shall be appointed for an insane person or spendthrift, the court shall make an allowance, to be paid by the guardian, for all reasonable expenses incurred by the ward in defending himself against the proceeding.

Guardian for spendthrift; powers duties.

Section 14. Every guardian so appointed for a spenthrift shall have the care and custody of the person of the ward and the management of all his estate until the guardian shall be legally discharged.

Payment of debts in settlement of accounts.

Section 15. Every guardian appointed under the provisions of this chapter shall pay all just debts due from his ward out of his ward's personal estate, if sufficient, and if not, out of his ward's real estate, upon obtaining a license for the sale thereof, as provided by law. He shall also settle

all accounts of the ward and demand, sue for, and receive all debts due to him, or may, with the approbation of the court, compound for the same and give a discharge to the debtor upon receiving a fair and just dividend of his ward's estate and effects, and he shall appear for and represent his ward in all legal actions and proceedings, unless when another person is appointed for that purpose as guardian or next friend.

Management of ward's estate.

Section 16.—The guardian shall also manage the estate of his ward frugally and without waste, and apply the income and profiits thereof, so far as may be necessary for the comfortable and suitable maintenance and support of the ward and his family, if there be any; and if the income and profits be insufficient for that purpose, the guardian may sell the real estate, upon obtaining a license therefor as provided by law, and shall apply the proceeds of such sale, so far as may be necessary, for the maintenance and support of the ward and his family.

Inventory and appraisal of the ward's estate.

Section 17.—Upon the taking of any inventory, as required by this chapter, the estate and effects comprised therein shall be appraised by three suitable persons, to be appointed and sworn in like manner as is required with respect to the inventory of a deceased testator or intestate; and every guardian shall account for and dispose of the personal estate of his ward in like manner as is directed with respects to executors and administrators.

Management and investment of property.

Section 18.—The District Court on the application of a guardian or any person interested in the estate of any ward, after notice to all other persons interested, may authorize or require the guardian to sell and transfer any stock in the public funds, or in any bank, insurance company, or other corporation, or any other personal estate or effects held by him as guardian, and invest the proceeds of such sale, and also of the moneys in his hands, in real estate, or in any other manner that shall be most for the interest of all concerned therein; and the court may make such further order and give such directions as the case may require for managing, investing, and disposing of the estate and effects in the hands of the guardian.

Removal or resignation of guardian.

Section 19.—When any guardian appointed either by a testator or by the court shall become insane or otherwise incapable of discharging his trust, or be unsuitable therefor, the court after notice to such guardian and to all others interested may remove him; and every guardian upon his request, may be allowed to resign his trust when it shall appear to the court proper to allow the same, and upon every such resignation or removal and also upon the death of any guardian, the court shall appoint another in his stead.

Marriage of female ward. Discharge of guardian.

Section 20.—The marriage of any female who is under guardianship as a minor shall operate as a discharge of her guardian; and the guardian of any insane person or spendthrift may be discharged by the court when it shall appear, on the application of the ward or otherwise, that such guardianship is no longer necessary.

Proceedings in cases of suspected emblezzement.

Section 21.—Upon complaint made to the court by any guardian or by the ward, or by any creditor or other person interested in his estate, or by persons having claims thereto in expectancy, as heir or otherwise, against anyone suspected of having concealed, embezzled, or conveyed away any of the money, goods, or effects of the ward, the court may cite and examine such suspected person and proceed with him as to such charge in the same manner as is provided respecting persons suspected of concealing or embezzling effects of a deceased testator or intestate.

Guardians for non-resident minors.

Section 22.—When any minor or other person likely to be put under guardianship according to the provisions of this chapter shall reside without the district and shall have any estate therein, any friends of such person or anyone interested in his estate, in expectancy or otherwise, may apply to the District Court, and after notice to all persons interested, to be given in such manner as

the court shall order, and after a full hearing and examination, if it shall appear proper the court may appoint a guardian for such absent person.

Powers and duties of such guardian.

Section 23.—Every guardian appointed according to the provisions of the preceding section shall have the same powers and duties with respect to any estate of the ward that may be found within the district, and also with respect to the person of the ward if he shall come to reside therein, as are prescribed to any other guardian appointed by force of this chapter.

Expenses and compensation.

Section 24.—Every guardian shall be allowed the amount of all his reasonable expenses incurred in the execution of his trust, and shall also have such compensation for his services as the court shall consider just and reasonable.

Joint account.

Section 25.—When an account is rendered by two or more joint guardians, the court may, in its discretion, allow the same upon the oath of any one of them.

CHAPTER EIGHTY.

OF THE SALE OF LANDS BY GUARDIAN, AND DISPOSITION OF PROCEEDS.

When guardian may sell real property of ward.

Section 1.—When the income of the estate of any person under guardianship, whether as a minor, insane person, or spendthrift, shall be insufficient to maintain the ward and his family, his guardian may sell his real estate for that purpose, upon obtaining a license therefor and proceeding therein in the manner hereinafter provided.

Proceeds to be placed on interest.

Section 2.—When it shall appear upon the representation of any such guardian that it would be for the benefit of his ward that his real estate, or any part thereof, should be sold, and the proceeds thereof be put out on interest or invested in some productive stock his guardian may sell the same accordingly, upon obtaining a license therefor and proceeding therein as hereinafter provided.

Application of proceeds.

Section 3.—If the estate be sold for the maintenance of the ward and his family, the guardian shall apply the proceeds of the sale for that purpose, so far as necessary, and shall put out the residue, if any, on interest, or invest it in the best manner in his power, until the capital shall be wanted for the maintenance of the ward and his family, in which case the capital may be used for that purpose, so far as may be necessary, in like manner as if it had been the personal estate of the ward.

Investment of proceeds.

Section 4.—If the estate is sold in order to put out and invest the proceeds as provided in section two of this chapter, the guardian shall make the investment according to his best judgment, or in pursuance of any order of the court relating thereto.

Residue, when considered as real estate.

Section 5.—In every case of the sale of real estate as provided in this chapter, the residue of the proceeds, if any, remaining upon the final settlement of accounts of the guardianship, shall be considered as real estate of the ward and shall be disposed of among the same persons and in the same manner as the real estate would have been if it had not been sold.

Petition for license to sell.

Section 6.—In order to obtain a license for such sale the guardian shall present to the court a petition therefor, setting forth the condition of the estate of his ward and the facts and circumstances under which it is founded, tending to show the necessity or expediency of such a sale, which petition shall be verified by the oath of the petitioner.

Order to show cause.

Section 7.—If it shall appear to the court from such petition that it is necessary or would be beneficial to the ward that such real estate or some part of it should be sold, he shall thereupon make an order directing the next of kin of the ward and all persons interested in the estate to appear before him at a time and place to be therein specified, not less than four nor more than eight weeks from the time of making such order, to show cause why a license should not be granted for the sale of such estate.

Service of order.

Section 8.—A copy of such order shall be personally served on the next of kin of such ward, and on all persons interested in the estate, at least ten days before the hearing of the petition, or shall be published at least three successive weeks in a newspaper circulating in the District, to be specified by the court.

When certificate of commissioners necessary.

Section 9.—No such license shall be granted for the sale of any real estate of a ward, excepting that of a minor, unless the court shall certify in writing its approbation of the proposed sale.

His oath.

Section 10.—Such guardian shall also, before fixing on the time and place of sale, take and subscribe an oath before the court or some other officer competent to administer the same, in substance as follows: That in disposing

of the estate which he is licensed to sell he will use his best judgment in fixing the time and place of sale, and that he will exert his utmost endeavors to dispose of the same in such manner as will be most for the advantage of all person interested therein.

Section 11.—Such guardian shall also give public notice of the time and place of sale and shall proceed therein in like manner as is prescribed for executors and administrators; and the evidence of giving such notice may be perpetuated in the same manner and with the same effect as is provided in the case of sales of real estate by executors and administrators.

Notice of sale.

Section 12.—No license granted in pursuance of this chapter shall be in force for more than one year after the time of granting the same.

License, how long in force.

Section 13.—When any minor, insane person, or spendthrift residing out of the District shall be put under guardianship in the State, County, or District in which he resides, and shall have no guardian appointed in the District, the foreign guardian may file an authenticated copy of his appointment with the court; after which he may be licensed by the court to sell the real estate of the ward in the District in the same manner and upon the same terms and conditions as are prescribed in this chapter in the case of a guardian appointed in the District, except in the particulars hereinafter mentioned.

When foreign guardian may file copy of his appointment.

Section 14.—Every foreign guardian so licensed to sell real estate shall take and subscribe the oath in the like case of guardians appointed in the District, and shall give notice of the time and place of sale, and conduct the same in the same manner prescribed for guardians appointed in the District, and may perpetuate the evidence of the notice in the same manner.

When foreign guardian may be licensed to sell.

Section 15.—Upon every such sale by a foreign guardian the proceeds of sale, or as much thereof as may remain upon the final settlement of the accounts of guardianship, shall be considered as real estate of the ward, and shall be disposed of among the same persons and in the same proportions as the real estate would have been according to the laws of the District if it had not been sold; and the foreign guardian shall, in every case, before making the sale give bond to the Government, with sufficient sureties, with condition to account for and dispose of the same according to law.

Disposition of residue of proceeds.

Section 16.—If any person shall appear and object to the granting of any license prayed for under the provisions of this chapter, and it shall appear to the court that either the petition or the objection is unreasonable, the court shall give judgment for costs against the losing party in the cause.

Costs, when to prevailing parties.

Section 17.—No action for the recovery of any estate by a guardian under the provisions of this chapter shall be maintained by the ward, or by any person claiming under him, unless it be commenced within five years next after the termination of the guardianship, excepting only that persons out of the District, and minors and others under legal disability to sue at the time when the cause of action shall accrue, may commence their action at any time within five years next after the removal of the disability or after their return to the District.

Limitation of suits to recover estates sold by guardian.

Section 18.—In case of an action relating to any estate sold by a guardian under the provisions of this chapter, in which the ward, or any person claiming under him, shall contest the validity of the sale, the same shall not be avoided on account of any irregularity in the proceedings: Provided, It shall appear,—

Certain irregularities not to avoid sale.

First. That the guardian was licensed to make the sale by a court of competent jurisdiction;

Second. That he took the oath prescribed in this chapter;

Third. That he gave notice of the time and place of sale as prescribed by law; and

Fourth. That the premises were sold accordingly at public auction and are held by one who purchased them in good faith.

Liability of guardian for misconduct.

Section 19.—If, in relation to such sale, there should by any neglect or misconduct in the proceedings of the guardian, by which any person interested in the estate shall suffer damage, such aggrieved party may recover such damage, in an action against the guardian.

Sale, when not held void, though irregular.

Section 20.—If the validity of any sale made by a guardian under this chapter shall be drawn in question by any person claiming adversely to the title of the ward, or claiming under any title that is not derived from or through the ward, the sale shall not be held void on account of any irregularity in the proceedings: Provided, The guardian was authorized to make the sale by the court and that he did accordingly execute and acknowledge, in legal form, a deed for the conveyance of the premises.

CHAPTER EIGHTY-ONE.

OF THE RECORDS AND FILES OF A POLICE COURT.

Records and files of a Police court; what constitutes.

Section 1.—The records and files of the Police Court, are the docket and all papers and process filed in or returned to such court concerning or belonging to any proceeding authorized to be had or taken therein or before the judge who holds such court.

Docket; of Police Judge what entries to be made therein.

Section 2.—The docket of a Police Court is a book in which must be entered:

First. The title of every action or proceeding commenced in such court, with the names of the parties thereto and the time of the commencement thereof.

Second. The date of making or filing any pleading, and when the same is made orally, a plain statement of the substance thereof and the verification thereto when one is required.

Third. An order allowing a provisional remedy, and the date of issuing and returning the summons or other processes.

Fourth. The time when the parties, or either of them, appear, or their failure to do so.

Fifth. Every postponment of a trial or proceeding, and upon whose application, and for what time.

Sixth. The judgment of the court and when given.

Seventh. The fact of an appeal having been made and allowed, and the date thereof, with a memorandum of the undertaking thereof, and the justification of the sureties therein.

Eighth. Satisfaction of the judgment or of any part thereof.

Ninth. A memorandum of all orders relating to the admission to bail, taking bail, or commitment for want thereof.

Tenth. All other matters which may be material or specially required by any statute.

CHAPTER EIGHTY-TWO.

OF GENERAL PROVISIONS IN RELATION TO CIVIL ACTIONS IN POLICE COURT.

Code of civil procedure to govern.

Section 1.—A civil action in a Police Court is commenced and prosecuted to final determination, and judgment enforced therein, in the manner provided in this code for similar actions in courts of record, except as otherwise provided: Provided, Necessary disbursements shall in all cases be allowed the prevailing party.

Summons, by whom issued, and requirements of.

Section 2.—The summons shall be issued and signed by the Judge and must require the defendant to appear before such Judge at a time and place to be named therein not less than six nor more than twenty days from the date thereof, to answer the complaint of the plaintiff or judgment for want thereof will be taken against him.

Service of summons.

Section 3.—The service of the summons may be made as follows:

First. By delivering a copy thereof to the defendant; or

Second. By delivering a copy of the summons at the usual place of abode of the defendant, with some person of the family above the age of fifteen years; and if a defendant shall refuse to hear the summons read or to receive a copy thereof, at the offer of the officer to read the same or to deliver a copy thereof, such refusal shall be a sufficient service of the summons; or if the defendant be a corporation, then to the president, secretary, or a managing or local agent thereof.

When served and by whom.

Section 4.—The summons must be served at least five days before the time therein required for the defendant to appear.

Section 5.—Any police officer may serve a summons issued by a Police Court.

Undertaking for costs, when may be required.

Section 6.—If the plaintiff is a nonresident of the District, the judge may require him to give an undertaking, with one or more sureties, for the costs and disbursements of the action before issuing the summons, and if at any time before the commencement of the trial the defendant apply therefor, the justice must require such plaintiff to give such undertaking; but if the plaintiff is a resident of the District the Judge may, in his discretion, upon a like application on the part of the defendant require such plaintiff to give such undertaking.

Sureties in such cases.

Section 7.—The undertaking may be substantially the following form: "I, A.B." or "We; A. B. and C.D., undertake to pay E.F., the defendant in this action, all costs, and disbursements that may be adjudged to him in this action". The sureties must possess the qualifications of bail upon arrest, and if required by the defendant must justify in a sum not less than fifty dollars. A deposit of fifty dollars with the Judge or such less sum as he may deem sufficient, is equivalent to giving the required undertaking; and if the undertaking or deposit in lieu thereof is not given or made upon the day the same is demanded the Judge must dismiss the action as for want of prosecution.

Provisional remedies.

Section 8.—In a civil action in a Police Court a plaintiff is entitled to the benefit of the provisional remedies of arrest, attachment, and delivery of personal property claimed in the action, as in like cases in a court of record. All affidavits, orders, and undertakings for such remedies are to be taken or made and filed with the Judge, and such process is to be issued by and made returnable before him.

Section 9.—A writ of attachment or an order for the delivery of personal property claimed in the action may be served and executed by any person authorized to serve a summons.

Who may serve writ of attachment or order for delivery of personal property.

Section 10.—The undertaking for an order for the delivery of personal property claimed in the action shall be taken by the Judge who makes the order, and he shall require the sureties therein to justify as bail upon arrest; and no exceptions to the sufficiency of such sureties shall thereafter be allowed.

Undertaking for delivery of personal property.

Section 11.—Real property or any interest therein can not be attached upon a writ of attachment in a civil action in a police court.

Real property cannot be attached by process from a Police Court.

Section 12.—Whenever sureties in an undertaking given in a provisional remedy by either party are required to justify, the justification shall be made before the Judge in whose court the action is pending, and upon the notice prescribed in such cases by this code, or upon a shorter notice, to be prescribed by order of the judge.

Justification of sureties.

CHAPTER EIGHTY-THREE.

OF THE PLEADINGS IN POLICE COURT.

No formal pleadings necessary.

Section 1.—No formal pleadings on the part of either plantiff or defendant shall be required in a police court; but before any process shall be issued in any action the plaintiff shall file with the Judge the instrument sued on and a statement of the account as of the facts constituting the cause of action upon which the action is founded; and the defendant shall, before the trial is commenced, file the instrument, account, or statement of his set-off or counterclaim relied upon.

Same subject.

Section 2.—When the action is founded on any instrument of writing purporting to have been executed by the defendant, and the debt or damage claimed may be ascertained by such instrument, the same shall filed with the Judge, and no other statement or pleading shall be required. If the action be upon an account, a bill of the items constituting the cause of action and the amount or sum demanded shall be filed with the justice; but no action shall be dismissed or discontinued for want of any such statement as cause of action, or for any defect or insufficiency thereof, if the plaintiff shall file the instrument or account as a sufficient statement before trial commenced, or when required by the Judge.

Action on lost instrument.

Section 3.—If such instrument be alleged to be lost or destroyed, it shall be sufficient for the plaintiff to file with the Judge the affidavit of himself, or some other credible person, stating such loss or destruction and setting forth the substance of such instrument.

CHAPTER EIGHTY-FOUR.

OF THE POSTPONEMENT OF TRIALS IN POLICE COURT.

When postponement allowed.

Section 1.—When a cause is at issue upon a question of fact the Judge must, upon sufficient cause shown, on the application of either party, postpone the trial for a period not exceeding sixty days.

When deposition to be taken.

Section 2.—An applicaton for the postponement of a trial must not be granted unless the party applying therefor, if required by the adverse party, consent to take the deposition of any wtness of such adverse party then in attendance upon the court. If the consent is given, the Judge must take such deposition, and the same may be read on the trial, subject to the same objections as if the witness were present and gave the testimony orally.

Proceeding when title to land is in issue.

Section 3.—If it appear on the trial of any cause before a Police court, from the evidence of either party, that the title to lands is in question, which title shall be disputed by the other party, the Judge shall immediately make an entry thereof in his docket and cease all further proceedings in the cause, and shall certify and return to the district court a transcript of all the entries made in his docket relating to the case together with all the process and other papers relating to the action, in the same manner and within the same time as upon an appeal; and thereupon the district court shall proceed in the cause to final judgment and execution in the same manner as if the action had been originally commenced therein; and the costs shall abide with the event of the action.

CHAPTER EIGHTY-FIVE.

OF THE TRIAL IN POLICE COURT.

Time for trial.

Section 1.—When a cause is at issue, such issue must be tried by the court at such time as the court shall set and within fourteen days.

Trial by the court, how judgment may be given.

Section 2.—When an issue of fact is tried by the Police Judge it is not necessary that there should be any special statement of the facts found or law determined on such trial, but it is sufficient for the court to give judgment generally, as the law and the evidence may require, for the plaintiff or the defendant, setting forth therein for what amount, or what relief, or to what effect the same is given.

CHAPTER EIGHTY-SIX.

OF JUDGMENT AND EXECUTION IN POLICE COURT.

Docketing judgment in district court.

Section 1.—Whenever a judgment is given in a Police court in favor of anyone, for the sum of ten dollars, or more, exclusive of costs or disbursements, the party in whose favor such judgment is given, may within one year thereafter, file a certified transcript thereof with the clerk of the district court, and thereupon such clerk shall immediately docket the same in the judgment docket of the district court.

Effect of same.

Section 2.—From the time of docketing a judgment in a district court as provided in the last section, the same shall be a lien upon the real property of the defendant, as if it were a judgment of the district court wherein it is docketed.

Setting off mutual judgment.

Section 3.—A party against whom a judgment is given in a Police court may, upon three days' notice to the adverse party, apply to the Judge of such court to have another judgment given in the Police court, between the same parties and against such adverse party, set-off against such first mentioned judgment.

Conditions of judgment poposed as set-off.

Section 4.—There must be no existing right of appeal from judgment proposed as a set-off, and if such judgment was given in another court than the one where the application is made, the party proposing such set-off must produce a transcript of such judgment, certified by the proper Judge, which certificate shall also state how much of the judgment remains unsatisfied, and that the transcript is given for the purpose of being set-off against the judgment to which it is proposed as a set-off.

When transcript stays execution.

Section 5.—The Judge making such transcript and certificate shall make an entry thereof in his docket, and thereafter all proceedings to enforce such judgment shall be stayed, unless the transcript be returned, with the certificate of the proper Judge indorsed thereon, to the effect that it has not been allowed to be set off.

If judgments mutual, Judge must set off.

Section 6.—If, upon the hearing of the application, the Judge finds that the judgments are mutual, he shall give judgment allowing the proposed set-off.

Judgment for difference.

Section 7.—If there is any difference in the amount of the two judgments, judgment for the dfference must be given in favor of the party owning the largest judgment. If the Judge refuse to allow the set-off, he shall so certify on the transcript and return it to the party making the application.

Judgment does not effect title to real property.

Section 8.—Although the title to real property may be controverted or questioned in an action in a Police court, the judgment in such action in no way affects or determines such title as between the parties thereto or otherwise.

Execution to enforce judgment when against real property.

Section 9.—Execution to enforce a judgment in a Police Court must not be issued against or levied upon the real property of the defendant; but when a judgment given by a Police Court has been duly docketed in the district court thereafter it must be enforced as a judgment of such district court.

Execution, when returnable and by whom served.

Section 10.—An execution issued by a Police Court must be made returnable in thirty days from the date thereof and may be directed to the sheriff or the deputy or other officer authorized to act; and must be executed by any of such officers when delivered to him.

Execution renewal of.

Section 11.—At any time before the expiration of the return day of the execution it may be renewed for another period of thirty days, at the request of the plaintiff, by an indorsement to that effect, made by the Judge thereon. Such indorsement must be dated, and if any part of such execution has been satisfied, must state the amount then due thereon. An entry of such renewal must also be made in the docket of the Police Judge.

CHAPTER EIGHTY-SEVEN.

OF APPEALS FROM POLICE COURT IN CIVIL ACTIONS.

Appeal, who may take and from what judgment.

Section 1.—Either party may appeal from a judgment given in a Police Court, in a civil action, when the sum in controversy is not less than ten dollars, or for the recovery of personal property of the value of not less than ten dollars, exclusive of costs in either case, except when the sum is given by confession or for want of an answer, as prescribed in this chapter, and not otherwise.

To what court and within what time.

Section 2.—The appeal is taken to the District Court, and may be taken within thirty days from the date of the entry of the judment. The party appealing is known as the appellant and the adverse party is the respondent, but the title of the action is not thereby changed.

How taken.

Section 3.—An appeal is taken by serving a notice thereof on the adverse party or his attorney and filing the original, with the proof of service indorsed thereon, with the justice, and by giving the undertaking for the costs of the appeal as hereinafter provided.

Undertaking when to stay proceedings.

Section 4.—The undertaking of the appellant must be given, with one or more sureties, to the effect that the appellant will pay all costs and disbursements that may be awarded against him on the appeal; but such undertaking does not stay the proceeding unless the undertaking further provides to the effect following, that the appellant will satisfy any judgment that may be given against him in the appellate court on the appeal.

When proceedings stayed by undertaking for costs.

Section 5.—If the judgment appealed from be in favor of the appellant, the proceedings thereon are stayed by the notice of appeal and the undertaking for the costs of the appeal.

Allowance of appeal and return of execution.

Section 6.—When an appeal is taken the Police Court Judge must allow the same and make an entry thereof in his docket, stating whether the proceedings are thereby stayed or not. When the proceedings are stayed, if an executon has been issued to enforce the judgment, the judge must recall the same by written notice to the officer holding the execution, and thereupon it must be returned and all property taken thereon and not sold released; and if the body of the defendant has been taken on execution he must be discharged from custody.

Qualifications and justification of sureties.

Section 7.—All sureties in an undertaking under the provisions of this chapter must have the qualifications of bail upon arrest; and if required by the adverse party must justify before the judge in like manner.

Transcript, when filed and what constitutes.

Section 8.—Within twenty days after the allowance of the appeal the appellant must file with the clerk of the district court a transcript of the cause. The transcript must contain a copy of all the material entries in the Police Court docket relating to the cause of the appeal, and must have annexed thereto all the original papers relating to the cause or the appeal and filed with the judge.

Appeal, how perfected and tried.

Section 9.—Upon the filing of the transcript with the clerk of the district court the appeal is perfected, and the action shall be deemed pending and for trial therein as if originally commenced in such court, and the district court shall proceed to hear, try, and determine the same anew, without regarding any error or other imperfection in the original summons and the service thereof, or on the trial, judgment, or other proceeding of the Police Court.

Dismissal of appeal.

Section 10.—The District Court, on motion of the respondent may, at any time before the action is called for trial, dismiss the appeal, if it satisfactorily appear that the transcript and original papers annexed are incomplete in any material particular, unless upon the cross motion of the appellant it makes

a rule upon the Police Court Judge to supply such omission, upon such terms against the appellant as may be just. At any time before the trial the court may dismiss the appeal upon the motion of the appellant.

Judgment in the appellate court.

Section 11.—When an appeal is dismissed the dstrict court must give judgment as it was given in the court below, and against the appellant, for the costs and disbursements of the appeal. When judgment is given in the appellate court against the appellant, either with or without trial of the action, it must also be given against the sureties in the undertaking according to the nature and effect of it. If the appellant fail to file such transcript within the time required, the adverse party may file a transcript of the judgment of the Police Court, and the notice and undertaking on appeal, which, on demand, the Police Court Judge shall deliver to him for that purpose and thereupon have such appeal dismissed and judgment against the appellant and his sureties as provided in this section.

Defective undertaking, how cured.

Section 12.—An appeal can not be dismissed on the motion of the respondent, on account of the undertaking therefor being defective, if the appellant, bfore the determination of the motion to dismiss, will execute a sufficient undertaking, and file the same in the appellate court, upon such terms as may be deemed just.

Amendment of pleadings in the appellate court.

Section 13.—In all cases of appeal the bill of items of the account sued on, or filed as a counterclaim or set-off, or the abatement of the plaintiff's cause of action, or of the defendant's counterclaim or set-off, or other ground of defense filed before the Police Court, may be amended upon appeal in the appellate court to supply any defect, deficiency, or omission therein, by filing formal pleadings therein when by such amendment substantial justice will be promoted; and in all cases when required by court, or by either party to the action, formal pleadings shall be filed on either side upon the trial of the cause on appeal; when either party requires such formal pleadings, he shall cause to be served on the opposite party a notice thereof in writing, and file the same in the court where the cause is pending by the first day of the term of such court at which such cause is to be tried, but no new item or cause of action not embraced or intended to be included in the original account or statement shall be added by such amendment.

CHAPTER EIGHTY-EIGHT.

OF MISCELLANEOUS PROVISIONS RELATING TO POLICE COURTS.

Judgment of justices may be reviewed.

Section 1.—No provision in this code in relation to appeals or the right of appeal must be construed so as to prevent either party to a judgment given in a Police Court from having the same reviewed in the District Court for errors in law appearing upon the face of such judgment or the proceedings connected therewith.

Party entitled to one hour to appear.

Section 2.—A party is entitled to one hour in which to make his appearance after the time specified in the summons, and not otherwise; and if the judge be then actually engaged in other official business he may, on his own motion, postpone further proceedings in the case until such official business has been completed or he can be disengaged therefrom.

Proceedings for contempt.

Section 3.—Chapter Fifty-Five of this title, defining contempts, and the proceeding for punishing a party guilty of contempt, shall apply to Police Courts, except as in this chapter otherwise specially provided.

Punishment for contempt.

Section 4.—The punishment for a contempt in a Police Court shall be by fine or imprisonment, or both; but the fine shall in no case exceed twenty-five dollars, nor the imprisonment ten days.

~~Section 5.—There shall be no appeal from any action or proceeding in a Police Court wherein the Judge of the District Court administers such Police Court.~~

CHAPTER EIGHTY- NINE.

OF FORCIBLE ENTRY AND DETAINER.

When entry upon real property allowed; not to be made with force.

Section 1.—No person shall enter upon any land, tenement or other real property, but in cases where entry is given by law; and in such cases the entry shall not be made with force, but only in a peaceful manner.

Action to recover possession of premises forcibly entered or held by force.

Section 2.—When a forcible entry shall be made in a peaceable manner and the possession shall be held by force, the person entitled to the premises may maintain an action to recover the possession thereof before the Police Court.

Necessary averments and complaint.

Section 3.—In such action it shall be sufficient to state in the complaint a description of the premises with convenient certainty, that the defendant is in possession thereof, that he entered upon he same with force, or unlawfully holds the same with force, as the case may be, and that the plaintiff is entitled to the possession thereof.

Action for, how conducted.

Section 4.—Such action, except as hereinafter specially provided, shall be conducted in all respects as other actions before the Police Court.

Summons in, how served and returned.

Section 5.—The summons shall be served and returned as in other cases; such service shall be not less than two nor more than seven days before the day of trial appointed.

Continuance, for what time granted.

Section 6.—No continuance shall be granted for a longer period than two days, unless the defendant applying therefor shall give an undertaking to the adverse party, with good and sufficient security, to be approved by the court, conditioned for the payment of the rent that may accrue if the judgment be rendered against the defendant, and all costs.

Form of execution.

Section 7.—The execution, should judgment of restitution be rendered, may be in the following form:

To the Sheriff for the District.

Whereas a certain action for the forcible entry and detention (or the forcible detention, as the case may be) of the following described premises, to wit:....., lately tried before me, wherein..... was plaintiff and..... was defendant, judgment was rendered on the..... day of....., anno Domini....., that the plaintiff....., have restitution of said premises; and also that he recover costs in the sum of..... In the name of The People you are therefore hereby commanded to cause the defendant to be forthwith removed from said premises, said plaintiff to have restitution of the same; also, that you levy on the goods and chattels of said defendant, and make the costs aforesaid and all accruing costs; and of this writ make legal service and due return.

Witness my hand this..... day of....., anno Domini.....

....

Appeal by defendant.

Section 8.—If judgment be rendered against the defendant for the restitution of the real property described in the complaint or any part thereof, no appeal shall be taken by the defendant from such judgment until he shall, in addition to the undertaking now required by law upon appeal, give an undertaking to the adverse party, with two sureties, who shall justify in like manner as bail upon arrest, for the payment to the plaintiff of twice the rental value of the real property of which restitution shall be adjudged from the rendition of such judgment until final judgment in the action, if such judgment shall be affirmed upon appeal.

Unlawful holding by force, what deemed to be.

Section 9.—The following shall be deemed cases of unlawful holding by force within the meaning of this chapter:

First. When the tenant or person in possession of any premises shall fail or refuse to pay any rent due on the lease or agreement under which he holds, or deliver up the possession of the premises for three days after demand made for such possession;

Second. When, after a notice to quit as provided in this chapter, any person shall continue in the possession of any premises at the expiration of the time limited in the lease or agreement under which such person holds, or contrary to any condition or covenant thereof, or without any written lease or agreement therefor.

Notice to quit must be in writing; service of.

Section 10.—A notice to quit must be in writing and must be served upon the tenant or person in possession by being delivered to him or left at the premises in case of his absence therefrom.

Notice to quit, how long served before action brought.

Section 11.—An action for the recovery of the possession of the premises may be maintained in the cases specified in subdivision second of section nine next preceding, when the notice to quit has been served upon the tenant or person in possession for the period of three days before the commencement thereof, unless the leasing or occupation is for the purpose of farming or agriculture, in which case such notice must be served for the period of ninety days before commencement of such action.

Action cannot be maintained before expiration of period for which rent paid.

Section 12.—The service of a notice to quit upon a tenant or person in possession does not authorized an action to be maintained against him for the possession of the premises before the expiration of any period for which such tenant or person may have paid the rent of such premises in advance.

Crops sown, etc., before lease expires, tenant may cultivate and harvest.

Section 13.—When the leasing or occupation is for the purpose of farming or agriculture, the tenant or person in possession shall, after the termination of such lease or occupancy, have free access to the premises to cultivate and harvest or gather any crop or produce of the soil planted or sown by him before the service of notice to quit.

Merits of title not to be questioned in action, limitation of action.

Section 14.—In an action to recover the possession of any land, tenement or other real property, where the entry is forcible or when the possession thereof is unlawfully held by force, the merits of the title shall not be inquired into, and three years quiet possession of the premises immediately preceding the commencement of such action by the party in possession, or those under whom he holds, may be pleaded in bar thereof, unless the estate of such party in the premises is ended.

CHAPTER NINETY.

OF WITNESSES, INSPECTION AND PROOF OF RECORDS AND OF PRIVATE SEALS.

Competent witnesses.

Section 1.—Neither parties nor other persons who have an interest in the event of an action or proceeding are excluded as witnesses; nor those who have been convicted of crime; nor persons on account of their opinions on matters of religious belief; although in every case, except the latter, the credibility of the witness may be drawn in question.

Incompetent witnesses.

Section 2.—The following persons shall not be witnesses;

First. Those of unsound mind at the time of the transaction and of their production for examination;

Second. Children under ten years of age, who appear incapable of receiving just impressions of the facts respecting which they are examined, or of relating them truly.

Competency of husband and wife.

Section 3.—A husband shall not be examined for or against his wife, without her consent, nor a wife for or against her husband, without his consent; nor can either during the marriage or afterwards, be, without the consent of the other, examined as to any comunications made by one to the other during marriage, but the exception does not apply to a civil action, or proceeding for a crime committed by one against the ohter.

Competency of attorney.

Section 4.—An attorney shall not, without the consent of his client, be examined as to any communication made by his client to him, or his advice thereon, in the course of his professional employment.

Competency of clergyman.

Section 5.—A priest or cleryman shall not, without the consent of the person making the confession, be examined as to any confession made to him in his professional capacity, in the course of discipline enjoined by the church to which he belongs.

Competency of physician.

Section 6.—A physician or surgeon shall not, against the objection of his patient, be examined in a civil action or proceeding as to any information acquired in attending the patient which was necessary to enable him to prescribe or act for the patient.

Inspection of public records.

Section 7.—Every person has a right to inspect any public writing or record in said District, and every public officer having the custody thereof is bound to permit such inspection, and to give on demand and on payment of the legal fees therefor a certified copy of such writing or record, and such copy shall in all cases be evidence of the original.

Proof of public records.

Section 8.—A judicial, legislative, or executive record of said District, or of any State or Territory of the United States, or of any foreign country, or of any political subdivision of either, may be proved by the production of the original, or by a copy thereof, certified by the clerk or other person having the legal custody thereof, with the seal of the court or the official seal of such person affixed thereto, if it or he have a seal.

Private seals abolished.

Section 9.—Private seals and scrolls as a substitute are abolished and are not required to any instrument, but the effect thereof, when used, shall remain unchanged.

Title by adverse possession.

Section 10.—The uninterrupted, exclusive, actual, physical, adverse, continuous notorious possession of real property under color and claim of title for fifteen years or more shall be conclusively presumed to give title thereto except as aginst the Government.

CHAPTER NINETY-ONE.

OF INDISPENSABLE EVIDENCE

Sale or transfer of personal property.

Section 1.—Every sale or assignment of personal property, unless accompanied by the immediate delivery and the actual and continued change of possession of the thing sold or assigned, shall be presumed *prima facie* to be a fraud against the creditors of the vendor or assignor, and subsequent purchasers in good faith and for a valuable consideration, during the time such property remains in the possession of said vendor or assignor.

As to representations concerning third persons.

Section 2.—No evidence is admissable to charge a person upon a representation as to the credit, skill, or character of a third person unless such representation or some memorandum thereof be in writing, and either subscribed by or in the handwriting of the party to be charged.

Sale or transfer real property.

Section 3.—No estate or interest in real property, other than a lease for a term not exceeding one year, nor any trust or power concerning such property, can be created, transferred, or declared otherwise than by operation of law, or by a conveyance or other instrument in writing subscribed by the party creating, transferring, or declaring the same, or by his lawful agent under written authority, and executed with such formalities as are required by law.

When last section not to affect certain cases.

Section 4.—The last section shall not be construed to affect the power of a testator in the disposition of his real property by a last will and testament, nor to prevent a trust arising or being extinguished by implication or operation of law, nor to affect the power of a court to compel specific performance of an agreement in relation to such property.

Sale or transfer of boat or vessel.

Section 5.—A sale or transfer of a boat or vessel is not valid unless it be in writing and signed by the party making the sale or transfer.

TITLE IV.

CRIMINAL LAW.

CHAPTER ONE.

GENERAL PROVISIONS.

Section 1.—All provisions and sections of this Code are to be construed according to the fair construction of their trens, with a view to effect its object and to promote justice. **Construction.**

Section 2.—Whenever in this Code the character or grade of an offense, or its punishment, is made to depend upon the value of the property, such value shall be estimated in such currency as is legal tender and in general use in this District. **Value of property, how estimated.**

Section 3.—A crime or public offense is an act committed or omitted in violation of a law forbidding or commanding it and to which is annexed, upon conviction, any of the following punishments: **Crime, defined.**

First.—Imprisonment; **Penalties.**

Second.—Fine;

Third. Removal from office; or,

Fourth. Disqualification to hold and enjoy any office of honor, trust or profit.

Section 4.—Crimes are divided into: First,—Felonies; and second,—Misdemeanors. **Crimes, how divided.**

Section 5.—A felony is a crime which is punishable by imprisonment in the penitentiary for more than one year. Every other crime is a misdemeanor. **Felony.**

Section 6.—Except in cases where a different punishment is prescribed every offense declared to be a felony is punishable by imprisonment in the penitentiary not exceeding five years. **Imprisonment for felony.**

Section 7.—Except in cases where a different punishment is prescribed every offense declared to be a misdemeanor is punishable by imprisonment in jail not exceeding one year, or by a fine not exceeding two hundred dollars or by both. **Misdemeanor, penalty for.**

Section 8.—When an act or omission is declared by a statute to be a public offense, and no penalty for the offense is prescribed in any statute, the act or omission is punishable as a misdemeanor. **Public offense, penalty for.**

Section 9.—Except in cases where a different punishment is prescribed an accessory to a felony is punishable by imprisonment or fine or both not to exceed one half of the maximum punishment prescribed for the offense to which he is an accessory. **Accesory; punishment for.**

Section 10.—Whenever a fine is imposed in terms of dollars by any of the provisions of this code the same may be liquidated in Danish West Indian currency at the rate of 5 Francs to one Dollar, so long as Danish West Indian Currency shall remain legal tender in this District. **Fine, Court may impose.**

Section 11.—A sentence of imprisonment in the penitentiary for any term less than for life suspends all the civil rights of the person so sentenced, and forfeits all public offices and all private trusts, authority, or power during such imprisonment. **Imprisonment, effect of.**

Section 12.—A person sentenced to imprisonment in the penitentiary for life is thereafter deemed civilly dead. **Imprisonment for life, effect.**

Capacity of persons imprisoned.

Section 13.—The provisions of the last two preceding sections must not be construed to render the persons therein mentioned incompetent as witnesses upon the trial of a criminal action or proceeding, or incapable of making and acknowledging a sale, conveyance of property or will.

Conviction of two or more crimes; when imprisonment begins.

Section 14.—When any person is convicted of two or more crimes the term of imprisonment to which he is sentenced upon the second or other subsequent conviction must commence at the termination of the first term of imprisonment to which he shall be adjuged, or at the termination of the second or other subsequent term of imprisonment as the case may be.

Term of imprisonment; when begins.

Section 15.—The term of imprisonment fixed by the judgment in a criminal action commences to run only upon the actual delivery of the defendant at the place of the imprisonment; and if, thereafter, during such term, the defendant by any legal means is temporarily released from such imprisonment, and subsequently returned thereto, the time during which he was at large must not be computed as part of such term.

Prisoners under protection of law.

Section 16.—The person of a convict sentenced to imprisonment is under the protection of the law, and any injury to his person, not authorized by law, is punishable in the same manner as if he were not convicted or sentenced.

No forfeiture of property.

Section 17.—No conviction of any person for crime works any forfeiture of any property, except in cases in which a forfeiture is expressly imposed by law.

CHAPTER TWO.

OF PARTIES TO CRIME.

Section 1.—The parties to crimes are classified as:

Parties to crime classification.

1.—Principals; and

2.—Accessories.

Section 2.—All persons concerned in the commission of a crime, whether it be a felony or misdemeanor, and whether they directly commit the act constituting the offense, or aid or abet in its commission, or, not being present, have advised and encouraged its commission, and all persons counselling, advising or encouraging children under the age of fourteen years, lunatics or idiots, to commit any crime, or who, by fraud, contrivance, or force, occasion the drunkenness of another for the purpose of causing him to commit any crime, are principals or accessories, as the jury or court by its verdict may determine in any crime so committed.

Principals.

Section 3.—All persons who, after knowledge that a crime has been committed, willfully conceal it from the proper authorities, or harbor and protect the person charged with or convicted thereof, are accessories.

Accessories.

Section 4.—The following persons are liable to punishment:

Persons liable to punishment.

1.—All persons who commit, in whole or in part, any crime within the jurisdiction of the courts;

2.—All who commit larcency or robbery beyond the jurisdiction of the courts, and bring to, or are found with the property stolen within this jurisdiction.

3.—All who, being beyond jurisdiction of the courts, cause or aid, advise or encourage, another person to commit a crime within the District, and are afterwards found therein.

Section 5.—All persons are capable of committing crimes except those belonging to the following classes:

Persons incapable of committing crime.

1.—All children under the age of seven years;

2.—Children over the age of seven years but under the age of fourteen years, in the absence of clear proof that at the time of committing the act charged against them they knew its wrongfulness;

Children.

3.—Idiots;

Idiots.

4.—Lunatics and insane persons; but a morbid propensity to commit prohibited acts, existing in the mind of a person who is not shown to have been incapable of knowing the wrongfulness of such acts, forms no defense to a prosecution therefor;

Lunatics. Persons ignorant of fact.

5.—Persons who committed the act or made the omission charged under an ignorance or mistake of fact, which disproves any criminal intent.

Section 6.—No person is punishable for an omission to perform an act, where such act has been performed by another person acting in his behalf, and competent by law to perform it.

When omissions not punishable.

Section 7.—No act committed by a person while in a state of voluntary intoxication is less criminal by reason of his having been in such condition. But, whenever the actual existence of any particular purpose, motive, or intent is a necessary element to constitute any particular species or degree of crime, the court or jury may take into consideration the fact that the accused was intoxicated at the time, in determining the purpose, motive, or intent with which he committed the act.

Intoxication, effect of.

Evidence of witness may be used against him in posecution for perjury.

Section 8.—The various sections of this Code which declare that evidence obtained upon the examination of a person as a witness can not be received against him in any criminal proceeding, do not forbid such evidence being proved aginst such person upon any proceedings founded upon a charge of perjury committed in such examination.

Act or omission punishable under different provisions of Code.

Section 9.—An act or omission which is made punishable in different ways by different provisions of this Code may be punished under any of such provisions, but in no case can it be punished under more than one; an acquittal or conviction and sentence under any one bars a prosecution for the same act or omission under any other.

Criminal act punishable as a crime and contempt.

Section 10.—A criminay act is not less punishable as a crime because it is also declared to be punishable as a contempt.

Failure of attempt to commit crime; punishment for.

Section 11.—Every person who attempts to commit any crime, but fails, or is prevented or intercepted in the perpetration thereof, is punishable, where no provision is made by law for the punishment of such attempts, as follows:

1.—If the offense so attempted is punishable in the maximum by imprisonment in the penitentiary for five years, or more, the person guilty of such attempt is punishable by imprisonment in the penitentiary or in jail, as the case may be, for a term not exceeding one-half the longest term of imprisonment prescribed upon a conviction of the offense so attempted.

2.—If the offense so attempted is punishable by imprisonment in the penitentiary for any term less than five years in the maximum, the person guilty of such attempt is punishable by imprisonment for not more than one year.

3.—If the offense so attempted is punishable by a fine, the offender convicted of such attempt is punishable by a fine not exceeding one-half the largest fine which may be imposed upon a conviction of the offense attempted.

4.—If the offense so attempted is punishable by imprisonment and by a fine, the offender convicted of such attempt may be punished by imprisonment and a fine not to exceed one-half the maximum imprisonment and fine which may be imposed upon a conviction for the offense so attempted.

Commission of crime in attempt to commit another.

Section 12.—The last two sections do not protect a person who, attempting unsuccessfully to commit a crime, accomplishes the commission of another and different crime, whether greater or less in guilt, from suffering the punishment prescribed by law for the crime committed.

Resistance to prevent offense; when allowed.

Section 13.—Resistance sufficient to prevent the offense may be made by the party about to be injured:

1.—To prevent an illegal attempt by force to take or injure property in his lawful possession;

2.—To prevent an offense against his person or his family or some member thereof.

By other persons.

Section 14.—Any other person in aid or defense of the person about to be injured may make resistance sufficient to prevent the offense.

Right of self defense.

Section 15.—The right of self-defense in no case extends to the infliction of more harm than is necessary for the purpose of defense. To justify a homicide on the ground of self-defense, there must be not only the belief but also reasonable ground for believing that at the time of killing the deceased, the party killing was in imminent or immediate danger of his life or great bodily harm.

CHAPTER THREE.

CONSPIRACY.

Page 301 Omitted herein.

CHAPTER FOUR.

OF CRIMES AGAINST PUBLIC JUSTICE.

Offer or giving of bribe to judicial officer, referee, or arbitrator, etc.

Section 1.—Every person who gives or offers to give a bribe to any judicial officer, juror, referee, arbitrator, or to any person who may be authorized by law to hear or determine any question or controversy, with intent to influence his vote, opinion, or decision upon any matter or question which is or may be brought before him for decision, is punishable by imprisonment in the penitentiary not exceeding five years.

Receiving of by same.

Section 2.—Every judicial officer, juror, referee, arbitrator and every person authorized by law to hear or determine any question or controversy, who asks, receives, or agrees to receive any bribe, upon any agreement or understanding that his vote, opinion, or decision upon any matter or question which is or may be brought before him for decision, shall be influenced thereby is punishable by imprisonment in the penitentiary not exceeding five years.

Asking or receiving emolument.

Section 3.—Every judicial officer who asks or receives any emolument, gratuity, or reward, or any promise thereof, except such as may be authorized by law, for doing any official act, is guilty of a misdemeanor.

Attempt to influence juror.

Section 4.—Every person who corruptly attempts to influence a juror, or any person summoned or drawn as a juror, or chosen as an arbitrator, or appointed as a referee, in respect to his verdict in, or decision of any cause or proceeding, pending or about to be brought before him, either:

1.—By means of any communication, oral or written, had with him except in the regular course of proceedings;
2.—By means of any book, paper, or instrument exhibited, otherwise than in the regular course of proceedings;
3.—By means of any threat, intimidation, persuasion or entreaty;
4.—By means of any promise, or assurance of any pecuniary or other advantage;

Is punishable by fine not exceeding two thousand dollars, or by imprisonment in the penitentiary not exceeding five years.

Agreement by juror to give certain verdict or decision.

Section 5.—Every juror, or person drawn or summoned as a juror, or chosen arbitrator or appointed referee, who either:

1.—Makes any promise or agreement to give a verdict or decision for or against any party; or,
2.—Willfully an corruptly permits any communication to be made to him or receives any book, paper, instrument or information relating to any cause or matter pending before him, except according to the regular course of proceedings;

Is punishable by fine not exceeding two thousand dollars, or by imprisonment in the penitentiary not exceeding five years.

Destruction, mutilation, etc., of records by public officer.

Section 6.—Every officer having the custody of any record, map, or book, or of any paper or proceeding of any court, filed or deposited in any public office, or placed in his hands for any purpose, who is guilty of stealing, willfully destroying, mutilating, defacing, altering or falsifying, removing or secreting, the whole or any part of such record, map, book, paper or proceeding, or who permits any other person so to do is punishable by imprisonment in the penitentiary not exceeding ten years, and by fine not exceeding two thousand dollars.

By person other than by public officer.

Section 7.—Every person, not an afficer such as is referred to in the next preceding section who is guilty of any of the acts specified in that section, is punishable by imprisonment in the penitentiary not exceeding five years, or by fine not exceeding one thousand dollars, or by both.

Section 8.—Every person who knowingly procures or offers any false or forged instrument to be filed, registered, or recorded in any public office within the District, which instrument if genuine, might be filed, registered or recorded under the laws of the District or under the laws of the United States applicable to the District, is guilty of a felony.

Filing of false or forged instrument.

Section 9.—That when, during the trial of any case pending in any court, a witness shall appear and take an oath, or shall affirm that he will testify and depose truly before any such tribunal in any of the cases in which such an oath or affirmation may be administered and after having taken such oath or affirmation, shall wilfully, and contrary thereto, state as true any material matter which he knows to be false, or which he does not know to be true, is guilty of perjury; and when such oath or affirmation is taken in open court, and is violated as herein provided, then said witness is guilty of a contempt of court, and shall be punished as hereinafter provided. If the judge presiding in said case shall be satisfied, in any case pending in his court, that a witness, after taking the oath, or after having affirmed, to testify truly in any matter pending in the court, is guilty of perjury as herein defined, then it shall be the duty of said judge so trying the case, and he is hereby empowered on his own motion alone, to cause the arrest and detention of the party so offending, and he shall issue an order, to be served on the offending party, to appear and show cause why he should not be punished for contempt of court. The defendant shall, within a time to be fixed by the court, make his defense to the citation, and the judge shall hear the testimony adduced by the prosecution and the defense, and after hearing the testimony shall pronounce judgment in the case. If the judge is satisfied from the depositions which must be taken in writing that the party so cited has been guilty of perjury, then it shall be the duty of the judge to punish him as for contempt of court, and the punishment for such contempt shall be a fine not exceeding on hundred dollars, or imprisonment in jail not exceeding three months, or both such punishments in the discretion of the judge trying the case.

Perjury in open court punishable as a contempt of court.

Any person so convicted in a police court shall have a right to appeal to the district court, as in other criminal cases. The power given herein by this section to the judge of any court to punish as for a contempt any perjury committed in open court is not to be understood as taking away from the courts the power and authority to punish for perjury as provided by the other laws; but this is intended as a summary manner of dealing with cases of perjury committed in open court where the falsity of the testimony is apparent to the judge of the court.

Right to appeal.

Intention of the law.

In case of a person being sentenced for perjury in proceedings for contempt of court as provided in this section and his being prosecuted in a criminal cause for the same offense, no evidence whatever of the order or sentence dictated by the judge nor anything related to said order shall be admissible.

Inadmissible evidence in a criminal cause for the same offense.

Section 10.—Every person who, having taken an oath that he will testify, declare, depose, or certify truly before any competent tribunal, officer, or person, in any of the cases in which such an oath may by law be administered. willfully and contrary to such oath, states as true any material matter which he knows to be false, is guilty of perjury. It is no defense to a prosecution for perjury that the oath was administered or taken in an irregular manner.

Perjury defined.

Section 11.—The term "oath", as used in the preceding section, includes an affirmation and every other mode authorized by law of attesting the truth of that which is stated.

Oath defined.

That mode of swearing which the witness believes most obligatory may be adopted. No special form of oath or affirmation is required.

Form of.

Section 12.—It is no defense to a prosecution for perjury that the accused did not know the materiality of the false statement made by him; or that it did not, in fact, affect the proceeding in or for which it was made. It is sufficient that it was material, and might have been used to affect such proceeding.

Ignorance of materiality of false statement.

Incompetency of the accused to testify.

Section 13.—It is no defense to a prosecution for perjury that the accused was not competent to give the testimony, deposition, or certificate of which falsehood is alleged. It is sufficient that he did give such testimony or make such deposition or certificate.

Deposition or certificate when complete.

Section 14.—The making of a deposition or certificate is deemed to be complete, from the time it is delivered by the accused to any other person, with the intent that it be uttered or published as true.

Unqualified statement.

Section 15.—An unqualified statement of that which one does not know to be true is equivalent to a statement of that which one knows to be false.

Perjury, how punished.

Section 16.—Perjury is punishable by imprisonment in the penitentiary not exceeding ten years.

Subornation of.

Section 17.—Every person who willfully procures another person to commit perjury is guilty of subornation of perjury, and is punishable in the same manner as he would be if personally guilty of the perjury so procured.

Conviction of innocent person through perjury.

Section 18.—Every person who, by willful perjury, or subornation of perjury, procures the conviction and punishment of any innocent person, is punishable by the same penalty that was inflicted upon such innocent person; Provided, That in no case shall the punishment be less than one year.

Presentation of false evidence at trial.

Section 19.—Every person who, upon any trial, proceeding, inquiry, or investigation whatever, authorized or permitted by law, offers in evidence, as genuine or true any book, paper, document, record or other instrument in writing, konwing the same to have been forged, or fraudulently altered or antedated, is guilty of a felony.

Practice of fraud or deceit upon witnesses.

Section 20.—Every person who practices any fraud or deceit, or knowingly makes or exhibits any false statement, representation, token, or writing, to any witness, or person about to be called as a witness upon any trial, proceeding, inquiry, or investigation whatever, authorized by law, with intent to affect the testimony of such witness, is guilty of a misdemeanor.

False writings.

Section 21.—Every person guilty of preparing any false or antedated book, paper, record, instrument in writing or other matter or thing, with intent to produce it, or allow it to be produced for any fraudulent or deceitful purpose, as genuine or true, upon any trial, proceeding or inquiry whatever, authorized by law, is guilty of felony.

Destruction of evidence.

Section 22.—Every person who, knowing that any book, paper, record, instrument in writing, or other matter or thing, is about to be produced in evidence upon any trial, inquiry or investigation whatever, authorized by law, willfully destroys or conceals the same with intent thereby to prevent it from being produced is guilty of a misdemeanor.

Preventing or dissuading witnesses from attending trial.

Section 23.—Every person who willfully prevents or dissuades any person who is or may become a witness, from attending upon any trial, proceeding, or inquiry authorized by law, is guilty of a misdemeanor.

Bribing witnesses.

Section 24.—Every person who gives, offers, or promises to give, to any witness, or person about to be called as a witness, any bribe, upon any understanding or agreement that the testimony of such witness shall be thereby influenced, or who attempts by any other means fraudulently to induce any person to give false or withhold true testimony is guilty of a felony.

Witness receiving bribes.

Section 25.—Every person who is a witness, or is about to be called as such, who receives or offers to receive any bribe, upon any understanding that his testimony shall be influenced thereby, or that he will absent himself from the trial or proceeding upon which his testimony is required, is guilty of a misdemeanor.

Section 26.—Every public officer, or person pretending to be a public officer, who, under the pretense or color of any process or other legal authority, arrests any person or detains him against his will, or seizes or levies upon any property or dispossesses any one of any lands or property without a regular process or other lawful authority therefor, is guilty of a misdemeanor.

Arrest etc., without due process of law.

Section 27.—Every person who is guilty of willful inhumanity or oppression toward any prisoner under his care or in his custody, is punishable by a fine not exceeding five hundred dollars or imprisonment in jail not exceeding one year, or by both.

Inhumanity or oppression toward prisoners.

Section 28.—Every person who willfully resists, delays, or obstructs any public officer, in the discharge, or attempted discharge of any duty of his office, when no other punishment is prescribed, is punishable by fine not exceeding five hundred dollars or imprisonment in jail not exceeding one year or by both.

Resistance to public officer.

Section 29.—Every public officer who, under color of authority, without lawful necessity, assaults, wrongs, oppresses or beats any person is punishable by fine not exceeding five hundred dollars, or imprisonment in jail not exceeding one year, or by both.

Assault, oppression etc., by public officer.

Section 30.—Every male person above eighteen years of age, who willfully neglects or refuses to aid and assist in taking or arresting any person against whom there may be issued any process, or by neglecting to aid and assist in retaking any person who, after being arrested or confined may have escaped from such arrest or by willfully neglecting or refusing to aid and assists in preventing any breach of the peace, or the commission of any criminal offense, being thereto lawfully required by any marshal, policeman, or other officer concerned in the administration of justice, is punishable by fine of not exceeding five hundred dollars.

Refusal to aid making arrest.

Section 31.—Every person who, having knowledge of the actual commission of a crime, takes money or property of another or any gratuity or reward, or any engagement or promise thereof upon any agreement or understanding to compound or conceal such crime, or to abstain from any prosecution thereof, or to withold any evidence thereof, except in the cases provided for by law in which crimes may be compromised by leave of court, is punishable as follows:

Agreement to conceal commission of crime.

1.—By imprisonment in the penitentiary not exceeding five years, where the crime was punishable by death.

2.—By imprisonment in the penitentiary not exceeding three years, where the crime was a felony punishable by imprisonment in the penitentiary.

3.—By imprisonment in jail not exceeding three months or by fine not exceeding one hundred dollars, where the crime was a misdemeanor.

Section 32.—Every debtor who fraudulently removes his property or effects beyond the jurisdiction of the courts or fraudulently sells, conveys, assigns, or conceals his property, with intent to defraud, hinder, or delay his creditors of their rights, claims, or demands, is punishable by imprisonment in jail not exceeding one year, or by fine not exceeding two thousand dollars, or by both.

Fraudulent removal of goods by debtor.

Section 33.—Every person against whom an action is pending or against whom a judgment has been rendered for the recovery of any personal property, who fraudulently conceals, sells, or disposes of such property with intent to hinder, delay or defraud the person bringing such action or recovering such judgment, or with such intent removes such property beyond the jurisdiction of the courts in which it may be at the time of the commencement of such action or the rendering of such judgment, is punishable as provided in the preceding section.

Fraudulent sale, concealment of goods.

Section 34.—Every person who fraudulently produces an infant, falsely pretending it to have been born of any parent whose child would be entitled to inherit, with intent to intercept the inheritance, is punishable by imprisonment in the penitentiary not exceeding ten years.

Fraudulent production of infant.

Authority to punish for contempt.

Section 35.—The courts duly established in the District shall have power to punish for criminal contempt, any person or persons guilty of any of the following acts:

Disturbance in court.

1.—Breach of the peace, noise or other disturbance directly tending to interrupt its proceedings, or disorderly, contemptous or insolent conduct towards a court or justice thereof, in its presence or during its session and tending to interrupt its proceedings, or in the presence of a jury while actually sitting or deliberating in any case.

Disobedience of order of court.

2.—Willful disobedience of, or resistance offered to or exerted against any lawful writ, mandate or order issued or made by any such court in a suit or action pending therein.

Criticism.

3.—Scurrilous or libelous criticism of the orders, judgments, writs or proceedings of any court published in any public print or newspaper or circular for circulation tending to bring the court or any of its members into undeserved disrepute.

4.—The unlawful or contumacious refusal of any person to be sworn or properly qualified as a witness in any case pending in such court, or after being sworn or qualified, the refusal without lawful excuse, to answer any legal interrogatory.

5.—The willful publication of any false or grossly inacurate report of judicial proceedings.

Provided, however, that the publication of any true and fair report of any judicial proceeding shall not be punishable as a contempt.

Penalty for contempt.

Section 36.—The courts shall have authority to punish a contempt against their authority by imprisonment not exceeding a period of thirty days, or by a fine not exceeding two hundred dollars or by both such fine and imprisonment, in the discretion of the court.

When imposable.

Section 37.—When contempt is committed in the immediate presence and view of the court, the punishment therefor may be imposed immediately by the judge of the court. When such a person is charged with contempt committed out of the presence of the court, no conviction can be had thereon, unless the person so charged shall have been given an opportunity to appear and defend against the charge, and whenever a person is fined or committed to jail for a contempt of court, an order or warrant for such fine or imprisonment must be signed by the judge delivering such sentence, setting forth the act or acts constituting such contempt, with the time and place of the commission thereof and the circumstances, and specifying the sentence of the court; otherwise such sentence will be wholly invalid and inoperative.

Issue of false certificate by public officer.

Section 38.—Every public officer authorized by law to make or give any certificate or writing, who makes and delivers as true any such certificate or writing containing statements which he knows to be false, is guilty of a misdemeanor.

Court officer disclosing facts guilty of misdemeanor.

Section 39.—Every prosecuting attorney, clerk, judge, or other officer who, except by issuing or in executing a warrant of arrest willfully discloses the fact of a presentment or information having been made for a felony, until the defendant has been arrested, is guilty of a misdemeanor.

Malicious procurement or warrants.

Section 40.—Every person who maliciously and without probable cause procures a search warrant or warrant of arrest to be issued and executed, is guilty of a misdemeanor.

Aiding, rescuing or attempting to rescue prisoner.

Section 41.—Every person who rescues or attempts to rescue, or aids another person in rescuing or attempting to rescue, any prisoner from the penitentiary or any jail, or from any officer or person having him in lawful custody is punishable as follows:

1.—If such prisoner was in custody upon a conviction of felony punishable by death; by imprisonment in the penitentiary not exceeding ten years;

2.—If such prisoner was in custody upon a conviction of any other felony; by imprisonment in the penitentiary not exceeding five years;

3.—If such prisoner was in custody upon a charge of felony; by a fine not exceeding one thousand dollars or imprisonment in jail not exceeding one year, or both.

4.—If such prisoner was in custody otherwise than upon a conviction of felony; by a fine not exceeding five hundred dollars or imprisonment not exceeding six months or by both.

Injury to personal property.

Section 42.—Every person who willfully injures or destroys, or takes or attempts to take, or assists any person in taking or attempting to take, from the custody of any officer or person any personal property which such officer or person has in charge under any process of law, is guilty of a misdemeanor.

Escape from prison.

Section 43.—Every person who shall escape from prison while serving his sentence shall be punishable by summary order of the competent court by imprisonment for an additional term of not exceeding one-fifth of the term of the original sentence.

Aiding in, by guard, etc.

Section 44.—Every keeper of a jail or penitentiary, assistants, jailer, or person employed as a guard, or otherwise, who fraudulently contrives, procures, aids, connives at, or voluntarily permits the escape of any prisoner in custody is punishable by imprisonment in the penitentiary not exceeding ten years or by a fine not exceeding two thousand five hundred dollars, or by both.

By other person.

Section 45.—Every other person who willfully assists any prisoner confined in any jail or penitentiary, or in the lawful custody of any officer or person to escape, or in an attempt to escape from such penitentiary or custody, is punishable by imprisonment not exceeding five years or a fine not exceeding one thousand dollars, or by both.

By furnishing means of.

Section 46.—Every person who carries or sends into a jail or penitentiary anything useful to aid a prisoner in making his escape, with intent thereby to facilitate the escape of any prisoner confined therein, is guilty of a misdemeanor.

Unlawful return to land from which removed.

Section 47.—Every person who has been removed from any lands by process of law, or who has removed from any land pursuant to the lawful adjudication, or direction of any court, tribunal, or officer, and who afterwards unlawfully returns to settle, reside upon, or take possession of such lands, is guilty of a misdemeanor.

CHAPTER FIVE.

OF CRIMES AGAINST THE PERSON.

Murder defined.

Section 1.—Murder is the unlawful killing of a human being, with malice aforethought.

Degrees of murder.

Section 2.—All murder which is perpetrated by means of poison, lying in wait, torture, or by any other kind of willful, deliberate, and premeditated killing, or which is committed in the perpetration or attempt to perpetrate arson, rape, burglary, robblery, or mayhem, is murder in the first degree, and all other kinds of murder are of the second degree.

Penalty.

Section 3.—Every person guilty of murder in the first degree shall suffer confinement in the penitentiary for life. Every person guilty of murder in the second degree is punishable by imprisonment in the penitentiary not less than ten years.

Manslaughter defined.

Section 4.—Manslaughter is the unlawful killing of a human being without malice aforethought. It is of two kinds:

Voluntary.

(1) Voluntary; upon a sudden quarrel or heat of passion.

Involuntary.

(2) Involuntary; in the commission of an unlawful act, not amounting to a felony; or in the culpable omision of some legal duty; or in the commission of a lawful act which might produce death, in an unlawful manner, or without due caution and circumspection.

Penalty.

Section 5.—Manslaughter is punishable by imprisonment in the penitentiary not exceeding ten years.

Homicide excusable, when.

Section 6.—Homicide is excusable in the following cases:

(1) When committed by accident and misfortune, or in doing any lawful act by lawful means, with usual and ordinary caution, and without any unlawful intent.

(2) When committed by accident and misfortune, in the heat of passion, upon any sudden and sufficient provocation, or upon a sudden combat, when no undue advantage is taken, nor any dangerous weapon used, and when the killing is not done in a cruel or unusual manner.

Justifiable, when.

Section 7.—Homicide is justifiable when committed by public officers, and those acting by their command in their aid and assistance, either:

(1) In obedience to any judgment of a competent court; or,

(2) When necessarily committed in overcoming actual resistance to the execution of some legal process, or in the discharge of any other legal duty; or,

(3) When necessarily committed in retaking felons who have been rescued or have escaped, or when necessarily committed in arresting persons charged with felony, and who are fleeing from justice or resisting such arrest.

Same.

Section 8.—Homicide is justifiable when committed by any person in any of the following cases:

(1) When resisting any attempt to murder any person, or to commit a felony, or to do some great bodily injury upon any person; or,

(2) When committed in defense of habitation, property, or person, against one who manifestly intends or endeavors, by violence or surprise to commit a felony, or against one who manifestly intends and endeavors, in a violent, riotous or tumultuous manner, to enter the habitation of another for the purpose of offering violence to any person therein; or,

(3) When committed in the lawful defense of such person, or of a wife or husband, parent, child, master, mistress, or servant of such person, when there is reasonble ground to apprehend a design to commit a felony, or to do some great bodily injury, and imminent danger of such design being accomplished; but such person, or the person on whose behalf the defense was made, if he was the assailant or engaged in mortal combat, must really and in good faith have endeavored to decline any further struggle before the homicide was committed; or,

(4) When necessarily committed in attempting by lawful ways and means to apprehend any person for any felony committed or in lawfully suppressing any riot, or in lawfully keeping or preserving the peace.

Discharge of the accused.

Section 9.—The homicide appearing to be justifiable or excusable, the person charged must, upon his trial, be acquitted and discharged.

Mayhem defined.

Section 10.—Every person who unlawfully and maliciously deprives a human being of a member of his body, or permanently disables, disfigures, or renders it useless, or cuts or disables the tongue, or puts out an eye, or slits the nose, ear or lip, is guilty of mayhem.

Penalty.

Section 11.—Mayhem is punishable by imprisonment in the penitentiary not exceeding fifteen years.

Kidnapping and child stealing defined.

Section 12.—Every person who forcibly steals, takes or arrests any person in the District and carries him from one part of the District to another part of the District; or into another country, State or Territory of the United States, or who forcibly takes or arrests any person with a design to take him out of the District without having esablished a claim, according to the laws of the District or of the United States applicable in the District, or who hires, persuades, entices, decoys, or seduces by false promises, misrepresentations, or the like, any person to go out of the District, or to be taken or removed therefrom for the purpose and with the intent to sell such person into slavery or involuntary servitude, or otherwise to employ him for his own use, or to the use of another, without the free will and consent of such persuaded person, or to unlawfully deprive such person of his liberty is guilty of kidnapping.

Punishment.

Section 13.—Kidnapping is punishable by imprisonment in the penitentiary not exceeding ten years.

Stealing of child under twelve years of age.

Section 14.—Every person who maliciously, forcibly or fraudulently takes or entices away any child under the age of twelve years, with intent to detain and conceal such child from its parents, guardian or other person having the lawful charge of such child, is punishable by imprisonment in the penitentiary not exceeding ten years.

Attempts to kill by poison.

Section 15.—Every person who with intent to kill, administers, or causes to be administered, to another, any poison or other noxious or destructive substance or liquid, but by which death is not caused, is punishable by imprisonment in the penitentiary not less than ten years.

Assault with intent to kill.

Section 16.—Every person who assaults another with intent to commit murder, is punishable by imprisonment in the penitentiary not exceeding fifteen years.

Physician in state of intoxication endangering life of another.

Section 17.—Every physician who, in a state of intoxication, does any act as such physician to another person by which the life of such person is endangered, is guilty of a misdemeanor.

Poisoning of food, etc.

Section 18.—Every person who willfully mingles any poison with any food, drink, or medicine, with intent that the same shall be taken by any human being, to his injury, and every person who willfully poisons any spring, well, or reservoir of water is punishable by imprisonment in the penitentiary for a term not less than ten years.

Assaults to commit rape, mayhem, robbery, etc.

Section 19.—Every person who assaults another with intent to commit rape, an infamous crime against nature, mayhem, robbery, or larceny, is punishable by imprisonment in the penitentiary not exceeding fourteen years.

Any felony except murder.

Section 20.—Every person who is guilty of an assault, with intent to commit any felony, except an assault with intent to commit murder, the punisment for which assault it not prescribed by the preceding section, is punishable by imprisonment in the penitentiary not exceeding five years, or by fine not exceeding five hundred dollars, or by both.

Administration of narcotics.

Section 21.—Every person guilty of administering to another any chloroform, ether, laudanum, or other narcotic, anesthetic, or intoxicating agent, with intent thereby to enable himself or assist any other person to commit a felony is guilty of felony.

Duel defined.

Section 22.—A duel is any combat with deadly weapons, fought between two or more persons by previous agreement or upon previous quarrel.

Penalty in case of death.

Section 23.—Every person guilty of fighting, aiding or assisting in, any duel, from which death ensues within a year and a day, is punishable by imprisonment in the penitentiary not exceeding seven years.

Penalty.

Section 24.—Every person who fights a duel, or who sends or accepts a challenge to fight a duel is punisable by imprisonment in the penitentiary or in jail not exceeding one year.

Posting or publishing for not sending challenge.

Section 25.—Every person who posts or publishes another for not fighting a duel, or for not sending or accepting a challenge to fight a duel, or who uses any reproachful or contemptuous language, verbal, written or printed, to or concerning another, for not sending or accepting a challenge to fight a duel, or with intent to provoke a duel, is guilty of a misdemeanor.

Acid, throwing of on person with intent to injure.

Section 26.—Every person who willfully and maliciously places or throws, or causes to be placed or thrown, upon the person of another, any vitriol, corrosive acid, pepper, hot water, or chemical of any nature with intent to injure the flesh or disfigure the body or clothes of such person is punishable by imprisonment in the penitentiary not exceeding ten years.

Assault and battery defined.

Section 27.—The use of any unlawful violence upon the person of another with intent to injure him, whatever be the means or the degree of violence used, is an assault and battery. Any attempt to commit a battery, or any threatening gesture showing in itself an immediate intention, coupled with a ability to commit a battery, is an assault.

When violence not assault.

Section 28.—Violence used to the person does not amount to an assault or an assault and battery in the following cases:

(1) In the exercise of the right of moderate restraint or correction given by the law to the parents over the child, the guardian over the ward, the master over his apprentice or minor servant, whenever the former be authorized by the parent or guardian of the latter so to do;

(2) For the preservation of order in a meeting for religious or other lawful purposes, in case of obstinate resistance to the person charged with the preservation of order;

(3) The preservation of peace, or to prevent the commission of offenses;

(4) In preventing or interrupting an intrusion upon the lawful possession of property, against the will of the owner or person in charge thereof;

(5) In making a lawful arrest and detaining the party arrested, in obedience to the lauful orders of a magistrate or court, and in overcoming resistance to such lawful order;

(6) In self defense or in defense of another against unlawful violence offered to his person or property.

Section 29.—In all cases mentioned in the preceding section, where violence is permitted to effect a lawful purpose, only that degree of force must be used which is necessary to effect such purpose.

Degree of force permissible.

Section 30.—No verbal provocation justifies an assault and battery, but insulting and abusive words may be given in evidence in mitigation of the punishment affixed to the offense.

Verbal provocation.

Section 31.—The punishment for simple assault, or for assault and battery, unattended with circumstances of aggravation, shall be by fine not exceeding fifty dollars.

Punishment.

Section 32.—An assault and battery becomes aggravated when committed under any of the following circumstances:

Aggravated assault and battery.

(1) When committed upon an officer in the lawful discharge of the duties of his office, if it was known or declared to the offender that the person assaulted was an officer discharging an official duty;

(2) When committed in a court of justice, or in any place of religious worship, or any place where persons are assembled for the purpose of innocent amusement;

(3) When the person committing the offense goes into the house of a private family and is there guilty of an assault and battery;

(4) When committed by a person of robust health upon one who is aged or decrepit;

(5) When committed by an adult male upon the person of a female or child, or by an adult female upon the person of a child;

(6) When the instrument or means used is such as inflicts disgrace upon the person assaulted, as an assault or battery with a whip, cowhide or cane;

(7) When a serious bodily injury is inflicted upon the person assulted;

(8) When committed with deadly weapons under circumstances not amounting to an intent to kill or maim;

(9) When committed with premeditated design, and by the use of means calculated to inflict great bodily injury;

(10) When committed by any person or persons in disguise.

Section 33.—The punishment for an aggravated assault or aggravated assault and battery, shall be by fine not exceeding five hundred dollars, or imprisonment in jail not exceeding one year, or by both such fine and imprisonment.

Punishment for aggravated assault, etc.

Section 34.—Robbery is the felonious taking of personal property in the possession of another, from his person or immediate presence and against his will accomplished by means of force or fear.

Robbery defined.

Section 35.—Robbery is punishable by imprisonment in the penitentiary not exceeding ten years.

Punishment for.

Section 36.—A libel is a malicious defamation, expressed either by writing, printing, or by signs or pictures, or the like tending to blacken the memory of one who is dead, or to impeach the honesty, integrity, virtue, or reputation, or publish the natural or alleged defects of one who is alive or any body corporate, or any religious denomination, or organization existing in the District, and thereby expose him to public hatred, contempt or ridicule.

Libel, defined

Section 37.—Every person who willfully publishes or procures to be published any libel, or distributes or causes to be distributed any libelous matter in the form of leaflets, cards, or any other manner whatsoever, either printed or written, posting or causing them to be posted in any place, is punishable by fine not exceeding five hundred dollars, or imprisonment not exceeding one year, or both such fine and imprisonment.

Punishment for.

Section 38.—An injurious publication is presumed to have been malicious if no justifiable motive for making it is shown.

Injurious publication presumed malicious.

Truth a defense, when.

Section 39.—In all criminal prosecutions for libel, the truth may be given in evidence, and if it appears to the court that the matter charged as libelous is true, and was published with good motives and for justifiable ends, the party shall be acquitted.

Requisites to sustain charge.

Section 40.—To sustain a charge of publishing a libel, it is not needful that the words or things complained of should have been read or seen by another. It is enough that the accused knowingly parted with the immediate custody of the libel, under circumstances which exposed it to be read or seen by any other person than himself.

Author, editor and proprietor chargeable.

Section 41.—Each author, editor, and proprietor of any book, newspaper, or serial publication, is chargeable with the publication of any words contained in any part of such book or number of such newspaper or serial.

Liability for report of judicial, legislative, or official proceedings.

Section 42.—No reporter, editor, or proprietor of any newspaper is liable to any prosecution for a fair and true report of any legislative, judicial, or other official proceedings, or of any statement, speech, argument or debate in the course of the same, excepting upon proof of malice in making such report, which shall not be implied from the mere fact of publication.

Privileged matter.

Section 43.—Libelous remarks or comments connected with matter privileged by the preceding section receive no privilege by their being so connected.

Privileged communication in libel.

Section 44.—A communication made to a person interested in the communication, by one who was also interested or who stood in such relation to the former as to afford a reasonable ground for supposing his motive innocent, is not presumed to be malicious, and is a privileged communication.

Threats to publish libel.

Section 45.—Every person who threatens another to publish a libel concerning him, or any parent, husband, wife or child of such person, or member of his family, and every person who offers to prevent the publication of any libel upon another person, with intent to extort any money or other valuable consideration from any person is guilty of a misdemeanor.

Publication of portraits.

Section 46.—It shall be unlawful to publish in any newspaper, handbill, poster, book or serial publication, or supplement thereto, the portrait of any living person a resident of the District other than that of a person holding a public office without the written consent of such person first had and obtained: Provided, That it shall be lawful to publish the portrait of a person convicted of a crime. It shall likewise be unlawful to publish in any newspaper, handbill, poster, book, or serial publication or suplement thereto, any caricature of any person residing in the district, which caricature will in any manner reflect upon the honor, integrity, manhood, virtue, reputation, or business or political motives of the person so caricatured, which tends to expose the individual so caricatured, to public hatred, ridicule or contempt.

—of caricatures.

Punishment.

A violation of this section shall be a misdemeanor and shall be punished by a fine of not exceeding five hundred dollars.

Persons liable for publication.

All persons concerned in said publication, either as owner or manager, editor or publisher, or engraver, are each liable for said publication.

Author of libel, guilt of.

Section 47.—The author of a libel in all cases is equally guilty and is subject to the same punishment as the publisher, owner, or proprietor of the newspaper or other printed publication in which the libelous article appears, and shall be liable to like punishment.

Slander defined.

Section 48.—Slander is a false and malicious utterance made by word of mouth in a public manner against a natural person or body corporate, whereby said natural person or body corporate is charged with the commission of a deed punishable by law.

Section 49.—Slander is also a tale, or report maliciously made tending to injure the honor, reputation or worthiness of a natural person or body corporate or any religious denomination or organization existing in the District.

What constitutes the crime of.

Section 50.—Any slanderous statement made whether in the presence of the injured person or in his absence, shall be presumed to be malicious and shall constitute the crime of slander.

Penalty for.

Section 51.—Any person convicted of slander shall be punished by a fine of not exceeding five hundred dollars or by imprisonment not exceeding six months.

Exceptions.

Section 52.—No oral, impartial and accurate account or exposition of judicial, legislative or of any other official act, nor of the statements made while in the discussion, argumentation and debating of said acts shall be considered malicious.

CHAPER SIX.

OF CRIMES AGAINST PUBLIC DECENCY AND GOOD MORALS.

Rape defined.

Section 1.—Rape is an act of sexual intercourse, accomplished with a female not the wife of the perpetrator, under any of the following circumstances:—

(1) Where the female is under the age of fifteen years;

(2) Where she is incapable, through lunacy or unsoundness of mind, whether temporary or permanent, of giving legal consent;

(3) Where she is prevented from resisting by threats of great and immediate bodily harm, accompanied by apparent power of execution, or by any intoxicating narcotic, or anesthetic substance, administered by or with the privity of the accused;

(4) Where she resists, but her resistance is overcome by force or violence.

Age.

Section 2.—No conviction for rape can be had against one who was under the age of fifteen years at the time of the act alleged, unless his physical ability to accomplish penetration is proved as an independent fact.

Essential guilt.

Section 3.—Any sextual penetration, however slight, is sufficient to complete the crime.

Rape, penalty for.

Section 4.—Rape is punishable by imprisonment in the penitentiary not exceeding ten years.

Forcible marriage or defilement.

Section 5.—Every person who takes any woman unlawfully, against her will, and by force, menace, or duress, compels her to marry him, or to marry any other person, or to be defiled, is punishable by imprisonment in the penitentiary not exceeding ten years.

Enticing unmarried females under age for purposes of prostitution.

Section 6.—Every person who inveigles or entices any unmarried female, of previous chaste character, under the age of twenty-one years, into any house of ill fame or of assignation, or elsewhere, for the purpose of prostitution, or to have illicit carnal connection with any man; and every person who aids or assists in such inveiglement or enticement; and every person who, by any false pretenses, false representation, or other fraudulent means, procures any female to have illicit carnal connection with any man, is punishable by imprisonment in the penitentiary not exceeding five years, or by a fine not exceeding one thousand dollars. Any person who shall willfully and lewdly commit any lewd or lascivious act, upon or with the body or any part or member thereof, of a child under the age of fifteen years, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of such person or of such child, shall be guilty of a felony and shall be imprisoned in the penitentiary not exceeding five years.

Penalty.

Penalty.

Seduction under promise to marry, penalty for.

Section 7.—Every person who, under promise of marriage, seduces and has sexual intercouse with an unmarried female of previous chaste character, is punishable by imprisonment in the penitentiary not exceeding three years, or by a fine of not more than two thousand dollars, or by both such fine and imprisonment.

Marriage prior to trial is bar to prosecution.

Section 8.—The intermarriage of the parties prior to the trial is a bar to a prosecution for a violation of the preceding section.

Abortion defined.

Section 9.—Every person who provides, supplies, or administers to any pregnant woman, or procures any such woman to take any medicine, drug or substance, or uses or employs any instrument or other means whatever, with intent thereby to procure the miscarriage of such woman, unless the same is necessary to preserve her life, is punishable by imprisonment in the penitentiary not exceeding five years.

Section 10.—Every person having a husband or wife living who marries any other person, except in the cases specified in the next section is guilty of bigamy.

Bigamy defined.

Section 11.—The preceding section does not extend:

Exceptions.

(1) To any person by reason of any former marriage, whose husband or wife by such marriage has been absent for five successive years, without being known to such person within that time to be living; nor,

(2) To any person by reason of any former marriage which has been pronounced void, annulled or dissolved by the judgment of a competent court.

Section 12.—Bigamy is punishable by fine not exceeding two thousand dollars, or by imprisonment in the penitentiary not exceeding three years or by both.

Penalty.

Section 13.—Every person who knowingly and willfully marries the husband or wife of another, in any case in which the husband or wife would be punishable under the provisions of this Chapter, is punishable by fine not less than two thousand dollars or by imprisonment in the penitentiary not exceeding three years or by both.

Marrying wife or husband or another knowingly and willfully.

Section 14.—Persons being within the degrees of consanguinity within which marriages are declared by law to be void, who knowingly intermarry with each other, or who commit fornication or adultery with each other are punishable by imprisonment in the penitentiary not exceeding ten years.

Persons within degrees of consanguinity—intermarrying of—fornication or adultery.

Section 15.—Every person authorized to solemnize marriages, who willfully and knowingly solemnizes any marriage forbidden by law, is punishable by fine of not more than one thousand dollars, or by imprisonment in jail not exceeding one year, or by both.

Solemnizing marriages forbidden by law.

Section 16.—Every person authorized to solemnize any marriage, who willfully makes a false return of any marriage or pretended marriage to the court, or without the authority of law, or whoever contracts such a marriage or whoever knowingly takes part in the celebration thereof, and every person who willfully makes a false record of any marriage return; is punishable as provided in the preceding section.

False returns of marriage.

Section 17.—Every person who is guilty of an infamous crime against nature, committed with mankind or with any animal, is punishable by imprisonment in the penitentiary not exceeding ten years.

Infamous crime against nature.

Section 18.—Every person who mutilates, disinters, or removes from the place of sepulture the dead body of a human being without authority of law, is guilty of felony. But the provisions of this section do not apply to any person who removes the dead body of a relative or friend for reinterment.

Mutilation of or removal of dead

Section 19.—Every person who willfully and maliciously defaces, breaks, destroys, or removes any tomb, monument or gravestone, erected to any deceased person, or any momento or memorial; or any ornamental plan, tree, or shrub, appertaining to the place of burial of a human being, or shall mark, deface, injure, destroy, or remove any fence, post, rail, or wall of any cemetery or graveyard, is guilty of a misdemeanor.

Removal or defacement of tomb, monument, gravestone, etc.

Section 20.—Every person who shall bury or inter, or cause to be buried or interred without the permision of competent authority, the dead body of any human being, or any human remains, in any place except in a cemetery or place of burial, now existing, and in which interments have been made, or that is now or may hereafter be established or organized, shall be guilty of a misdemeanor.

Burial in place other than cemetery.

Section 21.—Every person who willfully and lewdly, either:

Willful and lewd exposure of person.

(1) Exposes his person or the private parts thereof in any public place, or in any place where there are present other persons to be offended or annoyed thereby; or,

(2) Procures, counsels, or assists any person so to expose himself, or to take part in any model artist exhibition, or to make any other exhibition of himself to public view or to the view of any number of persons, such as is offensive to decency, or is adapted to excite to lewd or vicious thoughts or acts; or

Publication or sale of obscene matter.

(3) Writes, composes, stereotypes, prints, publishes, sells, distributes, keeps for sale, or exhibits any obscene or indecent writing, paper or books; or designs, copies, draws, engraves, paints, or otherwise prepares any obscene or indecent picture or print; or molds, cuts, casts, or likewise makes any obsecene or indecent figure; or

Advertisement of

(4) Writes, composes, or publishes any notice or advertisement of any such writing, paper, book, picture, print, or figure; or,

(5) Sings any lewd or obscense song, ballad, or other words in any public place, or in any place where there are persons present to be offended or annoyed thereby, is guilty of a misdemeanor.

Keeping disorderly house for purpose of prostitution.

Section 22.—Every person who keeps any disorderly house, or any house for the purpose of prostitution or assignation, or any house of public resort, by which the peace, comfort, or decency of the immediate neighborhood is habitually disturbed, and every person who lets any apartment or tenement knowing that it is to be used for the purpose of assignation or prostitution, is guilty of a misdemeanor.

Prevailing upon person to visit house of prostitution or for gambling.

Section 23.—Whoever through invitation or device, prevails upon any person to visit any room, building, or other places kept for the purpose of gambling or prostitution, is guilty of a misdemeanor.

Children, neglect of. Penalty.

Section 24.—Every parent of any child who wilfully omits, without lawful excuse, to perform any duty imposed upon him by law, to furnish necessary food, clothing, shelter, or medical attention for such child, is guilty of a misdemeanor.

Abandonment.

Penalty for.

Section 25.—Every parent of any child under the age of ten years, and every person to whom any such child has been confided for nurture or education who deserts such child in any place whatever, with intent wholly to abandon it, is punishable by imprisonment in the penitentiary not exceeding seven years.

Hiring under age of 12 years.

Section 26.—Any person, whether as parent, relative, guardian, employer or otherwise, having in his care, custody, or control any child under the age of twelve years who shall sell, apprentice, give away, let out, or otherwise dispose of any such child to any person, under any name, title, or pretense, for the vocation, use, occupation, calling or service of begging, in any public street or highway or in any mendicant business whatsoever, and any person who shall take, receive, hire, employ, use or have in custody any child for such purposes, or any of them, is guilty of a misdemeanor.

Lottery defined.

Section 27.—A lottery is any scheme for the disposal or distribution of money or property by chance, among persons who have paid or promised to pay any valuable consideration for the chance of obtaining such property or a portion of it, or for any share or interest in such money or property, upon any agreement, understanding, or expectation that it is to be distributed or disposed of by lot or chance, whether called a lottery, raffle, gift, enterprise, or by whatever name the same be known; Provided, the Director of Police may permit raffles in good faith.

Contriving or setting up.

Section 28.—Every person who contrives, prepares, sets up, proposes, or draws any lottery, is guilty of a misdemeanor.

Sale of lottery tickets or chances.

Section 29.—Every person who sells, gives, or in any manner whatever furnishes or transfers to or for any other person any ticket, chance, share, or interest, of any paper, certificate, or instrument purporting or understood to be or to represent any ticket, chance, share, or interest in, or depending upon the event of any lottery, is guilt of a misdemeanor.

Section 30.—Every person who deals, plays or carries on, opens or causes to be opened, or who conducts, either as owner or employee, whether for hire or not, any game of faro, monte, roulette, fantan, poker, sevent-and-a half, twenty-one, hoky-poky, or any game of chance played with dice, cards or any device for money, checks, credit, or other representative of value and every person who plays or bets at or against any of the said prohibited games, or is willfully present where any said game is being played, is guilty of a misdemeanor and shall be punished by a fine not exceeding one hundred dollars, or by imprisonment not exceeding six months, or by both.

Dealing, playing, or carrying on gambling games.

Section 31.—Every person who knowingly permits any of the games mentioned in the preceding section to be played, conducted, or dealt in any house owned or rented by such person, in whole or in part, is punishable as provided in the preceding section.

Permitting of gambling by owner of house.

Section 32.—Every person who willfully reproduces, copies, imitates, forges, or counterfeits, or procures to be reproduced, copied, imitated, forged, or counterfeited, any trade mark usually affixed by any person to his goods, which has been duly recorded in the office of the Government Secretary or with the Commissioner of Patents in the United States Patent Office, or any label or brand, composed in whole or in part of a reproduction of said trade mark, who affixes the same to goods of essentially the same descriptive properties and qualities as those referred to in the registration of such trade mark, with intent to pass off, or to assist other persons to pass off, any goods to which such reproduced, copied, imitated, forged, or counterfeited trade mark or label, or brand is affixed, or intended to be affixed as the goods of the person, firm, company, or corporation owing the said trade mark, is guilty of a misdemeanor

Reproducing, copying, forging, or counterfeiting trade - mark, label or brand.

Section 33.—Every person who sells or keeps for sale, or manufactures or prepares, for the purpose of sale, any goods upon or to which any reproduced, copied, imitated, forged, or counterfeited trade mark, or label, or brand, composed in whole or in part of such reproduced, copied, imitated, forged or counterfeited trade mark, has been affixed, after such trade mark has been recorded in the office of the Government Secretary, or with the Commissioner of Patents in the United States Patent Office, intending to represent such goods as the genuine goods of the person, firm, company, or corporation, owning the said trade-mark, knowing the same to be reproduced, copied, imitated, forged, or counterfeited, is guilty of a misdemeanor.

Manufacture or sale of goods having affixed false trade mark, etc.

Section 34.—Every person who marks or brands, alters or defaces the mark or brand of any animal, belonging to another with intent thereby to steal the same or to prevent identification thereof by the true owner, is punishable by imprisonment in the penitentiary for not more than five years.

Altering brand or misbranding animals.

Section 35.—Every member of a partnership, who commits any fraud in the affairs of the partnership, is punishable by imprisonment not exceeding two years, or by fine not exceeding two thousand dollars, or by both.

Member of partnership.

Section 36.—Every person guilty of any harsh, cruel, or unkind treatment of, or any neglect of duty towards any idiot, lunatic, or insane person, is guilty of a misdemeanor.

Ill treatment of person non compos mentis.

Section 49.—Slander is also a tale, or report maliciously made tending to injure the honor, reputation or worthiness of a natural person or body corporate or any religious denomination or organization existing in the District.

What constitutes the crime of.

Section 50.—Any slanderous statement made whether in the presence of the injured person or in his absence, shall be presumed to be malicious and shall constitute the crime of slander.

Penalty for.

Section 51.—Any person convicted of slander shall be punished by a fine of not exceeding five hundred dollars or by imprisonment not exceeding six months.

Exceptions.

Section 52.—No oral, impartial and accurrate account or exposition of judicial, legislative or of any other official act, nor of the statements made while in the discussion, argumentation and debating of said acts shall be considered malicious.

CHAPTER SEVEN.

OF CRIMES AGAINST THE PUBLIC SAFETY.

Steam boiler or engine bursting through negligence or ignorance of engineer.

Section 1.—Every engineer or other person having charge of any steam-boiler, steam-engine, or other apparatus for generating or employing steam, used in any manufactory, railway, or other works, who willfully, or from gross neglect, creates, or allows to be created such an undue quantity of steam as to burst or break the boiler or engine, or apparatus, or cause any other accident whereby human life is endangered, is guilty of a felony.

—causing death.

Section 2.—Every person having charge of any steam-boiler or steam-engine, or other apparatus for generating or employing steam, used in any manufactory, or on any railroad, or in any vessel, or in any kind of mechanical work, who willfully or from neglect, creates or allows to be created, such an undue quantity of steam as to burst or break the boiler, engine, or apparatus, or to cause any other accident whereby the death of a human being is produced, is guilty of a felony.

Public nuisance defined.

Section 3.—Anything which is injurious to health, or is indecent, or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, by an entire community or neighborhood, or by any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake or river, bay, stream, canal, or basin, or any public park, square, street, or highway, is a public nuisance.

Punishment.

Section 4.—Every person who maintains or commits any public nuisance, the punishment for which is not otherwise prescribed, or who willfully omits to perform any legal duty relating to the removal of a public nuisance, is guilty of a misdemeanor.

Neglect to perform duties under health laws.

Section 5.—Every person charged with the performance of any duty under the laws relating to the preservation of the public health, who willfully neglects or refuses to perform the same, is guilty of a misdemeanor except in cases where a specific punishment is prescribed.

Setting fire to goods, grasses, etc.

Section 6.—Every person who willfully and maliciously or negligently sets on fire, or causes or procures to be set on fire, any goods, grasses or shrubbery or other property, on any lands, is guilty of a misdemeanor.

Disobedience of orders of fireman at fire.

Section 7.—Every person who, at the burning of a building, disobeys the lawful orders of any public officer or fireman, or offers any resistance to or interferes with the lawful efforts of any fireman or company of firemen to extinguish the same, or engages in any disorderly conduct calculated to prevent the same from being extinguished, or who forbids, prevents, or dissuades others from assisting to extinguish the same, is guilty of a misdemeanor.

Failure to ring locomotive bell at crossing.

Section 8.—Every person in charge of a locomotive engine, who, before crossing any traveled public way, omits to cause a bell to ring or a whistle to sound, at the distance of at least one hundred and fifty meters from the crossing, and up to it, is guilty of a misdemeanor.

Exposure in public place while suffering from contagious disease.

Section 9.—Every person who willfully exposes himself or another afflicted with any contagious or infectious disease in any public place or thoroughfare, except in his necessary removal in a manner the least dangerous to the public health, is guilty of a misdemeanor.

Suffering ferocious or vicious animals to go at large.

Section 10.—If the owner of a ferocious, vicious or mischievous animal, knowing its propensities, willfully suffers it to go at large, or keeps it without ordinary care, and such animal, while so at large, or while not kept with ordinary care, kills or seriously injures any human being who has taken all

the precautions which the circumstances permitted, or which a reasonable person would ordinarily take, in the same situation, is guilty of a misdemeanor.

Aiding or advising to commit suicide.

Section 11.—Every person who deliberately aids, or advises or encourages another to commit suicide, is guilty of a felony.

Certain diseased animals to be killed.

Section 12.—Every animal having glanders or any other simi-contagious or infectious disease shall at once be deprived of life by the owner or person having charge thereof, upon the order of the Director of Health; and any such owner or person omitting or refusing to comply with the provisions of this section shall be guilty of a misdemeanor.

Failure to report cattle suffering from contagious disease.

Section 13.—Every person who owns or has the custody of any cattle, horses, mules or asses infected with a contagious diseases, and fails to immediately report the same to the Director of Health, or conceals the existence of such disease, or attempts so to do, or willfully obstructs or resists the health authorities in the discharge of their duty as provided by law, or sells, gives away or uses the meat or milk, or removes the skin or any part of such animal, is punishable by fine not exceeding three hundred dollars or imprisonment not exceeding one year, or by both.

Abandonment of boiler under steam pressure.

Section 14.—Whoever shall willfully abandon a steam boiler while said boiler is under a pressure of steam shall be guilty of a misdemeanor.

CHAPTER EIGHT.

OF CRIMES AGAINST THE PUBLIC PEACE.

Interference with religious worship.

Section 1.—Every person who willfully disturbs or disquiets any assemblage of people met for religious worship, or any other purpose not unlawful in character, by noise, profane discourse, rude or indecent behavior, or by any unnecessary noise, either within the place where such meeting is held, or so near as to disturb the order and solemnity of the meeting, is guilty of a misdemeanor; and every person who without authority of law willfully disturbs or breaks up any assembly or meeting not unlawful in its character is guilty of a misdemeanor.

Riot defined.

Section 2.—Any use of force or violence, disturbing the public peace or any threat to use such force or violence if accompanied by immediate power of execution, by three or more persons acting together and without authority of law, is a riot.

Participation in riot.

Section 3.—Every person who participates in any riot is punishable by imprisonment in the penitentiary not exceeding two years, or by fine not exceeding two thousand dollars or by both.

Riot defined.

Section 4.—Whenever three or more persons assembled and acting together, make any attempt or advance toward the commission of an act which would be a riot if actually committed, such assembly is a riot.

Unlawful assembly defined.

Section 5.—Whenever three or more persons assemble together to do an unlawful act, and separate without doing or advancing toward it, or do a lawful act in a violent, boisterous, or tumultuous manner, such assembly is an unlawful assembly.

Participation in.

Section 6.—Every person who participates in any riot or unlawful assembly is guilty of a misdemeanor.

Remaining present at place of riot, rout, etc.

Section 7.—Every person remaining present at the place of any riot, rout, or unlawful assembly, after the same has been lawfully warned to disperse, except public officers and persons assisting them in attempting to disperse the same, is guilty of a misdemeanor.

Neglect to supress unlawful or riotous assembly.

Section 8.—If a public, or police officer, having notice of an unlawful or riotous assembly, mentioned in this chapter, neglects to proceed to the place of assembly or as near thereto as he can with safety, and to exercise the authority with which he is invested for suppressing the same and arresting the offenders, he is guilty of a misdemeanor.

Drawing, exhibiting or unlawfully using deadly weapon.

Section 9.—Every person who, not in necessary self-defense, in the presence of two or more persons, draws or exhibits any deadly weapon in a rude, angry, and threatening manner, or who, in any manner unlawfully uses the same, in any fight or quarrel, is guilty of a misdemeanor.

Use of force and violence in entering lands, etc.

Section 10.—Every person using or procuring, encouraging or assisting another to use any force or violence in entering upon or detaining any lands, or other property, public or private, except in the cases and in the manner provided by law, is punishable by imprisonment not exceeding two years or a fine of not more than one thousand dollars. And every person entering in another person's domicile, against the express consent of the tenant, except also in the cases and in the manner provided by law, is punishable by imprisonment not exceeding six months or fine not more than five hundred dollars or by both.

CHAPTER NINE.

OF CRIMES AGAINST THE REVENUE.

Section 1.—Any public officer and every person charged with the receipts, safekeeping, transfer or disbursement of public moneys, who either: *Public moneys.*

(1) Without authority of law, appropriates the same, or any portion thereof to his own use or to the use of another; or *Appropriating funds.*

(2) Fails to keep the same in his possession until disbursed or paid out by authority of law; or, *Failing to keep in possession.*

(3) Loans the same, or any portion thereof; or makes a profit out of, or uses the same for any purpose not authorized by law; or, *Loaning or making profit.*

(4) Unlawfully deposits the same, or any portion thereof, in any bank, or with any banker or other person; or, *Unlawfully depositing.*

(5) Changes or converts any portion thereof from coin into currency, or from currency into coin or other currency, without authority of law; or, *Changing or converting.*

(6) Knowingly keeps any false account, or makes any false entry or erasure in any account of or relating to the same; or, *Keeping false account.*

(7) Fraudulently alters, falsifies, conceals, destroys or obliterates any account, or documents relating thereto; or, *Altering accounts or documents.*

(8) Willfully refuses or omits to pay over, on demand, any public moneys in his hands, upon the presentation of a draft, order or warrant drawn upon such moneys by competent authority; or, *Refusing or omitting to pay over funds.*

(9) Willfully omits to transfer the same, when such transfer is required by law; or, *Omitting to transfer funds.*

(10) Willfully omits or refuses to pay over to any officer or person authorized by law to receive the same, any money received by him under any duty imposed by law so to pay over the same; *Refusing to pay proper officer.*

is punishable by imprisonment in the penitentiary for not exceeding five years, or by fine not exceeding two thousand dollars, or by both, and is disqualified from further holding any public office. *Punishment.*

Section 2.—Every officer charged with the receipt, safekeeping, or disbursement of public money, who neglects or fails to keep and pay over the same in the manner prescribed by law, is guilty of a felony. *Officer failing to keep and pay over funds.*

Section 3.—The phrase "public moneys", as used in the preceding sections, includes all bonds and evidences of indebtedness, and all moneys belonging to the Government or Municipality. *Public moneys defined.*

Section 4.—Any clerk, sheriff, or other officer who receives any fine or forfeiture and refuses or neglects to pay over the same according to law, is guilty of a felony. *Refusal of officer to pay over fine, etc.*

Section 5.—Any person, agent or officer of any institution, corporation or company, who shall give or return a false or fraudulent list, schedule or statement as required by any Law; or who shall willfully fail or refuse to take and subscribe to any of the oaths, affidavits or affirmations required by law, is guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding five hundred dollars, or by imprisonment not exceeding one year, or by both. *Fraudulent lists, etc.*

CHAPTER TEN.

OF CRIMES AGAINST PROPERTY.

Arson defined.

Section 1.—Arson is the willful and malicious burning of a building of another with intent to destroy it.

Building defined.

Inhabited building.

Section 2.—Any house, edifice, structure, vessel, or other erection, capable of affording shelter for human beings, or appurtenant to or connected with an erection so adapted, is "building" within the meaning of this chapter; and, any building which has usually been occupied by any person lodging therein at night is an "inhabited building", within the meaning of this chapter.

Burning defined.

Section 3.—To constitute a burning within the meaning of this chapter, it is not necessary that the building set on fire should have been destroyed. It is sufficient that fire is applied so as to take effect upon any part of the substance of the building.

What constitutes.

Section 4.—To constitute arson it is not necessary that a person other than the accused should have had ownership in the building set on fire. It is sufficient that at the time of the burning another person was rightfully in possession of or was actually occupying such building, or any part thereof.

Degrees, first and second.

Section 5.—The malicious burning in the night-time of an inhabited building in which there is at the time some human being is arson in the first degree. All other kinds of arson are of the second degree.

Penalty for.

Section 6.—Arson is punishable by imprisonment in the penitentiary as follows:

(1) Arson in the first degree, for not less than ten years.

(2) Arson in the second degree, for not exceeding ten years.

Burning of bridge, building or vessel, crops, grass, tree, or fence. Penalty for.

Section 7.—Every person who willfully and maliciously burns any brigde exceeding in value fifty dollars, or any building or vessel, not the subject of arson, or any growing or standing crop, grass or tree, or any fence, not the property of such person, is punishable by imprisonment not exceeding ten years.

Burglary defined.

Section 8.—Every person who enters any house, room, apartment, tenement, shop, ware-house, store, barn, stable, outhouse, or other building, tent, vessel or car, with intent to commit grand or petit larceny, or any crime is guilty of burglary.

Degrees.

Section 9.—Every burglary committed in the night time is burglary in the first degree, and every burglary committed in the day time is burglary of the second degree.

Punishment.

Section 10.—Burglary of the first degree is punishable by imprisonment in the penitentiary for not exceeding fifteen years. Burglary of the scond degree is punishable by imprisonment not exceeding five years.

Night-time defined.

Section 11.—The phrase "night-time" as used in this chapter means the period between sunset and sunrise.

Forgery and counterfeiting.

Section 12.—Every person who, with intent to defraud another, falsely makes, alters, forges, or counterfeits any charter, letters patent, deed, lease, indenture, writing obligatory, will, testament, codicil, annuity, bond, covenant, bankbill or note, post-note, check, draft, bill of exchange, contract, promissory note, due bill for the payment of money or property, receipt for money or property, passage ticket, power of attorney, or any certificate of any share, right, interest in the stock of any corporation or association, or any comptroller's warrant for the payment of money at the treasury, treasurer's order or warrant, or request for the payment of money or the delivery of goods or

chattels of any kind, or for the delivery of any instrument of writing, acquittance, release or receipt for money or goods, any acquittance, release or discharge for any debt, account, suit, action, demand, or other thing, real or personal, or any transfer or assurance of money, certificates of shares of stock, goods, chattels, or other property whatever or any letter of attorney, or other power to receive money, or to receive or transfer certificates of shares of stock or annuities, or to let, lease, dispose of, alien, or convey any goods, chattels, lands or tenements, or other estate, real or personal, or any acceptance or indorsement of any bill of exchange, promissory note, draft, order or assignment, of any bonds, writing obligatory, or promissiory note for money or other property, or counterfeits or forges the seal or handwriting of another, utters, publishes, passes, or attempts to pass, as true and genuine, any of the above named false, altered, forged or counterfeited matters, as above specified and described, knowing the same to be false, altered, forged or counterfeited, with intent to prejudice, damage, or defraud, any person; or who, with intent to defraud, alters, corrupts, or falsifies any record of any will, codicil, conveyance, or other instrument, the record of which is by law evidence, or any record of any judgment of a court or the return of any officer to any process of any court, is guilty of forgery.

Records.

Section 13.—Every person who, with intent to defraud another, makes, forges, or alters any entry in any books or records, or any instrument purporting to be any record or return specified in the preceding section, is guilty of forgery.

Seals.

Section 14.—Every person who, with intent to defraud another, forges or counterfeits the Government seal, the seal of any public officer authorized by law, the seal of any court of record, or the seal of any corporation, or any other public seal authorized or recognized by the law, or of any State, government, or country, or who falsely makes, forges, or counterfeits any impression purporting to be an impression of any such seal, or who has in his possession any such counterfeit seal, or impression thereof, knowing it to be counterfeited, and willfully conceals the same, is guilty of forgery.

Penalty for forgery.

Section 15.—Forgery is punishable by imprisonment in the penitentiary for not exceeding fifteen years.

Having in possession forged notes or bills.

Section 16.—Every person who has in his possession or receives from another person any forged promissory note or bank-bill, or bills for payment of money or property, with the intention to pass the same or to permit, cause, or procure the same to be uttered or passed with the intention to defraud any person, knowing the same to be forged or counterfeited, or has or keeps in his possession any blank or unfinished note or bank bill made in the form or similtude of any promissory note or bill for payment of money or property made to be issued by any incorporated bank or banking company with intention to fill and complete such blank and unfinished note or bill, or to permit or cause, or procure the same to be filled up and completed, in order to utter or pass the same, or to permit or cause, or procure the same to be uttered or passed, or to defraud any person, is punishable by imprisonment in the penitentiary not exceeding ten years.

Fraudulent telegram, radio, etc.

Section 17.—Every person who knowingly and willfully sends by telegraph, radio or cable, to any person a false or forged message, purporting to be from such telegraph, radio or cable office or from any other person or who willfully delivers or causes to be delivered to any person any such message falsely purporting to have been received by telegraph, etc., or who furnishes, or conspires to furnish, or causes to be furnished, to any agent, operator, or employee, to be sent by telegraph, etc., or to be delivered, any such message knowing the same to be false or forged, with the intent to deceive, injure, or defraud another is punishable by imprisonment in the penitentiary not exceeding five years or by fine not exceeding five thousand dollars or by both.

Forgery of evidence of debt, etc.

Section 18.—Every person who makes, utters, passes, or publishes, with intention to defraud any other person, or who, with like intention, attempts to pass, utter or publish, any fictitious bill, note, or check, or other instrument in writing for the payment of money or property of some bank, corporation, copartnership, or individual when, in fact, there is no such bank, corporation, copartnership, or individual in existence, knowing the bill, note, check, or instrument in writing to be fictitious is punishable by imprisonment in the penitentiary for not exceeding fifteen years.

Counterfeiting gold or silver coin, etc.

Section 19.—Every person who counterfeits any of the species of gold or silver coin current in the District, or any kind or species of gold dust, gold or silver bullion, or bars, lumps, pieces, or nuggets, or promises, causes or procures the same to be sold, uttered, or passed, with intention to defraud any person, knowing the same to be counterfeited, is guilty of counterfeiting and shall be punished by imprisonment in the penitentiary for not exceeding fifteen years.

Possession of counterfeit gold or silver coin, Uttering of.

Section 20.—Every person who has in his possession or receives from any other person, any counterfeit gold or silver coin of the species current in the District, or any counterfeit gold dust, gold, or bullion or bars, lumps, pieces, or nuggets, with the intention to sell, utter, put off, or pass the same, or permits, causes, or procures the same to be sold, uttered or passed, with intention to defraud any person, knowing the same to be counterfeited, is punishable by imprisonment in the penitentiary not exceeding ten years.

Larceny defined.

Section 21.—Larceny is the unlawful taking, stealing, carrying, leading, or driving away the personal property of another.

Degrees.

Section 22.—Larceny is devided into two degrees, grand larceny and petit larceny.

Grand larceny.

Section 23.—Grand larceny is committed in either of the following cases:

(1) When the property taken is of the value of fifty dollars and upwards, or

(2) When the property is taken from the person of another, or

(3) When the property taken is a boat, horse, mare, gelding, steer, bull, cow, calf, mule, jack, jenny, hog, sheep or goat.

Petit larceny.

Section 24.—Larceny in other cases is petit larceny and is punishable accordingly.

Punishment for grand larceny.

Section 25.—Grand larceny is punishable by imprisonment in the penitentiary for not exceeding ten years.

Punishment for petit larceny.

Section 26.—Petit larceny is punishable by fine not exceeding five hundred dollars, or by imprisonment not exceeding one year, or both.

Conversion of real estate into personal property.

Section 27.—Every person who shall convert any manner of real estate, of the value of fifty dollars and upwards, into personal property, by severing the same from the realty of another, with intent to steal, take, and carry away the same shall be deemed guilty of grand larceny.

Every person who shall convert any manner of real estate of the value of under fifty dollars, into personal property by severing the same from the realty of another, with intent to steal, take and carry away the same, shall be deemed guilty of petit larceny.

Finder of lost property appropriating the same to his own use.

Section 28.—One who finds lost property, and who appropriates such property to his own use, or to the use of another person not entitled thereto, is guilty of larceny.

Theft of evidence of debt.

Section 29.—If the thing stolen consists of any evidence of debt, or other written instrument, the amount of money due thereupon, or secured to be paid thereby, and remaining unsatisfied, or which in any contingency might

be collected thereon, or the value of the property the title to which is shown thereby, or the sum which might be recovered in the absence thereof, is the value of the thing stolen.

Section 30.—The provisions of this chapter apply where the thing taken is any fixture or part of the realty, and is severed at the time of the taking, in the same manner as if the thing had been severed by another person at a previous time. Scope of chapter.

Section 31.—Every person who for his own gain, or to prevent the owner from again possessing his property, buys or receives any personal property knowing the same to have been stolen, is punishable by imprisonment in the penitentiary not exceeding five years where the value of said property is fifty dollars or more, or by imprisonment not exceeding one year where the value of said property is under fifty dollars; and it shall be presumptive evidence that such property was stolen, if the same consists of jewelry, silver, plated ware, or articles of personal ornament, or junk if purchased or received from a person under the age of eighteen, unless such property is sold by said minor at a fixed place of business carried on by said minor or his employer. Receiving stolen property.

Section 32.—Embezzlement is the fraudulent appropriation of property by a person to whom it has been intrusted. Embezzlement defined.

Section 33.—Every officer of the district or municipality and every deputy, clerk, or servant of such officer, and every officer, director, trustee, clerk, servant, attorney, or agent of any association, society, or corporation (public or private), who fraudulently appropriates to any use or purpose not in the due and lawful execution of his trust, any property which he has in his possession or under his control by virtue of his trust, or secretes it with a fraudulent intent to appropriate it to such use or purpose, is guilty of embezzlement. Who may be guilty of.

Section 34.—Every carrier or other person having under his control personal property for the purpose of transportation for hire, who fradulently appropriates it to any use or purpose, inconsistent with the safekeeping of such property and its transportation according to his trust is guilty of embezzlement, whether he has broken the package in which such property is contained or has otherwise separated the items thereof, or not. By common carriers.

Section 35.—Every trustee, banker, merchant, broker, attorney, agent, assignee in trust, executor, administrator, or collector, or person otherwise intrusted with or having in his control property for the use of any other person, who fraudulently appropriates it to any use or purpose not in the due and lawful execution of his trust, or secretes it with a fraudulent intent to appropriate it to such use or purpose is guilty of embezzlement. By trustee, banker, merchant, broker, attorney, agent, etc.

Section 36.—Every person intrusted with any property as bailee, tenant, or lodger, or with any power of attorney for the sale or transfer thereof, who fraudulently converts the same or the proceeds thereof to his own use, or secrets it or them with a fraudulent intent to convert to his own use, is guilty of embezzlement. —by bailee, tenant or lodger.

Section 37.—Every clerk, agent, or servant of any person who fraudulently appropriates to his own use, or secretes with a fraudulent intent to appropriate to his own use, any property of another which has come into his control or care by virtue of his employment as such clerk, agent or servant, is guilty of embezzlement. —by clerk, agent or servant.

Section 38.—Any evidence of debt, negotiable by delivery only, and actually executed, is the subject of embezzlement, whether it has been delivered or isued as a valid instrument or not. Evidence of debt; subject of.

Punishment for.

Section 39.—Every person guilty of embezzlement is punishable in the manner prescribed for feloniously stealing property of value of that embezzled; and where the property embezzled is an evidence of debt or right of action the sum due upon it or secured to be paid shall be taken as its value.

Extortion defined.

Section 40.—Extortion is the obtaining of property from another, with his consent, induced by a wrongful use of force or fear, or under color of official right and is punishable by imprisonment in the penitentiary not exceeding five years.

Signature obtained by extortion.

Section 41.—Every person who, by extortionate means, obtains from another his signature to any paper or instrument, whereby, if such signature were freely given, any property would be transferred, or any debt, demand, charge, or right of action created, is punishable in the same manner as if the actual delivery of such debt, demand, charge, or right of action were obtained.

Letter or writing for purpose of.

Section 42.—Every person who, with intent to extort any money or other property from another, sends or delivers to any person any letter or other writing, whether subscribed or not, expressing or implying, or adapted to imply any threat, is punishable in the same manner as if such money or property were actually obtained by means of such threat.

Threat in writing to accuse of crime.

Section 43.—Every person who knowingly, willfully and maliciously sends or delivers to another any letter or writing, whether subscribed or not, threatening to accuse him or another of a crime, or to expose or publish any of his failings or infirmities, is guilty of a misdemeanor.

False personation.

Section 44.—Every person who falsely personates another and in such assumed character does any act whereby, if it were done by the person falsely personated, he might, in any event, become liable to any suit or prosecution, or to pay any sum of money, or to incur any charge, forfeiture, or penalty, or whereby any benefit might accrue to the party personating, or to any other person; receives any money or property, knowing that it is intended to be delivered to the individual so personated, with intent to convert the same to his own use, or to that of another person, or to deprive the true owner thereof, is punishable by imprisonment in the penitentiary not exceeding two years or by fine not exceeding one thousand dollars or by both.

Parties to fraudulent conveyance of property.

Section 45.—Every person who is a party to any fraudulent conveyance of any property, real or personal, or any right or interest issuing out of the same, or to any bond, suit, judgment, or execution, contract or conveyance, had, made or contrived, with intent to deceive and defraud others, or to defeat, hinder, or delay creditors or others of their just debts, damages, or demands; or who, being a party as aforesaid, at any time wittingly and willingly puts in, uses, avows, maintains, justifies or defends the same, or any of them, as true, done, had, or made in good faith, or upon good consideration, or aliens, assigns, or sells any of the property, real or personal, or other things before mentioned, to him or them conveyed as aforesaid, or any part thereof, is guilty of a misdemeanor.

Defrauding of money or property by false personation.

Section 46.—Every person who knowingly and designedly, by false or fraudulent representation or pretenses, defrauds any other person of money or property, is punishable in the same manner and to the same extent as for larceny of the money or property so obtained.

Resale of property sold.

Section 47.—Every person who, after once selling, bartering or disposing of any property, real or personal, or interest therein, or after executing any bond or agreement for the sale of any such property, again willfully and with intent to defraud previous or subsequent purchasers, sells, barters, or disposes of the same property, or any part thereof, or interest therein, or willfully and with intent to defraud previous or subsequent purchasers, executes any bond or agreement to sell, barter, or dispose of the same property, or any part

thereof, or interest therein, to any other person for a valuable consideration, is punisable by fine not more than five hundred dollars.

Section 48.—Every married person who shall falsely and fraudulently represent himself or herself as competent to sell or mortgage any real estate to the validity of which sale or mortgage the assent or concurrence of his wife or her husband is necessary, and under such representation, willfully conveys or mortgages the same, is guilty of a misdemeanor.

Misrepresentation of competency by married person.

Section 49.—Any person who obtains any food or accommodation at an inn or boarding house without paying therefor, with intent to defraud the propietor or manager thereof or who obtains credit at an inn or boarding house by the use of any false pretense, or who, after obtaining credit or accommodation at any inn or boarding house, absconds and surreptitiously removes his baggage therefrom without paying for his food or accommodations, is guilty of a misdemeanor.

Obtaining credit at boarding house with intent to defraud.

Section 50.—Every person who, after pledging as security any real or personal property whatever, for a loan or other security, during the existence or said pledge, with the intent to defraud the pledgee, his representatives or assigns, transfers, sells, takes, drives or carries away or otherwise disposes of or permits the transferring, selling, taking or carrying away or otherwise disposes of said property, or any part thereof, without the written consent of the pledgee, is guilty of larceny and shall be punished accordingly.

Removal or assignment of thing pledged.

Section 51.—Every person who willfully burns or in any other manner injures or destroys any property which is at the time insured against loss or damage by fire, or by any other casualty, with intent to defraud or prejudice the insurer, whether the same be the property or in possession of such person, or of any other, is punishable by imprisonment in the penitentiary for not more than ten years.

Destruction or burning of insured property.

Section 52.—Every person who presents or causes to be presented any false or fraudulent claim, or any proof in support of such claim, upon any contract of insurance for the payment of any loss, or who prepares, makes, or subscribes any account, certificate of survey, affidavit, or proof of loss, or other book, paper, or writing, with intent to present or use the same, or to allow it to be presented or used in support of any such claim is punishable by imprisonment in the penitentiary not exceeding three years, or by fine not exceeding one thousand dollars, or by both.

Fraudulent claim for insurance.

Section 53.—A false weight or measure is one which does not conform to the standard established by law.

False weight or measure defined.

Section 54.—Every person who uses any weight or measure, knowing it to be false, by which another is defrauded or otherwise injured, shall be punished by imprisonment for not exceeding six months or by fine not exceeding two hundred dollars, or by both.

Punishment for using.

Section 55.—Every person who knowingly marks or stamps false or short weight or measure, or false tare, on any cask or package, or knowingly sells or offers for sale, any cask or package so marked, shall be punished by imprisonment not exceeding six months or by fine not exceeding two hundred dollars or by both.

Sale of package marked or stamped with short weight or measure.

Section 56.—In all sales of merchandise, wares, articles of food or drink or whatever else is purchased by weight or measure, the seller must give the purchaser full weight or measure, and any person violating this section shall be punished by imprisonment not exceeding six months or by fine not exceeding two hundred dollars, or by both.

Sale of goods sold by weight or measure.

Section 57.—In all sales of sugar, coal, and other commodities, usually sold by the ton or fractional parts thereof, the seller must give to the purchaser

Sale of sugar, coal, etc., sold by the ton.

full weight, and any person violating this section shall be punished by imprisonment not exceeding six months or by fine not exceeding two hundred dollars, or by both.

MALICIOUS INJURIES TO BRIDGES, HIGHWAYS, TELEPHONES AND TELEGRAPHS.

—to bridge or highway.

Section 58.—Every person who maliciously digs up, removes, displaces, breaks, or otherwise injures, obstructs or destroys any public highway or bridge, or any private way laid out by authority of law, or bridge upon such highway or private way, is punishable by imprisonment not exceeding one year or by fine not exceeding five hundred dollars, or by both.

Injury to telegraph or telephone lines.

Section 59.—Every person who maliciously takes down, removes, injures, or obstructs any line of telegraph, radio or telephone, or any part thereof, or appurtenances or apparatus connected therewith, or severs any wires thereof, is guilty of a misdemeanor.

Taking water without authority.

Section 60.—Every person who shall without authority of the owner or managing agent, and with intent to defraud, take water from any canal, well, ditch, flume, or reservoir, used for the purpose of holding or conveying water for manufacturing, agriculture, irrigation or generation of power or domestic uses, or who shall, without like authority, raise, lower or otherwise disturb any gate or other apparatus thereof used for the control or measurement of water, or who shall empty or place, or cause to be embtied or placed into any such canal, well, ditch, flume or reservoir, any rubbish, filth, or obstruction to the free flow of the water, is guilty of a misdemeanor.

Injury or destruction of real property.

Section 61.—Every person who maliciously injures or destroys any real or personal property not his own, in cases otherwise than are specified in this code, is guilty of a misdemeanor.

Administration or exposure of poison.

Section 62.—Every person who maliciously administers any poison to an animal, the property of another, or maliciously exposes any poisonous substance, with the intent that the same shall be taken or swallowed by any such animal, is punisable by imprisonment not exceeding one year, or a fine not exceeding five hundred dollars or by both.

Malicious killing of or wounding animal.

Section 63.—Every person who maliciously kills, maim, or wounds an animal, the property of another, or who maliciously and cruelly beats, tortures or injures any animal whether belonging to himself or another, is guilty of a misdemeanor.

Killing birds within public park or highway.

Section 64.—Every person who, within any public park, plaza or highway, kills, wounds or traps any bird, or destroys any bird's nest, or removes any eggs or young birds from any nest, is guilty of a misdemeanor.

Explosion of gunpowder, etc.

Section 65.—Every person who maliciously by the explosion of gunpowder or other explosive substance, destroys, throws down, or injures the whole or any part of any building, by means of which the life or safety of a human being is endangered, is guilty of a felony.

Trespass.

Section 66.—Every person who willfully commits any trespass by either:

(1) Cutting down, destroying or injuring any kind of wood or timber growing upon the lands of another, or upon public lands; or,

(2) Carrying away any kind of wood or timber lying on such lands; or,

(3) Maliciously injures or destroys any standing crops, fruits or vegetables, the property of another, in any case for which a punishment is not otherwise prescribed by this Code; or,

(4) Digging, taking, or carrying away from any real estate, without the license of the owner or legal occupant thereof any earth, soil, or stone; or,

(5) Digging, taking or carrying away from any land of the municipality, recognized or established as a street, road, alley, avenue, or park, without the license of the proper authorities, any earth, soil, or stone; or,

(6) Putting up, affixing, fastening, printing, or painting upon any property belonging to the Government or Municipality, or dedicated to the public, or upon any property of any person, without license from the owner, any notice, advertisement, or designation of, or any name for any commodity, whether for sale or otherwise, or any picture, sign, or device intended to call attention thereto, is guilty of a misdemeanor.

Leaving enclosure open.

Section 67.—Any person passing through an enclosure of another and leaving the same open is guilty of a misdemeanor and punishable by a fine not exceeding fifty dollars.

Tearing down fence.

Trespass.

Penalty for.

Section 68.—Any person willfully tearing down a fence without the consent of the owner or the person in charge thereof to make passage through an enclosure, is guilty of a misdemeanor and is punishable by a fine of not more than three hundred dollars. Any person entering upon the land of another, without the consent of the owner or of the person in charge thereof, is guilty of a misdemeanor and punishable by a fine of not more than fifty dollars, or by imprisonment, not to exceed thirty days, or by both.

Section 69.—Every person who either:

Removal of monument.

(1) Maliciously removes any monument erected for the purpose of designating any point in the boundary of any lot or tract of land, or a place where a subaqueous telegraph cable lies; or,

(2) Maliciously defaces or alters the marks upon any such monument; or,

(3) Maliciously cuts down or removes any tree upon which any such marks have been made for such purpose, with intent to destroy such marks;

—is guilty of a misdemeanor.

Destroying or injuring jail.

Section 70.—Every person who willfully and intentionally breaks down, pulls down, or otherwise destroys or injures any public jail or other place of confinement, is punishable by a fine not exceeding two thousand dollars, and by imprisonment in the penitentiary not exceeding five years.

Masking or removing signal.

Section 71.—Every person who unlawfully marks, alters, or removes any light or signal, or willfully exhibits any light or signal, with intent to bring any vessel into danger, is punishable by imprisonment in the penitentiarly not less than five nor more than twenty years.

—in port

Section 72.—Every person who, without permission of the Harbormaster within the anchorage of any port, harbor, or cove, into which vessels may enter for the purpose of receiving or discharging cargo, throws overboard from any vessel the ballast, or any part thereof, or who otherwise places or causes to be placed in such port, harbor, or cove, any obstructions to the navigation thereof, is guilty of a misdemeanor.

Mooring vessel or boat to buoy or beacon.

Section 73.—Any person or persons who shall moor any vessel or boat of any knd, or any raft or scow to any buoy or beacon placed in the waters within the jurisdiction of the District, by the authority of the District or the United States Light House Board, or shall in any manner hang on to the same with any vessel, boat, raft or scow, or shall willfully remove, damage, or destroy any such buoy or beacon or any part of the same, or shall cut down, remove, damage or destroy any beacon or beacons erected or located within the jurisdiction of the District, shall for each offense be guilty of a misdemeanor.

Cost of repairs a lien on vessel.

Section 74.—The cost of repairing or replacing any such beacon which may have been misplaced, damaged or destroyed, shall be a lien upon such vessel, boat, raft or scow.

Signals, etc., of U. S. Coast Survey.

Section 75.—Every person who willfully injures, defaces, or removes any signal, monument, building, or apprtenance thereto, placed, erected or used by persons engaged in the United States Coast Survey, is guilty of a misdemeanor.

Defacing or removing extract of law or notification.

Section 76.—Every person who intentionally defaces, obliterates, tears down, or destroys any copy or transcript, or extract from or of any law of the United States or the District, or any proclamation, advertisement, or notification set up at any place in the District, by authority of any laws of the United States or the District, or by order of any court, before the expiration of the time for which the same was to remain set up, is punishable by fine not more than one hundred dollars, or by imprisonment not more than one month.

Mutilating or destroying written instrument.

Section 77.—Every person who maliciously mutilates, tears, defaces, obliterates, or destroys any written instrument, the property of another, the false making of which would be forgery, is punishable by imprisonment in the penitentiary for not more five years.

Opening or reading sealed letter addressed to another.

Section 78.—Every person who willfully opens or reads, or causes to be read, any sealed letter not addressed to himself, without being authorized to do so, either by the writer of such letter or by the person to whom it is addressed, and every person who, without the like authority, publishes any of the contents of such letter, knowing the same to have been unlawfully opened, is guilty of a misdemeanor.

Refusal or neglect to deliver message.

Section 79.—Every agent, operator, or employee of any telegraph, cable, telephone, or radio office, who willfully refuses or neglects to send any message received at such office for transmission, or willfully postpones the same out of its order, or willfully refuses or neglects to deliver any message received by telegraph, cable or telephone, is guilty of a misdemeanor. Nothing herein contained shall be construed to require any message to be received, transmitted or delivered unless the charges thereon have been paid or tendered, nor to require the sending, receiving or delivery of any message, counseling, aiding, abetting, or encouraging treason, or other resistance to the lawful authority, or any message calculated to further any fraudulent plan or purpose, or to instigate of encourage the perpetration of any unlawful act, or to facilitate the escape of any criminal or person accussed of crime.

Speculation upon information derived from private message.

Section 80.—Every agent, operator, or employee of any radio, telephone, telegraph or cable office, who in any way uses or appropriates any information derived by him of any private message passing through his hands, and addressed to any other person, or in any other manner acquired by him by reason of his trust as such agent, operator or employee, or trades or speculates upon such information so obtained, or in any manner turns, or attempts to turn the same to his own account, profit or advantage, is punishable by imprisonment in jail not exceeding one year, or by fine not exceeding two thousand dollars or by both such fine and imprisonment.

Telegraph messages, attempts to learn contents of.

Section 81.—Every person who by means of any machine, instrument, or contrivance, or in any other manner, willfully and fraudulently reads, or attempts to read, any message, or to learn the contents thereof, whilst the same is being sent by radio or over any telegraph line, or willfully and fraudulently, or clandestinely, learns or attempts to learn the contents or meaning of any message, while the same is in any telegraph, radio or cable office, or being received thereat or sent therefrom, or who uses or attempts to use or communicate to others, any information so obtained, is punishable as provided in Section seventy-six of this Chapter.

Attempts to procure contents of message by bribery, etc.

Section 82.—Every person who, by the payment or promise of any bribe, inducement, or reward, procures or attempts to procure any telegraph, radio or cable agent, operator, or employee to disclose any private message, or the contents, purport, substance, or meaning thereof, or offers to any such agent, operator, or employee any bribe, compensation or reward for the disclosure of

any private information received by him by reason of his trust as such agent, operator, or employee, or uses or attempts to use any such information so obtained, is punishable as provided in Section seventy-six of this Chapter.

Disclosure of contents of message.

Section 83.—Every person who willfully discloses the contents of any telegraphic, radio or cable message, or any part thereof, addressed to another person, without the permission of such person, unless directed so to do by lawful order of a court, is punishable as provided in Section eighty of this Chapter.

Alteration of message.

Section 84.—Every person who willfully alters the purport, effect, or meaning of a telegraphic, radio or cable message to the injury of another, is punishable as provided in the preceding section.

Opening of message.

Section 85.—Every person not connected with any telegraph, radio or cable office who, without authority or consent of the person to whom the same may be directed, willfully opens any sealed envelope inclosing a telegraphic or cable message and addressed to any other person, with the purpose of learning the contents of such message, or who fraudulently represents any other person, and thereby procures to be delivered to himself any telegraphic or cable message, addressed to such other person, with the intent to use, destroy, or detain the same from the person or persons entitled to receive such message, is punishable as provided in Section seventy-nine of this Chapter.

CHAPTER ELEVEN.

OF SUBSEQUENT OFFENSES.

Commission of crime after conviction.

Section 1.—Every person who having been convicted of any offense punishable by imprisonment in the penitentiary commits any crime of like nature after such conviction, is punishable therefor as follows:

1.—If the offense of which such person is subsequently convicted is such that, upon a first conviction, an offender could be punishable by imprisonment in the penitentiary, for any term exceeding five years, such person is punishable by imprisonment in the penitentiary not less than five years.

2.—If the subsequent offense is such that, upon a first conviction, the offender could be punishable by imprisonment in the penitentiary for five years, or any less term, then the person convicted of such subsequent offense is punishable by imprisonment in the penitentiary not exceeding ten years.

3.—If the subsequent conviction is for petit larceny, or any attempt to commit an offense which, if committed, would be punishable by imprisonment in the penitentiary not exceeding five years, then the person convicted of such subsequent offense is punishable by imprisonment in the penitentiary not exceeding five years.

Offense after conviction for petit larceny, etc.

Section 2.—Every person who, having been convicted of petit larceny, or of an attempt to committ an offense which, if perpetrated, would be punishable by imprisonment in the penitentiary, commits any crime of like nature after such conviction, is punishable as follows:

Punishable by life imprisonment.

1.—If the subsequent offense is such that, upon a first convicition, the offender would be punishable by imprisonment in the penitentiary for life at the discretion of the court, such person is punishable by imprisonment in such prison for life.

—by other penalties.

2.—If the subsequent offense is such that, upon a first conviction, the offender would be punishable by imprisonment in the penitentiary for any term less than for life, such person is punishable by imprisonment in such prison for the longest term prescribed, upon a conviction for such first offense.

3.—If the subsequent convicion is for petit larceny, or for an attempt to commit an offense which, if perpetrated, would be punishable by imprisonment in the penitentiary, then such person is punishable by imprisonment in the penitentiary not exceeding five years.

Habitual criminal.

Section 3.—Whoever has been twice convicted of felony, of like nature, sentenced and committed, shall upon conviction of a felony committed in this District after the passage of this Code, be deemed to be an habitual criminal, and shall be punished by imprisonment for a term not exceeding ten years: Provided, however, That if a person so convicted shall show to the satisfaction of the court before which such conviction was had that he was released from imprisonment upon either of said sentences upon a pardon granted on the ground that he was innocent, such conviction and sentence shall not be considered as such under this law.

Permit to be at liberty.

Section 4.—Whenever it shall appear to the Governor, upon the recommendation of the Government Attorney, that any person sentenced to the penitentiary as an habitual criminal has reformed, the Governor may issue to him a permit to be at liberty, and may revoke such permit at any time. The violation by the holder of a permit, granted as aforesaid, of any of the terms or conditions of such permit, or the violation of any of the laws of this District, may of itself make void said permit.

Section 5.—If at the time for passing a sentence it shall appear to the Judge that there is good reason to believe the person convicted will thereafter live a life free from crime, the Judge may order the execution of the sentence suspended during good behavior for a period of two years and if, thereafter, the person convicted shall conduct himself in any orderly manner and free from crime during the period of two years the sentence shall be deemed permanently suspended, but if such person shall fail therein he may be taken into custody at any time during the said period of two years and the sentence executed.

Suspended sentences.

CHAPTER TWELVE.

MISCELLANEOUS OFFENSES.

Detaining children from school.

Section 1.—Any person who shall detain, or attempt to detain, any child from attending school at the prescribed times and places, without authority of lawful regulation, or shall perform any act or be guilty of any neglect whereby any child under his control, directly or indirectly, is hindered from regular attendance at school, shall be subject to a fine of not exceeding one dollar for each day's absence.

Failure to register children for school attendance.

Section 2.—Parents or guardians who fail to register such children as are required to be registered for school attendance shall be guilty of a misdemeanor and upon conviction thereof shall be fined not to exceed ten dollars.

Concealed weapons—carrying on person.

Punishment.

Section 3.—If any person shall carry concealed on or about his person, any pistol, dirk, dagger, sling shot, black-jack, sword, sword cane, cudgel, spear or knuckles, made of any metal or any hard substance, razor, bowie-knife, or any other knife, manufactured or sold for purposes of offense or defense, or any other dangerous or deadly weapon, he shall be punished by a fine of not exceeding fifty dollars, or by imprisonment not exceeding sixty days or both such fine and imprisonment.

—who may carry.

Section 4.—The preceding section shall not apply to a peace officer, judge, sheriff, deputy sheriff, or bailiff, of any court, persons engaged in the guarding of prisoners while so employed, policeman; nor to the safekeeping or carrying of arms by the proprietors, lessees, administrators, overseers, or watchmen of an estate while on or within the same or while going to or returning from the same, as well as while within their private houses or buildings under their care or guardianship; nor to persons engaged in the military or naval service of the United States, nor to persons carrying the United States mail, nor to persons charged with the custody of municipal property or funds nor to watchmen or keepers, carrying a written authorization from the superior officer having the supervision of such property or funds; neither shall it apply to the carrying of ordinary folding pocket knives, having blades less than three inches in length; neither shall it apply to the instrument known as a bill or cutlass, when the same is being used or carried bona fide, by the owner or possessor thereof, as a necessary incident to his occupation. Provided, That the authorization given by this act to owners, lessees, administrators, overseers or watchmen of agricultural properties, in order to be valid, must be confirmed at the request of the parties concerned, by the Director of Police, and Provided that the Director of Police may authorize in his discrition any other person to carry firearms.

Forfeiture of arms.

Section 5.—In addition to the punishment authorized by section six of this chapter, the judgment of conviction against the offender shall also be declared a forfeiure of the firearm, instrument or weapon seized, in favor of the People.

Violation of regulations.

Section 6.—Whenever any official is granted, by law, power to issue regulations and regulations are issued in pursuance thereof, any violation thereof shall constitute an offense and shall be punishable fine not exceeding five dollars.

Vagrancy.

Section 7.—Every person being able either by labor or by other lawful means to maintain himself or herself, or his wife, or his or her children or child, who shall willfully refuse or neglect so to do; and every common prostitute wandering in the public streets or highways, or in any place of public resort and behaving in a riotous and indecent manner; and every person who in any street, highway, or public place shall accost a passenger and offer to take him to the house or residence of a prostitute; and every common pros-

titute or nightwaker loitering in any street or highway and importuning passengers for the purpose of prostitution; and every person wandering abroad, or placing himself in any public place, street, wharf, highway, court or passage, to beg or gather alms, or causing or procuring or encouraging any child or children so to do; and every person who in any street, highway, or public place shall, without lawful authority or excuse, accost a passenger or follow him about; and every person pretending or professing to tell fortunes, or using or pretending to use any subtle craft or device, by palmistry, "obeah" or any such like superstitious means, to deceive and impose upon other persons; and every person willfully exposing or causing to be exposed to view in any street, road, highway, or public place, or in the window or other part of any shop or other building situated in any street, road, highway, or public place, any obscene print, picture, or other indecent exhibiton; and every person willfully, openly, and obscenely exposing his person in any street, public road or highway, or in the view thereof, or in any place of public resort; and every person wandering abroad and endeavoring by the exposure of wounds or deformities to obtain or gather alms; and every person endeavoring to procure charitable contributions under any false or fraudulent pretence; and every person having in his custody or possession any picklock, key, crow, jack, bit, or other implement with intent feloniously to break into any dwelling house, warehouse, store, shop, coachhouse, stable, garage or outbuilding; shall be deemed a vagrant and shall be punished on conviction thereof by a fine not exceeding ten dollars or imprisonment not exceeding thirty days or by both.

Power of police to search suspected boats or vehicles and suspected persons.

Section 8.—Every police and peace officer may stop, search, and detain any vessel, boat, cart, carriage or other vehicle, in or upon which there shall be reason to suspect that anything stolen or unlawfully obtained may be found, and also any person who may be reasonably suspected of having or conveying in any manner anything unlawfully obtained; and every person who shall be brought before a Police Court, charged with having in his possession or conveying in any manner anything which may be reasonably suspected of being stolen or unlawfully obtained, and who shall not give an account to the satisfaction of such court how he came by the same, may be imprisoned with or without hard labor for any term not exceeding thirty days, or fined not exceeding ten dollars or both.

Possession of property unlawfully obtained.

CHAPTER THIRTEEN.

FINAL PROVISIONS.

Acts when criminal or punishable under this code.

Section 1.—Any act or omission commenced prior to the establishment of this Ordinance may be inquired of, prosecuted and punished in the same manner as if this Ordinance had not been passed.

Definition of the words.

Section 2.—Words used in this Ordinance in the present tense include the future as well as the present; words used in the masculine gender shall be held to include all genders, except where such construction would be absurd or unreasonable; the singular number includes the plural, and the plural the singular; the word "person" includes a corporation as well as a natural person; "writing" includes printing; "oath" includes affirmation or declaration; and every mode of oral statement under oath or affirmation is embraced by the term "testify", and every written one in the term "depose"; signature or inscription includes mark, when the person cannot write his name, being written near it, and written by a person who writes his own name as a witness. The following words, also, have in this Code the signification attached to them in this section, unless otherwise apparent from the context:

"Person" "Writing" "Oath." "Testify" "Depose"

"Willfully" defined.

First. The word "willfully", when applied to the intent with which an act is done or omitted, implies simply a purpose or willingness to committ the act, or make the omission referred to.

"Neglect," etc., defined.

Second. The words "neglect", "negligence", "negligent" and "negligently", import a want of such attention to the nature of probable consequences of the act or omission as a prudent man ordinarily bestows in acting in his own concerns.

"Corruptly" defined.

Third. The word "corruptly" imports a wrongful design to acquire or cause some pecuniary or other advantage to the person guilty of the act or omission referred to, or to some other person.

"Malice" and "maliciously" defined.

Fourth. The words "malice" and "maliciously" import the doing of a wrongful act, intentionally, without just cause or excuse, a conscious violation of the law to the prejudice of another.

"Knowingly" defined.

Fifth. The word "knowingly" imports a personal knowledge. It does not require any knowledge of the unlawfulness of such an act or omission.

"Bribe" defined.

Sixth. The word "bribe" signifies anything of value or advantage, present or prospective, or any promise or understanding to give any, asked, given, or accepted, with a corrupt intent to influence, unlawfully, the person to whom it is given, in his action, vote or opinion, in any public or official capacity.

"Vessel" defined.

Seventh. The word "vessel", when used with reference to shipping, includes ships of all kinds, steamboats, barges, and every structure adapted to be navigated from place to place for the transportation of merchandise or persons.

"Property" defined.

Eighth. The word "property" includes both real and personal property.

"Real property" defined.

Ninth. The words "real property" are co-extensive with lands and whatever is erected, or growing upon or fixed to the land.

"Personal property" defined.

Tenth. The words "personal property" include money, goods, chattels, things in action, and evidence of debt.

"Year" defined. "Month" defined.

Eleventh. The word "year", as used in this Code, means a calendar year; the word "month" means a calendar month, unless otherwise expressed.

"Will" defined.

Twelfth. The word "will" includes codicils.

Thirteenth. The word "writ" signifies an order or precept in writing, issued in the name of the people, or of a court or judicial officer, and the word "process" a writ or summons issued in the course of judicial proceedings.

"Writ" and "Process" defined.

Fourteenth. The word "code" as used herein shall be construed to mean all of this Ordinance and shall not be restricted to mean any particular title or chapter unless a different construction is clearly shown to be intended.

Definition of word "Code."

Fifteenth. Words and phrases must be construed according to the context and the approved usage of the language.

Construction of words and phrases.

Sixteenth. Words giving a joint authority to three or more public officers, or other person, are construed as giving such authority to a majority of them, unless it be otherwise expressed in the act giving the authority.

—giving joint authority.

Seventeeth. When the seal of a court or public officer is required by law to be affixed to any paper, the word "seal" includes an impression of such seal upon the paper alone, or upon any substance attached to the paper capable of receiving a visible impression. The seal of a private person may be made in like manner, or by the scroll of a pen, or by writing the word "seal" against his name.

"Seal" defined.

Section 3.—The Penal Code, Royal Decrees, Orders and Military Orders heretofore in force in the District, in so far as the same relate to or refer to crimes and are inconsistent or in conflict herewith, and all other laws, orders, decrees and acts inconsistent or in conflict with this code, are hereby repealed.

Decrees and orders inconsistent with Penal Code repealed.

Section 4.—No person shall be arrested for any crime or offense unless such crime or offense is expressly declared in this Code of Laws, except for crimes and offenses against the Laws of the United States applicable to the Virgin Islands of the United States and the Enactments of the Colonial Council of the District and for crimes and offenses existing by law or Ordinance prior to the enactment of this Code and not repealed, altered or amended by this Code.

Exemption from arrest for crimes and of fences not declared in this Code; exceptions.

Section 5.—Whenever any person is declared punishable for a crime by imprisonment for a term not less than any spcified number of years, and no limit to the duration of such imprisonment is declared, the court authorized to pronounce judgment upon such conviction, may, in its discretion, sentence such offender to imprisonment during his natural life, or for any number of years not less than that prescribed.

Term of imprisonment; when court to determine.

Section 6.—The common law of England as adopted and understood in the United States shall be in force in this District, except as modified by this ordinance.

Common law of England adopted.

Section 7.—Nothing herein contained shall apply to or in any way affect any proceeding, civil or criminal, now pending or that hereafter may be pending for any offense committed before the passage of this ordinance.

Pending actions unaffected.

Section 8.—The ommission to specify or affirm in this ordinance any liability to any damages, penalty, or forfeiture, or other remedy imposed by law and allowed to be recorded in any civil action or proceeding, for any act or omission declared punishable as a crime does not affect any right to recover or enforce the same.

Criminal prosecution not to exclude other remedy.

Section 9.—The Police Regulations heretofore in force in this District are hereby continued in force, except as altered, amended or repealed by this ordinance, provided however, that the punishment for violation of any such regulation shall be by fine not exceeding twenty dollars or by imprisonment not exceedings thirty days or by both.

Police Regulations continued.

Intent to defraud; what sufficient.

Section 10.—Whenever, by any provisions this Code an intent to defraud is necessary to constitute a crime, it is sufficient if any intent appears to defraud any person, body politic, corporation or partnership.

"Dollar" defined.

Section 11.—Whenever the word "dollar" is used in this Code it may be construed to mean the equivalent in currency in ordinary use, which may be legal tender in this District and particularly five franes in Danish West Indian Currency shall be equivalent to a dollar.

TITLE V.

CRIMINAL PROCEDURE.

CHAPTER ONE.

PRELIMINARY PROVISIONS.

Section 1.—The proceedings for the punishment and prosecution of crimes shall be conducted in the manner herein provided.

Crimes and offenses, how punished.

Section 2.—The word "District" whenever used in this Code shall be construed to mean:

"District" defined.

(1) All of the Virgin Islands of the United States, and adjacent islands and cays, rocks, etc., acquired from Denmark by treaty entered into at the City of New York, and ratified on the 17th day of January 1917, or;

(2) The Municipality of St. Croix, as will best carry out the interest of the particular section, etc., under consideration, or;

(3) The Municipality of St. Thomas and St. John, as will best carry out the interest of the particular section, etc., under consideration.

Section 3.—Every felony and every criminal action or proceeding within the District Court, must be prosecuted, by information, filed in open court by any one of the Government Attorneys.

Crimes, how prosecuted.

Section 4.—The Judge of the District Court in extraordinary cases, and in the interest of public justice, may receive from any person a complaint and if, in his opinion public justice requires that the same be prosecuted, he may order the Government Attorney to file and prosecute an information covering the matter charged in the said complaint.

Judge of District Court may direct an information.

Section 5.—That the proceeding by which a person is tried and punished for the commission of a crime is known in this act as a criminal action.

Criminal action defined.

Section 6.—That in a criminal action in this District, "The People", is the plaintiff and the person prosecuted is defendant.

Parties to a criminal action.

Section 7.—No person shall be subjected to a second prosecution for a public offense for which he has once been finally prosecuted or acquited.

Second prosecution prohibited.

Section 8.—No person can be compelled, in a criminal action, to be a witness against himself; nor can a person charged with a public offense be subjected, before conviction, to any more restraint than is necessary for his detention to answer the charge.

Accused cannot be compelled to testify.

Section 9.—In a criminal action the defendant is entitled:

Rights of defendant.

(1) To a speedy trial.

(2) To be allowed to procure counsel, or to appear and defend with counsel.

(3) To procure witnesses on his behalf.

(4) To be confronted with the witnesses against him in the presence of the court in open court.

Section 10.—A complaint is an allegation or statement made before a magistrate and verified by oath of the party making it that a person is guilty of some designated crime.

Complaint defined.

Section 11.—A magistrate is an officer having power to issue a warrant for arrest of a person charged with the commission of a crime.

Magistrate defined.

Section 12.—The folloging persons are magistrates and examining officers and shall have power to issue a warrant for arrest, viz:—

Who are magistrates.

(1) The Judge of the District Court.

(2) Each Police Court Judge.

(3) Such persons as the Governor may appoint to act as magistrates at particular places.

Oath defined.

Section 13.—An oath is an outward attestation by which a person signifies that he is bound in conscience to perform an act or to speak or has spoken faithfully and truthfully.

Form of Oath.

Section 14.—All oaths when administered in judicial proceedings in the District shall be substantially in form as follows:

"You do solemnly swear that the testimony you will give in this case (or affirm, as the case may be) is the truth, the whole truth and nothing but the truth."

CHAPTER TWO.

LIMITATIONS FOR COMMENCEMENT OF CRIMINAL ACTIONS.

Section 1.—A criminal action must be commenced within the periods as follows: **Time to commence criminal action**

(1) For murder, embezzlement of public moneys, and the falsification of public records, there is no limitation of the time within which a prosecution must commence. **No limitation.**

(2) For any felony other than specified above, action must be commenced within three years after its commission. **Felonies.**

(3) For any misdemeanor, action must be commenced within one year after its commission. **Misdemeanors.**

(4) If when the offense is committed, the defendant is out of the District, the information may be filed within the term herein limited after his coming within the District, and no time during which the defendant is not an inhabitant of, or usually resident within the District is a part of the limitation. **For absent offender.**

Section 2.—Nothing in the preceding sections shall extend to persons fleeing from justice. **Fugitives from justice.**

CHAPTER THREE.

OF THE JURISDICTION AND PLACE OF CRIMINAL ACTION.

When crime committed without, but consummated within the District.

Section 1.—That when the commission of a crime commenced without the District is consummated within its boundaries the defendant is liable to punishment therefor in the District, thought he were out of the said District at the time of the commission of the crime charged, provided he consumated it in the District through the intervention of an innocent or guilty agent, or by any means proceeding directly from himself.

Murder or manslaughter committed by means used without the District.

Section 2.—That when the crime of murder or manslaughter has been committed by means of a mortal wound given, or injury inflicted, or poison administered without the District, and the person so wounded, injured, or poisoned shall die thereof within the District the person committing such crime is liable to punishment therefor in the District, and in such case the action therefor may be commenced and tried in the said District.

When conviction or acquittal in another jurisdiction is a bar.

Section 3.—That when an act declared to be a crime is within the jurisdiction of any United States, State, County or Territorial Court in the United States of America or any of its Possessions as well as of this District, a conviction or acquittal thereof in the former is a bar to a prosecution therefor, in this District.

CHAPTER FOUR.

POWERS AND DUTIES OF THE GOVERNMENT ATTORNEY.

Government Attorney. Duties.

Section 1.—The Government Attorney is the public prosecutor for the district in which he is stationed. He shall personally conduct all prosecution in the District Court and in his discretion such cases as require his personal attention in all other courts.

Power to issue subpoena.

Section 2.—The Government Attorney shall have power to issue subpœnas for witnesses.

Information may be filed although defendant has not been held to answer.

Section 3.—The Government Attorney may file an information against a person for a crime, upon sufficient evidence, whether such person has been held to answer for such crime or not.

Cases not under jurisdiction of police courts.

Section 4.—All cases in which police courts have no jurisdiction to try and determine the same the Government Attorney shall upon the return of the proceedings had before such courts issue subpœnas for witnesses. He shall examine such witnesses under oath as to the offense charged, with such particulars as to the person accused, the time, place, property and value thereof, and the offense; and if sufficient evidence is produced that the offense as charged or that any offense has been committed and that there exists probable cause as to the guilt of the defendant he shall file an information as provided by law.

Accused may be dismissed by Government Attorney.

Section 5.—If after hearing the testimony it appears either that no public offense has been committed or that there is not sufficient cause to believe the defendant guilty, the Government Attorney must recommended that the defendant be discharged, and shall file with the clerk of the court the original proceedings indorsed thereon as follows: "There being no sufficient cause to believe that the within named A. B. is guilty of an offense, I recommended his discharge."

Defendant, warrant for.

Section 6.—If, however it appears from the examination that a public offense has been committed, and there is sufficient cause to believe the defendant guilty thereof, the Government Attorney shall effect an arrest of the defendant by having issued a warrant therefor.

Offenses transferable to District Court.

Section 7.—In all offenses within the jurisdiction of the Police Court that may be transferred to the District Court, upon appeal or otherwise, the Government Attorney need not file an information. Such cases shall be tried on the original complaint and warrant.

Preparation and filing of informations.

Section 8.—The government Attorney shall prepare all informations and file the same in court.

Prosecuting recognizances forfeited, etc.

Section 9.—The Government Attorney shall prosecute all recognizances forfeited and all cases for the recovery of fines, penalties, debts, and forfeitures accruing to the People within his district.

Other duties.

Section 10.—He shall perfom such other duties as may from time to time be assigned him by the Governor.

CHAPTER FIVE.

READINGS AND INFORMATION.

Forms of pleading.

Section 1.—All the forms of pleadings in criminal action and rules by which the sufficiency of pleadings is to be determined are those prescribed by this act.

Information; first pleading.

Section 2.—The first pleading on the part of the people is the information.

Information; defined.

Section 3.—That an information is an allegation or statement in writing made to the District Court by the Government Attorney.

Presentment.

Section 4.—The information when filed shall be known as the presenment and must be presented to the District Court and filed with the clerk thereof.

Information, when to be filed.

Section 5.—When a person has been committed it shall be the duty of the Government's attorney within twenty days thereafter, unless granted further time by the District Court, to examine witnesses and file an information in the District Court, charging such person with such offense as seems warranted by the testimony. The information shall be in form as herein provided.

Contents.

Section 6.—The information must contain:

(1) The title of the action, specifying the name of the court to which same is presented, and the names of the parties.

(2) A statement of the facts constituting the offense in ordinary concise language, without repetition, as to enable a person of common understanding to know what is intended.

Form of information.

Section 7.—The information may be substantially as follows:

District Court for..... District of Virgin Islands of the United States.

The People,
vs.
A..... B.....

A..... B..... is accused by this information, filed by,..... ..... Government Attorney, of the crime of ..... committed as follows:

That the said A.... B.... on the.... day of..... nineteen hundred and..... A. D., in the District of..... and within the jurisdiction of this court, did,

---

(Statement of facts)

---

contrary to the form, force and effect of the law in such cases made and provided and against the Peace and Dignity of the People of this District.

Signed.....

Virgin Islands of the United States.
Island of..... } ss.

I hereby certify that the above information is filed, based upon the testimony of witnesses examined before me, and I do solemnly believe that there is just cause for the filing of this information.

(To be sworn to before the Judge, Clerk or Deputy clerk of the Court.)

Section 8.—If the facts as stated in the information constitute an offense triable by the court, the court must direct the clerk to issue a bench warrant if the defendant is not already in custody under a warrant of commitment.

Bench warrant may be issued.

Section 9.—The clerk may upon the application of the Government Attorney, if the court is not in session, issue a bench warrant under his signature and the seal of the court for the arrest of the defendant upon the filing of an information.

Issue of bench warrant.

Section 10.—The information must be direct and certain as regards:

Information; particulars in

(1) The party charged,

(2) The offense charged,

(3) The particular circumstances of the offense charged, when they are necessary to constitute a complete offense.

Section 11.—When the defendant is charged by a fictitious or erroneous name, and in any stage of the proceedings his true name is discovered, it must be inserted in the subsequent proceedings, referring to the fact of his being charged by the name mentioned in the information.

Name of defendant.

Section 12.—The information must charge but one offense, except that when the crime may have been committed by the use of different means, the information may allege the means in the alternative in the same count.

Offenses; how charged.

Section 13.—The precise time at which the offense was committed need not be stated in the information but may be alleged to have been committed at any time before the filing thereof, and within the time an action may be commenced therefor, except where time is a material ingredient in the crime.

Time, when material to be stated precisely.

Section 14.—When the crime involves the commission of or an attempt to commit a private injury, and is described with sufficient certainty in other respects to identify the act, an erronous allegation as to the person injured or intended to be injured is not material.

Statement as to person injured or intended to be injured.

Section 15.—That when a crime involves the taking of, or injury to an animal, the information is sufficiently certain in that respect if it describes the animal by the common name of its class.

Description of animal, sufficiency of.

Section 16.—That the words used in an information must be construed in their usual acceptation, in common language, except words and phrases defined by law, which are to be construed according to their legal meaning.

Construction of words.

Section 17.—Words used in a law to define a public offense need not be strictly pursued in the information, but other words conveying the same meaning may be used.

Words of statute need not be used.

Section 18.—The information is sufficient if it can be understood therefrom:

Information; when sufficient.

(1) That it is entitled in the District Court of the Judicial District.

(2) That the information be subscribed and presented to the court by an officer entitled to subscribe and present it.

(3) That the defendant is named, or if his name cannot be discovered, that he is described by a fictitious name, with a statement that his true name is to the person subscribing to the information unknown.

(4) That the crime was committed at some place within the jurisdiction of the court except where the act, though done without the local jurisdiction of the court is triable therein.

(5) That the offense was committed at some time prior to the time of filing of the information, and within the time limited by law for the commencement of an action therefor;

(6) That the act or omission charged as the offense is clearly and distinctly set forth in ordinary and concise language, without repetition, and in such a manner as to enable a person of common understanding to know what is intended.

(7) That the act or omission charged as the crime is stated with such a degree of certainty as to enable the court to pronounce judgment upon a conviction to the right and justice of the case.

Information not insufficient for defect of form.

Section 19.—No information is insufficient, nor can the trial, judgment or other proceedings thereon be affected by reason of any defect or imperfection in matter of form, which does not tend to the prejudice of the substantial rights of the defendant upon the merits.

Presumptions of law, etc. need not be stated.

Section 20.—Neither presumptions of law nor matters of which judicial notice is taken need be stated in an information.

Private statute; or proceeding before court of special jurisdiction.

Section 21.—In pleading a judgment or other determination or on proceeding before a court or officer of special jurisdiction it is not necessary to state the facts constituting jurisdiction; but the judgment, determination, or proceeding may be stated to have been duly given, made or had. The facts conferring jurisdiction however, must be established on the trial.

Private statute; how pleaded.

Section 22.—That in pleading a private statute or law or right derived therefrom, it is sufficient to refer to the statute or law by its title and the day of its approval and the court must thereupon take judicial notice thereof.

Pleading in an information for libel or slander.

Section 23.—That an information for libel or slander, need not set forth any extrinsic facts, for the purpose of showing the application to the party libelled by the defamatory matter on which the information is founded; but it is sufficient to state generally that the same was published concerning him, and the fact that it was so published must be established on the trial.

Information for forgery when instrument lost or withheld.

Section 24.—That when an instrument which is the subject of any information for forgery has been destroyed or withheld by the act or procurement of the defendant and the fact of the destruction or withholding is alleged in the information and established on the trial, the misdescription of the istrument is immaterial.

For perjury or subornation of perjury.

Section 25.—That in an information for perjury or subornation of perjury, it is sufficient to set forth the substance of the controversy or matter in respect to which the offense was committed and in what court, or before whom, the oath alleged to be false was taken, and that the court or person before whom it was taken has authority to administer it, with proper allegations of the falsity of the matter on which the perjury is assigned; but the information need not set forth the pleading, record or proceedings with which the oath is connected, nor the commission or authority of the court or person before whom the perjury was committed.

Information against several defendants. One or more may be convicted or acquitted.

Section 26.—That upon an information against several defendants, any one or more may be convicted or acquitted.

One or more defendants in the same information may be acquitted.

Section 27.—All persons concerned in the commission of a felony, whether they directly commit the act constituting the offense or aid and abet in its commission, though not present, shall be prosecuted and tried as principals, and no other fact need be alleged in the information against them other than is required in the information against the principal.

Accessory may be tried etc. without the principal.

Section 28.—That an accessory to the commission of a felony may be prosecuted, tried and punished though the principal be neither prosecuted nor tried, or though the principal may have been tried and acquitted.

Section 29.—That an information may be filed against a person for having, with knowledge of the commission of a crime, taken money or property of another, or a gratuity or reward, or an engagement or promise thereof, upon an agreement or understanding, express or implied, to compound or conceal the crime, or to abstain from a prosecution therefor, or to withhold any evidence thereof, though the person guilty of the original crime has not been presented or tried.

Information for compounding crime though principal has not been presented.

Section 30.—In an information for larceny or embezzlement of money, bank notes, certificates of stocks, or valuable securities, or for a conspiracy to cheat or defraud a person of any such property, it is sufficient to allege the larceny or embezzlement, or the conspiracy to cheat or defraud to be of money, bank notes, certificates of stocks, or valuable securities, without specifying the coin, number, denomination, or kind thereof.

Information for larceny or embezzlement.

Section 31.—An information for exhibiting, publishing, passing, selling, or offering to sell, or having in possesion, with such intent, any obscene book, pamphlet, picture, print, card, paper, or writing, need not set forth any portion of the language used or figures shown upon such book, pamphlet, picture, print, card, paper, or writing; but it is sufficient to state generally the fact of the obscenity thereof.

For publishing etc. obscene literature.

CHAPTER SIX.

OF THE ARRAIGNMENT OF THE DEFENDANT.

Defendant; when to be arraigned.

Section 1.—That when an information has been filed, the defendant if he has been arrested or as soon thereafter as he may be, must be arraigned, if the court be in open session but if the court be adjourned then the arraignment must be made during the first day of open session of the court thereafter.

How made.

Section 2.—That the arraignment must be made by the Court or by the clerk or the government's attorney in open court, under its direction, and consists in reading the information to the defendant, and delivering to him a copy thereof and the endorsements thereon including the names of the complaining witnesses if there be any, indorsed on it and asking him whether he plead guilty to the information.

Defendant to be informed he is entitled to counsel.

Section 3.—That if the defendant appear for arraignment, without counsel he must be informed by the court that it is his right to have counsel, before being arraigned, and must be asked if he desires the aid of counsel.

If felony charged counsel to be appointed. When.

Section 3½.—If the charge in the information is for a felony and the defendant is unable to employ counsel, the court must assign counsel to defend him.

Defendant to be requested to declare his true name.

Section 4.—That when the defendant is arraigned he must be informed that if the name by which he is prosecuted is not his true name, he must then declare his true name or be proceeded against by the name in the information.

If the defendant gives no other name, the court may proceed accordingly, but if the defendant allege that another name is his true name, the court must direct an entry thereof to be made in its journal and the subsquent proceedings on the information may be had against him by that name, referring also to the name by which he was presented.

Time allowed to answer the information.

Section 5.—That if on the arraignment the defendant require it, he must be allowed until the next day or such further time as the court may deem reasonable, to answer the information.

How defendant may answer the information.

Section 6.—That if the defendant do not require time to answer as provided in the last section, or if he do, then on the next day, or at which further time as the court may have allowed him, he may in answer to the arraignment, either move the court to set aside the information or may demur or plead thereto.

If defendant refuses to plead a plea of not guilty must be entered.

Section 7.—That if the defendant within the time required refuse to demur or plead to the information, the court must direct that a plea of not guilty be entered for him.

If defendant is in custody court shall order him brought in.

Section 8.—That if the defendant is in custody at the time for arraignment the court shall direct the proper officer to bring him before it to be arraigned and the officer must do so accordingly.

If on bail and not present a bench warrant may issue.

Section 9.—That if the defendant has been discharged on bail or has deposited money in lieu thereof, and does not appear to be arraigned at the time set for arraignment, the court in addition to the forfeiture of the undertaking of bail or the money deposited in lieu thereof shall direct the clerk to issue a bench warrant for his arrest.

Bench warrant; by whom, and how issued.

Section 10.—That when an information has been filed in court, if the defendant has not been arrested and held to answer the charge, unless he voluntarily appears for arraignment, the court must order the clerk to issue a bench warrant for his arrest.

Section 11.—That if the crime charged in the information be bailable, the court, upon directing the bench warrant to issue, must fix the amount of bail and the clerk must endorse the same upon the warrant, and sign it, substantially as follows:

Court may direct amount of bail when bench warrant issues.

"The defendant is to be admitted to bail in the sum of..... dollars."

Section 12.—That at any time after the making of the order for the bench warrant, the clerk. on the application of any Government Attorney, must issue such bench warrant as by order directed, whether the court be sitting or not.

Warrant to issue; when.

Section 13.—That the Bench Warrant upon the information must be substantialy as follows:

Form of bench warrant.

District Court for the District of.....

Virgin Islands of the United States of America.

The People to the Sheriff or any deputy sheriff, marshal, policeman, or other peace officer of the District. Greetings;

An information having been filed on the.... ..... day of ..... A. D..... in the District Court for the..... District of....., charging.... ..... with the crime of (Describing it generally) you are therefore commanded to forthwith arrest the above named ..... and bring him before this court to answer the said information, or if, the court be not in session that you deliver him into the custody of the Warden for the District.

You are further ordered to make due return hereof.

Given under my hand and the seal of the Court, affixed this ..... day of..... ..... 191.....
.....day of..... A. D. 19....

....
Clerk of the District Court.

(L. S.)

Section 14.—A Bench Warrant may be served anywhere in the District.

Where bench warrant may be served.

Section 15.—If bail be given or money deposited in lieu thereof by the defendant and delivered to the proper officer, he must thereupon discharge the defendant from custody, and without delay return the warrant and the order to the clerk of the court together with the bail bond or money deposited in lieu thereof.

Proceedings on giving of bail by the defendant.

Section 16.—If the offense is not bailable, or bail is not given, the officer must deliver the defendant to the Court or to the Warden of the District for commitment according to the command of the warrant.

Proceeding if bail is not allowed or given.

Section 17.—That at any time the court may increase the amount of bail required or given or may order the defendant into actual custody, unless he give bail with new securities, or in an increased amount, to be specified in the order.

Court may order the defendant into custody or increase amount of bail at any time.

Section 18.—That if the defendant be present when the order is made, he must forthwith be committed accordingly; but if he be not present, a bench warrant must be issued and proceeded upon in the manner provided in this chapter.

Proceeding when bail is increased or defendant ordered into custody.

CHAPTER SEVEN.

OF SETTING ASIDE THE INFORMATION.

Information, when to be set aside on motion.

Section 1.—That the information must be set aside by the court upon motion of the defendant in either of the following cases.

First: When it is not found endorsed by the Government's Attorney.

Second: When the name of the complaining witnesses if there be any, or, if there be no such witnesses the statement of such fact, is not endorsed on the information.

When motion to set aside to be made and heard.

Section 2.—That the motion to set aside the information must be made and heard at the time of the arraignment, unless for good cause the court postpone the hearing to a further time, and if not so made, the defendant is precluded from afterwards taking the objection mentioned in the last preceding section.

Proceedings if motion to set aside is granted.

Section 3.—That if the motion be allowed, the court must order that the defendant, if in custody, be discharged therefrom; or if he has given bail, or deposited money in lieu thereof, that his bail be exonerated or his money refunded to him, unless it direct that a new information be filed. If the motion be denied, the defendant must then immediately answer the information either by demuring or pleading thereto unless granted further time by the court.

Effect of order for a new information to be fied.

Section 4.—That if the court direct that a new information be filed, the defendant, if then in custody, must so remain unless he be admitted to bail, or if he has already given bail, or deposited money in lieu thereof, such bail or money is answerable for the appearance of the defendant to answer such new information as may be filed.

New information; when to be filed, etc.

Section 5.—If a new information has been ordered to be filed, it shall be the duty of the proper officer to file the same within fifteen days; and if the same is not filed within fifteen days, the court shall order the defendant discharged, unless by special reason, the court extends the time for the filing of the new information.

Order to set aside information; no bar to future prosecution.

Section 6.—That an order to set aside an information, as provided in this chapter, is no bar to a future prosecution for the same crime.

CHAPTER EIGHT.

OF THE DEMURRER.

Pleadings on part of defendant.

Section 1.—That the only pleading on the part of the defendant is either a plea or demurrer.

When plea or demurrer to be made.

Section 2.—That both the plea and the demurrer must be put in, in open court, either at the time of the arraignment or at such other time as may be allowed to the defendant for that purpose.

When defendant may demur.

Section 3.—That the defendant may demur to the information when it appears upon the face thereof, either:

1. That more than one offense is charged.
2. That it does not substantially conform to chapter five of this title.
3. That the facts stated do not constitute a public offense.
4. That it contains any matter, which, if true would constitute a legal justification or excuse for the offense charged, or other legal bar to the prosecution.

Demurrer, how made.

Section 4.—The demurrer must be made in writing signed either by the defendant or his attorney, and filed. It must specifically state the grounds of objection to the information, or it may be disregarded.

When heard.

Section 5.—Upon the demurrer being filed, the argument upon objections presented thereby must be heard, either immediately or at such time as the court may appoint.

Judgment on demurrer.

Section 6.—That upon considering the demurrer, the court must give judgment either allowing or disallowing it, and an entry to that efect must be entered in the journal.

Proceedings when demurrer is allowed.

Section 7.—That if the demurrer be allowed, the judgment is final upon the information demurred to and is a bar to another prosecution for the same offense, unless the court is of the opinion that the objection upon which the demurrer is allowed may be avoided by amendment, or in a new information, and directs a new information to be filed.

Proceedings when demurrer allowed and new information is not ordered.

Section 8.—That if the court does not direct that a new information be filed or that the information be amended the defendant, if in custody, must be discharged, or if admitted to bail, his bail exonerated, or if he has deposited money in lieu thereof, the money must be refunded to him.

Proceedings if demurrer is not allowed.

Section 9.—That if the demurrer be disallowed, the court must permit the defendant, at his election, to plead, which he must do forthwith, or at such time as the court may allow, but if he do not plead, a plea of not guilty shall be directed by the court.

When objection may be taken at the trial on in arrest of judgment.

Section 10.—That when the objections mentioned in section three of this chapter, appear upon the face of the information they can only be taken by demurrer, except that the objection to the jurisdiction of the court over the subject of the information, or that the facts stated do not constitute a crime, may be taken at the trial under the plea of not guilty and in arrest of judgment.

Definition of demurrer.

Section 11.—A demurrer is an allegation that, admiting the facts as stated in the information, such facts do not constitute an offense against the law whereby the defendant should be put to trial.

CHAPTER NINE.

OF PLEAS TO THE INFORMATION.

The plea; kinds.

Section 1.—There are four kinds of pleas to an information, viz:

(1) Guilty.
(2) Not guilty.
(3) A former conviction or acquittal of the offense charged, which may either with or without the plea of not guilty.
(4) Once in jeopardy.

The plea; how put in and its form.

Section 2.—That every plea must be oral, and must be entered on the journal of the court in substantially the following form:

(1) If the defendant pleads guilty;
"The defendant pleads that he is guilty of the crime charged in the information."

(2) If he pleads not guilty.
"The defendant pleads that he is not guilty of the crime charged in the information."

(3) If he pleads a former conviction or acquittal;
"The defendant pleads that he has already been convicted (or acquitted) of the offense charged in the judgment of the court (*naming it*) rendered at (*naming the place*), on the..... day of.....".

(4) If he plead once in jeopardy.
"The defendant pleads that he has been once in jeopardy for the offense charged (*Specifying the time, place and court*)."

Plea of guilty must be made by the defendant in person except when put in by corporation.

Section 3.—That a plea of guilty must in all cases be put in by the defendant in person, in open court, unless upon an information against a corporation in which case it may be put in by counsel. The court may at any time, before judgment upon a plea of guilty permit it to be withdrawn, and a plea of not guilty substituted.

Extent of plea of not guilty.

Section 4.—That the plea of not guilty controverts and is a denial of every material allegation in the information.

What may be given in evidence under plea of not guilty.

Section 5.—That all matter of fact tending to establish a defense to the charge in the information other than those specified in the third and fourth subdivisions of section one of this chapter may be given in evidence under a plea of not guilty.

What is not deemed a formal acquittal.

Section 6.—That if the information is dismissed upon an objection to its form or substance or in order to hold the defendant for a higher offense, without a judgment of acquittal, it is not an acquittal of the same offense and the defendant shall not be deemed to have in jeopardy.

What is deemed acquittal.

Section 7.—That when the defendant is acquitted on the ground of a variance between the information and the proof or upon the merits, he is deemed acquitted of the same crime, notwithstanding any defect in form or substance in the presentment on which he is acquitted.

Conviction or acquittal for crime consisting of different defenses; when a bar to another information.

Section 8.—That when the defendant shall have been convicted or acquitted upon the information for a crime consisting of different degrees, such conviction or acquittal is a bar to another information for the crime charged in the former or for any inferior degree of that crime, or for any attempt to commit the same, or for an offense necessarily included therein of which he might have been convicted under that information.

CHAPTER TEN.

OF LAW AND FACT.

Section 1.—That an issue of fact arises

When issue of fact arises.

First: Upon a plea of not guilty; or

Second: Upon a plea of former conviction or acquittal of the same crime; or

Third: Upon a plea of once in jeopardy.

Section 2.—That an issue of law arises upon demurrer to the information.

When issue of law arises.

Section 3.—In the District Court an issue of law must be tried by the court, and an issue of fact if the charge in the information amount to a felony, by jury if requested.

Issues of law and fact; how tried.

Section 4.—That the defendant must be personally present in court during all the preceedings of the trial.

Defendant must be present throughout the trial.

CHAPTER ELEVEN.

OF THE CALENDAR OF ISSUES FOR TRIAL, AND OF POSTPONEMENT.

Clerk to keep a calendar.

Section 1.—The clerk must keep a calendar of all criminal actions pending in the court, enumerating them according to the date of the filing of the information, specifying opposite the title of each action, whether it is for a felony or misdemeanor, and whether the defendant is in custody or on bail. This book is to be known as the criminal register.

Order of disposition of issues on the calendar.

Section 2.—The issues on the calendar must be disposed of in the following order, unless for good cause shown the court shall direct an action to be tried out of its order:

1. Prosecution for felony when the defendant is in custody.
2. Prosecution for misdemeanor when the defendant is in custody.
3. Prosecution for felony when the defendant is on bail.
4. Prosecution for misdemeanor when the defendant is on bail.

Postponement of trial. How and when allowed.

Section 3.—After his plea, the defendant upon motion, is entitled to at least five days to prepare for trial, but unless such motion is made and presented to the court at the time of the plea, such right shall be deemed waived.

Further postponement.

Section 4.—When an action is called for trial, or at any time previous thereto, the court may, upon sufficient cause, direct the trial to be postponed to another day.

Court may order information discharged for want of prosecution.

Section 5.—That if, when an information is called for trial, the defendant appear for trial and the prosecutor for the Government is not ready, and does not show any sufficient cause for postponing the trial, the court must order the information discharged, except being of the opinion that the public interest requires the information to be retained for trial, it may direct the information to be retained on the calendar.

Effect of such discharge.

Section 6.—That if the court order the information discharged, the order is not a bar to another action for the same crime unless the court so direct; and if the court so direct, judgment of acquittal must be entered.

Proceedings upon discharge in relation to bail.

Section 7.—That if, upon discharge of the information, the court give a judgment of acquittal, the same proceedings must be had thereon, in relation to the custody of defendant, his bail or money deposited in lieu thereof, as are prescribed in section eight of Chapter eight of this title.

CHAPTER TWELVE.

OF THE JURY.

Section 1.—In all Criminal Actions in the District Court when the charge in the information amounts to a felony, the defendant may demand a trial by jury. If no jury is demanded the case shall be tried by the court without a jury; provided, however, that the Judge of the District Court may on his own motion order a jury for the trial of any criminal action.

Defendant may demand jury in criminal action in District Court.

Section 2.—The qualifications of a person to act as juror shall be as follows:

Qualifications of jurors.

(1) Such person shall not have been convicted of a felony and for the purpose of this section a felony is defined to mean "conviction of any offense and a sentence therefor in jail or prison or other confinement for a period of more than one year";

(2) Such person must be either a citizen of the United States or of the Municipality in the Virgin Islands of the United States in which he resides, and, such person if not a natural born citizen of the United States, must be a qualified voter of the Municipality of the Virgin Islands of the United States within which he resides;

(3) Such person must be a male inhabitant of the District, over twenty-five years of age, in possession of his natural faculties, of sound mind and must have resided within the District for six months.

Section 3.—A person is exempt from liability to act as a juror if he be:

Who exempt from jury service.

(1) A judicial officer;

(2) A practicing physician or dentist;

(3) A minister of the gospel or priest of any denomination;

(4) An attorney at law;

(5) Any civil officer of the District, or of the Municipality, or of the United States, whose duties are at the time inconsistent with his attendance as a juror.

Section 4.—In each Municipality of the Virgin Island of the United States there shall be appointed annually by the Colonial Council a jury commissioner, who shall with the Clerk of the District Court, or his deputy, and one other person appointed by the Governor constitute a Jury Commission.

Jury commission; how selected.

Section 5.—The Electoral Board, for each of the Electoral Districts shall, each year when the Electoral List is completed, forward a true and correct copy thereof to the Clerk of the District Court and within ten days thereafter it shall be the duty of the Jury Commission to meet for the purpose of adding thereto the names of all persons within the Municipality who are known to be competent as jurors. After the Jury Commission has so made a complete list of the known jurors in the Municipality, it shall present the same to the District Court from which list the General-Panel shall be selected.

General list; how made up.

Section 6.—It shall be the duty of the Judge of the District Court, not more than ten days before each term of the court and in the presence of at least two members of the Jury Commission to proceed to select from the lists last furnished in the Municipality in which the term of court is to be convened, a panel to consist of the names of seventy-five persons, to be selected with reference to the intelligence, sobriety and integrity of such persons and without the least reference to their political opinions; and of the names of such persons when selected, a list shall be made and a certificate thereto appended by the said Judge that the said list of names has been duly selected in conformity with and according to the spirit and intent of this chapter, and which said list and certificate shall be filed with the Clerk of the District Court and by him preserved as other proceedings of the said Court are kept.

General-Penal; how selected.

Jury - Panel; how procured.

Section 7.—When said list of names, selected as directed in the preceding section is made and certified as herein provided, immediately thereupon, the Judge of the District Court in the presence of the Jury Commission, shall cause all of the names selected and placed in the list as aforesaid to be legibly written upon ballots, which shall be of equal size and of the same color and appearance, and shall be closely rolled or folded and placed by the Judge in a cubi-form box, with a sliding top and after so depositing said ballots the said box shall be closed and the Judge shall direct the Clerk or one of this deputies whom the Judge shall designate, but not one of the Jury Commission, to draw from said box through such an opening caused by removing the sliding top thereof so far as will only conveniently admit the hand and without in any manner looking into said box, one by one, such number of ballots as the Judge may direct but not exceeding twenty-four, which names shall be recorded as the Jury-Panel for the term. Summons shall thereafter be issued by the Clerk of the District Court directing each person drawn on the Jury-Panel to attend the District Court at such time and place as announced by the Judge of the District Court, and to serve as members of the Jury-Panel for the stated term of court, unless excused by the Judge of the court for good and sufficient cause.

Jury - Panel to be sworn.

Section 8.—Before entering upon the trial of any case the court shall cause an oath to be administered to the Jury-Panel in form to the effect that individually and collectively they will well and faithfully perform their duty as jurors.

Jury box; how composed.

Section 9.—The respective names of the members of the Jury-Panel shall be placed on ballots which shall be rolled or folded, and the said ballots then placed in a box similar to that used in drawing the Judy Panel. This box with the names of the members of the Jury-Panel so placed therein shall be known as the trial jury box.

CHAPTER THIRTEEN.

FORMATION OF THE TRIAL JURY.

Section 1.—The Jury shall consist of twelve person unless in misdemeanors and civil actions the parties consent to a less number, which must be at least six.

Number to constitute Jury.

Section 2.—Juries for the trial of cases, both civil and criminal, shall be chosen in the following manner, to-wit:

Juries, how chosen.

When a case which is to be tried by a jury is called for trial, the clerk shall draw from the trial jury box containing the names of those who have been summoned and not excused as jurors, the names of twelve persons unless a less number has been agreed upon; Provided, if at the time said case is called there are less than twelve names in the jury box, the Court may either order the examination "for cause" of those present to be proceeded with, or it may direct bystanders to be called, or it may issue an open venire, to complete the number of twelve.

Examination for cause.

These twelve prospective jurors shall be examined as to their qualifications, first by the plaintiff and then by the defendant. If a challenge for cause should be sustained the place of the person so challenged shall be filled forthwith, and the person called to fill said place shall be then examined for cause.

When there are twelve qualified men in the jury box, the parties shall exercise peremptory challenges in the following order:

Peremptory challenges; order of.

In capital cases: Plaintiff one, defendant two; plaintiff one, defendant two; and so on until plaintiff has exercised or waived peremptory challenges to the number of ten and the defendant has exercised or waived peremptory challenges to the number of twenty.

Capital cases.

In trials for other felonies: Plaintiff one, defendant two; plaintiff one, defendant two; and so on until plaintiff has exercised or waived peremptory challenges to the number of three and defendant has exercised or waived peremptory challenges to the number of six.

Felonies.

In trials for misdemeanors: Plaintiff one, defendant one, and so on, alternately, until each side has exercised or waived peremptory challenges to the number of three.

Misdemeanors.

In trials of civil cases: Plaintiff one, defendant one, and so on, alternately, until each side has exercised or waived peremptory challenges to the number of three.

Civil cases.

A waiver of a peremptory challenge shall be considered as a waiver as to all the jurymen then in the box, and thereafter none of said jurymen shall be allowed to be challenged peremptorily by the party exercising the waiver except for good cause shown; but in no event shall either party be allowed peremptory challenges in greater number than is herein provided.

Waiver of peremptory challenges.

The court may at any time issue an open venire for such number of prospective jurymen as it thinks will be necessary to secure a jury, but when this is done, the names of all those summoned on said open venire shall be placed in the box and drawn by lot whenever there is a vacancy to be filled. When said open venire is exhausted, the court may order another open venire to issue, or may direct bystanders to be called one at a time.

Open venire.

If at any time the regular paned of jurors is reduced to a number less than that which in the judgment of the court is necessary for the orderly and speedy dispatch of the business of the court, the Judge may order the panel to be filled by adding thereto the name or names of any person who may have been summoned on any open venire and the person whose name is so added shall be thereafter considered as a member of said panel, the same as if his name had been draw from the lists provided by law.

Jurymen from open venire may be added to regular panel; when.

Challenge to the panel.

Section 3.—No challenge shall be made or alloved to the panel. A challenge is an objection to a particular juror and may be either:

First. Peremptory; or

Second. For cause.

Peremptory challenges defined.

Section 4.—A peremptory challenge is an objection to a juror for which no reason need be given, but upon which the court shall exclude him.

Challenge for cause defined.

Section 5.—A challenge for cause is an objetion to a juror and may be be either:

First. General; that the juror is disqualified from serving in any action; or,

Second. Particular; that he is disqualified from serving in the action on trial.

General causes of challenge.

Section 6.—The general causes of challenge are:

First. A want of any of the qualifications prescribed by law for a juror;

Second. Unsoundness of mind, or such defect in the faculties of the mind or organs of the body as renders him incapable of performing the duties of juror.

Particular causes of challenge.

Section 7.—The particular causes of challenge are of two kinds:

First. For such bias, as, when the existence of the facts is ascertained, in judgment of law disqualifies the juror, and which is known herein as implied bias.

Second. For the existence of a state of mind on the part of a juror in reference to the action or to either party which satisfies the trier, in the exercise of a sound discretion, that he cannot try the issue impartially and without prejudice to the substantial rights of the party challenging, and which is know herein as actual bias.

Challenge for implied bias.

Section 8.—A challenge for implied bias may be taken for any of the following causes, and for no other:

First. Consanguinity or affinity within the fourth degree to the person alleged to be injured by the crime charged in the presentment or the person indorsed thereon as the prosecutor or to the defendant.

Second. Standing in the relation of guardian and ward, attorney and client, master and servant, or landlord and tenant, with the defendant, or the person alleged to be injured by the crime charged in the presentment, or indorsed thereon as prosecutor or being a member of the family, a partner in business with or in the employment on wages for either of such persons, or being surety or bail in the action or otherwise for the defendant.

Third. Having been one of a jury formerly sworn in the same action, and whose verdict was set aside, or which was discharged without a verdict, after the case was submitted to it.

Fourth. Having served as a juror in a civil action, suit, or proceeding brought against the defendant for substantially the same act charged as a crime.

Fifth. If the offense charged be punishable with death, the entertaining of such conscientious opinions as would preclude a person from finding the defendant guilty; in which case he shall neither be permitted nor compelled to serve as a juror.

Challenge for actual bias.

Section 9.—A challenge for actual bias may be taken for the cause mentioned in the second subdivision of the next preceding section. But on the trial of such challenge, although it sould appear that the juror challenged

has formed or expressed an opinion upon the merits of the cause from what he may have heard or read, such opinion shall not of itself be sufficient to sustain the challenge, but the court must be satisfied, from all the circumstances that the juror cannot disregard such opinion and try the issue impartially.

Exemption from service on jury.

Section 10.—An exemption from service on a jury shall not be cause of challenge, but the privilege of the person exempted.

Trial of challenges.

Section 11.—A challenge may be excepted to by the adverse party for insufficiency, and if so the court shall determine the sufficiency thereof, assuming the facts alleged therein to be true. The challenge may be denied by the adverse party, and if so the court shall try the issue and determine the law and the fact.

Proceedings and evidence on trial of challenge.

Section 12.—Upon the trial of a challenge the rules of evidence applicable to testimony offered upon the trial of an ordinary issue of fact shall govern. The juror challenged, or any other person otherwise competent, may be examined as a witness by either party. If a challenge be determined to be sufficient or found to be true, as the case may be, it shall be allowed, and the juror to whom it was taken excluded. But if determined or found otherwise, it shall be disallowed.

Challenge may be oral.

Section 13.—The challenge, the exception, and the denial may be made orally. The Judge of the Court shall note the same upon his minutes, and the substance of the testimony on either side.

Challenge by whom and how taken.

Section 14.—All challenges whether peremptory or for cause, may be taken by "The People" or defendant, but when several defendants are tried together they cannot sever their challenges, but must join therein.

Oath of jury.

Section 15.—That as soon as the number of the jury has been completed, an oath or affirmation shall be administered to the jurors in substance, that they and each of them will well and truly try the matter in issue between the plaintiff and defendant, and a true verdict give according to the law and evidence as given on the trial.

CHAPTER FOURTEEN.

OF THE CONDUCT OF THE TRIAL AND MISCELLANEOUS PROVISIONS RELATING THERETO.

Order of proceedings on trial.

Section 1.—After the jury is impaneled and sworn, the trial shall proceed in the following order:

First. The Government Attorney may state the case of the prosecution, and may briefly state the evidence by which he expects to sustain it.

Second. The defendant, or his counsel, may then state his defense, and may briefly state the evidence he expects to offer in support of it.

Third. The Government Attorney must produce evidence; and the defendant will then produce his evidence.

Fourth. The Government Attorney will then be confined to rebutting evidence, unless the court, for good reasons, in furtherance of justice, permit him to offer evidence in chief.

Fifth. When the evidence is concluded, either party may request instructions to the jury on points of law, which shall be given or refused by the court; which instructions shall be reduced to writing if either party requests it.

Sixth. When the evidence is concluded, unless the case be submitted without argument, the Government Attorney shall commence, the defendant or his counsel follow, and the Government Attorney conclude, the argument to the jury.

Seventh. The court, after the argument is concluded, shall immediately, and before proceeding with other business, charge the jury; which charge, or any charge given after the conclusion of the argument, shall be reduced to writing by the court, if either party requests it before the argument of the trial is commenced; such charge or charges, or any other charge or instructions provided for in this section, when so written and given, shall in no case be orally qualified, modified, or in any manner explained to the jury by the court; and all written charges and instructions shall be taken by the jury in their retirement, and returned with their verdict into court, and shall remain on file with papers of the case.

Conduct of jury after case is submitted.

Section 2.—When a case is finally submitted, the jurors must be kept together in some convenient place under the charge of an officer until they agree upon a verdict or are discharged by the court; the officer having them in charge shall not suffer any communication to be made to them nor make any himself, except to ask them if they have agreed upon a verdict, unless by order of the court; nor shall he communicate to any person, before the verdict is delivered, any matter in relation to the state of their deliberations; and if the jurors be permitted to separate during the trial, they shall be admonished by the court that it is their duty not to converse with, nor to suffer themselves to be addressed by anyone, nor to form or express an opinion thereon, until the case is finally submitted to them.

For what cause court may discharge jury.

Section 3.—The court may discharge a jury without prejudice to the prosecution for the sickness of a juror, the corruption of a juror, or other accident or calamity, or because there is no probability of the jurors agreeing, and the reason for the discharge shall be entered in the journal.

Jury may be polled.

Section 4.—When the jurors agree upon their verdict they must be conducted into court by the officer having them in charge; and before the verdict is accepted, the jury may be polled at the request of either the Government Attorney or the defendant.

Section 5.—When a presentment charges an offense against property by larceny, embezzlement, or obtaining by false pretenses, the jury, on conviction, shall ascertain and declare in the verdict the value of the property stolen, embezzeled, or falsely obtained.

When jury to ascertain value of property.

Section 6.—No act committed by a person while in a state of voluntary intoxication shall be less criminal by reason of his having been in such condition; but whenever the actual existence of any particular motive, purpose, or intent is a necessary element to constitute any particular species or degrees of crime, the jury may take into consideration the fact that the defendant was intoxicated at the time in determining the purpose, motive, or intent with which he committed the act.

Intoxication no excuse for crime.

Section 7.—When it appears that the defendant has committed a crime, and there is reasonable ground of doubt in which of two or more degrees he is guilty, he can be convicted of the lowest of those degrees only.

Defendant to be convicted in lowest degree in case of doubt.

Section 8.—When two or more defendants are jointly presented for a felony, any defendant requiring it must be tried separately; but in other cases defendants jointly presented may be tried seperately or jointly, in the discretion of the court.

When defendants jointly presented entitled to separate trial.

Section 9.—The fact that two or more persons are jointly presented shall not render any one so presented incompetent as a witness for or against his co-defendant, whether said defendants are tried jointly or severally.

When one of several defendants may be discharged as a witness for the People.

Section 10.—The law of evidence in civil actions is also the law of evidence in criminal actions and proceedings, except as otherwise specially provided in this code.

Law of evidence in criminal cases.

Section 11.—In the trial of or examination upon all presentments, complaints, information, and other proceedings before any court, magistrate, jury, or other tribunal against persons accused or charged with the commission of crimes or offenses, the person so charged or accused shall at his own request, but not otherwise, be deemed a competent witness, the credit to be given to his testimony being left solely to the jury, under the instructions of the court, or to the discrimination of the magistrate, or other tribunal before which such testimony may be given: Provided, That his waiver of such right shall not create any presumption against him; that such defendant or accused, when offering his testimony as a witness in his own behalf, shall be deemed to have given the prosecution a right to cross-examine.

Defendant can be witness.

Section 12.—In all criminal actions where the husband is the party accused the wife shall be a competent witness and when the wife is the party accused the husband shall be a competent witness; but neither husband nor wife, in such cases shall be compelled or allowed to testify in such case unless by consent of both of them: Provided, That in all cases of personal violence upon either by the other, the injured party, husband or wife, shall be allowed to testify against the other.

Husband or wife can be witness for or against each other.

Section 13.—In a criminal action the testimony of a witness must be given orally in the presence of the court and jury.

Evidence in criminal actions to be oral.

Section 14.—Neither a departure from the form or mode prescribed by this chapter, in respect to any pleadings or proceedings, nor any error or mistake therein, renders the proceedings invalid, unless it has actually prejudiced the defendant, or tended to his prejudice in respect to a substantial right.

Error in proceedings not material, unless it prejudice substantial rights of defendant.

Section 15.—A conviction cannot be had upon the testimony of an accomplice unless he be corroborated by such other evidence as tends to connect the defendant with the commission of the crime, and the corroboration is not sufficient if it merely show the commission of the crime or the circumstances of the commission.

Testimony of accomplice must be corroborated.

Evidence on trial for false pretenses.

Section 16.—Upon a trial for having, by any false pretense, obtained the signature of any person to any written instrument, or obtained from any person any valuable thing, no evidence can be admitted of a false pretense expressed orally and unaccompanied by a false token or writing; but such pretense, or some note or memorandum thereof, must be in writing, and either subscribed by or in the handwriting of the defendant. This section does not apply to an action for falsely representing or personating another, and in such assumed character receiving any such valuable thing.

Evidence of female abducted or seduced must be corroborated.

Section 17.—Upon a trial for inveigling, enticing, or taking away an unmarried female for the purpose of prostitution, or for having seduced and had illicit connection with an unmarried female, the defendant cannot be convicted upon the testimony of the female injured, unless she is corroborated by some other evidence tending to connect the defendant with the commission of the crime.

Court to decide questions of law; knowledge of the court.

Section 18.—All questions of law, including the admissibility of testimony, the facts preliminary to such admission, and the construction of statutes and other writings, and other rules of evidence, are to be decided by the court, and all discussions of law addressed to it; and whenever the knowledge of the court is made evidence of a fact, the court is to declare such knowledge to the jury, who are bound to accept it as conclusive.

Jury to receive the law from the court and decide the facts.

Section 19.—Although the jury has a power to find a general verdict, which includes questions of law as well as fact, they are bound, nevertheless, to receive as law what is laid down as such by the court; but all questions of fact other than those mentioned in the last section must be decided by the jury, and all evidence thereon addressed to them.

Defendant may be committed after appearance.

Section 20.—When a defendant who has given bail appears for trial, the court may, in its discretion, at any time after such appearance, order him to be committed to actual custody to abide the judgment or further order of the court; and he must be committed and held in custody accordingly.

CHAPTER FIFTEEN.

OF THE VERDICT.

Section 1.—In all cases excepting murder and rape wherein there is a trial by jury it is hereby declared that a verdict may be rendered by any five sixths of the members of the jury and the court shall pass judgment upon such verdict. In cases for murder and rape the verdict must be agreed upon by all members of the jury.

Number of jury required for a verdict.

Section 2.—That upon a presentment for a crime consisting of different degrees, the jury may find the defendant not guilty of the degree charged in the presentment and guilty of any degree inferior thereto, or of an attempt to commit the crime or any such inferior degree thereof.

Jury may convict of any degree of the charged, or of an attempt to commit the crime.

Section 3.—That in all cases the defendant may be found guilty of any crime the commission of which is necessarily included in that with which he is charged in the presentment, or of an attempt to commit such crime.

Jury may convict of any crime necessarily included in that charged.

Section 4.—That on presentment against several, if the jury cannot agree upon a verdict as to all, they must give a verdict as to those in regard to whom they do agree, on which a judgment must be given accordingly; and the case as to the rest of the defendants may be tried by another jury.

Jury may give verdict as to defendants concerning whom they agree and cause others to be tried again.

Section 5.—That if a verdict be given against the defendant, he must be remanded if in custody; if he has given bail he may be permitted to await the judgment of the court upon the verdict. When committed his bail is exonerated, or if money be deposited in lieu thereof it must be refunded to the defendant.

Custody of defendant when verdict given against him.

Section 6.—That if the defense be the insanity of the defendant the jury must be instructed, if they find him not guilty on that ground, to state that fact in their verdict, and the court must thereupon, if it deems his being at large dangerous to the public peace or safety, order him to be committed to any lunatic asylum authorized by the law to receive and keep such persons until he became sane or be otherwise discharged therefrom by authority of law.

Proceedings when defendant acquited on account of insanity.

Section 7.—In cases wherein no jury is demanded or ordered and the trial had by the court, the Judge of the Court shall render a decision which shall be deemed a verdict.

Court to give decision in cases without jury.

CHAPTER SIXTEEN.

EXCEPTIONS AND NEW TRIAL.

Exceptions which may be taken by the defendant.

Section 1.—On the trial of an information exceptions may be taken by the defendant to a decision of the court in refusing to postpone the trial on motion of the defendant or on any matter of the law made from the time of calling the action for trial to the rendering of the decision, and exceptions may be taken by either party to the decision of the court upon a matter of law:

First. In granting or refusing to set aside an information.

Second. In granting or refusing a motion in arrest of judgment.

Third. In granting or refusing a motion for a new trial.

Fourth. In making or refusing to make an order after judgment affecting any substantial rights of the party.

Exceptions; how taken.

Section 2.—The point of the exceptions shall be particularly stated, and taken at the time of the trial and delivered in writing to the judge, or shall be entered in his minutes, and at the time, or afterwards, be corrected until made conformable to the truth; if no exceptions be taken at the time of the trial the same shall be deemed to be waived.

Procedure for settlement of bill of exceptions.

Section 3.—When a party desires to have the exceptions mentioned in section one of this chapter, settled in a bill of exceptions, the draft of a bill must be prepared by him, and presented, upon at least three days notice to the adverse party, to the judge for settlement, within fifteen days after the judgment or final action is rendered in the case in which the exception is taken unless further time is granted by the Judge of the District Court. When settled and allowed the bill of exceptions must be signed by the Judge of the District Court and filed with the Clerk of the Court and shall thereafter be deemed and taken to be a part of the record of the cause.

No exceptions need be taken or allowed to any decision upon a matter when the same is entered in the journal or made wholly upon matters in writing and on file in the court.

Contents of bill of exceptions.

Section 4.—A bill of exceptions must contain so much of the evidence only as is necessary to present the questions of law upon which the exceptions were taken; and the judge must upon the settlement of the bill, whether agreed to by the parties or not, strike out all other matters contained therein.

Definitions of new trial

Section 5.—That a new trial is a reexamination of an issue of fact in the same court after a trial and decision or verdict by the court or jury.

For what causes granted.

Section 6.—That the court may on motion of the defendant set aside the decision or verdict and grant a new trial for any of the following causes, materially affecting the substantial rights of such party:

First. Accident or surprise which ordinary prudence could not have guarded against.

Second. Newly discovered evidence, material for the defendant which he could not with reasonable diligence have discovered and produced at the trial.

Third. Irregularity in the proceedings of the Court, jury, or adverse party or any order of the court, or abuse of discretion, by which such party was prevented from having a fair trial.

Fourth. Error in law occurring at the trial and excepted to by the defendant.

Fifth. Insufficiency of the evidence to justify the verdict or other decision, or that it is against law.

Sixth. Misconduct of the jury or prevailing party.

Motion for a new trial.

Section 7.—That a motion for a new trial with affidavits, if any, in support thereof shall be filed within forty-eight hours after the rendition of the verdict or other decision sought to be set aside unless further time is granted by the court. When the adverse party is entitled to oppose the motion by counter affidavits, he shall file the same within one day after the filing of the motion. The court shall then set a time for hearing on such motion.

Motion must state ground.

Section 8.—That in all cases of motion for new trial the grounds thereof must be plainly specified and no cause for new trial not so stated shall be considered or regarded by court. When the motion is made for a cause mentioned in subdivisions First, Second, Third or Sixth of Section Six of this chapter, it shall be upon affidavits setting forth the facts upon which such motion is based.

Counter affidavits when allowed.

Section 9.—If the motion be supported by affidavits, counter affidavits may be offered by the adverse party; and if the cause be newly discovered evidence, the affidavits of any witness or witnesses showing what their testimony will be be shall be procured or good reason shown for their nonproduction; and in the considaration of any motion for a new trial, reference may be had to any proceedings in the case prior to the decision sought to be set aside.

CHAPTER SEVENTEEN.

ARREST OF JUDGMENT.

Motion in arrest of judgment.

Section 1.—A motion in arrest of judgment is an application on the part of the defendant that no judgment be rendered on a plea, verdict or decision of guilty.

It may be founded on any of the defects, in the information mentioned, in section number three of Chapter eight of this title, unless the objection has been waived by a failure to demur, and, must be made within the time allowed to file a motion for a new trial, and both such motions may be made together and heard and decided at once or separately as the court may direct.

Effect of arrest of judgment.

Section 2.—That the effect of allowing a motion in arrest of judgment is to place the defendant in the same situation in which he was before the information was filed.

Defendant; when to be held.

Section 3.—That if, from the evidence given at the trial, there is reason to believe the defendant guilty, and a new information can be framed upon which he may be convicted, the court must order the defendant recommitted to custody or admitted to bail, to answer the new informatnou. If the evidence shows him guilty of another offense, he must be committed and held thereon, and in neithr case shall the decision be a bar to the prosecution. The court must also in either case, order a new information to be filed.

When to be discharged.

Section 4.—If the motion in arrest of judgment is allowed and a new information is not ordered to be filed, the defendant, if in custody, must be discharged, or if he has given bail or deposited money in lieu thereof, his bail exonerated or his money returned to him, and in such case, the arrest of Judgment operates as an acquittal of the charge upon which the information was formed.

CHAPTER EIGHTEEN.

OF THE JUDGMENT.

Section 1.—That after a plea, verdict or decision of guilty, if the judgment be not arrested, or a new trial granted, the court must appoint a time for pronouncing judgment, which in cases of felony must be at least forty-eight hours after the plea, verdict or decision, except by consent of the defendant the judgment may be pronounced within less time.

Time for pronouncing judgment.

Section 2.—That when the defendant is in custody, the court must direct the officer in whose custody he is, to bring him before it for judgment, and the officer must do so accordingly.

Defendant must be brought before the court.

Section 3.—That the defendant must be personally present in all cases at the time judgment is pronounced.

In all cases.

Section 4.—That if the defendant has given bail or deposited money in lieu thereof and does not appear for judgment, the court in addition to forfeiture of the undertaking of bail, or money deposited, shall direct the clerk to issue a bench warrant for his arrest.

Proceedings when defendant on bail does not appear.

Section 5.—The clerk at any time after the making of the order for the bench warrant, on the application of the Government Atorney, must issue such warrant whether the court be sitting or not.

Bench warrant to issue.

Section 6.—The bench warrant so issued must be substantially in the following form:

Form.

"District Court for the District of.....

Virging Islands of the United States at.....
The People

To (the sheriff, deputy sheriff, marshal, policeman or other officer)
Greeting!

A..... B..... having been on the.... .....day of ..... A. D., duly convicted in the District Court for the District of the Virgin Island at..... of the crime of (*stating generally*) this is to command you forthwith to arrest the above named defendant and bring him before the said court for judgment and if the court be not in session, that you retain him in the custody of the warden. You are further ordered to make due return hereof.

By order of the Court.

Witness my hand and seal of the said court affixed at..... this..... day of..... A. D.

.....

(L. S.) Clerk."

Section 7.—That such warrant may be served in the same manner as a warrant of arrest.

How served.

Section 8.—After a plea, verdict or decision of guilty when a discretion is conferred upon the court as to the extent of the punishment, the court upon the oral suggestion of either party that there are circumstances which may be properly taken into view either in aggravation or mitigation of the punishment, may in its discretion hear the same summarily at a specified time, and upon such notice to the adverse party as it may direct.

Court may inquire into circumstances in aggravation or mitigation of punishment.

Of conviction of two or more crimes. Judgment of imprisonment how given.

Section 9.—That if the defendant be convicted of two or more crimes before judgment on either, the judgment may be that the imprisonment on any one may commence at the expiration of the imprisonment of any other of such crimes and if the defendant be in imprisonment upon a previous judgment on a conviction of a crime, the judgment may be that the imprisonment commence at the expiration of the time limited by such previous judgment.

Duration of imprisonment of judgment to pay a fine

Section 10.—That a judgment that a defendant pay a fine or a fine and costs may also direct that he be imprisoned until the same be satisfied specifying the extent of the imprisonment which cannot exceed one day for each dollar of the fine, or fine and costs, and in no event can the extent of the imprisonment for the same exceed one year.

Imprisonment at hard labor.

Section 11.—In all cases of conviction the court sentencing any person convicted may attach to the sentence of imprisonment a provision that such imprisonment must be at hard labor. Provided; however, that no prisoner shall be sentenced to labor outside the prison and its grounds or precincts without his consent.

Entry of judgment of conviction.

Section 12.—That when a judgment upon a conviction is given the clerk must enter the same in the journal, stating briefly the crime for which the conviction was had. Such entry must be made within thirty days, as of the day's proceedings upon which the judgment was given.

Imprisonment of an impoverished person.

Section 13.—That whenever a person is accussed of an offense and bail is allowed and fixed for awaiting trial, but by reason of poverty, is unable to secure bondsmen and is therefore held in custody while awaiting trial, and is thereafter sentenced to a term of imprisonment, such term of imprisonment shall be reduced by the time already spent in custody from the time of the arrest to the time when sentence is rendered.

Judgment roll, how and when made.

Section 14.—That immediately after entry of judgment the clerk must prepare and annex together the following papers which constitute the judgment roll:

First.—The information and demurrer if there be one.

Second. A copy of the journal entry of the plea, the trial, and decision, and of any order involving the merits and necessarily affecting the judgment.

Third. A copy of the journal entry of the judgment.

Fourth. The bill of exceptions if there be one.

And in all cases the clerk must attach on the outside of the judgment roll a blank sheet of paper, upon which he shall endorse the name of the court, the date when the judgment was given, and the names of the parties to the action and the title thereof, for whom judgment was given and the amount and nature thereof and the date of its entry and docketing.

CHAPTER NINETEEN.

OF THE EXECUTION.

Authority for the execution of judgment.

Section 1.—When a judgment has been pronounced a certified copy of the entry thereof upon the journal must be forthwith furnished by the clerk to the officer whose duty it is to execute the judgment, and no other warrant or authority is necessary to justify its execution.

Judgment for imprisonment and fine.

Section 2.—If the judgment is for imprisonment, or a fine and imprisonment until it be paid, the defendant must forthwith be committed to the custody of the proper officer, and by him detained until the judgment is complied with.

Judgment for imprisonment.

Section 3.—If the judment is for imprisonment, the proper officer of the court must, upon receipt of a certified copy thereof, take and deliver the defendant to the warden of the penitentiary. He must also deliver to the warden the certified copy of the judgment, and take from the warden a receipt for the body of the defendant.

CHAPTER TWENTY.

OF BAIL.

Section 1.—That admission to bail is the order of a Judge of a competent court, or magistrate that the defendant be discharged from actual custody upon bail.

Admission to bail defined.

Section 2.—That the taking of bail consists in the acceptance by a competent court or magistrate of the undertaking of sufficient bail for the appearance of the defendant according to the terms of the undertaking, or that he will pay to the Municipality a specified sum of money.

Taking of bail defined.

Section 3.—That the defendant cannot be admitted to bail when the proof or presumption of guilt is evident or strong and the charge is for murder in the first degree. The filing of an information does not add to the strength of the proof or the presumption to be drawn therefrom.

When defendant cannot be admitted to bail.

Section 4.—If the charge is for any other offense than that specified in the last section, the defendant before conviction is entitled to be admitted to bail, as a matter of right.

When defendant admitted to bail as a matter of right.

Section 5.—After a judgment of conviction of a crime other than that of murder in the first degree or rape, a defendant who has appealed, may be admitted to bail:

When the defendant may be admitted to bail after conviction.

(1) As a matter of right in case of a misdemeanor.

(2) As a matter of discretion in all other cases.

Section 6.—The Judge of the District Court and such other persons as the Governor may appoint as magistrates may admit to bail and accept bail. When bail is given to a magistrate the undertaking shall be by the magistrate, delivered to the clerk of the District Court, and filed by the clerk with the records of the case within three days.

Who may admit to bail. Who to have custody of undertaking of bail.

Section 7.—If the offense is bailable the defendant may be admitted to bail before conviction:

May be admitted to before conviction.

(1) For his appearance before the magistrate, for examination of the charge before being held to answer.

(2) To appear before District Court upon being held to answer, and to at all times render himself amenable to the orders and process of the said court and if convicted, to appear for judgment and render himself in execution thereof.

Section 8.—That after an information is filed, or upon an appeal a defendant cannot be admitted to bail except by the district court or the court wherein the appeal is pending, or any judge thereof.

When bail only may be given by the Judge of the District Court.

Section 9.—That if an application to be admitted to bail be made to the district court an order must be made granting or denying it, and stating the sum in which bail may be taken.

Order for admission to bail; how made.

Section 10.—That when a warrant for arrest is issued without stating any sum in which bail may be given, the defendant, if the officer issuing the warrant refuse to fix the amount, may file an application in the District Court to be admitted to bail; notice of which application must be served on the Government Attorney at least one day prior to being heard by the District Court.

When defendant may apply to the District Court for bail and procedure.

Section 11.—The decision of the District Court granting or denying bail, either upon an orginal application or upon appeal is final.

Decision of the District Court final.

Form of undertaking.

Section 12.—The bail is put in by written undertaking executed by two sufficient sureties, and acknowledged before the court or magistrate taking the same. It may be in the following form:

In the District Court for the District of

Virgin Island of the United States.

The People Plaintiff. VS. .....Defendant.	For violation. Sec.....

Undertaking for bail.

An order having been made on the..... day of..... 19... A. D. by..... (adding title of court, or magistrate official) that John Doe (charged with the crime of.....) be admitted to bail in the amount of..... dollars, to appear before the examining officer for examination, and if held to answer to appear before the District Court, Now therefore:

We....., of (stating his place of residence and occupation) and....., (his residence and occupation) hereby undertake that the above named John Doe shall appear for examination before the examining officer and shall appear and answer any information which may be filed in the District Court, and shall at all times render himself amenable to the orders and process of the court; and if convicted shall appear for judgment and render himself in execution thereof, or if he fail to perform either of these conditions, that we will pay to the Municipality the sum of..... .....dollars.

Dated this..... day of..... 19..... A. D.

Sureties .....

.....

Certificate of officer before whom undertaking is made.

Undertaking how executed.

Section 13.—That the undertaking must be dated and signed by the sureties in the presence of the Judge of the District Court, or other Judge, or magistrate, taking bail, and he must append thereto a certificate signed by him, with his name of office.

Qualifications of bail.

Section 14.—The qualifications of bail are as follows:

(1) Each surety must be a resident of the District, but no counselor or attorney, sheriff, marshal, policeman, or other peace officer, clerk of any court or other officer of any court is qualified to be bail.

(2) They must be each worth the sum specified in the undertaking, exclusive of property exempt from execution and over and above all legal debts and liabilities; but the court, magistrate, or officer taking bail may allow more than two sureties to justify severally in amounts less than expressed in the undertaking if the whole justification be equivalent to that of two suficient bails.

Bail must justify.

Section 15.—That the bail must in all cases justify by affidavits and the affidavits must state that they each possess the qualifications prescribed by the last preceding section.

Section 16.—The court or magistrate may, before the bail is taken, further examine them, upon oath, concerning their sufficiency in such manner as the court or magistrate may deem proper. The statements of the bail must be reduced to writing, and subscribed by them.

Bail may be examined as to sufficiency.

Section 17.—The court or magistrate may also receive other testimony, either for or against the sufficiency of the bail, and may from time to time adjourn the taking of the bail, to afford an opportunity of proving or disproving their sufficiency.

Other testimony may be received as to sufficiency.

Section 18.—That when the examination is closed, the court or magistrate must indorse upon the undertaking an order either allowing or disallowing the bail, and must forthwith cause the same with the affidavits and examination of the sureties and the order of the admission to bail, to be filed with the clerk of the court.

Decision on sufficiency of bail, etc., to be filed in the District Court.

Section 19.—That upon the execution of the undertaking and allowance of bail, the magistrate must make an order signed with the name of his office for the discharge of the defendant as follows in effect:

Discharge of defendant on allowance of bail.

> "To the warden for the..... Division,
> of Virgin Islands of the United States.
>
> John Doe, who is detained by you on a charge of....., having sufficient bail to answer the same, you are therefore hereby commanded to discharge him from your custody."

Section 20.—The Government Attorney, either in person or by anyone authorized by him is entitled to appear and be heard upon an application for bail.

Government Attorney may be heard on application for bail.

CHAPTER TWENTY-ONE.

OF DEPOSITS INSTEAD OF BAIL.

Deposit in lieu of bail; when and how made.

Section 1.—That the defendant at any time after an order admiting him to bail, instead of giving bail, may deposit with the Clerk of the District Court the sum of money mentioned in the order, or negotiable securities, bonds, etc., of the par value of the amount of bail required; provided however, the deposit of such securities, bonds, etc., in lieu of bail must first be approved by the Judge of the court to which the defendant is to appear, and upon delivering to the officer in whose custody he is, the clerk's certificate of such deposit, he must be discharged from custody.

May be made after bail given and before forfeiture.

Section 2.—That if the defendant has given bail, he may, at any time before the forfeiture of the undertaking of it, in like manner deposit the sum of money mentioned in the undertaking; and upon the deposit being made, and the certificate thereof given, the bail is exonerated.

Bail may be given after deposit.

Section 3.—That if money be deposited as provided in the last two sections, bail may be given in the same manner as if it had been originally given upon the order for admission to bail, at any time before forfeiture of the deposit, and the court before which the bail is taken must thereupon direct, in the order of allowance, that the money deposited be refunded by the clerk to the defendant; and it must be refunded accordingly.

Deposit to be applied on any judgment for fine.

Section 4.—That when any money has been deposited in lieu of bail if it remains on deposit at the time of a judgment for the payment of money the clerk must, under direction of the court, apply the money in satisfaction thereof, and after satisfying the same, must refund the surplus, if any, to the defendant.

Municipality responsible for return of bail.

Section 5.—In all cases where deposit in lieu of bail is made the Municipality of the District in which such deposit is made is responsible for the due return thereof.

CHAPTER TWENTY-THREE.

OF THE FORFEITURE OF THE UNDERTAKING OF BAIL OR THE DEPOSIT OF MONEY.

Undertaking when forfeited and how ordered.

Section 1.—That if, without sufficient excuse, the defendant neglect or fail to appear for arraignment or for trial or jugdment, or upon any other occasion when his presence in the court may be lawfully required or to surrender himself in execution of the judgment, the court must direct the fact to be entered in its journal, and the undertaking of bail or money deposited in lieu thereof, as the case may be, is thereupon forfeited.

When and how forfeiture may be discharged.

Section 2.—That if, at any time before the final adjournment of the court the defendant appear and satisfactorily excuse his neglect or failure, the court may direct the forfeiture of the undertaking or deposit to be discharged upon such terms as are just.

Forfeiture to be enforced by action.

Section 3.—That if the forfeiture be not discharged as provided in the last preceding section, the Government may at any time after the adjournment of court, proceed, by action only against the bail upon their undertaking.

Remission of the forfeiture.

Section 4.—That at any time before judgment against the bail, in an action upon the undertaking, they may apply to the court for a remission of the forfeiture, and thereupon the court, upon good cause shown, may remit the forfeiture, or any part thereof upon such terms as may be just and reasonable, according to the circumstances of the case.

Condition of remission.

Section 5.—That the court can only remit the forfeiture in whole or part, upon payment of the costs and expenses incurred in the proceedings for its enforcement, and if part only be remitted, judgment must be given against the bail for the remainder, and such judgment is a bar to an action upon the undertaking, or if one be already commenced it is abated.

Application for, how made; judgment is final.

Section 6.—That the application for remission must be upon at least ten days' notice to the Government Attorney which copies of all affidavits and papers upon which it is founded. The application must admit the forfeiture and their legal obligation to pay the sum mentioned in the undertaking, and the judgment or order of the court in the matter is final.

Deposit of money; how disposed of when forfeited.

Section 7.—That if money deposited in lieu of bail is forfeited and the forfeiture be not discharged as provided in this chapter, the clerk with whom it is deposited must, after the final adjournment of the court, forthwith deposit the same in the same manner as moneys collected upon judgments in favor of the Municipality.

CHAPTER TWENTY-FOUR.

OF RECOMMITMENT OF THE DEFENDANT AFTER BAIL OR A DEPOSIT OF MONEY IN LIEU THEREOF.

When defendant may be recommitted.

Section 1.—The District Court at any time may, by order entered upon its journal, direct the arrest of the defendant and his commitment to the officer in whose custody he was committed at the time of giving bail, and his detention until legally discharged, in the following cases:

(1) When by reason of his neglect or failure to appear he has incurred a forfeiture of his bail, or of money deposited in lieu thereof.

(2) When it satisfactorily appears to the court that his bail, or either of them, are dead or insufficient, or have removed from the jurisdiction.

(3) Upon an information being filed, the court may at any time order the defendant into actual custody, unless he give bail with new sureties or in an increased amount to be specified in the order.

Contents of the order of arrest.

Section 2.—That the order for the recommitment of the defendant must recite generally the facts upon which it is founded, and direct the sheriff or marshall, or any of his deputies, or any peace officer to arrest the defendant and to detain him until legally discharged.

Defendant arrested upon copy of the order.

Section 3.—That the defendant may be arrested pursuant to the order upon a certified copy thereof in the same manner as upon a Bench Warrant.

Bail may be granted after recommitment.

Section 4.—That after arrest upon such order, bail may be granted by the court, in its discretion, upon application by the defendant and notice to the Government Attorney of such application. Such bail if allowed must be in form as prescribed in chapter twenty hereof.

Bail; fixing of, how governed.

Section 5.—The amount of bail to be fixed must in all cases be governed by the nature of the offense charged, but in no case shall excessive bail be required.

"Excessive bail" defined.

Section 6.—By the term "excessive bail" used herein is meant an amount which exceeds the total of the maximum fine and number of days of imprisonment, calculated at fifty cents per day, which may be imposed upon conviction of the offense charged.

CHAPTER TWENTY-FIVE.

OF COMPELLING THE ATTENDANCE OF WITNESSES.

Attendance of witnesses required by subpoenas.

Section 1.—The process by which the attendance of a witness before a court or magistrate is required is a subpœna. It may be signed and issued by:

(1) The Judge of any court.

(2) Any magistrate.

(3) The Clerk of the District Court, and the clerk must, at any time, upon application of the defendant issue subpœnas for him, not exceeding five in number, without cost, unless the judge of the District Court for good cause shown direct additional subpœnas to be issued for the defendant.

(4) The Clerk of the District Court upon application of any government attorney.

Form of subpoena.

Section 2.—A subpœna authorized by the preceding section must be in substantially the following form:

The People, to:..... .....
You are hereby commanded to appear before.....
(court), at..... within the.....
District of the Virgin Islands, U. S. A. on..... as a witness in a criminal prosecution wherein the people is plaintiff, and ..... is defendant.

Given under my hand this..... day of.....
19.... A. D.

.....

(Seal) Clerk of the District Court.

Duces Tecum.

Section 3.—If books, papers, documents, etc., are required a direction to the following effect must be contained in the subpœna.

and you do bring with you the following.....

(describing books, etc., required)
....

Who may serve subpoena.

Section 4.—A subpœna may be served by any officer who may serve a warrant for arrest, and is served by exhibiting the original if requested, and delivering a copy thereof to the witness.

Disobedience to a subpoena, contempt.

Section 5.—Disobedience to a subpœna, or a refusal to be sworn or to testify as a witness may be punished by the court as a contempt.

Prisoner desired as witness; how attained.

Section 6.—When the testimony of a material witness for either the People or the defendant, who is in custody within the Virgin Islands, is desired, the court in its discretion may upon the application of either the People or the defendant issue an order for his temporary removal from the place where he is in custody, and for his production before the court. The order may be executed by the sheriff, or marshal or any of his deputies, or any member of the Police Force, or other peace officer and it shall be his duty to bring such person before the court and when his presence is no longer required as a witness to deliver such person back to the officer from whose custody the witness was received.

CHAPTER TWENTY-SIX.

OF COMPROMISING CERTAIN CRIMES BY LEAVE OF THE COURT.

What crimes may be compromised.

Section 1.—That when an information charges a misdemeanor, for which the person injured by the act constituting the crime has a civil action the crime may be compromised except, when it was committed as follows:

(1) By or upon an officer of the peace while in the execution of the duties of his office.

(2) Riotously; or

(3) With intent to commit a felony; or

(4) Larcenously.

Compromise; how effected.

Section 2.—For a compromise to be effected, the party injured must appear before the court in which the information is filed at any time before trial and acknowledge in writing that he has received satisfaction for the injury. The court may then in its discretion, on payment of the costs and expenses incurred, order all further proceedings to be stayed upon the prosecution and the defendant to be discharged therefrom; but the order and reason therefor must be entered in the journal, and such order is a bar to another prosecution for the same crime.

No crime can be compromised except as herein provided.

Section 3.—That no crime can be compromised, nor any proceeding for the prosecution or punishment therefor stayed upon a compromise, except as in this chapter provided.

CHAPTER TWENTY-SEVEN.

OF DISMISSAL OF THE ACTION FOR WANT OF PROSECUTION OR OTHERWISE.

Dismissal when information not filed.

Section 1.—That when a person has been arrested and an information is not filed against him within the time by law prescribed, the court must order the prosecution to be dismissed, unless good cause to the contrary be shown.

Dismissal when not brought to trial in specified time.

Section 2.—That if a defendant presented for a crime, whose trial has not been postponed upon his application or by his consent, be not brought to trial within one hundred and twenty days after the filing of the information the court must, unless good cause to the contrary be shown order the prosecution to be dismissed.

Court may continue action and admit defendant to bail.

Section 3.—That if the defendant be not presented or tried as provided in the last two preceding sections, and sufficient reason therefor be shown, the court may order the action to be continued from time to time and in the meantime may discharge the defendant from custody, on his own undertaking of bail, for his appearance to answer the charge or action at the time to which the same is continued.

Effect of dismissal upon bail or money deposited.

Section 4.—If the court direct the charge or action to be dismissed, the defendant must, if in custody, be discharged therefrom, or, if admitted to bail, his bail exonerated or money deposited in lieu thereof must be refunded to him.

Court may dismiss action on its own motion.

Section 5.—The court may either on its own motion, or upon the application of the Government Attorney, and in furtherance of justice, order an action after an information has been filed to be dismissed, but in that case the reasons of dismissal must be set forth in the order, which must be entered in the journal.

Dismissal; when bar to another action.

Section 6.—That an order for the dismissal of a charge or action as provided in this chapter is a bar to another prosecution for the same crime, if it be a misdemeanor, but it is not a bar if the crime charged be a felony.

CHAPTER TWENTY-EIGHT.

OF THE DISPOSAL OF PROPERTY STOLEN OR EMBEZZLED.

How officer to hold property alleged to have been stolen or embezzled.

Section 1.—That when property alleged to have been stolen or embezzled comes into the custody of a peace officer, he must hold it subject to the order of the court as provided in this chapter.

Order for deliver to owner by the court.

Section 2.—That on satisfactory proof of title of the owner of the property, the court which hears the charge must order it to be delivered to the owner or his duly authorized agent, on his paying the reasonable and necessary expenses incurred in its preservation, to be ascertained and certified by the court.

Order for delivery by magistrate or examining officer.

Section 3.—That if there be not a charge filed against any person in relation to property alleged to have been stolen or embezzled then the magistrate who examines the charge against the person accused of the crime must order it to be delivered to the owner or his duly authorized agent on like proof and condition as in the preceeding section.

Effect of order of delivery of property.

Section 4.—That the order provided for in the last two preceding sections, entitles the owner or his agent to demand and received the possession of the property from the officer having it in custody, and authorizes such officer to deliver it accordingly, but does not affect the rights of third parties.

Receipts for money or property taken from persons when arrested.

Section 5. That when money or other property is taken from a person arrested upon a charge of crime, the officer taking it must at the time give duplicate receipts therefor, specifying particularly the amount of money or kind or property taken, one of which receipts he must deliver to the person arrested and the other to the magistrate who examines the charge; or if the arrest be made after an information has been filed then to the Clerk of the District Court, where the action is pending.

Sale and disposition when property not claimed.

Section 6.—That if the property stolen or embezzled be not claimed by the owner before the expiration of one year from the conviction of the person for stealing or embezzling it, and after publication, the officer having it in custody must, if it be money, pay it to the Clerk of the District Court, or if it be property, must sell it as upon execution, and after paying the expenses of the sale and preservation of the property to be ascertained and certified by the Clerk of the District Court pay the proceeds to the Clerk of the District Court, to be deposited by him as in case of moneys collected upon judgments in favor of the Municipality.

CHAPTER TWENTY-NINE.

OF THE WARRANT OF ARREST.

Examination of complainant and his witnesses.

Section 1.—That when complaint is made to a magistrate of the commission of a crime, he must examine the informant on oath, and reduce this statement to writing and cause the same to be subscribed by him, and also take the depositions of any witness that the informant may produce in support thereof.

When warrant of arrest to issue.

Section 2.—That thereupon if the magistrate be satisfied that the crime complained of has been committed and that there is probable cause to believe that the person charged has committed it, he must issue a warrant of arrest.

Definition and form of warrant.

Section 3.—That a warrant of arrest is an order in writing in the name of The People signed by a magistrate with the name of his office, commanding the arrest of the defendant, and may be substantially in the following form:

District Court for the District of the Virgin Islands of the United States of America, at.....

In the name of The People, to the marshal, sheriff or any of their deputies or any other peace officer. Greeting! Information on oath having been this day been laid before me that the crime of..... has been committed and accusing.....(*name*) thereof:

You are hereby commanded forthwith to arrest the above named ..... and bring him before me at.....(*place*) or in case of my inability to act, before the nearest or most accessible magistrate.

Dated at..... this..... day of.....
A. D..... hundred and.....

Warrant; what to contain.

Section 4.—That the warrant of arrest must specify the name of the defendant, or if it be unknown to the magistrate the defendant may be designated by a fictitious name, with a statement therein that his true name is unknown, and it must also state a crime in respect of which the magistrate has authority to issue the warrant.

Who are peace officers.

Section 5.—That a peace officer is any sheriff, marshal, coroner, or member of the police force and a warrant of arrest must be directed to and executed by such officers.

Duty of officer making arrest.

Section 6.—That the officer making the arrest must take the defendant before the magistrate who issued the warrant or in case of his absence or inability to act, before the nearest or most accessible magistrate, and the officer must at the same time deliver to the magistrate the warrant with his return indorsed thereon and subscribed by him.

Statement and depositions to be sent to magistrate who makes examination.

Section 7.—That if the defendant be taken for examination before a magistrate other than the one who issued the warrant, the statement and depositions, if any, on which the warrant was issued must be sent to that magistrate; or if they cannot be procured, the informant and his witness must be subpœnaed to give their testimony anew.

Defendant must be taken before magistrate without delay.

Section 8.—That the defendant in all cases must be taken before the magistrate without delay.

CHAPTER THIRTY.

ARREST, BY WHOM AND HOW MADE.

Section 1.—An arrest is taking a person into custody, in a case and in the manner authorized by law. **Arrest defined.**

Section 2.—An arrest is made by actual restraint of the person of the defendant or by his submission to the custody of an officer. The defendant must not be subject to any more restraint than is necessary for his arrest and detention. **Restraint used.**

Section 3.—A peace officer may make an arrest in obedience to a warrant delivered to him, or may, without a warrant, arrest a person: **By peace officer, when.**

(1) For a public offense committed or attempted in his presence;

(2) When a person has committed a felony, although not in his presence;

(3) When a felony has in fact been committed and he has reasonable cause for believing the person to have committed it;

(4) On a charge made, upon a reasonable cause, of the commission of a felony by the party;

(5) At night, when there is reasonable cause to believe that he has committed a felony.

Section 4.—A private person may arrest another: **By private person, when.**

(1) For a public offense committed or attempted in his presence;

(2) When the person arrested has committed a felony, although not in his presence;

(3) When a felony has been in fact committed, and he has reasonable cause for believing the person arrested to have committed it.

Section 5.—A magistrate may orally order a peace officer or private person to arrest any one committing or attempting to commit a public offense in the presence of such magistrate. **Magistrate may order arrest.**

Section 6.—Any person making an arrest may orally summon as many persons as he deems necessary to aid him therein. **Summoning of aid.**

Section 7.—If the offense charged be a felony, the arrest may be made on any day, and at any time of day or night. If it is a misdemeanor, the arrest can not be made at night, unless upon the direction of a magistrate indorsed upon the warrant. **When arrest may be made.**

Section 8.—The person making an arrest must inform the person to be arrested of the intention to arrest him, of the cause of the arrest, and the authority to make it, except when the person to be arrested is actually engaged in the commission of or an attempt to commit an offense, or is pursued immediately after its commission, or after an escape. **Information to be given person arrested.**

Section 9.—If the person making the arrest is acting under the authority of a warrant, he must show the warrant, if required. **Warrant to be shown.**

Section 10.—When the arrest is being made by an officer under the authority of a warrant, after information of the intention to make the arrest, if the person to be arrested either flees or forcibly resists, the officer may use all necessary means to effect the arrest. **Force allowed in case of flight or resistance.**

Section 11.—To make an arrest, a private person, if the offense be a felony, and in all cases, a peace officer, may break open the door or window of the house in which the person to be arrested is, or in which they have reasonable grounds for believing him to be, after having demanded admittance and explained the purpose for which admittance is desired. **Forcible entrance.**

Force allowed when detained.

Section 12.—Any person who has lawfully entered a house for the purpose of making an arrest may break open the door or window thereof if detained therein, when necessary for the purpose of liberating himself, and an officer may do the same, when necessary for the purpose of liberating a person who, acting in his aid, lawfully entered for the purpose of making an arrest, and is detained therein.

Dangerous weapons.

Section 13.—Any person making an arrest may take from the person arrested all dangerous weapons which he may have about his person and must deliver them to the magistrate before whom he is taken.

Capture of persons escaping after arrest.

Section 14.—If a person arrested escape or is rescued, the person from whose custody he escaped or was rescued, may immediately pursue and retake him at any time and in any place within the Virgin Islands, U. S. A.

Forcible entrance.

Section 15.—To retake the person escaping or rescued, the person pursuing may break open an outer or inner door or window of a dwelling house, if after notice of his intention he is refused admittance.

CHAPTER THIRTY-ONE.

OF THE EXAMINATION OF THE CASE AND DISCHARGE OR HOLDING OF THE DEFENDANT TO ANSWER.

Magistrate to inform the defendant of the charge.

Section 1.—(a) That when the defendant is brought before a magistrate upon an arrest on a charge of having committed a felony the magistrate must immediately inform him of the charge against him, and of his right to the aid of counsel before any proceedings are had and of his right to bail.

Procuring counsel.

(b) If the defendant desires to procure counsel, he must adjourn the examination and allow a reasonable time for that purpose, and may upon request of the defendant require a peace officer to take a message to such counsel in the town as the defendant may name. The officer when so requested by the magistrate must deliver the message without delay.

Examination; when to proceed.

Section 2.—That immediately after appearance of counsel or if after awaiting a reasonable time, no one appear, or if the defendant does not require counsel, the magistrate must examine the case.

Examination; adjournment of.

Section 3.—That the examination must be completed in one session unless the magistrate for good cause shown, adjourn it; and the adjourment cannot be for more than one day at each time, nor for more than six days in all unless by consent of the defendant.

On adjournment defendant to be committed or to give bail.

Section 4.—That if an adjournment be had for any cause the magistrate must commit the defendant for examination or may dscharge him from custody, upon his giving bail or depositing money in lieu thereof, as provided in this code for his appearance at the time to which the examination is adjourned.

Form of commitment.

Section 5.—That the commitment for examination is by an indorsement, signed by the magistrate, on the warrant of arrest, to the following effect:

> "The within named....., having been brought before me under this warrant, is committed for examination to the custody of the warden, whereupon the officer having him in charge, shall deliver him to the warden of the..... District."

Witnesses to be subpoenaed.

Section 6.—That at the examination, the magistrate must read to the defendant the complaint upon which the warrant of arrest is issued, and, if the defendant request it, must subpœna the informant and his witnesses and such witnesses as the defendant may require.

Witnesses to be examined in presence of defendant.

Section 7.—The witnesses must be examined in the presence of the defendant, and may be cross-examined in his behalf or against him.

Defendant may make statement.

Section 8.—That when the examination of the witnesses on behalf of The People is closed, the magistrate must inform the defendant that it is his right to make a statement under oath in relation to the charge against him; but that if he make a statement, it may be used against him on the trial. If the defendant make a statement the same must be reduced to writing and then read to him, and he may then add to or correct it until it is made conformable to what he declares the truth.

How reduced to writing and authenticated.

Section 9.—The statement of the defendant must be reduced to writing by the magistrate or under his direction and must be signed by the defendant, but if he refuse to sign it, his reason therefor must be stated as he gives it; the statement must also be signed and certified by the magistrate.

Statement of the defendant may be used on trial.

Section 10.—The statement of the defendant is competent testimony and may be given in evidence against him on the trial.

Defendant's witnesses to be examined; when.

Section 11.—That after the waiver of the defendant to make a statement, or after he has made it, his witnesses, if he produce any must be sworn and examined.

Magistrate may excluded witnesses.

Section 12.—That the magistrate may exclude the witnesses who have not been examined during the examination of witnesses for The People, or the defendant.

Defendant how and when discharged.

Section 13.—That after hearing the proof and statement of the defendant, if he has made one, if it appears either that a crime has not been committed or that there is no sufficient cause to believe the defendant guilty thereof, the magistrate must order the defendant to be discharged, by an indorsement on the warrant signed by him to the following effect: "There being no cause shown to believe the within named..... guilty of the crime within mentioned, I order him to be discharged."

Defendant when to be committed; order of commitment.

Section 14.—That if, however, it appears from the examination that a crime has been committed, and that there is sufficient cause to believe the defendant guilty thereof, the magistrate must make a written order signed by him, to the following effect: "It appearing to me from the testimony produced before me on the examination that the crime of..... has been committed, and that there is sufficient cause to believe..... guilty thereof, I order him to be held to answer."

Defendant; how committed.

Section 15.—That if the magistrate order the defendant to be held to answer, as provided in the last preceding section, he must make out a commitment signed by him with his name and office, and deliver it, with the defendant, to the officer to whom he is committed, or if that officer be not present, to any peace officer, who must immediately deliver the defendant into the proper custody, together with the commitment.

Form of commitment.

Section 16.—The commitment shall be substantially in the following form:

"In the name of the People of the District of the Virgin Islands of the United States.

To the Warden for the..... District.

Greetings!

An order having been made this day by me that A. B..... be held to answer upon a charge of..... (*generally stated*) you are therefore commanded to receive him in your custody, and detain him until legally discharged.

Dated this..... day of..... .. 192....

.....

Magistrate."

Commitment; how directed.

Section 17.—The commitment must be directed to the warden for the district, who must receive and detain the defendant by such means as may be necessary and proper therefor.

Order for bail on commitment.

Section 18.—That if the crime be bailable, the magistrate must admit the defendant to bail, by adding to the order of commitment, "The defendant is admitted to bail in the sum of..... dollars."

The defendant may either put in bail according to the order of the commitment then or afterwards. If it be not put in before he is delivered to the officer for commitment, the magistrate must indorse the amount of bail on the writ.

Security for material witness may be taken; when.

Section 19.—That when the magistrate has good reason to believe, by proof produced before him, that any material witness examined before him, will not appear to testify at the trial, unless security therefor be given, he may order such witness to enter into a written undertaking, with such sureties

and in such sum as he may deem proper, for the appearance of such witness at the trial of such charge as may be filed against the defendant in the District Court.

Witness refusing to give undertaking may be committed.

Section 20.—That if a witness required to enter into an undertaking to appear and testify, in such amount and with such sureties as ordered by the magistrate, refuse compliance with the order for that purpose, the magistrate must commit him to the custody of the warden until he comply or be legallgy discharged.

Magistrate to return proceedings and papers.

Section 21.—That when a magistrate has held a defendant to answer as provided in this chapter, he must return to the District Court, within three days thereafter, the warrant, the statement and depositions of the informant and witnesses, the statement of the defendant, if he has made any, and the names of each witness who appeared, both for The People, and for the defendant, and for the appearance of witnesses taken by him, together with a fee bill for his costs, whether collected or uncollected and all orders by him made.

Magistrate to hold defendant in misdemeanor.

Section 22.—That when a defendant is brought before a magistrate upon an arrest on a charge of having committed a crime, if the charge be for a misdemeanor, the magistrate must immediately inform him of the charge against him and of his right to the aid of counsel and read the complaint to him. He must then issue an order of commitment of the defendant to appear for trial in the Police Court.

The commitment and order of bail shall be in form and manner as in cases when the charge is for felony, and the defendant is given a hearing before the magistrate.

In misdemeanor magistrate must return proceedings to Police Court.

Section 23.—After the issuance of the commitment as provided in the last preceding section, the magistrate must return to the Police Court before the close of office hours of the succeeding business day, the undertaking for bail of the defendant (if any), the complaint, warrant, and commitment.

Police Court to try same.

Section 24.—On receipt of any record from a magistrate, wherein a defendant is held to answer the Police Court shall proceed to trial of the case in the same manner as if the complaint was filed in the Police Court in the first instance.

CHAPTER THIRTY-TWO.

OF THE PREVENTION OF CRIMES AND SECURITY TO KEEP THE PEACE.

Resistance to the commission of crime; by whom made.

Section 1.—Resistance to the commission of crime may be lawfully made by the party about to be injured, or by any other person in his aid or defense:

(1) To prevent a crime against his person;

(2) To prevent an illegal attempt, by force, to take or injure property in his possession.

Officers of justice may interfere to prevent crime.

Section 2.—Crimes may be prevented by the intervention of the officers of justice:

(1) By requiring security to keep the peace.

(2) By requiring the Police Force of the District to attend at exposed places.

(3) By suppressing riots.

Persons acting in their aid are justified.

Section 3.—That when the officers of justice act in the prevention of crime other persons who by their command act in their aid are justified in so doing.

Information of threatened crime before whom laid—Examination of complainant and witnesses.

Section 4.—That complaint may be laid before any magistrate that a person has threatened to commit a crime against the person or property of another, and when complaint is so made to a magistrate, he must examine the complainant on oath, and reduce his statement to writing and cause the same to be subscribed by him, and also take the depositions of any witnesses that the complainant may produce in support thereof.

Warrant of arrest; when issued.

Section 5.—Thereupon, if it appear to the magistrate that there is good reason to fear the commission of the crime threatened, by the person complained of, he must issue a warrant for the arrest of such person, which warrant must be directed and executed as a warrant of arrest, and may be substantially in the same form except, that instead of reciting the commission of a crime it must recite the substance of the threat to commit one according to the information.

Proceedings on complaint being controverted.

Section 6.—That when the person complained of is brought before the magistrate, if the charge be controverted he must take the testimony in relation thereto and the evidence must be reduced to writing and subscribed by the witness.

Conduct of the examination as to adjournment, commitment and bail.

Section 7.—That the magistrate may adjourn the examination and commit the person complained of; or take bail or a deposit of money in lieu thereof as provided in Chapter twenty of this title.

Subpoenas; when issued persons complained of entitled to statement.

Section 8.—The magistrate must issue supœnas for witnesses for the complainant and for the person complained of and the person complained of is entitled, if he choose, to make a statement concerning the charges aginst him.

When to be disregarded.

Section 9.—If from the examination it appear that there is no good reason to fear the commission of the crime alleged to have been threatened, the person complained of must be discharged; the order for the discharge must be indorsed upon the warrant and signed by the magistrate with his name of office, and may be to the following effect.

"There being no good reason shown to fear the commission of the crime within mentioned by the within named..... I order him to be discharged."

Section 10.—That if, however, there be good reason to fear the commission of the crime, the person complained of must be held to answer as in case of felony, and the magistrate may give bail to keep the peace in the same manner as in case of felony.

Security to keep the peace; when required.

Section 11.—That when a magistrate has held a person to answer as provided in the last preceding section, he must return to the clerk of the District Court within three days thereafter the complaint, warrant, statement and depositions of all witnesses that have appeared before him; the undertaking of bail if any; the commitment and a fee bill of his costs whether collected or uncollected.

Form of commitment.

Section 12.—That if bail be not given a commitment may be issued in substantially the following form:

Form of commitment.

"In the name of the People of the District of the Virgin Islands of the United States.

To the Warden of the..... District.

Greetings!

An order having been this day made by me that..... give an undertaking in the sum of..... dollars, as security to appear before the District Court, at.....in the said District on a charge of....., and to abide the order of the said District Court, and the said..... having failed to give such undertaking, you are therefore commanded to receive him into your custody, and detain him until legally discharged.

Dated at..... this..... day of..... ..... hundred and.....

...."

Section 13.—That a person who in the presence of any court, assaults or threatens to assault another, or to commit an offense against his property or who contends with another with angry words to the disturbance of the peace may be ordered by the court or magistrate without warrant or other proof to give security to keep the peace in an amount not exceeding two thousand dollars.

Breach of peace committed in presence of court or magistrate.

Section 14.—That if the complainant does not appear at the District Court when summoned the person complained of may be discharged unless good cause to the contrary be shown.

Proceeding if complainant does not appear in District Court.

Section 15.—That if both parties appear, the court must hear the proofs and allegations transmitted by the magistrate and such other evidence as the parties may produce and may either discharge the defendant, or require an undertaking to keep the peace for a time not exceeding a year, in an amount not exceeding two thousand dollars.

Proceeding in District Court.

Section 16.—That the sureties in an undertaking to keep the peace are entitled to the rights and authority of bail, as provided in chapter twenty of this title and may be exonerated from their undertaking in the manner prescribed therein.

Rights of sureties in undertaking to keep the peace.

Section 17.—That the court before whom any person is convicted of a crime, which by the judgment of such court is punished otherwise than by imprisonment in the penitentiary, may require such person to enter into an undertaking to keep the peace, as provided in section ten of this chapter for a period not exceeding one year and in default thereof may commit him until the undertaking be given or the period expired.

When court may require defendant to give security.

Section 18.—That an undertaking to keep the peace shall be taken and deemed to be an undertaking to be of good behavior, and cannot be required except as provided in this chapter.

Undertaking to keep peace deemed undertaking for good behavior.

CHAPTER THIRTY-THREE.

OF THE SUPPRESSION OF RIOTS.

How and by whom riots commanded to disperse.

Section 1.—That when any persons, to the number of three or more, whether armed or not, are unlawfully or riotously assembled in any town, village or settlement or in any other place in the District, the sheriff or any deputy or any police officer or other peace officer for the District must go among the persons assembled or as near to them as he can with safety and command them in the name of The People to disperse.

If rioters do not disperse, to be arrested.

Section 2.—That if the persons assembled do not immediately disperse, the officers must arrest them or cause them to be arrested; that they may be punished according to law, and for the purpose may command the aid of all persons present.

Consequence of refusal to aid officers.

Section 3.—If a person, commanded to aid any such officer or officers mentioned herein, neglect to do so, he shall be deemed guilty of a misdemeanor and punished accordingly.

Magistrate or officers neglecting to act, guilty of misdemeanor.

Section 4.—That if an officer having notice of an unlawful or riotous assembly mentioned herein neglect to proceed to the place of assembly or as near thereto as he can with safety, and to exercise the authority with which he is vested for suppressing the same and arresting the offenders, he is guilty of a misdemeanor.

Proceeding if rioters do not disperse.

Section 5.—That if the persons assembled and commanded to disperse, do not immediately disperse, any two of the officers mentioned herein, may command the aid of a sufficient number of persons, armed or otherwise, as may be necessary, and may proceed in such manner as in their judgment may be most expedient to disperse the assembly and arrest the offenders.

If death ensues, who guilty thereof.

Section 6.—That if, in the effort to suppress or disperse any unlawful or riotous assembly, or to arrest or detain any of the persons engaged therein, any such rioters or other persons then present as spectators or otherwise be killed or wounded, the officers, and persons acting in their aid, are guiltless thereof; but if any such officers or persons acting in their aid be killed or wounded, all persons engaged in such assembly are guilty thereof.

CHAPTER THIRTY-FOUR.

OF CRIMINAL ACTIONS IN POLICE COURTS.

Section 1.—A criminal action in a Police Court is commenced and proceeded to final determination, and the judgment therein enforced, in the manner herein provided.

Proceedings in criminal action, how governed.

Section 2.—In a Police Court a criminal action is commenced by the filing of the complaint therein, verified by the oath of the person commencing the action, who is thereafter known as the private prosecutor; and no judgment of conviction or acquittal can be given in a criminal action in a Police Court unless the person injured appear or be subpœnaed to attend the trial as a witness.

Criminal action, how commenced; person injured must appear or be subpoenaed.

Section 3.—The complaint is to be deemed a presentment within the meaning of the provisions of chapter five of this title, prescribing what is sufficient to be stated in such pleading and the form of stating it.

Complaint to be deemed presentment.

Section 4.—Upon the filing of the complaint the Police Court Judge must issue a warrant of arrest for the defendant named therein.

Warrant of arrest.

Section 5.—A warrant of arrest in a criminal action in the Police Court is issued, directed and executed in all respects as the warrant provided for in chapter twenty-nine of this title except that it must be made returnable only before the court which issues it.

Warrant, requisition of.

Section 6.—When the defendant is brought before the Police Court the complaint must be read to him, and he must be required to plead thereto.

Defendant, when must plead.

Section 7.—The defendant may plead the same pleas as upon a presentment. His plea must be oral and entered in the docket. If the defendant refuse to plead, the Judge must enter the fact, together with the plea of not guilty on his behalf.

Defendant may plead same pleas as in presentment.

Section 8.—Upon a plea other than a plea of guilty, the court must set a time for trial of the issue.

Issue, how tried.

Section 9.—When the trial is concluded the Judge must, within five days thereafter, render a decision.

Judgment to be rendered, when.

Section 10.—When the defendant pleads guilty, or is convicted, the Judge must give judgment thereon for such punishment as may be prescribed by law for the crime.

Judgment of conviction.

Section 11.—When the defendant is found not guilty he must be immediately discharged and if it appear to the court that the prosecution was malicious or without probable cause he must make an entry to such effect in his docket.

Judgment of acquittal, entry of.

Section 12.—Upon making the entry prescribed in the last section, the court may give judgment against the private prosecutor for the costs and disbursements of the action, and require him to pay the same or give satisfactory security therefor, by a written undertaking, with one or more sureties to be approved by the Judge, and to pay the same to the court, within thirty days from the date of such judgment.

Judgment against prosecutor for costs.

Section 13.—The judgment for costs and disbursements, may be enforced against the prosecutor, if he do not pay the same or give the required security therefor, in all respects as a judgment for costs in a civil action; but if he give the required security therefor, said judgment may be enforced at the expiration of the thirty days, against the prosecutor and his sureties in the undertaking in all respects as a judgment for money in a civil action.

Judgment against prosecutor, how enforced.

Judgment of conviction; entry of.

Section 14.—When a judgment of conviction is given either upon a plea of guilty or upon a trial, the judge must enter the same in the docket substantially as follows:

Police Court for the District of the Virgin Islands of the United States at.....

No.

"The People" vs. A. B.

"The above named A. B. having been brought before me, C. D., a Police Judge, in a criminal action, for the crime of (briefly designate the crime), and the said A. B. having thereupon pleaded 'guilty' (or as the case may be) having been tried by me and upon such trial duly convicted, I have adjudged that he be imprisoned for.....days and that he pay the costs of the action, taxed at..... dollars (or that he pay the fine of..... dollars and such costs and be imprisoned until such fine and costs be paid, not exceeding..... days, as the case may be.)

"C. D."

If the defendant has pleaded guilty instead of the clause commencing "and the said A. B.", and ending "upon such trial duly convicted", the entry must state substantially as follows: "And the said A. B. having been thereof duly convicted upon a plea of guilty."

Entry of judgment, copy of evidence.

Section 15.—An entry of judgment and the transcript thereof, made and filed as in the last two sections provided is conclusive evidence of the facts stated therein.

Judgment of conviction.

Section 16.—The judgment must be executed by the sheriff or any deputy or other peace officer upon receiving a certified copy of the entry of judgment and such copy shall also be deemed an execution against the property of the defendant for the purpose of collection of the amount of any costs mentioned therein.

Payment of fine and costs.

Section 17.—If the fine and costs, or any part thereof be paid before commitment, they must be paid to the Judge and thereafter to the officer in whose custody the defendant may be at the time of such payment, which officer must immediately pay the same to the Judge of the Police Court.

Money paid on judgment of conviction.

Section 18.—Any money paid to the court upon a judgment in a criminal action must first be applied to the costs of the action and the remainder paid by such court to the Clerk of the District Court, to be deposited as provided by law.

Action to be tried within eight days unless continued for cause.

Section 19.—When the defendant is brought before the Judge upon a warrant of arrest the action must be tried within eight days thereafter, unless continued for cause.

Defendant may give bail.

Section 20.—At any time before the commencement of the trial, or during the progress thereof, the Judge must admit the defendant to bail if he require it, and take bail of him accordingly.

Undertaking of bail; form of.

Section 21.—The bail must be given by a written undertaking, executed by one or more sufficient sureties, approved by the Judge in substantially the following form:

Police court for the District of the Virgin Islands of the United States at.....

No.

"The People" vs. A. B.

"A criminal action having been commenced on the..... day of....., in the Police court aforesaid, against A. B.,

for the crime of (designating it generally), and he having been duly admitted to bail by the said court in the sum of..... dollars, We C. D., of (stating his place of residence and occupation), and E. F., of (stating the like as to him) hereby undertake that the above named A. B. shall appear at the time and place fixed for the trial of the above mentioned action, in whatever court it may be prosecuted, and shall at all times render himself amenable to the orders and process of the court, and if convicted shall appear for judgment and surrender himself in execution thereof; or if he fail to perform either of those conditions, that we will pay to the Municipality, the sum of..... dollars, (inserting the sum in which the defendant is admitted to bail)."

Proceeding if defendant do not give bail.

Section 22.—If the defendant do not give bail when brought before the Judge upon the warrant of arrest, or during the progress of the trial, he must be committed to jail, to answer the action as the Judge may direct.

Form of commitment.

Section 23.—The commitment must be signed by the Judge with his name of office, and may be substantially as follows:

"Police Court for the District of the Virgin Islands of the United States at.....

No.

The People:

To the sheriff, marshal, or any deputy, etc.

An order having this day been made by me that A. B. be committed for trial in a criminal action against said A. B. for the crime of (designating it generally), you are hereby commanded to receive him into your custody, and detain him accordingly, until he be legally discharged.

Dated at....., this..... day of.....,

C. D."

Proceeding when crime not within jurisdiction of Police Court

Section 24.—If, in the progress of the trial, it shall appear that the defendant has committed a crime not within the jurisdiction of a Police Court, such Judge must dismiss the action, and state in the entry the reason therefor, and hold the defendant upon the warrant of arrest, and proceed to examine the charge as upon an information for the commission of a felony by a magistrate.

Security for costs.

Section 25.—That the Police Court Judge, may in his discretion, require the private prosecutor in a criminal action to give security for costs and disbursements before filing or receiving a complaint therein.

Qualifications of bail.

Section 26.—The qualifications of fail in criminal actions in the Police Courts and the justification thereof, shall be the same as provided for in like proceedings in the District Court.

CHAPTER THIRTY-FIVE.

OF PROCEEDINGS IN RELATION TO FUGITIVES FROM JUSTICE.

Governor to appoint agent to demand fugitive from justice.

Section 1.—That whenever a person charged with treason or other felony, in the District, shall flee from justice, the Governor may appoint an agent to demand such fugitive of the executive authority of the State, Territory or possession of the United States in which he may be found.

Governor may require report from Government Attorney.

Section 2.—That before appointing such agent the Governor may require the Government Attorney to investigate the matter and report to him the material circumstances, together with his opinion upon the expediency of allowing the application for extradition.

Fugitive from justice; when to be delivered up by Governor.

Section 3.—That a person charged in any State, Territory or Possession of the United States with treason, felony, or other crime, who may flee from justice and be found in the District, must, on demand of the executive authority of the State, Territory or Possession from which he fled, be delivered up by the Governor, to be removed to the State, Territory or Possession making the demand.

When fugitive not to be delivered up by Governor.

Section 4.—That when the person demanded is in custody in the District, either upon a criminal charge, an indictment for a crime, or a judgment upon a conviction thereof, he cannot be delivered up until he is legally discharged from such custody; but if he is in custody upon civil process only, the Governor may deliver him up or not before the termination of such custody, as he may deem most conducive to the public good.

Report of Government Attorney in relation to custody of fugitive.

Section 5.—That before issuing a warrant for the delivery of a fugitive from justice, the Governor may require the Government Attorney to ascertain and report to him whether such fugitive is in custody as mentioned in the last section, and if he be so upon civil process only, whether such custody be with the consent or procurement of the fugitive.

When and to whom Governor to issue warrant for arrest.

Section 6.—That when the Governor finds that the demand is conformable to law, and the person demanded should be given up, either then or at some future time, if he be in custody, he must issue his warrant under the seal of the Government of the Virgin Islands, directed to the person who makes the demand, and authorizing him, either forthwith or at some future time therein designated to take and transport the fugitive from the District, at the expense of the person making the demand.

Executive warrant to direct officers and magistrate to aid in its execution

Section 7.—That the executive warrant must also require all peace officers and magistrates, when requested by the person to whom the warrant is directed, to render all needful assistance in the execution thereof; and in so doing such officers or magistrates may exercise the same power and authority to prevent a rescue, an escape, or to effect a recapture, as if the fugitive was in arrest upon a charge of crime committed in said district.

Magistrate may issue warrant for arrest of.

Section 8.—That a magistrate authorized to issue a warrant of arrest may issue a warrant for the arrest of the person charged.

Proceedings for arrest and commitment of fugitive before magistrate.

Section 9.—That the proceedings for the arrest and commitment of the person charged are in all respects similar to those provided in this act for the arrest and commitment of a person charged with a crime committed in the District, except that an exemplified copy of an indictment found, or other judicial proceedings had against him in the State or Territory in which he is charged to have committed the crime, may be received as evidence before the magistrate.

When magistrate to commit, and for what time.

Section 10.—That if from the examination it appear that the person charged has committed the crime alleged, the magistrate must commit him to the proper custody for a time specified in the commitment, which the mag-

istrate deems reasonable, to enable the arrest of the fugitive under the warrant of the executive authority of the District on the requisition of the executive authority of the State or Territory in which he committed the crime, or until he be legally discharged, unless he give bail as provided in the next section.

Magistrate may admit person arrested to bail.

Section 11.—That the magistrate may admit the person arrested to bail by an undertaking, with sufficient sureties and in such amount as he deems proper, for his appearance before him at a time specified in the undertaking, and for his surrender to be arrested upon the warrant of the Governor of the District.

Magistrate to give notice to Governor of commitment.

Section 12.—That immediately upon the commitment of the person charged the magistrate must inform the Governor of the name of the person, the cause of the arrest, and his commitment; and the Governor must thereupon give the like notice to the executive authority of the State or Territory having jurisdiction of the crime, to the end that a demand may be made for the arrest and surrender of the person charged.

Person arrested to be discharged unless taken under executive warrant.

Section 13.—The person arrested must be discharged from custody or bail, unless, before the expiration of the time designated in the warrant or undertaking, he be arrested under the warrant of the Governor of the District.

Person causing arrest liable for costs and expenses.

Section 14.—That the person making the complaint to the magistrate is liable for the costs and expenses of the proceedings and for the support in the jail of the person so committed; and unless he advance to the jailer or other proper officer, from week to week during the commitment a sum sufficient for has support the jailer or other officer having such person in custody may, upon the order of the magistrate, discharge such person from custody.

CHAPTER THIRTY-SIX.

OF SEARCH WARRANTS.

Search warrants defined.

Section 1.—A search warrant is an order in writing in the name of the People signed by the Judge of a court of record or the Judge of the Police Court, directed to a peace officer commanding him to search for specific personal property and bring it before said Judge.

Grounds for issuing warrant.

Section 2.—It may be issued upon either of the following grounds:

(1) When the property was stolen or embezzled; in which case it may be taken on the warrant from the place in which it is concealed, or from the possession of the person by whom it was stolen or embezzled or from any person in whose possession it may be found.

(2) When it was used as the means of committing a felony; in which case it may be taken on the warrant from the place in which it is concealed, or from the possession of the person by whom it was used in the commission of the offense, or from any person in whose possession it may be.

(3) When it is in the possession of any person with the intent to use it as a means of committing a public offense or in the possession of another to whom he may have delivered it for the purpose of concealing it or preventing its being discovered; in which case it may be taken on the warrant from such person, or from any place occupied by him or under his control, or from the possession of the person to whom he may have so delivered it.

(4) When the property is a cask, keg, bottle, vessel, siphon, can, case, or other package, bearing printed, branded, stamped, engraved, attached, blown, or otherwise attached or produced thereon the duly filed trademark or name of the person by whom, or in whose behalf the search warrant in applied for, in the possession of any person except the owner thereof with intent to sell or traffic in the same, or refill the same with intent to defraud the owner thereof, with such intent, and without such owner's consent thereof; in which case it may be taken on the warrant from such person or from any place occupied by him, or under his control or from the possession of the person to whom he may have delivered it.

Search warrant issued only on probable cause.

Section 3.—A search warrant cannot be issued but upon probable cause, supported by affidavit, naming or describing the person, and particularly describing the property and the place to be searched.

Examination of witnesses.

Section 4.—The Judge, before issuing the warrant, must examine on oath the complainant, and any witnesses he may produce, and take their depositions in writing, and cause them to be subscribed by the parties making them.

Depositions, contents.

Section 5.—The deposition must set forth the facts tending to establish the grounds of the application or probable cause for believing that they exist.

When issued.

Contents.

Section 6.—If the judge is thereupon satisfied of the existence of the grounds of the application, or that there is probable cause to believe their existence, he must issue a search warrant, signed by him with his name of office, to a peace officer in his District, commanding him forthwith to search the person or place named, for the property specified and to bring it before him.

Form of.

Section 7.—The warrant must be in substantially the following form:

Title of Court.....:

"The People to any sheriff, policeman, or peace officer in the District.

"Proof by affidavit, having this day been made before me by (naming every person whose affidavit has been taken), stating the grounds of the application according to section....., or if the

affidavit be not positive, that there is probable cause for believing that, (stating the ground of the application in the same manner), you are therefore commanded, in the daytime, (or at any time of the day or night, as the case may be), according to section....., to make immediate search of the person of..... (or in the house situated..... describing it or any other place to be searched with reasonable particularity, as the case may be) for the following property; (describing it with reasonable certainty) and if you find the same or any part thereof, to bring it forthwith before me at (stating place).

Given under my hand, and dated, this..... day of.....

A. D., nineteen.....

....."

By whom executed.

Section 8.—A search warrant may in all cases be served by any of the officers mentioned in its directions, but by no other person except in aid of the officer on his requiring it, he being present and acting in its execution.

Power of officer in executing.

Section 9.—The officer may break open any outer or inner door or window of a house, or any part of a house, or anything therein, to execute the warrant, if after notice of his authority and purpose, he is refused admittance.

Power as to person assisting.

Section 10.—He may break open any outer or inner door or window of a house, for the purpose of liberating a person who, having entered to aid him in the execution of the warrant, is detained therein, or when necessary for his own liberation.

Time of service.

Section 11.—The judge must insert a direction in the warrant that it be served in the day time, unless the affidavits are positive that the property is on the person or in the place to be searched, in which case he may insert a direction that it be served at any time of the day or night.

Time of execution and return.

Section 12.—A search warrant must be executed and returned to the judge who issued it within ten days after its date; after the expiration of this time the warrant, unless executed, is void.

Officer must give receipt for property taken.

Section 13.—When the officer takes property under the warrant, he must give a receipt for the property taken (specifying in detail) to the person from whom it was taken by him, or in whose possession it was found; or in the absence of any person, he must leave the receipt in the place where he found the property.

Property when delivered to justice of the peace, how disposed of.

Section 14.—When the property is delivered to the judge, he must, if it was stolen or embezzled, dispose of it as provided in chapter twenty-eight of this title. If it was taken on a warrant issued on the grounds stated in section two of this chapter he must retain it in his possession, subject to the order of the court to which he is required to return the proceedings before him, or of any other court in which the offenses in respect to which the property taken is triable.

Return of warrant.

Section 15.—The officer must forthwith return the warrant to the Judge, and deliver to him a written inventory of the property taken, made publicly or in the presence of the person from whose possession it was taken, and of the applicant for the warrant, if they are present, verified by the affidavit of the officer at the foot of the inventory, and taken before the Judge at the time, to the following effect: "I,..... (the officer to whom this warrant was executed), do swear that the above inventory contains a true and detailed account of all the property taken by me on the warrant."

Copy of inventory to be furnished.

Section 16.—The judge must thereupon, if required, deliver a copy of the inventory to the person from whose possession the property was taken, and to the applicant for the warrant.

Proceedings if grounds of issuing warrant controverted.

Section 17.—If the grounds on which the warrant was issued be controverted, he must proceed to take testimony in relation thereto, and the testimony of each witness must be reduced to writing.

Property, when to be restored.

Section 18.—It it appear that the property taken is not the same as that described in the warrant, or that there is no probable cause for believing the existence of the grounds on which the warrant was issued, the Judge must cause the property to be restored to the person from whom it was taken.

Return of justice of the peace.

Section 19.—The Judge must annex together the deposition, the search warrant and return, and the inventory, and offenses in respect to which the search warrant was issued.

Person charged with crime may be searched Disposition of weapons.

Section 20.—When a person charged with a felony is supposed by the judge, before whom he is brought to have on his person a dangerous weapon, or anything which may be used as evidence of the commission of the offense, the judge may direct him to be searched in his presence, and the weapon or other thing to be retained subject to his order, or to the order of the court in which the defendant may be tried.

CHAPTER THIRTY-SEVEN.

OF APPEALS IN CRIMINAL ACTIONS.

Section 1.—That an appeal may be taken from a judgment of conviction given in a Police Court, in a criminal action, to the District Court, except when the same is given on a plea of guilty.

Appeal in criminal action, when taken.

Section 2.—That an appeal may be taken within thirty days of the entry of the judgment by serving a notice upon the Government Attorney, and filing the original, with the proof of service indorsed thereon, with the Police Judge, and by giving the undertaking for the costs of the appeal as hereinafter provided.

Appeal, how taken.

Section 3.—That the undertaking of the appellant must be given with one or more sureties approved by the judge, to the effect that the appellant will pay all costs and disbursements that may be awarded against him on the appeal.

Undertaking for appeal.

Section 4.—That an appeal can only be taken by the defendant.

Appeal taken by defendant only.

Section 5.—That if the defendant is in custody at the time the appeal is allowed, the Judge must make the proper transcript and deliver it to the Clerk of the District Court by the first day of the next term thereof.

Judge must transmit transcript.

Section 6.—That an allowance of an appeal does not stay the proceedings on the judgment unless the defendant give an undertaking of bail on appeal.

Undertaking for stay of proceedings.

Section 7.—That when an appeal is taken the Police Judge must allow the same and make an entry thereof in his docket, stating whether the proceedings are thereby stayed or not, and when the proceedings are stayed, if an execution has been issued to enforce the judgment, the Judge must recall the same by written notice to the officer holding the execution and thereupon it must be returned, and all the property taken thereon and not sold, released; and if the defendant is in custody, he must be discharged therefrom.

Allowance of appeal and return of execution.

Section 8.—That all sureties in an undertaking under the provisions of this chapter must have the qualifications of bail upon arrest; and if required by the adverse party, must justify before the Police Judge in like manner.

Qualification and justification of sureties.

Section 9.—That from the filing of the transcript with the Clerk of the District Court the appeal is perfected, and the action is to be deemed pending therein and for trial upon the issue tried in the Police Court. The apellate court has the same authority to allow an amendment of the pleadings on an appeal in a criminal action that it has on an appeal in a civil action.

Appeal, when perfected and how tried.

Section 10.—That when an appeal is dismissed the appellate court must give judgment as it was given in the court below, and against the appellant, for the costs and disbursements of the appeal. When judgment is given in the appellate court against the appellant, either with or without trial of the action, it must also be given against the surety in his undertaking according to the nature and effect thereof.

Judgment in the appellate court.

Section 11.—That an appeal cannot be dismissed on the motion of the appellee on account of the undertakings therefor being defective if the appellant before the termination of the motion to dismiss, executes a sufficient undertaking and files the same in the appellate court, upon such terms as may be deemed just.

Defective undertaking; how cured.

Section 12.—That no provision of this chapter in relation to appeals or right of appeal must be construed so as to prevent the defendant in a Police Court from having the judgment reviewed in the District Court for errors in law appearing upon the face of such judgment or the proceedings connected therewith.

Errors of law, how reviewed.

CHAPTER THIRTY-EIGHT.

ILLEGITIMATE CHILDREN.

Proceedings before Police Judge.

Section 1.—On complaint made to any Police Judge by any woman who is a resident of the District, who shall hereafter be delivered of an illegitimate child, born alive or being pregnant with a child which, if born alive, may be an illegitimate child, accusing on oath any person of being the father of said child, the said Judge shall take such accusation in writing, and thereupon issue his warrant, directed to the sheriff, or other peace officer, commanding him forthwith or at such time as is stated in the warrant to bring such accused person before said Judge to answer to said complaint; and on return of such warrant the Judge, in the presence of the accused person, shall examine the complainant under oath respecting the cause of her complaint, and such accused person shall be allowed to ask the complainant, when under oath, any question he may think necessary for his justification; all of which questions and answers, together with every other part of the examination shall be reduced to writing by the said judge and if, on such examination, the party accused shall pay or secure to be paid to the complainant such sum or sums of money or property as she may with the approval of the Government Attorney agree to receive; then and on that condition the Judge shall discharge the party accused from custody, on his paying the costs of prosecution; Provided, That the agreement aforesaid shall be made or acknowledged by both parties in the presence of the Judge who shall thereupon enter a memorandum of the same upon his docket; and provided further, that no suit for the support of a child still unborn shall be instituted unless the mother files a certificate from a duly authorized physician or midwife to the effect that she is pregnant, and further provided, that no final decision or order can be made before such child is born.

Suit by Government Attorney.

Section 2.—That, when any woman has an illegitimate child and neglects to have instituted an action for its maintenance, or commences and fails to prosecute to final judgment, the Government Attorney on behalf of the Municipality interested in the support of any such illegitimate child, where sufficient security is not offered and given to save the Municipality from expense, may bring an action in behalf of the Municipality against him who is accused of begetting such child, or may take up and prosecute a suit begun by the mother of the child. It shall be the duty of the mother of the child to give evidence under oath in all such cases.

Section 3.—If the mother, when such illegitimate child was conceived was married, but living separate and apart from her husband, suit for support of such illegitimate child can be brought in the same manner as above provided.

Section 4.—If the father of an illegitimate child should die before its birth, or within a year after it was born, and before an action against him for the support of the child has been brought to final settlement, suit can be instituted before the District Court for the support of the child against the estate, and if proven to the satisfaction of the court that the deceased was the father of the child, the amounts necessary for the support of the child can be collected from his estate in the same way as any other debt. If a man who was already ordered to pay for the support of a child should die before the child is sixteen years old, the amounts he was ordered to pay can be collected from his estate; provided, however, that if such person leaves a widow or legitimate children, the amounts to be collected from his estate for his illegitimate children cannot exceed the inheritance of a legitimate child; and provided further, that nothing can be paid from such estate for the support of an illegitimate child until the creditors of the estate have been fully satisfied.

Section 5.—That in case such accused person does not comply with the provisions of the first section of this chapter, the Judge to whom such complaint was made shall bind such person in a recognizance to appear at the next term of the District Court, with sufficient security, to answer such accusation, and to abide the order of the court thereon, and on neglect or refusal to give such security, the Judge shall cause him to be committed to bail, there to be held to answer such complaint. **Recognizance.**

Section 6.—That if, at the term of such court, the woman be not delivered, or be unable to attend, the court shall order the renewal of the bonds of recognizance, that the accused person shall be forthcoming at the next term of court after the birth of the child, at which the mother of said child shall be able to attend; and the continuance of such bonds shall be entered by order of said court unless the security object thereto, and shall have the same force and effect as a recognizance taken in court for that purpose. **Renewal of recognizance.**

Section 7.—That when such accused person shall plead not guilty to such charge before the court to which he is recognized, the court shall order the issue to be tried by a jury; and at the trial of such issue the examination before the Police Judge shall be given in evidence, and the mother of the illegitimate child shall be admitted as a competent witness, and her credibility be left to the jury; Provided, always, that no woman shall be admitted as a witness as aforesaid, who has been convicted of any crime which would by law disqualify her from being a witness in any other case; and on the trial of the issue the jury shall in behalf of the man accused, take into consideration any want of credibility in the mother of the illegitimate child; also any variations in her testimony before the Polce Judge and that before the jury; and also any confession given by her, at any time, which does not agree with her testimony, before the jury, and any other pleas or proofs made and produced on behalf of such accused person. **Trial-Evidence.**

Section 8.—That in case the jury find the defendant guilty or such accused person before the trial should confess in court that the accusation is true, he shall be judged the reputed father of said child, and shall stand charged for the maintenance thereof up to the age of fourteen years, in such sum or sums as the court may order and direct, also for the payment of costs of prosecution. In determining the amount to be paid by the father for the support of his illegitimate child, which money shall ordinarily be paid in advance in monthly instalments, the court shall take into consideration that the support of the child must be in accordance with the social and economical position of its mother, but never less than the support given a child in the family of a well-to-do laboring man, and never more than what is necessary for the support of a child of the middle class. As a rule, the father should pay three-fifths of the child's support, but be can be ordered to pay more if the mother is so situated that she cannot, without considerable difficulty, pay her part of the child's support; and provided that she has no other illegitimate children with another father. Should the mother die or leave the country the father may be ordered to undertake the entire support of the child. If the illegitimate child is the offspring of sexual intercourse obtained by rape, the father shall always undertake its entire support. The court may further direct the father to pay special sums for the expense caused the mother by the birth, for its education, and expense caused by the child's sikness or death. The father must always be given a hearing by the court before he is ordered to pay any of the above amounts. Compromises between the parents of an illegitimate child regarding the support of such child are only valid if approved by the Government Attorney, and it shall be the duty of the Government Attorney, to see that all money paid by the father for the support of an illegitimate child, according to the court's decision, or according to compromises arrived at within the court, be spent for the benefit of the child only. **Proceedings if defendant found guilty.**

Section 9.—If default is made in the payments or any payment of money toward the support of an llegitimate child a writ of execution may be issued by the Judge of the Police Court any time, after an *ex parte* hearing, upon **Execution, when may issue.**

the application of the Government Attorney, which execution shall be served and satisfied as executions upon a civil judgment; provided however, that no exemption shall be allowed against a writ issued for nonpayment of money for support of an illegitimate child.

If the writ of execution is returned not satisfied in whole or in part then the court shall issue a warrant of arrest for the person so charged with the said support and if he shall fail, refuse or neglect to forthwith pay the amounts due a commitment shall be issued and such person forthwith imprisoned, there to remain until he shall satisfy the amounts due.

Imprisonment for default.

Such person after being committed as above provided may thereafter be employed by the warden of the penal institution on any public or private work and the earnings from such work by such prisoner after first deducting the actual cost of maintenance of such prisoner shall be applied towards liquidating the amounts of support due; provided however, that no person shall be imprisoned for an amount less than fifteen dollars and that he is not to be kept in custody exceeding one day for each twenty cents of the amounts due, and further provided that no execution can issue except for payments due within the twelve months next preceding the issuance of the execution. When it is proved to the satisfaction of the court that a person in arrears of support of his illegitimate child due to sickness or other smilar cause is unable to perform any kind of work, the court may, in its discretion, order such person released from custody.

Persons charged with support; not permitted to leave.

Section 10.—No person who is charged with the support of an illegitimate child shall be permitted to leave the Municipality unless he first give security for the payment of such support for a period of two years.

Bar to action.

Section 11.—The marriage of the person charged as the father to the mother shall constitute a bar to any action or further proceedings under this chapter.

Considered as criminal action.

Section 12.—All proceedings by virtue of this chapter shall be considered in the nature of a criminal action.

Provided that this Ordinance shall come into full force and effect on the first day of July 1921.

Thus passed by the Colonial Council for St. Thomas and St. John at 3rd Discussion in the meeting held on the 10th March 1921.

THIELE,
Vice Chairman

A. BURNET,
Actg. Secretary.

The foregoing Titles II, III, IV, and V of an Ordinance Providing a Compiled Code of General and Special Laws for the Virgin Islands are hereby sanctioned and approved in their entirety.

Witness my hand and the seal of the Government of the Virgin Islands of the United States, at St. Thomas, this 17th day of March, 1921.

J. W. OMAN,
Governor.

TIP. LIN. CANTERO, FERNANDEZ & CO., INC.