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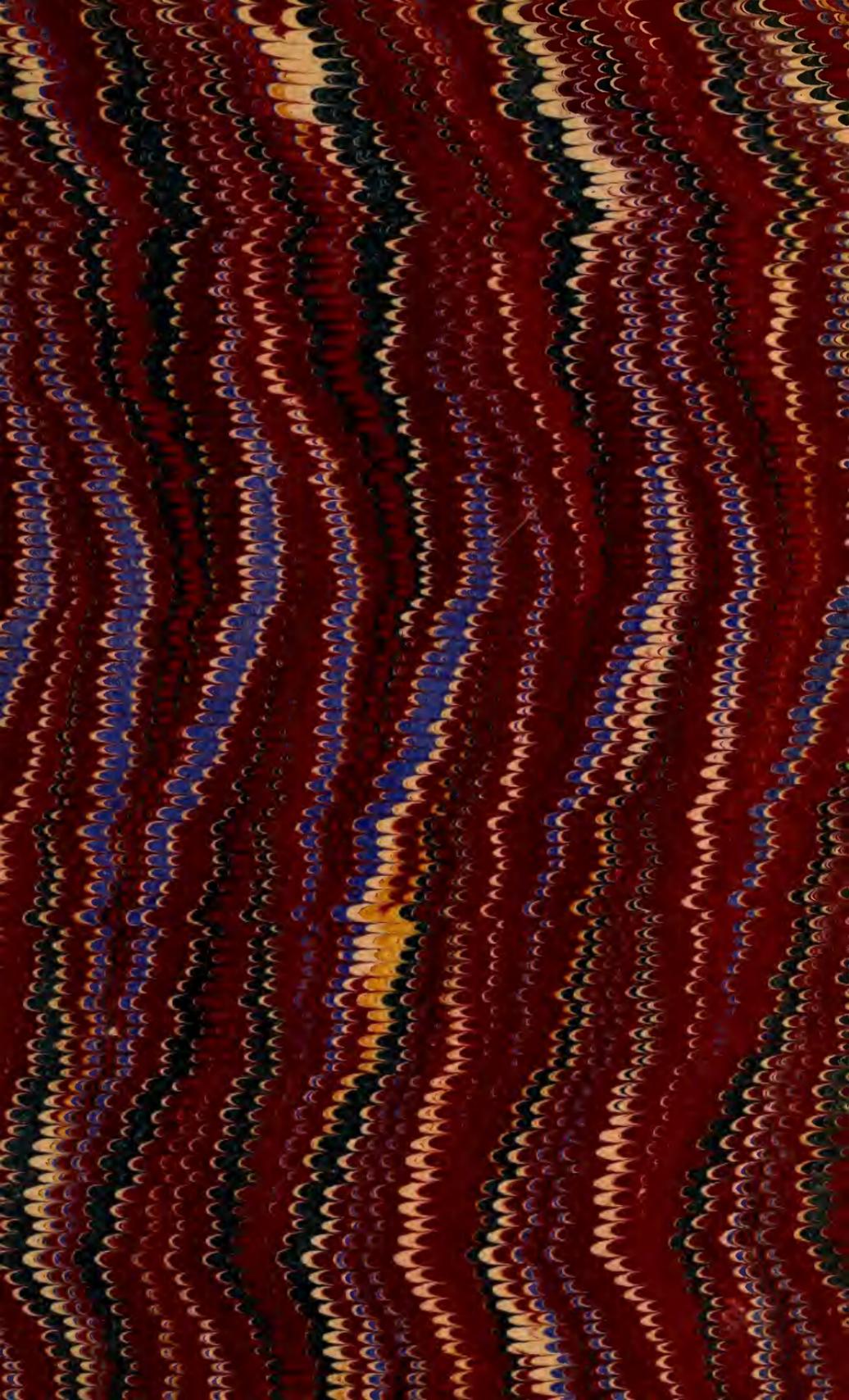
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THE
CODE OF CIVIL PROCEDURE
OF THE
CANAL ZONE.



WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1907.

new

Western Hemisphere

EXECUTIVE ORDER.

Under authority vested in me by law, it is
Ordered, That the within Code of Civil Procedure shall be in force
within the Canal Zone on and after May 1, 1907.

THEODORE ROOSEVELT.

Western

THE WHITE HOUSE,
March 22, 1907.

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THE CODE OF CIVIL PROCEDURE OF THE CANAL ZONE.

CHAPTER I.

GENERAL AND PRELIMINARY PROVISIONS.

SECTION 1. *Interpretation of words.*—In the interpretation of this Code, unless the context shows that another sense was intended, the word “person” includes a private corporation; “writing” includes printing; “oath” includes affirmation or other solemn declaration in such form as the court shall find to be obligatory upon the conscience of the witness; “of unsound mind” includes every species of mental deficiency or derangement; “bond” includes an undertaking or recognizance; “and” may be read “or”, and “or” read “and”, if the sense requires it; “writ” signifies an order or precept in writing issued in the name of the Government, or of a court or judicial officer, and the word “process” a writ or summons issued in the course of judicial proceedings; and “action” means an ordinary suit in a court of justice, by which one party prosecutes another for the enforcement or protection of a right, or the redress or prevention of a wrong; every other remedy furnished by law is a special proceeding; “pleadings” are the formal allegations by the parties of their respective claims and defenses, for the judgment of the court; words in the present tense include the future tense, and in the masculine gender include the feminine and neuter genders; and words in the plural include the singular, and in the singular include the plural number; the term “dollars” means the money of the United States.

The phrase “territory of the United States”, or “territories of the United States”, includes any body politic and any territorial possession under the jurisdiction of the United States.

The word “surety” or “sureties,” when occurring in this Code, shall include any surety company authorized to do business under the laws of the Canal Zone, and the single bond of such surety company shall in all cases be deemed sufficient.

“District judge” shall mean any judge appointed for any of the existing administrative districts, under whatsoever title known.

But this enumeration shall not be construed to require a strict construction of other general words.

SEC. 2. *Construction of Code.*—The provisions of this Code, and the proceedings under it, shall be liberally construed, in order to promote its object and assist the parties in obtaining speedy justice.

SEC. 3. *Powers of deputies.*—The duty enjoined by statute upon a ministerial officer, and an act permitted to be done by him, may be performed by his lawful deputy.

SEC. 4. *How time computed.*—Unless otherwise specially provided, the time within which an act is required by law to be done shall be computed by excluding the first day and including the last; and if the last be Sunday or a legal holiday it shall be excluded.

SEC. 5. *Provisions concerning process.*—Process shall be under the seal of the court from which it issues, be styled “The United States of America, Canal Zone, ss:” to be signed by the clerk and bear date the day it actually issues.

SEC. 6. *Rules of Court.*—The judges of the Supreme Court shall prepare rules regulating the conduct of business in the Supreme Court and in the Circuit Courts. The rules shall be uniform for all Circuit Courts throughout the Canal Zone. Such rules, when duly made and promulgated and not in conflict with the laws of the United States or the Canal Zone, shall be binding and must be observed, but no judgment shall be reversed by reason of a failure of the court to comply with such rules unless the substantial rights of a party have been impaired by such failure.

SEC. 7. *Stamped paper.*—Stamped paper is not required for use in proceedings in any court. But, for uniformity and convenience of folding and filing papers, the rules of court may prescribe the size and form of sheets of paper to be used for all written and printed documents in legal proceedings.

SEC. 8. *Disqualification of judges.*—No judge, magistrate, referee, or presiding officer of any tribunal shall sit in any case or proceeding in which he is pecuniarily interested, or related to either party within the sixth degree of consanguinity or affinity, computed according to the rules of the civil law, nor in which nor in the matter out of which the litigation arises he has been a counsel, nor in which he has presided in any inferior judicature when his ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record.

No challenge as to the competency of any of the officials named in this section shall be received or allowed; but if it be claimed that the official is disqualified by the provisions of this section, the party objecting to his competency may, in writing, file with the official his objection, stating the grounds therefor, and the official shall thereupon proceed with the trial, or withdraw therefrom, in accordance with his determination of the question of his disqualification. His decision shall be forthwith made in writing and filed with the other

papers in the case, but no appeal or stay of action shall be allowed from, or by reason of, his decision in favor of his own competency, until after final judgment in his court.

SEC. 9. *Civil liability of judges.*—No judge, shall be liable to a civil action for the recovery of damages by reason of any judicial action or judgment rendered by him in good faith, and within the limits of his legal powers and jurisdiction.

SEC. 10. *Publicity of proceedings and records.*—The sitting of every court of justice shall be public, but any court may, in its discretion, exclude the public when the testimony to be adduced is of so indecent a nature as to require such exclusion in the interests of morality. The records of every court of justice shall be public records and available for the inspection of any party in interest, at all proper business hours, under the supervision of the clerk having the custody of such records.

SEC. 11. *Incidental powers of courts.*—Every court shall have power:

1. To preserve and enforce order in its immediate presence;
2. To enforce order in proceedings before it, or before a person or persons empowered to conduct a judicial investigation under its authority;
3. To compel obedience to its judgments, orders, and process, and to the lawful orders of a judge out of court in a pending action or proceeding;
4. To control, in furtherance of justice, the conduct of its ministerial officers, and of all other persons in any manner connected with a judicial proceeding before it, in every matter appertaining thereto;
5. To compel the attendance of persons to testify in an action or proceeding pending therein;
6. To administer or cause to be administered oaths in an action or proceeding pending therein, and in all other cases where in the exercise of its powers it may be necessary;
7. To amend and control its process and orders so as to make them conformable to law and justice;
8. To appoint a clerk temporarily should there be a vacancy in said office or should the clerk for any cause be unable to attend to his duties.

SEC. 12. *Official language.*—The official language of all courts and their records shall be the English language. But the Supreme Court, or any Circuit Court, may order a duplicate record in the Spanish language to be made and duly enrolled in any action or proceeding, whenever the court shall determine that such duplicate record would promote the public convenience and the interests of the parties.

Provided, That any party or his counsel may examine or cross-examine witnesses, or make an oral argument in Spanish, the same

to be clearly interpreted into English by a court interpreter; and a party or his counsel may submit a written or printed pleading or brief in Spanish, if at the same time he accompany it by a correct English translation.

CHAPTER II.

LAWYERS, THEIR QUALIFICATIONS AND DUTIES.

SEC. 13. *Who may practice as lawyers.*—The following persons, if not specially declared ineligible, are entitled to practice law in the courts of the Canal Zone. All attorneys at law who were permitted to practice their profession within the territory of which the Canal Zone is constituted on or before the 23rd day of February, 1904, will be entitled to practice before the Canal Zone courts upon presenting evidence of this fact.

SEC. 14. *Qualification of applicants.*—Other persons who desire to be admitted to the practice, will appear before the Supreme Court, producing a certificate of good moral character, and be examined touching their qualifications to practice law. The subjects upon which they are examined will be Real Estate, Personal Property, Equity, Pleading, Contracts, Administrators and Executors, Criminal Law, and the Codes in force in the Canal Zone.

If in the opinion of the court they exhibit a sufficient acquaintance with the subjects upon which examined to enable them to practice their profession with efficiency a license to so practice will be issued to them.

SEC. 15. *Study of law.*—The Supreme Court by rule may require that applicants shall have regularly and attentively studied law for a fixed period before taking the examination, and may specify the kind of evidence necessary to establish the fact.

SEC. 16. *Place and manner of examinations.*—Such examinations shall be conducted by the judges of the Supreme Court or by a committee of competent lawyers by them to be appointed, and shall be held at such times as the judges of that court shall provide by general or special rules.

SEC. 17. *Admission.*—If upon examination, the candidate is found qualified, the Supreme Court shall admit him as a member of the bar for all the Courts of the Canal Zone, and shall direct an order to be entered to that effect upon its records, and a certificate of such record to be given to him by the clerk of the court, which certificate shall be his license.

SEC. 18. *Oaths.*—Before receiving a certificate the applicant shall take and subscribe in court the following oath:

1. " I, ----- recognize and accept the supreme authority of the United States of America, in the Canal Zone, and I do swear that

I will obey the existing laws which rule in the Canal Zone, as well as the legal orders and decrees of the duly constituted authorities therein; that I impose upon myself this voluntary obligation without any mental reservation or purpose of evasion. So help me God.

2. "I do solemnly swear that I will do no falsehood, nor consent to the doing of any in court; I will not wittingly or willingly promote or sue any false, groundless or unlawful suit, nor give aid nor consent to the same; I will delay no man for money or malice, but will conduct myself in the office of a lawyer within the courts according to the best of my knowledge and discretion, with all good fidelity as well to the courts as to my clients. So help me God."

These oaths may be taken before any judge of the Supreme Court, and a certificate that the oath has been taken shall be set forth in the license.

SEC. 19. *Admission from other jurisdictions.*—Every resident of the Isthmus of Panama, not a citizen or subject of any foreign government, who has been admitted to practice law in the Supreme Court of the United States, or in any circuit court of appeals, circuit or district court therein, or in the highest court of any State or Territory of the United States, may be admitted to practice in the courts of the Canal Zone upon the production of his license and satisfactory evidence that such license has not been revoked and that the applicant is of good moral character and professional standing. But the judges of the Supreme Court may, by general rules, provide that an applicant for admission under this section shall satisfactorily pass an examination upon the codes of law, and procedure in force in the Canal Zone.

The applicant under this section shall take the oath above provided before receiving his license.

SEC. 20. *Lawyer's roll.*—The clerk of the Supreme Court shall keep a roll of all the lawyers admitted to practice in the court, which roll shall be signed by the person admitted before he receives his license.

SEC. 21. *Disbarments.*—A member of the bar may be removed or suspended from his office as lawyer by the Supreme Court for any deceit, malpractice or other gross misconduct in such office, or by reason of his conviction of a crime involving moral turpitude or for any violation of either of the oaths aforesaid, or for the willful disobedience of any lawful order of the Supreme Court or Circuit Courts, or for corruptly or willfully appearing as a lawyer for a party to an action or proceeding without authority so to do.

SEC. 22. *Suspension of lawyers.*—Circuit Courts may suspend a lawyer from the further practice of his profession for unprofessional conduct in any case, or for conduct in the presence of the Court calculated to bring the administration of justice into derision or contempt. Should such suspension occur in the trial of a case, the party to said

action, represented by the lawyer so suspended, shall be entitled to have said case continued until such suspension is removed, or until such time as he may be reasonably able to secure another lawyer, and shall have the right on such new hearing to have the case tried *de novo*.

After such suspension such lawyer will not be privileged to practice his profession in any of the courts of the Canal Zone until further action of the Supreme Court in the premises.

SEC. 23. *Proceedings upon suspension.*—Upon such suspension, the judge of the Circuit Court ordering the suspension shall forthwith transmit to the Supreme Court a certified copy of the order of suspension and a full statement of the facts upon which the same was based. Upon receipt of such certified copy and statement, the Supreme Court shall make full investigation of the facts involved and make such order revoking or extending the suspension, or removing the lawyer permanently from the roll, as it shall find the facts to warrant.

SEC. 24. *Institution and costs of disbarment proceedings.*—Proceedings for the removal or suspension of a lawyer may be taken by the court of its own motion, or upon the complaint of another in writing. It shall be the duty of the Prosecuting Attorney for the Canal Zone to appear for the Government in all such proceedings in the Supreme Court and to conduct prosecutions. The costs of the prosecution of such proceedings shall be paid by the Government.

SEC. 25. *Hearing of charges.*—No lawyer shall be removed from the roll or be suspended from the performance of his profession until he has had full opportunity to answer the charges against him, and to produce witnesses in his own behalf and to be heard by himself and counsel, if he so desires, upon reasonable notice. But if upon reasonable notice the accused fails to appear and answer the accusation, the court may proceed to determine the matter *ex parte*.

SEC. 26. *Authority to appear.*—No written power of attorney shall be required to authorize a duly enrolled lawyer to appear in court for his client, but the presiding judge may, on motion of either party, and on reasonable grounds therefor being shown, require any lawyer who assumes the right to appear in an action or proceeding to produce or prove the authority under which he appears, and to disclose, whenever pertinent to any issue, the name of the person who employed him, and may make any order that justice may require on such investigation; but, *prima facie*, lawyers shall be held properly authorized to represent any causes they may appear in.

SEC. 27. *Authority to bind their clients.*—Lawyers have authority to bind their clients in any action or proceeding by any agreement in relation to the cause made in writing, in entering appeals, and in all matters of ordinary judicial procedure. But they can not, with-

out special authority, compromise their client's litigation, or receive anything in discharge of a client's claim but the full amount in cash.

SEC. 28. *Unauthorized appearances; contempt.*—A lawyer willfully appearing in court for a person without being employed, unless by leave of the court, is guilty of contempt of court, and may be fined a sum of not less than one hundred dollars and not more than one thousand dollars by the court in which such unauthorized appearance has been entered.

SEC. 29. *Lawyers' fees.*—A lawyer shall be entitled to have and recover from his client no more than a reasonable compensation for the services rendered, having in view the importance of the subject-matter of the controversy, the extent of the services rendered, and the professional standing of the lawyer. But in such cases the court shall not be bound by the opinion of lawyers as expert witnesses as to the proper compensation, but may disregard such testimony and base its conclusion on its own professional knowledge. A written contract for services shall control the amount of recovery if found by the court not to be unconscionable or unreasonable.

SEC. 30. *Retention of client's funds.*—When a lawyer unjustly retains in his hands money of his clients after it has been demanded, he may be dealt with as for contempt of court, and may, after due hearing, be imprisoned until he pays over his client's moneys ascertained to be unlawfully in his hands, for a period not exceeding six months in all. But proceedings under this section shall not be a bar to a criminal prosecution for embezzlement.

SEC. 31. *Inviolability of communications of clients.*—A lawyer must strictly maintain inviolate the confidence and preserve the secrets of his client. He shall not be permitted in any court, without the consent of his client, given in open court, to testify to any facts imparted to him by his client in professional consultation, or for the purpose of obtaining advice upon legal matters.

SEC. 32. *Change of lawyers.*—A lawyer may retire at any time from any action or special proceeding, by the written consent of his client filed in court, and a client may at any time dismiss his lawyer or substitute another in his place. A lawyer may also retire at any time from an action or special proceeding, without the consent of his client, should the court, on notice to the client and lawyer, and on hearing, determine that he ought to be allowed to retire. In case of such substitution, the name of the lawyer newly employed shall be entered on the docket of the court in place of the former one, and written notice of the change shall be given to the adverse party.

SEC. 33. *Employment of lawyers not required.*—Any party may conduct his litigation in a court of a district judge, in person or with the aid of an agent or friend appointed by him for that pur-

pose, or with the aid of a lawyer; in any other court a party may conduct his litigation personally or by the aid of a lawyer, and his appearance must be either personal or by the aid of a duly authorized member of the bar.

SEC. 34. *Lawyers for destitute litigants.*—The Supreme Court and Circuit Courts may, in their discretion, assign any lawyer to render professional aid to a party, in pending action, free of charge, if such court, upon full investigation shall find that the party is destitute and unable to employ a lawyer and that the services of counsel are necessary to secure the ends of justice and to protect the rights of the party. Upon such assignment, it shall be the duty of the lawyer assigned to render the required services, unless he shall be excused therefrom by the court for sufficient cause shown.

SEC. 35. *Judges as lawyers.*—No judge of the Supreme Court or Circuit Court, or clerk of court nor the prosecuting attorney or assistant prosecuting attorney shall be allowed to act as a lawyer or to give professional advice to clients while holding office.

SEC. 36. *Lawyers' liens.*—A lawyer shall have a lien upon all the funds and papers and documents of his client which may lawfully have come into his possession, and may retain the same until his lawful fees and disbursements due to him from his client have been paid, and may apply such funds to the satisfaction thereof. He shall also have a lien to the same extent upon all judgments and decrees for the payment of money, and executions issued in pursuance of such judgments and decrees which he has secured in a litigation of his client, from and after, but not before, the time when he shall have caused a statement of his claim of such lien to be entered upon the records of the court rendering such judgment or decree, or issuing such execution, and shall have caused written notice thereof to be delivered to the adverse party, and shall have the same right and power over such judgments, decrees, and executions to enforce his lien as his client had or may have, to the extent that may be necessary for the payment of his just fees and disbursements.

CHAPTER III.

PRESCRIPTION; TIME OF COMMENCING ACTION.

SEC. 37. *To what this chapter does not apply.*—This chapter shall not apply to actions already commenced, or to cases wherein the right of action has already accrued; but the statutes in force when the action or right of action accrued shall be applicable to such cases according to the subject of the action and without regard to the form; nor shall this chapter apply in the case of a continuing and

subsisting trust, nor to an action by the vendee of real property in possession thereof to obtain the conveyance of it.

SEC. 38. *Special limitations excepted.*—Civil actions can only be commenced within the periods prescribed in this chapter after the cause of action accrues; but where a different limitation is prescribed by this Code, that shall govern.

SEC. 39. *Period of prescription as to real estate.*—Except in the case of the Government of the United States or the Canal Zone an action for recovery of title to, or possession of, real property, or an interest therein, can only be brought within ten years after the cause of such action accrues.

SEC. 40. *Title to land by prescription.*—Ten years' actual adverse possession by any person claiming to be the owner for that time of any land or interest in land, uninterruptedly continued for ten years by occupancy, descent, grants, or otherwise, in whatever way such occupancy may have commenced or continued, except in the case of public lands, shall vest in every actual occupant or possessor of such land a full and complete title, saving to the persons under disabilities the rights secured by the next section. In order to constitute such title by prescription or adverse possession, the possession by the claimant or by the person under or through whom he claims must have been actual, open, public, continuous, under a claim of title exclusive of any other right and adverse to all other claimants. But failure to occupy or cultivate land solely by reason of war shall not be deemed to constitute an interruption of possession of the claimant, and his title by prescription shall be complete, if in other respects perfect, notwithstanding such failure to occupy or cultivate the land during the continuance of war.

SEC. 41. *Exceptions in favor of persons under disability.*—If a person entitled to bring the action mentioned in the preceding sections in this chapter is, at the time the cause of action accrues, within the age of minority, of unsound mind or in prison, such person may, after the expiration of ten years from the time the cause of action accrues, bring such action within three years after such disability is removed.

SEC. 42. *Other civil actions; how limited.*—Civil actions other than for the recovery of real property can only be brought within the following periods after the right of action accrues:

1. Within ten years: An action upon an agreement, contract, or promise in writing, or upon the judgment or decree of a court;

2. Within five years: An action upon a contract not in writing, whether such contract is expressed or implied, and an action upon a liability created by a statute other than a forfeiture or penalty;

3. Within two years: All actions for an injury to or trespass upon real estate; for the recovery of personal property; for the recovery

of damages for taking, retaining or injuring personal property; for an injury to the rights of the plaintiff not arising on contract and not hereinafter enumerated; for relief on the ground of fraud; shall be commenced within two years next after the cause of action accrued, except that in action for relief on the ground of fraud, the right of action in such cause shall not be deemed to have accrued until the discovery of the fraud.

4. Within one year: Action for injury to the person; action for libel or slander; for assault, battery, malicious prosecution or false imprisonment, or for injuries resulting therefrom; action upon a statute for a penalty or forfeiture; shall be brought within one year after the cause of action accrued, but where a different limitation is prescribed in the statute by which the remedy is given the action must be brought within the period so limited.

SEC. 43. *For other relief.*—An action for relief not herein provided for can only be brought within ten years after the cause of action accrues.

SEC. 44. *Rights saved to certain persons.*—If a person entitled to bring any action mentioned in either of the two last preceding sections is, at the time the cause of action accrues, within the age of minority, of unsound mind, or in prison, such person may bring such action within two years after the disability is removed unless the right of action is one of those named in subdivision four of section forty-two, in which case it may be brought within one year after such disability is removed.

SEC. 45. *When action deemed commenced.*—An action shall be deemed commenced within the meaning of this chapter, as to each defendant, at the date of the filing of the complaint in court, but if an additional defendant is made after the commencement of the action, the action shall be deemed commenced within the meaning of this chapter, as to such defendant, at the date of the summons which is served on him.

SEC. 46. *As to absent persons.*—If, when a cause of action accrues against a person, he is out of the Canal Zone, or has absconded or concealed himself, and has not known or visible property within the Canal Zone, the period limited for the commencement of the action shall not begin to run until he comes into the Canal Zone or while he is so absconded or concealed, or until he has known or visible property within the Zone; and if, after the cause of action accrues, he departs from the Canal Zone, or absconds or conceals himself, the time of his absence or concealment shall not be computed as any part of the period within which time the cause of action should be brought.

SEC. 47. *If barred at place where cause of action arose, barred*

here.—If, by the laws of the state or country where the cause of action arose, the action is barred, it is also barred in the Canal Zone.

SEC. 48. *Saving in other cases.*—If, in an action commenced, or attempted to be commenced, in due time, a judgment for the plaintiff be reversed, or if the plaintiff fail otherwise than upon the merits, and the time limited for the commencement of such action has, at the date of such reversal or failure, expired, the plaintiff, or, if he die and the cause of action survive, his representatives may commence a new action within one year after such date, and this provision shall apply to any claim asserted in any pleading by a defendant.

SEC. 49. *What shall renew right of action.*—When payment has been made upon any demand founded upon contract, or a written acknowledgment thereof or a promise to pay the same has been made and signed by the party sought to be charged, an action may be brought thereon within the time herein limited, after such payment, acknowledgment, or promise.

CHAPTER IV.

PROCEDURE IN DISTRICT COURTS.

SEC. 50. *Summons.*—Every action before a district judge, except as otherwise provided, shall be commenced by summons, which shall be in the following form, as nearly as the case will admit, viz:

“ UNITED STATES OF AMERICA,
“ *Canal Zone, ss:*

“ The Government of the Canal Zone, to any marshal of said Canal Zone, greeting:

“ You are hereby commanded to summon A. B. to appear before me at _____ on the ____ day of _____ at ____ o'clock -- M, to answer the complaint of C. D. for a failure to pay him a certain demand, not exceeding one hundred dollars, and hereof make due return, as the law directs.

“ Given under my hand this ____ day of _____ 19__.

“*District Judge.*”

In which summons the district judge shall specify a certain place, day and hour which shall be between the hours of eight o'clock a. m. and 4 o'clock p. m. for the trial, not less than five nor more than fifteen days from the date of such summons, at which time and place the defendant is to appear. Every summons shall be served at least three days before the time of trial mentioned therein, by reading the same to the defendant.

SEC. 51. *The complaint.*—The complaint shall state the name and residence of the plaintiff and that of the defendant, the substance of the claim made, the grounds of action, the amount sought to be recovered, and the date when the claim is presented to the court.

SEC. 52. *Nonsuit*.—If the plaintiff does not appear at the time and place designated in the summons, the judge may dismiss the action for failure to prosecute, and render judgment for the defendant to recover his lawful costs. But such dismissal without hearing shall not be a bar to a subsequent action for the same cause.

SEC. 53. *Default*.—If the defendant does not appear at the time and place designated in the summons, judgment may be rendered against him by default, and the court shall thereupon proceed to hear the testimony of the plaintiff and his witnesses as to the amount which the plaintiff is entitled to recover, and shall render judgment for the plaintiff to recover of the defendant such sum as he finds established by the evidence to be justly due with lawful costs; but in all actions for the recovery of money under a contract, express or implied, where the cause of action is set forth in a complaint verified by the plaintiff, judgment by default for the amount sued for may be entered without taking the testimony of the plaintiff and his witnesses.

SEC. 54. *Vacating nonsuits and defaults*.—Within two hours after the entry of a nonsuit or default as provided in the last two preceding sections, the court may strike off the entry of nonsuit or default and allow the party nonsuited or defaulted to have a trial upon the merits of the cause, if such party shall appear and make it manifest to the court that his failure to appear at the time designated occurred by reason of fraud, accident, or mistake.

SEC. 55. *Trial*.—The defendant may interpose any lawful defense, including a counterclaim or plea in offset, for any sum not exceeding the jurisdictional limit of a district court, verbally, without written pleadings. The plaintiff may make an opening statement by himself, his agent or counsel, if he so desires, explaining the character of his claim, and the defendant, personally or by his agent or counsel, may make a like opening statement, if he so desires, explaining the character of his defense or counterclaim. Upon the conclusion of the opening statement, the court shall hear the testimony of the plaintiff and his witnesses; afterwards, the testimony of the defendant and his witnesses, all under the sanction of an oath. Upon the conclusion of the testimony in behalf of the defendant, the plaintiff may offer rebutting testimony. When the testimony has been closed, the defendant or his agent or counsel shall be heard in argument, if he so desires, and upon the conclusion of his argument the plaintiff or his agent or counsel shall be heard, if he so desires.

SEC. 56. *Testimony*.—All testimony, except documentary, shall be given orally in court, at the time of trial, unless the written testimony of witnesses shall have previously been taken in accordance with general law upon that subject and produced at the trial in the form of depositions.

SEC. 57. *Adjournment.*—District courts shall have power to adjourn the hearing of an action from day to day as the interests of justice may require, but shall not have the power to adjourn hearings for a longer period than one week for each adjournment, nor for more than three months in all.

SEC. 58. *Power to punish for contempt of court.*—District judges may summarily impose a fine not exceeding five dollars, or sentence to imprisonment for a period not exceeding one day, or impose both of such punishments, upon a person guilty of misbehavior in the presence of or so near the district judge as to obstruct him in the performance of his judicial duties.

SEC. 59. *Judgments.*—At the conclusion of the trial, the judge shall render judgment for the plaintiff to recover such sum as he finds to be justly his due, with costs; or for the defendant to recover his costs, as the law and evidence may warrant. If there is a counterclaim or plea in offset the judge shall render judgment for the sum found in arrear from either party, with costs. But he may adjourn the disposition of the case to a stated day, not exceeding one week from the time of the conclusion of the trial, for the consideration of judgment, if he require time for consideration.

SEC. 60. *Form of judgment.*—The entry of judgment need not state the facts or conclusions arrived at by the judge, but shall be substantially in the following form only:

“Judgment for the plaintiff to recover ----- dollars damages and costs of the action;” or

“Judgment for the defendant to recover his costs,” if he shall not be entitled to anything on a counterclaim; or, “Judgment for the defendant to recover ----- dollars and his costs,” if he shall have established a counterclaim in excess of the demand established by the plaintiff.

SEC. 61. *Witnesses may be subpœnaed.*—At the instance of either party the judge may at any time after the commencement of the action issue a subpœna directed to any witness whose testimony may be desired, requiring his attendance as a witness at a time and place therein specified, which subpœna shall be served upon the witness in the same manner as has been above provided for the service of a summons to the defendant, and his lawful fees as a witness shall, if he require it, be then tendered to him. If the witness fails to appear at the time and place specified in the subpœna, the judge may issue a warrant upon which he may be seized and brought before the judge and compelled to testify, and the costs of such warrant and seizure of the witness shall be paid by the witness if the judge shall determine that his failure to answer the subpœna was willful or without excuse.

SEC. 62. *Dockets.*—Every district judge shall keep a well-bound

book, styled "Docket," upon each page of which shall be room for entries as to two actions, entries as to one to occupy the upper half of the page, and, as to the other, the lower half. Upon it he shall enter the names of the plaintiff and defendant in any suit brought before him; the time of issuing process, and when returnable; the appearance or default of the person summoned to appear; the names of the witnesses sworn; the date and amount of the judgment; the date of issuing execution, when one is issued, and a copy of the return thereon; the appeal, when and by whom demanded, and, briefly, all the proceedings before him touching the suit.

SEC. 63. *Entry to identify docket.*—Each district judge shall, at the beginning and in front of all his entries in his docket, make and subscribe substantially the following entry, to wit:

" A docket of proceedings in matters civil and criminal before
----- district judge of the administrative district of -----
----- Canal Zone.

" Witness my signature,

" -----
District Judge."

SEC. 64. *Final disposition of dockets.*—Every district judge whose term of office shall expire, or who shall resign, remove from the Zone, or otherwise go out of office and the legal representative of every district judge who shall die, shall, within ten days thereafter, deliver his docket, with all process and papers and books relating to his office, to the clerk of the Circuit Court of the judicial circuit of the district; and if any district judge shall refuse or neglect to deliver such docket, process, papers and books, to said clerk as required, or, in case of his death, should his legal representative fail so to do, he or they shall be guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine not exceeding five hundred dollars, or by imprisonment for not more than six months, or by both. Said clerk shall keep in his office such docket, process, papers, and books as public records, and shall certify copies thereof, while kept by him, whenever lawfully demanded. While such docket, process, papers, and books are in the custody of the clerk, if there shall be on such docket any judgment unexecuted, the clerk may issue execution upon such judgment, and the execution so issued shall have the same effect as if issued by the judge who rendered the judgment.

SEC. 65. *Execution.*—If no appeal from a judgment of a district judge shall be perfected as herein provided, the district judge shall, at the request of the successful party, issue an execution for the enforcement of the judgment, at the expiration of the time limited by law for the perfection of an appeal.

SEC. 66. *When judge is disqualified.*—When a judge is disqualified from presiding, or where there is no judge in the district where

the action is to be brought, or there is one and he refuses to serve, generally or in any particular case, and there is no auxiliary judge in the district competent and able to sit, any district judge of the Zone shall be authorized to issue all process and to preside in the particular case and in the administrative district in which the action shall be brought.

SEC. 67. *Appeals*.—Either party to an action before a district judge may appeal from the judgment of the judge to the next regular stated term of the Circuit Court to be held within the circuit in which the judgment was rendered in the manner herein provided.

SEC. 68. *Effect of appeals*.—A perfected appeal shall operate to vacate the judgment of the district judge, and the action when duly entered in the Circuit Court shall stand for trial *de novo* upon its merits in accordance with the regular procedure in that court, as though the same had never been tried and had been originally there commenced.

SEC. 69. *Appeals, how perfected*.—Within five days after the rendition of a judgment by a district judge, the party desiring to appeal may file with the judge a written statement that he appeals to the Circuit Court, and shall, within said period of five days, give a bond with sufficient surety to be approved by said judge, payable to the opposite party, in the penal sum of one hundred dollars, conditioned for the payment of all such costs in the action as finally may be awarded against him. The filing of such statement and giving of such bond shall perfect the appeal.

SEC. 70. *Copy of record to be transmitted*.—The district judge, upon the perfection of the appeal, shall prepare and certify his record to the following effect namely:

“Copy of the record of the proceedings before _____ the district judge of the district of _____ in the Canal Zone, in the case herein set forth, to wit: (Here copy the entries on the docket and certify as follows, namely:)

“Canal Zone. District of _____, I, _____ district judge of the said district, certify that the foregoing is a copy of the record and proceedings before me in the case stated therein as appears on my docket.

“Given under my hand this ____ day of _____, A. D. 19___

“_____”
“District Judge.”

SEC. 71. *Papers to be delivered to clerk of Circuit Court*.—The district judge from whose decision an appeal shall be taken shall, on or before the first day of the next term of the Circuit Court for the circuit in which the same is returnable, transmit to the clerk of that court a certified copy of the record of proceedings, with all the original papers and process in the case, and the original appeal bond

given by the appellant, or if money bond was taken said money, and the clerk shall docket the same in the Circuit Court, and shall be entitled to the same fees, upon such appeals, as for similar services in suits originating in said court. The district judge shall at all times be allowed, and, in the interest of justice, may be required, by the Circuit Court, to amend his return according to the facts.

SEC. 72. *Settlement of appeal cases.*—At any time after the perfection of an appeal from a judgment of a district judge and before the papers have been transmitted to the clerk of the Circuit Court to which the action is appealed, the parties may adjust the controversy by agreement in writing, signed by both parties and lodged with the judge, who shall enter the same upon his docket, and no further proceeding shall thereafter be taken in the action. But if the appeal papers have already been transmitted to the clerk of the Circuit Court, then the judge shall immediately transmit the compromise agreement to the clerk of the Circuit Court, who shall file the same and enter a memorandum thereof upon his docket, and no further proceedings shall thereafter be taken in the action.

SEC. 73. *Forcible entry into and detainer of land or buildings.*—Anyone deprived of the possession of land, or a building, by force, intimidation, fraud, strategy, or stealth, and any landlord, vendor, vendee, or other person, against whom the possession of land or a building is unlawfully withheld, by his tenant, vendee, vendor, or other person, after the expiration of his right by contract express or implied, to hold possession, and the legal representatives or assigns of him who is so deprived of possession, or from whom possession is so withheld, as against him who so obtains possession or withholds possession after the expiration of his rights, and all persons claiming to hold under him, shall, at any time within one year after such deprivation or unlawful withholding of possession be entitled to restitution of possession, and to damages, in a district court, in the manner hereinafter prescribed. The owner of land, or of a building, occupied by a tenant, may likewise obtain restitution or possession of the premises, and recover rents due and damages, in the manner next hereinafter provided, when the tenant for ten days after due demand for payment of rent due for the occupancy of the premises shall have refused or neglected to make payment of the same.

SEC. 74. *The complaint.*—The party turned out of possession, or held out of possession, may institute an action before any district judge of the district in which the land or building, or some part thereof, is situated, to recover possession thereof and damages. The complaint shall be substantially in the following form:

“The plaintiff (naming him) complains that the defendant (naming him) has unlawfully turned him out of possession (or unlawfully withholds from him the possession, as the case may be) of certain

lands and building (here describe the premises) lying and being within said district, whereof he prays the possession, and he also prays for just damages and costs.

“-----
“(The plaintiff naming him.)”

The complaint shall be verified by the oath of the plaintiff, or his agent or attorney, and certified by the district judge before whom the action is instituted. Process shall issue to and be served upon the defendant, as in other actions before a district judge.

SEC. 75. *Trial*.—The action shall be tried in the same manner as other actions before a district judge.

SEC. 76. *Continuance, and obligation therefor*.—No continuance shall be granted for a longer period than one week, unless the defendant applying therefor shall give an obligation to the adverse party, with good and sufficient sureties to be approved by the judge, conditioned for the payment of rent and damages that may accrue, if judgment be rendered against the defendant.

SEC. 77. *Judgment*.—If, upon trial, the court shall find that the complaint is not true, it shall enter judgment against the plaintiff for costs. If it finds the complaint to be true, it shall render judgment against the defendant in favor of the plaintiff for restitution of the premises, and costs of suit, and for all arrears of rent, or a reasonable compensation for the use and occupation of the premises.

SEC. 78. *The execution*.—When a judgment of restitution shall be entered by the justice, he shall, at the request of the plaintiff, his agent or attorney, issue a writ of execution thereon, which shall be in the following form, as near as practicable:

“THE CANAL ZONE,

“District of -----

“To any officer authorized to serve process in the district of

“Whereas, in a certain action for the forcible entry and detention (or forcible detention, as the case may be) of the following-described premises, to wit, (here describe them) lately tried before me, wherein ----- was plaintiff and ----- was defendant, judgment was rendered on the ---- day of ----- A. D. 19--, that the plaintiff have restitution of the premises, and also that he recover damages to the amount of ----- dollars; also that he recover costs in the sum of ----- dollars. You are therefore hereby commanded to cause the defendant to forthwith remove from said premises, and that the said plaintiff have restitution of the same; also that you levy upon the goods and chattels of the said defendant and collect from him the rent, damages, and costs aforesaid, and costs of this execution and service thereof, in due form of law.

“Witness my hand this ---- day of ----- A. D. 19--

“District Judge.”

But such execution shall not issue within five days from the date of the judgment, nor if an appeal to the Circuit Court has been per-

fect by the due execution and delivery of the obligation referred to in section eighty-one.

SEC. 79. *Service of execution.*—The officer shall, upon receiving the execution, execute the same, by restoring to the plaintiff the possession of the premises, and shall levy and collect the rent, damages, and costs awarded, and make return, as upon other executions.

SEC. 80. *Such judgment not conclusive in another action.*—A judgment rendered in a suit of unlawful entry and detainer, either for the plaintiff or defendant, shall not bar an action in the Circuit Court between the same parties respecting title to the land or building; nor shall any judgment given therein be held conclusive of the facts found in another action between the same parties.

SEC. 81. *Appeal.*—Either party may appeal from the judgment of the district judge to the Circuit Court and the suit shall therein be conducted as appeals from district judges in other civil actions; if the plaintiff recovers possession of the premises in the Circuit Court, he shall have judgment for the amount of rents or damages then due. If the defendant appeals from the judgment of the judge he shall give an obligation to the plaintiff with sufficient sureties, to be approved by the judge, to enter the action in the Circuit Court, and to pay rent then due, and intervening rent, damages, and costs; and the defendant and the sureties shall be liable upon their obligation for such rent, intervening rent, damages, and costs, down to the time of the final judgment in the action. The appeal shall not be allowed until such obligation has been filed with the judge, and the obligation shall be transmitted by the judge with the other papers to the clerk of the Circuit Court to which the action is appealed.

PROCEDURE IN CIRCUIT COURTS IN ACTIONS.

CHAPTER V.

PLEADINGS.

SEC. 82. *Pleadings.*—The only pleading allowed on the part of the plaintiff shall be:

1. The complaint;
2. The demurrer to the answer;

And on the part of the defendant:

1. The demurrer to the complaint;
2. The answer.

SEC. 83. *Complaint.*—The complaint is a statement in a methodical and logical form of the circumstances which constitute the plaintiff's cause of action. The complaint must contain:

1. The name of the court and circuit in which the action is brought, and the names of the parties to the action;

2. A brief statement of the facts constituting the cause of action, in ordinary and concise language without argument or unnecessary repetition with a reference by number or page to the sections of the several codes, if any, upon which the action is founded. If the complaint contains more than one cause of action, each distinct cause of action must be set forth in a separate paragraph containing all the facts constituting the particular cause of action;

3. A demand for the relief which the plaintiff claims.

4. Where documents are relied upon they shall accompany the memorial or complaint. A properly authenticated copy of any document, made by an officer in charge of the archives in which the original is kept, may be used in evidence in lieu of the original.

5. All pleadings in the case must be written either in English or Spanish, and must be on regular legal cap paper, and written on but one side, and always be furnished in duplicate. For convenience, papers in the case written on typewriter are desirable, although not obligatory.

6. All pleadings in the case shall be translated from Spanish to English if necessary by the officers of the court free of charge to those offering same.

7. All documents and exhibits of whatever character and kind shall be furnished to the court with a translated copy, if in Spanish; or, in case they do not so furnish them, the party offering the same shall deposit a fund sufficient to have them translated from Spanish into English.

8. The rate of translating from Spanish to English shall be fifty cents per typewritten page of three hundred words.

9. Documents not accompanying the memorial, petition or complaint, or the answer, or the counter-claim, or some other pleading in the cause, may be excluded by the court unless the same are offered a sufficient length of time before the trial to have the same properly translated, unless some sufficient reason for their non-production earlier is given or the court admits the same for other good and sufficient cause.

10. If the recovery of money or damages is demanded, the amount demanded must be stated. If special relief, such as an order for the specific restitution of property, or the specific enforcement of a written contract for the sale of property, or an injunction is sought, the ground of demanding such relief must be stated and the special relief prayed for. But there may be added to the statement of the specific relief demanded a general prayer for such further or other relief as shall be deemed equitable.

SEC. 84. *Demurrer to the complaint.*—The demurrer is an allegation that, admitting the facts of the preceding pleading to be true, as stated by the party making it, he has yet shown no cause why the

party demurring should be compelled by the court to proceed further. It imports that the objecting party will not proceed, but will wait the judgment of the court, whether he is bound so to do. The defendant may demur to the complaint, or to the statement of any distinct cause of action therein set forth, within the time fixed by general rules of court for such pleadings when it appears upon the face thereof, either:

1. That the court has no jurisdiction of the person of the defendant, or the subject of the action; or
2. That the plaintiff has not legal capacity to sue; or
3. That there is another action pending between the same parties for the same cause; or
4. That there is a defect or misjoinder of parties, plaintiff or defendant; or
5. That the complaint is ambiguous, unintelligible, or uncertain; or
6. That reference to the section of the Code upon which the plaintiff relies to sustain his action has not been made; or
7. That the complaint does not state facts sufficient to constitute a cause of action.

The demurrer must distinctly specify the grounds upon which any of the objections to the complaint, or to any of the causes of action therein stated, are taken.

SEC. 85. *Matters not apparent of record.*—When any of the matters enumerated in section eighty-four do not appear upon the face of the complaint, the objection can only be taken by answer.

SEC. 86. *Effect of failure to object.*—If no objection be taken to the complaint, either by demurrer or answer, the defendant shall be deemed to have waived all objections excepting only the objection to the jurisdiction of the court, over the subject-matter, and that the complaint does not state facts sufficient to constitute a cause of action.

SEC. 87. *The answer.*—The answer is a defense in writing, made by a defendant to the charges contained in a complaint filed by the plaintiff against him. The answer of the defendant shall contain:

1. A general or specific denial of the material allegations of the complaint, controverted by the defendant. A general denial puts in issue only the material allegations of the complaint;
2. A statement of any new matter constituting a defense or counterclaim. A material allegation of the complaint which is neither general nor specifically denied in the answer shall be deemed to have been admitted.

SEC. 88. *Defendant having counterclaim.*—The defendant may set forth by answer as many defenses and counterclaims as he may have, whatever their nature. They must be separately stated, and the several defenses must refer to the cause of action which they are intended to answer, in a manner by which they may be intelligibly

distinguished. The defendant may also answer one or more of the several causes of action stated in the complaint, and demur to the residue.

SEC. 89. *Character of counterclaim.*—A counterclaim, to be available as a defense in an answer, must be one in favor of all the substantial defendants and against all the substantial plaintiffs in the action.

SEC. 90. *Effect of omission to set up counterclaim.*—If the right out of which the counterclaim arises exists at the time of the commencement of the action and arises out of the transaction set forth in the complaint as the foundation of the plaintiff's claim, or is necessarily connected with the subject of the action, neither the defendant nor his assignee can afterwards maintain an action against the plaintiff therefor, if the defendant omits to set up a counterclaim for the same. But if the counterclaim arises out of transactions distinct from those set forth in the complaint as the foundation of the plaintiff's claim and not connected with the subject of the action, the defendant shall not be barred from any subsequent action upon such counterclaim by reason of his failure to set it up in his answer to the pending action.

SEC. 91. *Cross complaint.*—Whenever the defendant seeks affirmative relief apart from the payment of money, he may, in addition to his answer, file at the same time, or by permission of the court subsequently, a cross complaint. The defendants to the cross complaint may demur or answer thereto as they would to an original complaint. Where it is necessary for the defendant to bring a new party or parties before the court, he shall so state in his cross complaint and a summons shall issue and other proceedings be had, as in the case of an original complaint.

SEC. 92. *Demurrer to answer.*—The plaintiff may, within a period to be fixed by general rules of court, demur to the answer of the defendant or to one or more of the several defenses or counterclaims set up in the answer, so as thus to test the legal sufficiency of the answer.

SEC. 93. *Grounds of demurrer to answer.*—The demurrer may be taken upon one or more of the following grounds:

1. That the answer does not state facts sufficient to constitute a defense or counterclaim;

2. That the answer is ambiguous, unintelligible, or uncertain.

The demurrer must distinctly specify the grounds upon which any of the objections to the answer are taken.

SEC. 94. *Proceedings on demurrer.*—When a demurrer to any pleading is sustained, the party whose pleading is thus adjudged defective may amend his pleading within a time to be fixed by the court, with or without terms, as to the court shall seem just; but if

the party fails to amend his pleading within the time limited or elects not to amend, the court shall render such judgment upon the subject-matter involved in the pleading and demurrer as the law and the facts of the case as set forth in the pleadings warrant. If the demurrer is overruled, the court shall proceed, if no answer is filed, to render such judgment as the law and the facts duly pleaded warrant. But after the overruling of a demurrer to an answer the plaintiff may amend his complaint, if necessary, to meet new facts or counterclaims set forth in the answer.

SEC. 95. *Authentication of pleadings.*—Every pleading must be subscribed by the party or his attorney and a copy thereof must be forthwith furnished to the adverse party or his attorney.

SEC. 96. *Actions and defenses based upon written instruments.*—When an action is brought upon a written instrument and the complaint contains or has annexed a copy of such instrument, the genuineness and due execution of the instrument shall be deemed admitted, unless specifically denied under oath in the answer; and when the defense to an action, or a counterclaim stated in an answer, is founded upon a written instrument and the copy thereof is contained in or annexed to the answer, the genuineness and due execution of such instrument shall be deemed admitted, unless specifically denied under oath by the plaintiff in his pleadings.

SEC. 97. *Plaintiff's reply to new matter contained in answer.*—The plaintiff may reply to any new matter or special defense set up in the defendant's answer by an amendment to his complaint, which may be filed as a matter of course and without terms, within a period to be fixed by rules of court. If the plaintiff does not amend his complaint, as provided in this section, he shall be deemed to have controverted every material statement of the answer.

SEC. 98. *Supplemental complaint or answer.*—The plaintiff and defendant, respectively, may be allowed, on motion to make a supplemental complaint or answer, alleging facts material to the case occurring after the filing of the original complaint or answer.

SEC. 99. *Pleadings to be liberally construed.*—In the construction of a pleading, for the purpose of determining its effects, its allegations shall be liberally construed, with a view to substantial justice between the parties.

SEC. 100. *Sham or irrelevant pleadings.*—Sham and irrelevant answers, and irrelevant, redundant, or indecent matter inserted in a pleading, may be stricken out, upon such terms as the court may, in its discretion, impose.

SEC. 101. *Specifications.*—The court may, in its discretion, at any time, upon motion, order either party to make his pleading more definite, or to file specifications of his items of account or other claims

involved in the pleading, so as to furnish the adverse party with complete information as to the claim which he is required to meet.

SEC. 102. *Variance.*—An immaterial variance between the allegation in a pleading and the proof shall be disregarded and the facts found according to the evidence, and the pleading shall be forthwith amended in accordance with the facts found, unless it has actually misled the adverse party to his prejudice in maintaining his action or defense upon the merits. Whenever it appears that a variance is material and that a party has been misled, courts shall not dismiss the action by reason of the variance, but shall, upon such terms as may be just, order the pleadings to be forthwith amended in accordance with the facts, and determine the action upon the actual facts as established. The amendments provided in this section may be made either in the Circuit Court or in the Supreme Court, at any stage of the action.

SEC. 103. *Amendments in general.*—The court shall, in furtherance of justice, and on such terms, if any, as may be proper, allow a party to amend any pleading or proceeding and at any stage of the action, in either Circuit Court or the Supreme Court, by adding or striking out the name of any party, either plaintiff or defendant, or by correcting a mistake in the name of a party, or a mistaken or inadequate allegation or description in any other respect, so that the actual merits of the controversy may speedily be determined, without regard to technicalities, and in the most expeditious and inexpensive manner. The court may also, upon like terms, allow an answer or other pleading to be made after the time limited by the rules of the court for filing the same. Orders of the court upon the matters provided in this section shall be made upon motion filed in court, and after notice to the adverse party, and an opportunity to be heard.

SEC. 104. *When name of defendant is unknown.*—When the plaintiff is ignorant of the name of a defendant, he must state that fact in the complaint, and such defendant may be designated in any complaint or proceeding by any name. When his true name is discovered the pleading or proceedings must be amended accordingly.

SEC. 105. *Proceedings in cases of appeal from district courts.*—When a perfected appeal from a judgment of a district judge has been duly entered in the Circuit Court new pleadings shall be filed in the action in that court, and the pleadings in such action shall be in all respects governed by the same rule as though the action had been originally commenced in the Circuit Court. But the plaintiff may, if he so elects, rely upon his complaint as originally filed before the district judge, instead of filing a new one.

SEC. 106. *Relief from effect of judgments and orders.*—Upon such terms as may be just the court may relieve a party or his legal rep-

representative from a judgment, order, or other proceeding taken against him through his mistake, inadvertence, surprise, or excusable neglect: *Provided*, That application therefor be made within a reasonable time, but in no case exceeding six months after such judgment, order, or proceeding was taken.

CHAPTER VI.

PARTIES TO ACTIONS.

SEC. 107. *Parties to actions.*—Every action must be prosecuted in the name of the real party in interest. But in the case of an assignment of a right of action, an action by the assignee shall be without prejudice to any set-off or other defense existing at the time of or before notice of assignment; but this last provision shall not apply to a negotiable promissory note, or a draft or a bill of exchange, transferred in good faith and upon good consideration before maturity. And an executor or administrator or legal representative of a deceased person, or a trustee of an express trust, or a person expressly authorized by law so to do, or a lawfully appointed guardian of a person of unsound mind, or of a minor, may sue or be sued without joining with him the person for whose benefit the action is prosecuted or defended.

Otherwise than as provided in this section, all persons having an interest in the subject of the action and in obtaining the relief demanded shall be joined as plaintiffs.

Any person should be made a defendant who has or claims an interest in the controversy or the subject-matter thereof adverse to the plaintiff, or who is a necessary party to a complete determination or settlement of the questions involved therein.

If any person having an interest in the subject of the action, and in obtaining the relief demanded, refuses to join as plaintiff with those having a like interest, he may be made a defendant, the fact of his interest and refusal to join being stated in the complaint.

SEC. 108. *Married woman as a party.*—When a married woman is a party, her husband must be joined with her, except:

1. When the action concerns her property, in which her husband can have no interest or right;
2. When the action is between herself and her husband;
3. When for a just cause she is living separate and apart from her husband or by reason of an agreement in writing entered into between them.

In either of which cases she may sue or be sued alone.

SEC. 109. *Infants, spendthrifts, and persons of unsound mind.*—When an infant or a person of unsound mind or a person judicially

decreed to be a spendthrift is a party to an action, he must appear either by his general guardian or by a guardian ad litem appointed by the court in which the action is pending. A guardian ad litem may be appointed in any case when it is deemed by the court in which the action or proceeding is prosecuted expedient to represent the infant, spendthrift, or person of unsound mind in the action or proceeding.

SEC. 110. *Guardian ad litem.*—Such guardian ad litem may be appointed by the court of its own motion, and shall be appointed upon the application of a relative or friend of the infant, spendthrift, or person of unsound mind. The court may, in its discretion, allow to a guardian ad litem a reasonable compensation for his services as such guardian, to be paid out of the estate of the ward.

SEC. 111. *Numerous parties.*—When the subject-matter of the controversy is one of common or general interest to many persons, and the parties are so numerous that it is impracticable to bring them all before the court, one or more may sue or defend for the benefit of all. But in such case any party in interest shall have a right to intervene in protection of his individual interest, and the court shall make sure that the parties actually before it are sufficiently numerous and representative so that all interests concerned are fully protected.

SEC. 112. *Death of party.*—In case a party to an action dies while the action is pending, the action shall not abate by reason thereof, but the court on motion may allow the action or proceeding to be continued by or against his executor, administrator, heirs, or other legal representative, and the judgment, if it be for the payment of costs and against the executor, administrator, or other legal representative, shall be that he pay in due course of administration: *Provided; nevertheless*, That if the action is for the recovery of money, debt, or damages against the deceased, it shall be discontinued, and the claim thereafter be prosecuted as herein otherwise provided; *and provided further*, that should any action survive against the heirs of the deceased, the court may ascertain who are the heirs of the deceased and proceed as if the suit had been originally brought against them.

SEC. 113. *Interpleading.*—Whenever conflicting claims are or may be made upon a person for or relating to personal property, or the performance of an obligation or any portion thereof, so that he may be made subject to several actions by different persons, unless the court intervenes, such person may bring action against the conflicting claimants, disclaiming personal interest in the controversy to compel them to interplead and litigate their several claims among themselves, and the court may order the conflicting claimants to interplead with one another and thereupon proceed to determine the right of the several parties to the interpleading to the personal property or the

performance of the obligation in controversy, and shall determine the rights of all parties in interest.

SEC. 114. *Intervention*.—A person may, at any period of a trial, upon motion, be permitted by the court to intervene in an action or proceeding, if he has legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both. Such intervening party may be permitted to join the plaintiff in claiming what is sought by the claimant, or to unite with the defendant in resisting the claims of the plaintiff, or to demand anything adverse to both the plaintiff and defendant. Such intervention, if permitted by the court, shall be made by complaint in regular form, filed in court, and may be answered or demurred to as if it were an original complaint. Notice of motion for such intervention shall be given to all parties to the action, and notice may be given by publication, in accordance with the provisions of this Code relating to publication, in cases where other notice is impracticable.

SEC. 115. *Necessary parties*.—The court may determine any controversy between parties before it if it can be done without prejudice to the rights of others or by preserving their rights for future action; but when a complete determination of the controversy can not be had without the presence of other parties, the court must order them to be brought in, and to that end may order amended or supplemental pleadings, or a cross complaint, to be filed and summons therein to be duly issued and served.

CHAPTER VII.

VARIOUS PROCEEDINGS IN CIRCUIT COURTS.

SEC. 116. *Interlocutory and incidental orders*.—No interlocutory or incidental ruling, order, or judgment of the Circuit Court shall stay the progress of an action or proceeding therein pending, but only such ruling, order, or judgment as finally determines the action or proceeding; nor shall any ruling, order, or judgment be the subject of appeal to the Supreme Court until final judgment is rendered for one party or the other: *Provided*, That whenever an interlocutory order or decree is entered in any suit pending in any court of the Canal Zone, granting an injunction, or overruling a motion to dissolve the same, or enlarging the scope of an injunction order, or appointing a receiver, or giving other or further powers or property to a receiver already appointed, an appeal may be taken from such interlocutory order or decree to the Supreme Court of the Canal Zone: *Provided*, That such appeal is taken within thirty days from the entry of such interlocutory order or decree and is perfected in said Supreme Court within sixty days from the entry of such

order or decree. The force and effect of such interlocutory order or decree and the proceedings in the court below shall not be stayed during the pendency of such appeal, and the party taking such appeal shall give bond, to be approved by the clerk of the court below, to secure costs in the Supreme Court. Upon the filing of the record in the Supreme Court, the same shall there be at once docketed, and shall be ready for hearing under the rules of said court, taking precedence of other causes in said court. Upon such appeal the Supreme Court may affirm, modify, or reverse such interlocutory order or decree, and shall direct such proceedings to be had in the court below as the justice of the case may require. If such appeal is dismissed, the Supreme Court may allow to the attorney for appellee a reasonable attorney's fee, not to exceed one hundred dollars, to be taxed as part of the costs of the appeal.

SEC. 117. *Judgment in case of several plaintiffs or defendants.*—Judgment may be given for or against one or more of several plaintiffs, and for or against one or more of several defendants, and the court may, when the justice of the case requires it, conclusively determine the ultimate rights of the parties on each side, as between themselves, and may require such parties to file adversary pleadings as between themselves.

SEC. 118. *Several judgments.*—In an action against several defendants the court may, in its discretion, render judgment against one or more of them, upon default or confession, or otherwise, leaving the action to proceed against the others whenever a several judgment is proper.

The court may, in its discretion, order execution to issue upon such several judgment.

SEC. 119. *Kind of relief to be granted.*—The relief granted to the plaintiff, if there be no answer, can not exceed that which he shall have demanded in his complaint; but, in any other case, the court may grant him any relief consistent with the case made by the complaint and supported by the evidence and embraced within the issues, requiring the necessary amendments.

SEC. 120. *Dismissal of actions.*—An action may be dismissed, with costs to the defendant, in the following cases:

1. By the plaintiff himself, by written request to the clerk filed among the papers in the case, at any time before trial, upon payment of the costs; provided a counterclaim has not been made, or affirmative relief sought by the cross complaint or answer of the defendant, or provided the judge shall not decide that the defendant has made such preparation for trial that it would be unjust to permit a dismissal without a trial on the merits;

2. By the court, when the plaintiff fails to appear at the time of trial, and the defendant appears and asks for the dismissal;

3. By the court, when the plaintiff fails, for an unreasonable length of time, to prosecute his action;

4. The court may also, in its discretion, allow a plaintiff to dismiss the action on payment of the costs after the trial has begun and at any time before final adjournment, if the interests of justice so require;

5. The dismissal in the above cases shall be entered on the docket of the court and shall be effective, when so entered, to end the action; but shall not be a bar to another action for the same cause.

SEC. 121. *Default.*—In case a defendant fails to appear at the time required in the summons, or to answer at the time provided by the rules of court, the court shall, upon motion of the plaintiff, order judgment for the plaintiff by default which shall be entered upon the docket; and the court shall thereupon proceed to hear the plaintiff and his witnesses and assess the damages or determine the other relief to which the plaintiff may be entitled, including the costs of the action, and render final judgment for the plaintiff to recover such sum or to receive such other relief as the pleadings and the facts warrant. If the taking of a long account be involved in determining the amount to which the plaintiff shall be entitled, the court may, in its discretion, order a reference to some suitable person to take the account and report to the court and upon the coming in of such report, such final judgment shall be rendered as the facts require.

SEC. 122. *Default on cross complaint.*—If the plaintiff fails to answer a cross complaint within the time limited by the rules of court, judgment by default may be entered against him upon the cross complaint and the same proceedings shall be had upon such default as though the cross complaint had been the original complaint.

SEC. 123. *Postponement.*—The court may, in its discretion, for cause, and with or without terms, postpone a trial from day to day, or to a stated time during the term of the court, or to the next succeeding term.

SEC. 124. *Adjournment.*—Court may adjourn from day to day, and to any stated time, as the expeditious and convenient transaction of business may require.

SEC. 125. *Order of trial.*—The trial must proceed in the following order, unless the judge, for special reasons, otherwise directs:

1. The plaintiff, after stating the issue and his case, must produce the evidence on his part; but he may read the complaint as his statement of the case, if the judge so directs;

2. The defendant shall then state his defense and offer his evidence in support thereof; but he may read his answer as his statement of defense, if the judge so directs;

3. The parties may then respectively offer rebutting evidence only, unless the court, for good reason, in the furtherance of justice, permits them to offer evidence upon their original case;

4. When the evidence is concluded, unless the parties on either side or both sides agree to submit it without argument, the plaintiff or his counsel may make the opening argument, the defendant or his counsel may follow, and the plaintiff or his counsel may conclude the argument. Two counsel may, if desired, be heard upon each side, but in the order herein prescribed; and the court may in its discretion limit the time for oral argument;

5. If several defendants, having separate defenses, appear by different counsel, the court must determine their relative order in the evidence and argument, but in any event the plaintiff is entitled to the opening and closing argument.

SEC. 126. *Findings of facts.*—Upon the trial of a question of fact, the decision of the court must be entered on the record by the clerk.

SEC. 127. *Agreed statement of facts.*—The parties may, in any action or special proceeding, agree, in writing, upon the facts involved in the litigation, and require the judgment of the court upon the questions of law arising from such agreed statement of facts, without the introduction of testimony. The ruling and judgment of the court upon such agreed statement of facts shall be subject to exception, like all other rulings of the court. When an agreed statement of facts is entered into by the parties, no other finding of facts need be made by the court.

SEC. 128. *Reference.*—By written consent of both parties, filed with the clerk, the court may order an action to be referred to one or more referees, to be agreed upon by the parties or to be appointed by the court.

SEC. 129. *Commission to referees.*—In such case, the clerk shall issue, under the seal of the court, a commission to the referee or referees named, directing them to proceed with the trial of the action and to report the findings of law and fact to the court at or before a time named in the commission.

SEC. 130. *Oath of referees.*—Referees, before commencing the performance of their duty, shall be sworn to a faithful and honest performance thereof, and the fact that they have taken such oath shall be certified to on the commission by the authority administering the oath. The oath may be administered by the judge or clerk of the court, or by any district judge or notary public in the administrative district.

SEC. 131. *Trial before referee.*—Trial may occur at any convenient place within the circuit, and the time and place for trial shall be fixed by the referee and reasonable notice thereof shall be given by him to the parties. The referee is hereby authorized to administer oaths to witnesses, and the trial before him shall proceed in all respects as though the same had been had before the court.

SEC. 132. *Report of referee.*—Upon the completion of the trial, the referee shall report, in writing, to the court the facts found by him and such of his rulings as the parties shall request him to report.

SEC. 133. *Hearing upon report.*—Upon the filing of the report or as soon as conveniently may be thereafter, the court shall render judgment in accordance with the report, as though the facts had been found by the judge himself, unless the court shall, for cause shown, set aside the report, or modify and change the same in whole or in part and then enter judgment thereon, or order it to be recommitted to the referee for further findings.

SEC. 134. *Exceptions.*—An exception is an objection upon a matter of law to a decision made by a court, tribunal, judge, or other judicial officer in an action or proceeding. Rulings of the court upon minor matters, such as adjournments, postponements of trials, the extension of time for filing pleadings or motions, and other matters addressed to the discretion of the court in the performance of its duty, shall not be subject to exception. But exception may be taken to any other ruling, order, or judgment of the court made during the pendency of the action in the Circuit Court.

SEC. 135. *Manner of taking exceptions.*—The party excepting to the ruling, order, or judgment, shall forthwith inform the court that he excepts to the ruling, order, or judgment, and the judge shall thereupon minute the fact that the party has so excepted; but the trial shall not be delayed thereby. The exception shall also be recorded by the stenographer, if one is officially connected with the court.

SEC. 136. *Perfecting bill of exceptions.*—Upon the rendition of final judgment disposing of an action, either party shall have the right to perfect a bill of exceptions for a review by the Supreme Court of all rulings, orders, and judgments, made in the action, to which the party has duly excepted at the time of making such ruling, order, or judgment. The party desiring to prosecute the bill of exceptions shall so inform the court at the time of the rendition of final judgment, or as soon thereafter as may be practicable and before the ending of the term of court at which final judgment is rendered, and the judge shall enter a memorandum to that effect upon his minutes and order a like memorandum to be made by the clerk upon the docket of the court among the other entries relating to the action. Within ten days after the entry of the memorandum aforesaid, the excepting party shall cause to be presented to the judge a brief statement of the facts of the case sufficient to show the bearing of the rulings, orders, or judgments excepted to, and a specific statement of each ruling, order, or judgment that has been excepted to, for allowance by the judge. The judge shall thereupon, after reasonable notice

to both parties and within five days from the presentation of the bill of exceptions to him, restate the facts if need be, and the exceptions, so that the exceptions of law therein involved, and their relevancy shall all be made clear, and when the bill of exceptions has been perfected and allowed by the judge, he shall certify that it has been so allowed and the bill of exceptions shall be filed with the other papers in the action, and the same shall thereupon be transferred to the Supreme Court for determination of the questions of law involved. A bill of exceptions may likewise be made to consist of the judge's findings of fact in his final judgment and a statement of all the exceptions reserved by the party desiring to prosecute the bill of exceptions, which shall be allowed and filed by the judge as above in this section provided.

Immediately upon the allowance of a bill of exceptions by the judge, it shall be the duty of the clerk to transmit to the clerk of the Supreme Court, a complete transcript of the record, including therein the bill of exceptions, and of all documents which by the bill of exceptions are made a part of it, but the substance of documents may be shown, except when in the opinion of the judge an exhibition of the entire document or specified parts thereof is necessary to full understanding of the case. The cause shall be heard in the Supreme Court upon the record so transmitted.

SEC. 137. *Stay of execution.*—Except by special order of the court, no execution shall issue upon a final judgment rendered in a Circuit Court until after the period for perfecting a bill of exceptions has expired. But the filing of a bill of exceptions together with a bond to be fixed by the court and by it approved, shall stay execution until the final determination of the action, unless for special reasons stated in the bill of exceptions the court shall order that execution be not stayed, in which event execution may issue at once. The court shall require as a condition of a stay of execution that a bond shall be given, reasonably sufficient to secure the performance of the judgment appealed from in case it be affirmed in part or wholly and the payment of costs.

SEC. 138. *New trial.*—At any time during the term at which an action has been tried in a Circuit Court, the judge thereof may set aside the judgment and grant a new trial, upon such terms as may be just, on the application of the party aggrieved, and after due notice to the adverse party in the following cases:

1. Accident or surprise which ordinary prudence could not have guarded against, and by reason of which the party applying has probably been impaired in his rights;
2. Newly discovered evidence, material to the party making the application, which he could not, with reasonable diligence, have discovered and produced at the trial;

3. Because the judge has become satisfied that excessive damages have been awarded, or that the evidence was insufficient to justify the judgment, or that it is against the law.

SEC. 139. *Method of procedure in applications for new trial.*—The application shall be made by motion in writing, stating the ground therefor, of which the adverse party shall have such reasonable notice as the judge may direct. When the application is made for a cause mentioned in the first or second subdivisions of the last section, it must be made upon affidavits, and counter affidavits from the adverse party may likewise be received; the overruling or granting of a motion for a new trial shall be a ground of exception, but no appeal or bill of exceptions to the Supreme Court shall be allowed or necessary before final judgment is entered.

SEC. 140. *Effect of granting a motion for a new trial.*—If a new trial shall be granted the original judgment shall be vacated, and the action shall stand for trial de novo; but the recorded evidence taken upon the former trial, so far as the same is admissible and competent to establish the issues, shall be used upon the new trial without retaking the same.

SEC. 141. *Relief from judgments of subordinate tribunals, obtained by fraud, accident, or mistake.*—When a judgment has been rendered by a district judge, or any other subordinate tribunal, and any party to the action has been unjustly deprived of his day in court and an opportunity to be heard thereon, by fraud, accident, mistake, or excusable negligence, or has been prevented from entering an appeal from such judgment by fraud, accident, mistake, or excusable negligence, the Circuit Court may, in its discretion, and on reasonable terms, reverse and set aside the judgment so rendered, and hear and determine the action and make the necessary orders therein, as if the same had been brought to the Circuit Court by appeal, provided the party so aggrieved shall make application, as hereinafter provided, to the Circuit Court and within sixty days after he first knows that such judgment has been rendered against him. This section shall be liberally construed so as to prevent injustice.

SEC. 142. *Procedure to vacate such judgment.*—The person aggrieved by a judgment obtained in the manner stated in the preceding section may, within the time limited, file his complaint in the Circuit Court of the district in which the original judgment was rendered, stating the fact of the rendition of such judgment and the circumstances constituting the fraud, accident, mistake, or excusable negligence relied upon as ground for relief, and praying that such judgment may be reversed and set aside and the cause be determined upon its merits. The party against whom the complaint is made shall be served with notice as in other actions pending in the Circuit Court, and the trial shall proceed as in other actions in that court.

If the court shall find that the facts set forth in the complaint are true and that the complainant is entitled to relief, the judgment complained of shall be reversed and set aside, and shall thereafter be of no validity, and the court shall proceed to hear and determine the action upon its merits, and make the necessary orders therein, as if the same had been regularly brought to said court by appeal.

SEC. 143. *Temporary injunction in such cases.*—At the time of filing such complaint, or at any time thereafter before final hearing, the judge of the Circuit Court in which the action is pending, may grant an injunction restraining the party in whose favor such judgment has been rendered, his agents and attorneys and the district judge or other inferior tribunal rendering the judgment, from any further proceedings to enforce the same until the further order of the court in the premises, which injunction shall be served in the manner provided by law for serving process; but the judge issuing such injunction shall, before issuing it, take from the party upon whose application the same is granted, an obligation to the other party, with sufficient sureties, to be approved by the judge, conditioned that if the complainant fails to prosecute his complaint with effect, or finally to recover in such action, he will pay the adverse party the intervening damages and cost accruing to him by reason of the issuing of such injunction, together with the amount of the original judgment, but such injunction shall not operate to discharge or release bail or extinguish any lien which the party enjoined has acquired upon the property of the plaintiff by attachment or levy of execution. The damages, if any, accruing under this section shall be assessed by the judge and included in his final judgment in the action.

SEC. 144. *Final judgment in such proceedings.*—If the plaintiff shall prevail in such action, the original judgment shall be reversed and vacated, and the defendant therein and the municipal judge or other inferior tribunal that rendered the judgment shall be perpetually enjoined from any further steps to enforce the same. The costs of such proceedings shall be awarded in the discretion of the court, in such manner as justice requires.

SEC. 145. *Attendance of the district judge.*—Upon the trial of an action instituted in pursuance of the preceding sections, the district judge or other subordinate magistrate or official who rendered the judgment complained of, shall attend and produce before the court all the papers in the original action, if required to do so by the judge.

CHAPTER VIII.

ABATEMENT.

SEC. 146. *New action within one year from death of party.*—If a person entitled to bring an action, die before the expiration of the

term limited for the commencement thereof, and the cause of action survive, an action may be commenced by his representatives, after the expiration of that 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, an action may be commenced against his representatives after the expiration of that time, and within one year after the issuing of letters testamentary or of administration.

SEC. 147. *Extension of time to aliens, etc.*—When a person is an alien subject, or a citizen of a country at war with the United States, the time of the continuance of the war is not a part of the period limited for the commencement of the action.

SEC. 148. *Where judgment reversed.*—If an action is commenced within the time prescribed therefor, and a judgment therein for the plaintiff be reversed on appeal, the plaintiff, or, if he die and the cause of action survive, his representatives may commence a new action within one year after the reversal.

SEC. 149. *Where action stayed.*—When the commencement of an action is stayed by injunction or statutory prohibition, the time of the continuance of the injunction or prohibition is not part of the time limited for the commencement of the action.

SEC. 150. *Marriage, female party.*—No action, proceeding or complaint, commenced by or against a feme sole, either alone or with others, shall abate on account of her intermarriage before final judgment, but she may continue to prosecute or defend the same in like manner as if she were sole.

SEC. 151. *Death of complaintiff.*—When there is but one plaintiff, petitioner or complainant in an action, proceeding or complaint, and he shall die before final judgment or decree, such action, proceeding or complaint shall not on that account abate, if the cause of action survive to the heir, devisee, executor or administrator of such decedent, but any of such to whom the cause of action shall survive, may, by suggesting such death upon the record, be substituted as plaintiff, petitioner or complainant, and prosecute the same as in other cases.

SEC. 152. *Death of codefendant.*—When there is but one defendant in an action, proceeding or complaint, and he dies before final judgment or decree, such action, proceeding or complaint shall not on that account abate, if it might be originally prosecuted against the heir, devisee, executor or administrator of such defendant, but the plaintiff, petitioner or complainant may suggest such death on the record, and shall, by order of the court, have summons against such person or legal representative, requiring him to appear and defend the action, proceeding or complaint, after which it may proceed as if it had been originally commenced against him.

SEC. 153. *Surviving parties.*—When there are several plaintiffs, petitioners or complainants, or defendants in an action, proceeding or complaint, the cause of which survives, and any of them die before final judgment or decree, the action, proceeding or complaint shall not on that account abate, but such death may be suggested on the record, and the cause proceed at the suit of the surviving plaintiff, petitioner or complainant, or against the surviving defendant, as the case may be, in all cases as if such persons had been originally sole parties to the suit.

SEC. 154. *Same.*—If, in the case mentioned in the preceding section all the plaintiffs, petitioners or complainants, or all the defendants die, the cause may be prosecuted or defended by or against the heir, devisee, executor or administrator of the last surviving plaintiff, petitioner, complainant or defendant respectively, to or against whom the cause survives, in like manner as if the survivor had been originally the only plaintiff, petitioner, complainant or defendant.

SEC. 155. *Ejectment, death of plaintiff.*—If there are several plaintiffs in an action of ejectment, or an ordinary action for the recovery of real property or any interest therein, and any of them dies before final judgment, the death of such party may be suggested on the record, and the heir or devisee of the deceased party shall be admitted to prosecute the suit jointly with the survivor, in the same manner as if he had originally joined with him in commencing the action.

SEC. 156. *Rights of surviving plaintiff.*—If the interest of the deceased party passes to the surviving plaintiff, or if the heir or devisee of the deceased party does not, within a reasonable time, to be fixed by the court, join in the prosecution of the suit, the surviving plaintiff may prosecute the suit for so much of the premises in question as may then be claimed by him.

SEC. 157. *Ejectment, death of codefendant.*—In case of the death of any several defendants in an action of ejectment, or an ordinary action for the recovery of real property or any interest therein, the action may be prosecuted against the other defendants for so much of the premises as they hold or claim: or, the death being suggested, the heir, or devisee of the deceased party may be made co-defendant with the others, and the suit proceed the same as if such heir or devisee had originally been made co-defendant.

SEC. 158. *Where cause of action does not survive to co-party.*—When there are several complainants or defendants in a suit or proceeding, and any of them may die, and the cause of action does not survive to the surviving complainant or against the surviving defendant, and any other persons become interested therein in consequence of such decease, such suit or proceeding shall, by reason of such death, be abated only with respect to such deceased party; and the person or legal representative so becoming interested may be made a party to such suit or proceeding in the same manner as

in the case of the death of a sole complainant or defendant; or the suit or proceeding may be prosecuted by the surviving complainant against the surviving defendant without reviving the same in favor of or against the person or legal representative so becoming interested therein; but in the latter case such interested person or legal representative, not made a party, shall not be bound by any order or decree made in the cause.

SEC. 159. *Death of personal representative.*—When an executor, administrator, guardian or conservator is plaintiff, petitioner or complainant, or defendant in a suit or proceeding, and dies, resigns, or is removed from office before final judgment or decree, the suit or proceeding shall not on that account abate, but the same may be continued by or against his successor, in like manner as in case of the death of other parties.

SEC. 160. *Death of public officer or trustee.*—When an action, proceeding or complaint, in law or equity, is authorized or directed by law to be brought by or in the name of any public officer, or by any trustee appointed by virtue of any statute, and such officer or trustee dies or ceases to be such officer or trustee before final judgment or decree, the suit shall not on that account abate, but the same may be continued by his successor, in like manner as in case of the death of other parties.

SEC. 161. *Party becoming insane.*—If, during the pendency of an action, proceeding or complaint, either party becomes insane, the cause may be prosecuted or defended by his conservator in like manner as by an executor or administrator in case of the death of a party, or the court may appoint a guardian ad litem, as the case may require.

SEC. 162. *No abatement in partition suits.*—No plea in abatement shall be received in any suit for partition, nor shall such suit abate by the death of any tenant.

SEC. 163. *Same.*—No suit for the partition of land shall abate on account of the death of any party thereto, but it may be continued in the names of the survivors, if the interest of such deceased person survives to them; and if such interest passes to other persons they may be made parties in like manner as in the case of the death of other parties, and the same proceedings may be had as if they had been made parties originally.

SEC. 164. *Where action brought for another.*—No suit, instituted in the name of one for the use of another, shall abate by reason of the death of the person whose name is used; but it may be continued by the real plaintiff in interest, in his own name, on his suggesting such death on the record, and an order of the court being made, substituting his name for that of the deceased plaintiff.

SEC. 165. *Writs of error, etc.*—These provisions shall apply to all

appeals, writs of error and of certiorari, so far as the same may be made applicable.

SEC. 166. *Process to any circuit.*—Process may be sued out, and may be directed to any circuit, and shall correspond, as nearly as may be, to the original writ, and may be executed and returned in the same manner.

SEC. 167. *Disability, when available.*—No person can avail himself of a disability, unless it existed when his right of action accrued.

SEC. 168. *Two or more disabilities.*—When two or more disabilities co-exist at the time the right of action accrues, the limitation does not attach until they are removed.

SEC. 169. *Directors and stockholders of corporations.*—This chapter does not affect actions against directors or stockholders of a corporation, to recover a penalty or forfeiture imposed, or to enforce a liability created by law; but such actions must be brought within three years after the discovery by the aggrieved party of the facts upon which the penalty or forfeiture attached or the liability was created.

SEC. 170. *Acknowledgment or new promise must be in writing.*—No acknowledgment or promise is sufficient evidence of a new or continuing contract, unless the same is contained in some writing signed by the party to be charged thereby, or his agent duly authorized in writing, or his attorney in fact.

SEC. 171. *Where cause of action arises in foreign country.*—When a cause of action has arisen in a State or Territory of the United States, or in a foreign country, and by the laws thereof an action thereon can not be maintained against a person by reason of the lapse of time, an action thereon shall not be maintained against him in the Canal Zone, except in favor of one who has been a resident of said Canal Zone, and who has held the cause of action from the time it accrued.

SEC. 172. *Definition.*—The word “action” as used in this chapter, is to be construed, whenever it is necessary to do so, as including a special proceeding of a civil nature.

CHAPTER IX.

SPECIAL REMEDIES.

INJUNCTIONS—RECEIVERS—PARTITION OF REAL ESTATE—USURPATION OF OFFICE OR FRANCHISE—CERTIORARI PROCEEDINGS—MANDATE—PROHIBITION—CONTEMPT—EMINENT DOMAIN—FORECLOSURE—MANUAL DELIVERY OF PERSONAL PROPERTY.

Injunctions.

SEC. 173. *Injunction defined.*—An injunction is a writ or order requiring a person to refrain from a particular act, or, if mandatory,

commanding the defendant to do a particular thing. It may be of two kinds:

1. A preliminary injunction is one granted at any stage of an action prior to final judgment;

2. A final injunction is one granted in the final judgment as the relief, or a part of the relief, granted as a result of the action.

SEC. 174. *Who may grant an injunction.*—A preliminary injunction may be granted by any judge of the Circuit Court in any action pending in the Circuit Court in any circuit of the Canal Zone in which he has original jurisdiction; in case of his absence, by any Circuit Judge of the Canal Zone present on the Zone and not disqualified.

SEC. 175. *Circumstances under which a preliminary injunction may be granted.*—A preliminary injunction may be granted when it is established, in the manner hereinafter provided, to the satisfaction of the judge granting it:

1. That the plaintiff is entitled to the relief demanded and such relief, or any part thereof, consists in restraining the commission or continuance of the acts complained of either for a limited period or perpetually;

2. That the commission or continuance of some act complained of during the litigation would probably work injustice to the plaintiff;

3. That the defendant is doing, or threatens, or is about to do, or is procuring or suffering to be done, some act probably in violation of the plaintiff's rights, respecting the subject of the action, and tending to render the judgment ineffectual.

4. No mandatory injunction, or injunctions requiring the performance of some affirmative act, will be granted before final hearing, and will be ordered to issue only by final decree.

SEC. 176. *Time of granting preliminary injunction.*—A preliminary injunction may be granted at any time after the commencement of the action and before final judgment.

SEC. 177. *Method of obtaining preliminary injunction.*—A preliminary injunction may be granted only when the following conditions are complied with:

1. The complaint must show facts entitling the plaintiff to the relief demanded;

2. The complaint must be verified by the oath of the plaintiff or by that of some other person by him duly authorized and who can testify to the truth of the facts set forth in the complaint;

3. The plaintiff must file with the clerk of the court in which the action is pending a written obligation on the part of the plaintiff with sufficient sureties, to the effect that the plaintiff will pay, to the party enjoined all such damages as such party may sustain by reason of the injunction, if the court should finally decide that the plaintiff

was not entitled thereto. The sufficiency of the obligation must be approved in writing by the judge granting the injunction, and before approval he shall require such proof as is necessary in regard to the sufficiency of the sureties. The sureties, by executing the obligation, become quasi parties to the proceeding, so that a judgment may be rendered against them without further notice.

SEC. 178. *Proceeding in case of insufficient sureties.*—If it shall be made to appear at any time during the progress of the action that the sureties on the obligation provided in the last section are insufficient, the judge of the court in which the action is pending may, upon motion, order new sureties to be provided; and, if no sureties are provided within a time fixed by the order of the court for that purpose, the injunction shall be dissolved.

SEC. 179. *Notice to defendant of preliminary injunction.*—The injunction hereinbefore provided may be granted ex parte on the application of the plaintiff, on the conditions before stated, but if the judge to whom application is made for the granting of the injunction deems it just that the defendant should be heard before granting the injunction, an order may be made requiring cause to be shown, at a specified time and place, why the injunction should not be granted, and the defendant may then and there be heard and the injunction may be granted or refused as justice shall require. If upon such hearing it should be made to appear to the satisfaction of the court that the plaintiff is entitled to the injunction, but that the issuance thereof pending the litigation would entail great damage upon the defendant, and that the plaintiff could be fully compensated for such damages as he might suffer, the judge may refuse the injunction, upon the defendant giving an obligation with sureties to be approved by the judge in such amount as may be fixed by the judge, conditioned that the defendant will pay all damages which the plaintiff may suffer by reason of the continuance during the litigation of the acts complained of.

SEC. 180. *Dissolution of temporary injunctions.*—If a temporary injunction be granted without notice, the defendant, at any time before the trial, may apply, upon reasonable notice to the adverse party, to the judge who granted the injunction, or to the judge of the court in which the action was brought, to dissolve or modify the same. The application may be based upon the insufficiency of the complaint on which the injunction was granted or upon affidavit on the part of the defendant, with or without an answer. If the application be made upon affidavits upon the part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavits or other evidence to substantiate the facts set forth in the complaint, and the judge shall, after hearing, dissolve or modify or continue the injunction as justice may require. If it be made to appear to the

judge that great damage will be suffered by the defendant in case the injunction is continued and that the plaintiff can be fully compensated for any damages he may suffer by reason of the continuance of the acts of the defendant during the pendency of the litigation, the judge in his discretion may dissolve or modify the injunction, upon the defendant giving an obligation, with sureties to be approved by the judge, that the defendant will pay all damages which the plaintiff may suffer by reason of the continuance during the litigation of the acts complained of.

SEC. 181. *Damages pending a preliminary injunction.*—Upon final trial the amount of damages to be awarded to the plaintiff or to the defendant upon the obligation hereinbefore required, shall be ascertained by the court trying the action, and judgment for the same shall be included in the final judgment and the judgment shall be both against the plaintiff and against the sureties upon any obligation given.

SEC. 182. *Final injunctions.*—If upon the final trial of the action it shall appear that the plaintiff is entitled to an injunction perpetually restraining the commission or continuance of the act complained of, the court shall grant a final injunction perpetually restraining the defendant from continuing the act.

SEC. 183. *Method of enforcing injunctions.*—A person violating an injunction shall be treated as in contempt of court and dealt with as hereinafter provided under the head of "Contempt."

Receivers.

SEC. 184. *Receivers, who may appoint.*—A judge of the Circuit Court in which the action is pending, may appoint one or more receivers of the property, real, personal, or mixed, which is the subject of the action, in the manner and under the conditions hereinafter provided.

SEC. 185. *When a receiver may be appointed.*—A receiver may be appointed in the following cases:

1. When a corporation has been dissolved, or is insolvent, or is in imminent danger of insolvency, or has forfeited its corporate rights;

2. When it is made to appear by the complaint or answer, and by such other proof as the judge may require, that the party making the application for the appointment of receiver has an interest in the property or fund which is the subject of the action and it is shown that the property or fund is in danger of being lost, removed, or materially injured unless a receiver shall be appointed to guard and preserve it;

3. In an action by the mortgagee for the foreclosure of a mortgage, where it appears that the property is in danger of being wasted or materially injured, and that its value is probably insufficient to discharge the mortgage debt;

4. Whenever in other cases it shall be made to appear to the court that the appointment of a receiver is the most convenient and feasible means of preserving and administering the property which is the subject of litigation during the pendency of the action.

SEC. 186. *General powers of a receiver.*—The receiver shall have, under the control of the court in which the action is pending, power to bring and defend actions in his own name, as receiver; to take and keep possession of the property in controversy; to receive rent, to collect the same due to himself as receiver, or to the fund, property, estate, person, or corporation of which he is receiver; to compound for and compromise the same; to make transfers; and generally to do such acts respecting the property as the court may authorize.

SEC. 187. *Receivers of a corporation.*—When a corporation has been dissolved, or is insolvent, or is in imminent danger of insolvency, or has forfeited its corporate rights, the Circuit Court where the corporation has its principal place of business may, on complaint of a creditor of the corporation, or a stockholder or member thereof, appoint a receiver to take charge of its estate and effects, and to collect the debts and property due and belonging to the corporation, and to pay the outstanding debts thereof, and to divide the money and other properties that shall remain over among the stockholders or members.

SEC. 188. *Obligations for damages on appointment of receiver.*—If a receiver be appointed upon an ex parte application, the court, before making the order, may require from the plaintiff or person filing the application for such appointment, an obligation with sufficient sureties, to be approved by the court, in an amount to be fixed by the court, to the effect that the applicant will pay to the defendant in the application all damages he may sustain by reason of the appointment of such receiver and the entry by him upon his duties, in case the applicant shall have procured such appointment without sufficient cause; and the court may, in its discretion, at any time after the appointment, require an additional obligation as further security for such damages. The damages, if any, shall be ascertained by the court and, in its final judgment in the action, shall be decreed against the plaintiff and the sureties on the obligation.

SEC. 189. *Oath and obligation of receivers.*—Before entering upon his duties, the receiver must be sworn to perform them faithfully, and with one or more sureties approved by the court or judge, execute an obligation to such person and in such sum as the court or judge may direct, to the effect that he will faithfully discharge the duties of receiver in the action and obey the orders of the court therein.

SEC. 190. *Funds in the hands of receiver.*—Funds in the hands of a receiver may be invested upon interest by order of the court; but no such order shall be made except upon the written consent of all the parties to the action.

SEC. 191. *Termination of receivership.*—Whenever the court of its own motion, or on that of either party, shall determine, after due notice and hearing, that the necessity for a receiver no longer exists, it shall, on notice and hearing, settle the accounts of the receiver, direct the payment of the funds in his hands, and the delivery of the property by him held, to such persons as shall be adjudged entitled to receive them, and order his discharge from further duties as receiver.

Partition of real estate.

SEC. 192. *Partition of real estate.*—A person having or holding real estate with others, in any form of joint tenancy, or tenancy in common, may compel partition thereof in the manner hereinafter prescribed.

SEC. 193. *Where action for partition must be brought.*—An action to enforce partition shall be brought in the circuit wherein the estate sought to be divided is situated. If the estate is situated in two or more circuits, the action for partition of the whole may be instituted and maintained in any circuit wherein a part of such estate is situated.

SEC. 194. *The complaint.*—The complaint in an action for partition shall set forth the nature and extent of the plaintiff's title and contain an adequate description of the real estate of which partition is demanded, and name each tenant in common, coparcener, or other person interested therein as defendants.

SEC. 195. *The order of partition.*—If, upon trial, the court finds that the plaintiff has a legal right to any part of such estate, it shall order partition thereof in favor of the plaintiff, among all parties in interest.

Thereupon the parties may, if they are able to agree, make partition among themselves, by proper instruments of conveyance and the court shall confirm the partition so agreed upon by all the parties and enter the same of record, and the amicable partition so made shall be valid and binding between the parties thereto. But if the parties are unable to agree upon a partition, the court shall appoint three judicious and disinterested land owners of the circuit in which the land to be divided, or some portion of the same, is situated, to be commissioners to make the partition, and shall order a writ of partition to issue to the commissioners commanding them to make partition of the estate and to set off to the plaintiff and to each party in interest such part and proportion of the estate as the court shall order.

SEC. 196. *Duty of commissioners in making partition.*—Before making such partition, the commissioners shall take and subscribe an oath before the judge or clerk, or any district judge, that they will faithfully perform their duties as commissioners, which oaths

shall be filed in court with the other proceedings in the case. In making such partition, the commissioners shall view and examine the estate, after due notice to the parties to attend at such view and examination, and shall hear the parties as to their preference in the portion of the estate to be set apart to them and the comparative value thereof, and shall set apart the estate to the several parties in such lots or parcels as will be most advantageous and equitable, having due regard to the improvement, situation, and quality of the different parts thereof.

SEC. 197. *When partition of more than one tract is demanded.*—When partition of more than one tract is demanded the commissioners shall set off to each plaintiff or party in interest, his proper proportion in each of the several tracts, unless the several tracts are owned by the same proprietors and in the same proportion in each tract, in which case the whole share of any proprietor, in all the several tracts, may be set off to such proprietor according to the best discretion of the commissioners.

SEC. 198. *Assignment or sale of the estate.*—When it is made to appear to the commissioners that the estate, or a portion thereof, cannot be divided without great inconvenience to the parties interested, the court may order it assigned to one of the parties, provided he pays to the other party such sum of money as the commissioners judge equitable. But if no one of the parties interested will take such assignment and pay such sum, the court shall order the commissioners to sell such estate at public or private sale. In that case the commissioners shall sell the estate agreeably to such order; but the sale shall not be valid to pass the title to the property until confirmed by the court, unless the order of sale itself shall otherwise provide.

SEC. 199. *Report of commissioners.*—The commissioners shall make full and accurate report to the court of all their proceedings as to partition, or assignment of the estate to one of the parties, or sale of the same. But none of their proceedings shall be effectual to bind the property or the parties until the court shall have accepted their report and rendered judgment therein.

SEC. 200. *Action of the court upon commissioners' report.*—Upon the filing of such report in court, the court shall, upon hearing, accept the same and render judgment in accordance therewith; or for cause shown it may recommit the report to the commissioners for further report of facts; or it may set aside the report and appoint new commissioners; or it may accept the report in part and reject it in part, and make such final order and judgment as shall effectuate a fair and just partition of the estate or of its value, if sold or assigned as above provided between the several owners thereof.

SEC. 201. *Distribution of proceeds of sale.*—The money or securities arising from a sale, or an election to take the estate in accordance with the foregoing provision shall be distributed and paid, by order

of the court, to the parties entitled thereto, in lieu of their respective parts and proportions of the estate, according to their just rights therein.

SEC. 202. *Accounting for rent and profits in action for partition.*—In an action for partition in accordance with the last nine preceding sections, one tenant in common, or joint tenant, or coparcener, may recover from another his just share of rent and profits received by such other tenant in common, joint tenant, or coparcener from the estate according to the justice and equity of the case, and the final judgment shall include an allowance for such rents and profit as are found to be justly recoverable.

SEC. 203. *Costs and expenses to be equitably taxed.*—The court shall tax and apportion between the parties the costs and expenses which accrue in the action, having regard to the interests of the parties, and the benefit that each party may derive from a partition and according to equity. An execution may issue therefor as in other cases.

SEC. 204. *Fees of commissioners.*—The commissioners appointed to make partition of real estate shall receive such compensation for the time actually and necessarily employed in the performance of their duties and in making their report to the court, as the parties may agree to or the court fix, which fee shall be taxed as a part of the costs of the proceeding and apportioned as provided in the last preceding section.

SEC. 205. *Final judgment, its record and effect.*—The record of the final judgment in such action shall state definitely by metes and bounds an adequate description, the particular portion of the estate that is assigned to each party to the action if partition is made; if the whole estate is assigned to one of the parties upon his paying to the other party the sum ordered by the court, the record shall state the fact of such payment and of the assignment of the estate to such party making such payment.

If the estate is sold and the sale is confirmed by the court, the record shall state the name of the purchaser or purchasers and a definite description of the parcels of the estate sold to each purchaser. The expense of such record shall be taxed as a part of the costs of the action.

If actual partition of the land is made, the effect of the judgment shall be to vest in each party to the action in severalty the portion of the estate assigned to him. If the whole estate is assigned to one of the parties upon his payment to the other party or parties of the sum ordered by the court, the effect of the judgment, upon such payment being made, shall be to vest in the party making the payment, in accordance with the order of the court, the fee of the whole estate free of any interest on the part of the other joint tenants, tenants in common, or coparceners. If the estate is sold, and the sale confirmed by

the court, the effect of the record shall be, upon payment for the same being made, to vest in the purchaser or purchasers the fee of the estate free from claims of any of the parties to the action. The record of the judgment shall constitute an instrument of evidence in all questions as to the title to the lands or the estate which may be the subject of the judgment in all courts, and shall be conclusive as to the rights of all parties to the suit. But the right of appeal to the Supreme Court shall appertain to actions for partition in the same manner and to the same extent as to other actions.

SEC. 206. *Power of guardian in partition proceedings.*—The guardian, or guardian ad litem, of a minor, or person of unsound mind, may, on behalf of his ward, and with the approval of the court, do and perform any act, matter, or things respecting the partition of an estate which such minor or person of unsound mind could do in partition proceedings if he were of age or of sound mind.

SEC. 207. *Paramount rights and amicable partition not affected.*—Nothing herein contained shall be construed so as to injure, prejudice, defeat, or destroy the estate right, or title of any person claiming a tract of land, or any part thereof, by title under any other person or by title paramount to the title of the joint tenants, tenants in common, or coparceners by whom partition may have been made. Nothing herein contained shall be construed as restricting or preventing joint tenants, tenants in common, or coparceners from making an amicable partition of their common estate by agreement and suitable instrument of conveyance without recourse to an action for that purpose.

Usurpation of office or franchise.

SEC. 208. *Usurpation of an office or franchise.*—A civil action may be brought in the name of the Government of the Canal Zone:

1. Against a person who usurps, intrudes into, or unlawfully holds or exercises a public civil office or a franchise with the Canal Zone, or an office in a corporation created by the authority of the Government of the Canal Zone;
2. Against a public civil officer who does or suffers an act which, by the provisions of law, works a forfeiture of his office;
3. Against an association of persons who act as a corporation within the Canal Zone, without being legally incorporated or without lawful authority so to act.

SEC. 209. *Like actions against a corporation.*—A like action may be brought against a corporation:

1. When it has offended against a provision of an act for its creation or renewal, or any act altering or amending such act;
2. When it has forfeited its privileges and franchises by non-user;
3. When it has committed or omitted an act which amounts to a surrender of its corporate rights, privileges and franchises;

4. When it has misused a franchise, privilege, or right conferred upon it by law or when it has exercised a franchise, privilege, or right in contravention of law.

SEC. 210. *Action to be prosecuted by public officers.*—The General Counsel of the Isthmian Canal Commission or the Prosecuting Attorney of the Canal Zone may commence any such action; and when, upon complaint or otherwise, he has good reason to believe that any case specified in the two preceding sections can be established by proof he must commence such action.

SEC. 211. *Same.*—The General Counsel of the Isthmian Canal Commission or the Prosecuting Attorney of the Canal Zone may, at his own instance, bring such an action, or he may, on leave of the court in which the action is to be commenced, or a judge thereof in vacation, bring the action upon the relation of and at the request of another person; but, if the action is brought at the request of and upon the relation of another person, the officer bringing it may require an indemnity for expenses and costs of the action to be given to him by the party at whose request and upon whose relation the same is brought before commencing it.

SEC. 212. *An individual may commence such action.*—A person claiming to be entitled to a public office, unlawfully held and exercised by another, may bring an action therefor.

SEC. 213. *What the complaint must set forth in such action; judgment therein.*—When the action is against a person for usurping an office, the complaint shall set forth the name of the person who claims to be entitled thereto, with an averment of his right to the same; and that the defendant is unlawfully in possession of the same; and judgment may be rendered upon the right of the defendant, and also upon the right of the person so averred to be entitled, or only upon the right of the defendant, as justice requires.

SEC. 214. *Who may be made defendants.*—All persons who claim to be entitled to the same office or franchise may be made defendants in the same action, to try their respective rights to such office or franchise.

SEC. 215. *Where such actions may be brought.*—An action under the last preceding seven sections can be brought only in the Supreme Court or in the Circuit Court in which the defendant, or one of the defendants, resides, or, when the defendant is a corporation, in the circuit in which it is situated or has a place of business; but when the General Counsel commences the action, it may be brought in a Circuit Court or in the Supreme Court.

SEC. 216. *Application for leave to commence action and notice to defendant.*—Upon application for leave to commence such action, in accordance with section two hundred eleven, the court or judge may, in its or his discretion, direct notice thereof to be given to the defendant previous to granting such leave, and may hear the defend-

ant in opposition thereto; and if leave be granted, entry thereof shall be made on the docket or the fact shall be indorsed by the judge on the complaint, which shall then be filed.

SEC. 217. *Expediting proceedings.*—An order may be made by the court, or by the judge, shortening the time for filing pleadings and for all other proceedings, in such cases as fixed by general rules, so as to secure the most expeditious determination of the matters involved in the litigation consistent with the rights of the parties. Such action shall have precedence of any civil business pending in the court.

SEC. 218. *Judgment where office, franchise, etc., found to have been usurped.*—When the defendant is found guilty of usurping, intruding into, or unlawfully holding or exercising an office, franchise, or privilege, judgment shall be rendered that such defendant be ousted and altogether excluded therefrom, and that the relator or plaintiff, as the case may be, recover his costs. Such further judgment may be rendered as is provided in section two hundred thirteen.

SEC. 219. *Judgment where director of a corporation found to have been illegally elected.*—When the action is brought against a director of a corporation and the court finds that at his election either illegal votes were received or legal votes rejected, or both, sufficient to change the result, judgment may be rendered that the defendant be ousted, and of induction in favor of the person who was entitled to have been declared elected at such election. Or, in such case, the court may, in its discretion order a new election to be held at a time and place and by judges of election appointed by the court; notice of such election and nomination of the judges shall be given for the time and in the manner provided by law for notice of elections of directors of such corporations; the order of the court shall become obligatory upon the corporation and its officers when a duly certified copy thereof is served upon its secretary personally or left at its principal office; and the court may enforce its order by attachment or in any other manner it deems necessary.

SEC. 220. *Rights of person adjudged to be entitled to office.*—If judgment be rendered in favor of the person averred to be entitled to the office he may, after taking the oath of office and executing any official bond required by law, take upon himself the execution of the office, and he shall immediately thereafter demand of the defendant all the books and papers in his custody or within his power appertaining to the office from which he has been ousted.

SEC. 221. *How judgment of court enforced.*—If such defendant refuse or neglect to deliver over any such book or paper pursuant to demand, he shall be deemed guilty of a contempt of court and shall be fined in any sum not exceeding twenty-five hundred dollars and imprisoned until he complies with the order of the court, or is otherwise discharged by due course of law.

SEC. 222. *Action for damages against person ousted.*—Such person may, at any time within one year after date of such judgment, bring an action against the party ousted and recover the damages sustained by reason of his usurpation.

SEC. 223. *Judgment when corporation has forfeited its rights.*—When, in any such action, it is found and adjudged that a corporation has, by an act done or omitted, surrendered, or forfeited its corporate rights, privileges, and franchise, or has not used the same during the term of five years, judgment shall be entered that it be ousted and excluded therefrom and that it be dissolved; but when it is found and adjudged that a corporation has offended in any matter or manner which does not by law work as a surrender or forfeiture, or has misused a franchise or exercised a power not conferred by law, but not of such a character as to work a surrender or forfeiture of its franchise, judgment shall be rendered that it be ousted from the continuance of such offense or the exercise of such power.

SEC. 224. *Appointment of receiver when corporation dissolved.*—The court rendering a judgment dissolving a corporation shall appoint a receiver of all its assets, agreeably to section one hundred eighty-five, who shall proceed to administer the same in accordance with the provisions of sections one hundred eighty-six to one hundred ninety, inclusive.

SEC. 225. *How receiver placed in possession.*—An officer of such corporation who refuses or neglects, upon demand, to deliver over to the receiver all money, property, books, deeds, notes, bills, obligations, and papers of every description and within its power or control, belonging to the corporation, or in any wise necessary for the settlement of its affairs, or the discharge of its debts and liabilities, shall be deemed guilty of a contempt of court, and shall be fined not exceeding twenty-five hundred dollars, and imprisoned until he complies with the order of the court, or is otherwise discharged by due course of law; and he shall be liable to the receiver for the value of all money or other things so refused or neglected to be surrendered, together with all damages that may have been sustained by the stockholders and creditors of the corporation, or any of them, in consequence of such neglect or refusal.

SEC. 226. *Judgment for costs.*—If judgment be rendered in such action against a corporation or against a person claiming to be a corporation, the court may render judgment for the costs against the directors or other officers of the corporation, or against the person claiming to be the corporation. If judgment be rendered for the defendant he shall recover his costs from the plaintiff, if the plaintiff be not the Government.

SEC. 227. *Limitations.*—Nothing herein contained shall authorize an action against a corporation for forfeiture of charter, unless the

same be commenced within five years after the act complained of was done or committed; nor shall an action be brought against an officer to be ousted from his office unless within one year after the cause of such ouster, or the right to hold the office, arose.

Certiorari proceedings.

SEC. 228. *Certiorari proceedings.*—When the ground of the complaint in an action in a Circuit Court is that an inferior tribunal, board, or officer exercising judicial functions, has exceeded the jurisdiction of such tribunal, board, or officer, and there is no appeal, nor any plain, speedy, and adequate remedy, and the court, on trial, finds the allegations of the complaint to be true, it shall render a judgment ordering such inferior tribunal, board, or officer, or other person having the custody of the record or proceedings, at a specified time and place, to certify to the court a transcript of the record and the proceedings (describing or referring to them with convenient certainty) that the same may be reviewed by the court; and requiring the party, in the meantime, to desist from further proceedings in the matter to be reviewed, if, in the judgment of the court, a stay ought to be granted.

SEC. 229. *Service of order.*—A certified copy of the judgment and order of the court, as provided in the preceding section, shall be served upon such inferior tribunal, board, or officer in such manner as the court may direct.

SEC. 230. *Enforcement of order.*—If such order is not obeyed, the court may enforce it by attachment and by fine and imprisonment as for contempt.

SEC. 231. *Final proceedings in certiorari.*—When the proceedings complained of have been fully certified, the court shall hear the parties and determine whether the inferior tribunal, board, or officer has regularly pursued its authority; and if it finds that such inferior tribunal, board, or officer has not regularly pursued its authority, it shall thereupon give final judgment, either affirming, or annulling, or modifying the proceedings below, as the law requires.

SEC. 232. *Certifying judgment to inferior tribunal.*—A copy of the final judgment, signed by the clerk, shall be transmitted to the inferior tribunal, board, or officer having the custody of the record or proceedings certified up.

Mandate.

SEC. 233. *Mandate.*—When the complaint in an action in a Circuit Court alleges that any inferior tribunal, corporation, board, or person unlawfully neglects the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station, or

unlawfully excludes the plaintiff from the use and enjoyment of a right or office to which he is entitled and from which he is unlawfully precluded by such inferior tribunal, corporation, board, or person, and the court, on trial, finds the allegations of the complaint to be true, it may, if there is no other plain, speedy, and adequate remedy in the courts of law, render a judgment granting a peremptory order against the defendant, commanding him, immediately after the receipt of such order, or at some other specified time, to do the act required to be done to protect the rights of the plaintiff.

SEC. 234. *Damages in such action.*—If judgment be given for the plaintiff, he may recover in the same action the damages which he has sustained, as determined by the court, by reason of the wrongful acts of the defendant, together with costs.

SEC. 235. *Service of the order.*—A certified copy of the judgment and order of mandate shall be served upon the defendant in such manner as the court may direct.

SEC. 236. *Enforcement of order of mandate.*—When a peremptory mandate has been issued to and served upon any inferior tribunal, corporation, board, or person, as provided in the preceding section, if it be made to appear to the court that any member of such tribunal, corporation, or board, or such person upon whom the order has been personally served, has, without just excuse, refused or neglected to obey the same, the court may, upon motion and notice to the defendant, and hearing, impose a fine not exceeding five hundred dollars upon the person offending.

In case of persistence in a refusal of obedience, the court may order the party to be imprisoned until the order is obeyed, and may make any orders necessary and proper for the complete enforcement of the mandate.

Prohibition.

SEC. 237. *Prohibition.*—When the complaint in any action pending in any Circuit Court alleges that the proceedings of any inferior tribunal, corporation, board, or person, whether exercising functions judicial or ministerial, were without or in excess of the jurisdiction of such tribunal, corporation, board, or person, and the court, on trial, shall find that the allegations of the complaint are true, and that the plaintiff has no other plain, speedy, and adequate remedy in the ordinary course of law, it shall render a judgment in favor of the plaintiff, including an order commanding the defendant absolutely to desist or refrain from further proceedings in the action or matter specified therein.

SEC. 238. *Service of judgment and order.*—A certified copy of the judgment and order of prohibition shall be served upon the defendant in such manner as the court shall direct.

SEC. 239. *Enforcement order of prohibition.*—An order of prohibition may be enforced in the same manner as is provided for the enforcement of an order of mandate.

SEC. 240. *Preliminary injunctions in certiorari, mandate, and prohibition proceedings.*—A preliminary injunction in certiorari, mandate, and prohibition proceedings may be granted by the judge if, in his judgment, such injunction is necessary for the preservation of the rights of the parties, pending litigation.

SEC. 241. *Expediting such proceedings.*—The court may in its discretion, make such orders as it deems necessary for expediting proceedings in actions praying for certiorari, mandate, or prohibition, and the judge may make such orders in vacation, as well as in term time.

Contempt.

SEC. 242. *What contempt of court may be punished summarily.*—A Circuit Court may punish summarily, by fine not exceeding one hundred dollars, or by imprisonment not exceeding ten days, or both, a person guilty of misbehavior in the presence of or so near the court or judge as to obstruct the administration of justice, including the refusal of a person present in court to be sworn as a witness or to answer as a witness when lawfully required.

SEC. 243. *What other acts are contempts of court.*—A person guilty of any of the following acts may be punished as for contempt:

1. Disobedience of or resistance to a lawful writ, process, order, judgment, or command of a court, or injunction granted by a court or judge;

2. Misbehavior of an officer of the court in the performance of his official duties, or in his official transactions;

3. A failure to obey a subpoena duly served;

4. The rescue, or attempted rescue, of a person or property in the custody of an officer by virtue of an order or process of the court held by him.

SEC. 244. *When accused entitled to be heard.*—In cases under the last section, a charge in writing shall be filed with the clerk, an entry thereof made upon the docket, and an opportunity given to the accused to be heard, by himself or counsel; but this section shall not be so construed as to prevent the court from issuing process to bring the accused party into court, or from holding him in custody pending such proceedings.

SEC. 245. *Right of accused to bail.*—In such proceedings if the hearing is not ordered to be held forthwith, the court may fix the amount of an obligation to be given by the accused, with surety to the satisfaction of the court, for the appearance of the accused to answer the charge; and upon the approval of such obligation the accused shall be released from custody.

SEC. 246. *Trial of the charge.*—Upon the day fixed for the trial the court shall proceed to investigate the charge and shall hear any answer or testimony which the accused may make or offer.

SEC. 247. *Punishment if found guilty.*—The court shall then determine whether the accused is guilty of the contempt charged; and, if it be adjudged that he is guilty, he may be fined not exceeding five hundred dollars, or imprisoned not more than six months, or both. If the contempt consists in the violation of an injunction, the person guilty of such contempt may also be ordered to make complete restitution to the party injured by such violation.

SEC. 248. *Imprisonment until order obeyed.*—When the contempt consists of the omission to do an act, which is yet in the power of the accused to perform, he may be imprisoned until he performs it.

SEC. 249. *Proceedings when party released on bail fails to appear.*—If the party released on bail fail to appear upon the day named, the court may issue another order of arrest, or may order the obligation for his appearance to be prosecuted, or both; and, if the obligation be prosecuted, the measure of damages shall be the extent of the loss or injury sustained by the aggrieved party by reason of the misconduct for which the contempt was prosecuted and the costs of the proceedings, and such recovery shall be for the benefit of the party injured.

SEC. 250. *Right of court who committed prisoner to release him.*—When a person has been imprisoned for contempt, the court or judge who made the order may discharge him from imprisonment, when it shall be made to appear to the court or judge that the public interests will not suffer thereby.

SEC. 251. *Final judgment.*—The judgment and orders of a Circuit Court, made in cases of contempt, may be reviewed by the Supreme Court; but execution of the said final judgment and orders shall not be suspended until there is filed by the person in contempt, in the court rendering the judgment or making the order, an obligation with sureties to the acceptance of the judge, in an amount to be by him fixed, conditioned that he will prosecute an appeal with all due diligence and that if the judgment be against him he will abide and perform the order or judgment. But such review shall be had only after final judgment in the action in the Circuit Court, and when the cause has regularly passed to the Supreme Court, as in this Code provided.

The Supreme Court shall hear said cause and dispose of the same at the first term of the Court at which said appeal could be regularly heard.

Foreclosure of mortgage.

SEC. 252. *Where action for foreclosure of real-estate mortgage must be instituted.*—An action for the foreclosure of a mortgage or other

incumbrance upon real estate, or an interest therein, must be brought in the circuit in which the land or some part thereof lies.

SEC. 253. *The complaint in an action for foreclosure of a real-estate mortgage.*—In an action for foreclosure of a real-estate mortgage, or other incumbrance upon real estate the complaint shall set forth the date and due execution of the mortgage, its assignments, if any, the names and residences of the mortgagor and mortgagee, a description of the mortgaged premises, a statement of the date of the note or other obligation secured by the mortgage, and the amount claimed to be unpaid thereon, and the names and residences of all persons having or claiming an interest in the premises subordinate in right to that of the holder of the mortgage, all of whom shall be made defendants in the action.

SEC. 254. *Trial and judgment in foreclosure suit.*—If upon trial in such action the court shall find the facts set forth in the complaint to be true, it shall ascertain the amount due to the plaintiff upon the mortgage debt or obligation, including interest and costs, and shall render judgment for the sum so found due, and order that the same be paid into court on or before the first day of the next term of the court immediately succeeding the one at which such order was made, and that in default of such payment the land shall be sold to realize the mortgage debt and costs.

SEC. 255. *Sale of the mortgaged property.*—When the defendant, after being directed to do so, as provided in the last preceding section, fails to pay the principal, interest, and costs at the time directed in the order, the court shall order the property to be sold in the manner and under the regulations that govern sales of real estate under execution; but such sale shall not affect the rights of persons holding prior incumbrances upon the same estate or a part thereof. The sale, when confirmed by decree of the court, shall operate to divest the rights of all the parties to the action and to vest their rights in the purchaser. Should the court decline to confirm the sale, for good cause shown, and should set it aside, it shall order a resale in accordance with law.

SEC. 256. *Disposition of proceeds.*—The money arising from the sale of mortgaged property, under the regulations hereinbefore prescribed, shall, after deduction of costs of sale, be paid to the person foreclosing the mortgage, and when there shall be any surplus, after paying off such mortgage or other incumbrance, the same shall be paid to junior incumbrancers in the order of the priority, to be ascertained by the court, or if there be no such incumbrances or there be a surplus after payment of such incumbrances, then to the mortgagor or his agent, or to the person entitled to it.

SEC. 257. *Disposition of proceeds in case the debt is not all due.*—If the debt for which the mortgage or incumbrance was held is not

all due, so soon as sufficient of the property has been sold to pay the amount due, with costs, the sale must cease; and afterwards, as often as more becomes due for principal or interest, the court may, on motion, order more to be sold. But if the property can not be sold in portions without injury to the parties, the whole shall be ordered to be sold in the first instance and the entire debt and costs paid, a rebate of interest being made where such rebate is proper.

SEC. 258. *Judgment for balance after sale of property.*—Upon the sale of any real property, under a decree for a sale to satisfy a mortgage or other incumbrance thereon, if there be a balance due to the complainant after applying the proceeds of the sale, the court, upon motion, shall give a decree against the defendant for any such balance for which, by the record of the case, he may be personally liable to the plaintiff, upon which execution may issue immediately if the balance is all due at the time of the rendition of the decree; otherwise the plaintiff shall be entitled to execution at such time as the balance remaining would have become due by the terms of the original contract, which time shall be stated in the decree.

SEC. 259. *Final record.*—The final record in the action shall set forth, in brief, the petition and other pleadings, judgment, orders, the proceeding under the order of sale, and the decree confirming the same, and the name of the purchaser, with a description of the estate by him purchased.

Manual delivery of personal property.

SECTION 260. *Delivery of litigated personal property to plaintiff.*—Whenever the complaint in an action shall pray for the recovery of the possession of personal property, the plaintiff may, at the time of instituting the action, or at any time before answer, file a notice claiming the delivery of such property to him, in the manner hereinafter provided.

SEC. 261. *Affidavit and obligation to be filed by plaintiff.*—Where a delivery is claimed an affidavit must be made by the plaintiff, or by some one in his behalf, showing:

1. That the plaintiff is the owner of the property claimed (particularly describing it) or is entitled to the possession thereof;
2. That the property is wrongfully detained by the defendant;
3. The alleged cause of detention thereof according to his best knowledge, information, and belief;
4. That it has not been taken for a tax assessment or fine pursuant to law, or seized under an execution, or an attachment against the property of the plaintiff, or, if so seized, that it is by law exempt from such seizure;
5. The actual value of the property.

The plaintiff shall also at the same time file with the clerk a written obligation of the plaintiff, executed by two or more sureties approved by the court, to the effect that they are bound to the defendant 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 the return thereof be adjudged, and for the payment to him of such sum as may in the cause be recovered against the plaintiff. The affidavit and obligation shall be filed with the clerk of the court in which the action is pending.

SEC. 262. *Warrant of seizure.*—Upon the filing of such affidavit and obligation it shall be the duty of the clerk, at the request of the plaintiff or his attorney, to issue, under the seal of the court, a warrant requiring the officer of the court forthwith to take into his custody the personal property alleged to be wrongfully detained.

SEC. 263. *Service of warrant.*—Upon receiving the warrant named in the last section the officer must forthwith take the property described in the warrant, if it be in the possession of the defendant or his agent, and retain it in his custody. If the property, or any part thereof, be concealed in a building or inclosure, the officer must publicly demand its delivery; if it be not delivered, he must cause the building or inclosure to be broken open and take the property into his possession. When the officer has taken property as herein provided, he must keep it in a secure place and ultimately deliver it to the party entitled thereto, upon receiving his fees for taking and his necessary expenses for keeping the same. He must, without delay, serve on the defendant a copy of the notice, undertaking, and warrant, in the manner provided by law for service of process.

SEC 264. *Proceedings when objection is made to the sufficiency of the obligation.*—The defendant may, within two days after the service of a copy of the affidavit and undertaking and warrant, give notice to the clerk that he excepts to the sufficiency of the obligation or of the sureties. If he fails to do so, he is deemed to have waived all objections to them. When the defendant excepts, the clerk, on notice to both parties, and on hearing, shall investigate the sufficiency of the sureties as to their financial responsibility. If the clerk finds the obligation to be insufficient in amount, he shall require a new obligation with sufficient sureties forthwith. In either case, if the plaintiff does not forthwith furnish a sufficient obligation with sufficient sureties, the clerk shall make an order for the return of the property to the defendant, and it shall be returned. If the defendant except to the obligation or to the sureties, he can not reclaim the property as provided in the next section.

SEC. 265. *Delivery of property to the defendant.*—At any time before the delivery of the property to the plaintiff, as in this section

provided, the defendant may, if he do not except to the obligation or sureties of the plaintiff, require the return thereof, upon delivering to the clerk a written obligation to the plaintiff executed by him, with two or more sufficient sureties, 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 of such sum to him as may be recovered against the defendant. If a return of the property be not so required within five days after the taking and service of notice to the defendant, it must be delivered to the plaintiff, as herein provided.

SEC. 266. *Defendant's obligation and sureties.*—The defendant's sureties, upon notice to the plaintiff, not less than two nor more than five days, must justify before the clerk, and upon such justification the officer must deliver the property to the defendant. If the defendant's sureties, or others in their place, fail to justify at the time and place appointed, the officer must deliver the property to the plaintiff.

SEC. 267. *Responsibility of officer and clerk.*—The officer will be responsible for the property until the same is delivered to the plaintiff or defendant, as herein provided. The clerk will be responsible for the sufficiency of the sureties at the time he shall approve them, but not for their sufficiency at a subsequent date should their financial standing be thereafter changed.

SEC. 268. *If property claimed by third person.*—If the property taken be claimed by any other person than the defendant or his agent, and such person make an affidavit of his title thereto or right to the possession thereof, stating the grounds of such right or title, and serve the same upon the officer while he has possession of the property, the officer is not bound to keep the property, or deliver it to the plaintiff, unless the plaintiff on demand of him or his agent, indemnify the officer against such claim by an obligation with two sufficient sureties; and no claim to such property or damage for its seizure, by any other person than the defendant or his agent, shall be valid against the officer unless so made. But nothing herein contained shall prevent such third person from vindicating his claim to the property by any proper action.

SEC. 269. *Return of papers.*—The officer must file the warrant with his proceedings indorsed thereon, with the clerk of the court within twenty days after taking the property mentioned therein.

SEC. 270. *Final judgment.*—On trial, the court shall adjudge the property to the plaintiff, or to the defendant, as the law and facts warrant, together with such damages and costs as either party establishes a right to recover.

CHAPTER X.

TO ESTABLISH TITLES TO REAL PROPERTY.

SEC. 271. *Power of Circuit Courts to establish title to real estate.*—Any and all Circuit Courts in the Canal Zone shall have power to inquire into the condition of any title of or interest in any land in the circuit in which the court is held and to make all such orders, judgments and decrees as may be necessary to determine and establish said title or interest, legal or equitable, against all persons known or unknown, and all liens existing on such lands, whether by statute, judgment, mortgage, deed of trust or otherwise.

SEC. 272. *Who may sue.*—It shall be lawful for any person claiming title to any land in such circuit and for all claiming under such person, to file a petition in the Circuit Court in which the land, or a part thereof, are situated praying for a decree establishing and confirming his said title.

By resolution of the Isthmian Canal Commission, the General Counsel of said Commission, or the Prosecuting Attorney of the Canal Zone, or other legal officer of said Commission named in said resolution, may file such petition in any Circuit Court of a circuit in the Canal Zone wherein lands are situated, the title of which is claimed to be either in the United States Government, the Isthmian Canal Commission, or the Panama Railroad Company.

SEC. 273. *Contents of petition, verification.*—Any number of parcels of land may be included in one petition, or separate petitions may be filed, as the petitioner may elect.

Said petition shall state clearly the description of said lands, the character and extent of the estate claimed by the petitioner, and from whom, and when, and by what mode he derived his title thereto. It shall give the names of all persons owning or claiming any estate or interest in said lands, or any part thereof, and also all persons who shall be in possession of said land, or any part thereof, and also all persons to whom any such lands shall have been conveyed, and their residences, so far as the same are known to said petitioner, and if no persons are known to said petitioner it shall be so stated in said petition.

Should said petition be filed by a private party it shall be verified by the said petitioner or by the agent of said petitioner; and the party so swearing falsely shall be deemed guilty of perjury and punished accordingly, and shall be liable in damages to any person injured by such false statements, to be recovered in an action in any court having jurisdiction thereof.

If said petition is filed under the direction of the Isthmian Canal Commission the same need not be verified.

SEC. 274. *Summons*.—All persons so named in said petition shall be made defendants, and shall be notified of said suit by summons, if residents of the Canal Zone, in the same manner as is now or may hereafter be required by law: *Provided*, That the notice specified in this act shall be the only publication notice required, in either the case of residents, non-residents or otherwise. All other persons shall be deemed and taken as defendants, by the name or designation of "All whom it may concern."

SEC. 275. *Clerk's docket, notice*.—It shall be the duty of the clerk of the court in which said petition is filed, to enter in a separate book or books to be kept for that purpose, the name of the petitioner and defendant, the date of filing said petition, and a description of all the lands included therein, which record shall at all times be open to the public. All lands in each separate administrative district shall be entered on the same page, or consecutive pages, with an index to said book or books, showing on what page any such separate administrative district may be found. Said clerk shall also, in all cases, cause publication of notice to be made of the filing of said petition, which notice shall be entitled "Land title notice" and shall be substantially as follows:

A B, C D, etc. (here giving the names of all known defendants, if any) *and to all whom it may concern*:

TAKE NOTICE.—That on the ---- day of ----- A. D. 19-- a petition was filed by the undersigned, in the Circuit Court of ----- Judicial Circuit, of the Canal Zone, to establish his title to the following described land (here insert a full description of the land in said petition). Now, unless you appear at the ----- term of said court (naming the first term, after thirty days from the first insertion of said notice) and show cause against such application, said petition shall be taken for confessed, and the title or interest of said petitioner will be deemed and established according to the prayer of said petition, and you forever barred from disputing the same.

E F, *Petitioner*.

G P, *Solicitor*.

Said notice shall be published once a week for three weeks successively in a newspaper or newspapers of general circulation published in the Canal Zone, or in the Cities of Colon or Panama, and the first insertion shall be at least thirty days prior to said term of court.

SEC. 276. *Demurrer, answer*.—Any person interested may oppose any such petition, and file his demurrer or answer thereto on or before the third day of the term of court named in said publication notice, unless the time be extended by order of court. Said answer shall admit, confess or avoid or traverse all the material allegations of the petition or ask for affirmative relief, and shall, except when made by guardians ad litem, be verified by the affidavit either of the defendant or his agent, in the same manner as above required for the petition. Said answer shall have no other nor greater weight than the petition.

SEC. 277. *Further procedure.*—If no demurrer or answer shall be filed by the third day of said term, or by the day allowed by the order of said court, as above provided, the petition may be taken for confessed, and a decree entered according to the prayer of said petition, upon proof of the facts stated in said petition; but if any person shall file an answer, as aforesaid, to such petition, the court may hear evidence, or order a reference to a referee or commissioner to take evidence and report, under the procedure of Chapter VII of this code. If the petition includes more than one parcel of land and no demurrer or answer shall be filed as to some of said parcels, the court may enter a decree, pro-confesso, as to those parcels as to which no demurrer or answer shall be filed, and hear evidence or order a reference as to the remaining parcels.

SEC. 278. *Decree of court, not to affect liens.*—It shall be competent for said courts, in all such decrees, whether pro-confesso or on the report of any referee or special commissioner or otherwise, to determine and decree in whom the title in any or all of the lands described in said petition is vested, whether in the petitioner, or in any other of the parties before the court; but said decree shall not in anywise affect any lien or liens to which said title may be subject, and which may be by mortgage, deed of trust, judgment, statute, liens, or otherwise, but shall leave all such liens to be ascertained or established in some other proceeding, or to be enforced as the parties holding them may see fit.

SEC. 279. *Reopening decree, subsequent action.*—Said decree of said court, whenever entered, shall be forever binding and conclusive: Provided, That any decree shall be subject to be opened, modified, or set aside on appeal or writ of error, sued out within two years after the entry of such decree: *And provided further*, That insane persons and minors shall have two years after their disabilities are removed to prosecute a writ of error upon said decree: *Provided further*, That any decree entered upon any petition or answer, asking for affirmative relief which does not make defendant, by name, all persons who shall be in possession of such land, or any part thereof, at the time of the filing of such petition or which does not make defendant, by name, all persons to whom any such land shall have been conveyed, if said persons' names can be ascertained, shall be absolutely void as to such person omitted, but shall be final and conclusive as to all others: *And provided further*, That any defendant who shall not be actually served with a summons in the suit in which such decree may be rendered, shall have allowed to him one year after the entry of such decree within which, upon petition to the court rendering the same, to have the said decree vacated as to him, and if it shall appear upon the hearing of such petition that such decree ought not to have been made against such defendant, the same may be vacated, set aside, altered or modified as

shall appear just, otherwise the same shall be ordered to stand affirmed against said defendant. *Provided* this Section shall not be so construed as to prevent the complainant from beginning a subsequent action against any person whomsoever in possession of such land and whose presence on said land was unknown, or could not have been, by reasonable diligence, discovered at the time the action was begun.

SEC. 280. *Representatives*.—Executors, administrators, conservators, guardians and trustees shall be entitled to proceed, under this act, in behalf of the interest and right they represent.

CHAPTER XI.

NE EXEAT.

SEC. 281. *When writ may issue*.—Writs of ne exeat republica may hereafter be granted by the circuit court, as well in cases where the debt or demand is not actually due, but exists fairly and bona fide in expectancy at the time of making the application, as in cases where the demand is due; and it shall not be necessary, to authorize the granting of such writ of ne exeat, that the applicant should show that his debt or demand is purely of an equitable character.

SEC. 282. *In favor of co-obligors or co-debtors*.—In case of joint, or joint and several obligors or debtors, if one or more of them be about to remove without the Canal Zone, taking their property with them, leaving one or more co-obligors or co-debtors bound with them for the payment of any sum of money, or for the delivery of any article of property, or for the conveyance of land at a certain time, which time shall not have arrived at the time of such intended removal, such co-obligor or co-debtor who remains shall be entitled, upon application, to a writ of ne exeat, to compel the co-obligor or co-debtor who is about to remove to secure the payment of his part of the sum to be paid, or the delivery of the property, or to convey, or to join in the conveyance of the land. The writ of ne exeat may also issue in cases of security, on application of a surety, against the principal or co-surety, when the obligation or debt shall not yet be due, and the principal or co-surety is about to remove out of the Canal Zone.

SEC. 283. *Procedure when granted by judge*.—When a writ of ne exeat is granted by a judge, he shall direct the clerk of the court to which the writ is to be returnable to issue the same.

SEC. 284. *Returnable where*.—All writs of ne exeat shall be returnable into the court out of which they issue.

SEC. 285. *When judge absent*.—When no judge authorized to issue writs of ne exeat is present in the circuit, or being present, is unable or incapacitated to act, any other Circuit judge may order the issuing of such writs.

SEC. 286. *Bill or petition necessary—affidavit—bond, suit on.*—No writ of ne exeat shall be granted but on petition filed, and affidavit to the truth of the allegations therein contained. Upon the granting of any such writ, the judge shall indorse or cause to be indorsed upon the petition, in what penalty bond and security shall be required of defendant. Said judge shall also take or cause to be taken of the complainant, before the writ shall issue, bond with good and sufficient surety, in such sum as the judge shall deem proper, conditioned that the said complainant will prosecute his petition with effect, and that he will reimburse to the defendant such damages and costs as he shall wrongfully sustain by occasion of the said writ. If any defendant to such writ of ne exeat shall think himself aggrieved, he may bring suit on such bond, and if, on trial, it shall appear that such writ of ne exeat was prayed for without a just cause, the person injured shall recover damages, to be assessed as in other cases on penal bonds.

SEC. 287. *Form of writ—bond by defendant—temporary departure no breach.*—The writ of ne exeat shall contain a summons for the defendant to appear in the proper court, and answer the petition, and upon the writ being served upon the said defendant, he shall give bond, with surety in the sum endorsed on such writ, conditioned that he will not depart the Canal Zone without leave of the said court, and that he will render himself in execution to answer any judgment or decree which the said court may render against him; and in default of giving such security, he may be committed to jail, as in other cases, for the want of bail. No temporary departure from the Canal Zone shall be considered as a breach of the condition of the said bond, if he shall return before personal appearance shall be necessary to answer or perform any judgment, order or decree of said court.

SEC. 288. *Surrender of defendant by surety.*—The surety in any bond for the defendant, as aforesaid, may, at any time before the said bond shall be forfeited, surrender the said defendant, in exoneration of himself, in the same manner that bail may surrender their principal, and obtain the same discharge.

SEC. 289. *Proceedings on return of writ.*—On the return of the writ of ne exeat, if the same shall have been duly served, the court shall proceed therein as in other cases, if the time of performance of the duty or obligation of the defendant has expired; if not, then the proceeding shall be stayed until it has expired.

SEC. 290. *Quashing or setting aside writ.*—Nothing contained in the preceding section shall prevent the court from proceeding at any time to determine whether the writ ought not to be quashed or set aside. The writ may be set aside at the end of six months upon the defendant's turning into court such money or property as he possesses, excluding necessary wearing apparel, and filing an affidavit that he is possessed of no further property.

CHAPTER XII.

RULES OF EVIDENCE—AFFIDAVITS AND DEPOSITIONS—PERPETUATION OF TESTIMONY.

Rules of evidence.

SEC. 291. *Preponderance of evidence, how to determine.*—In determining where the preponderance or superior weight of evidence on the issues involved lies, the witnesses, their manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony, their interest or want of interest, and also their personal credibility, so far as the same may legitimately appear upon the trial, must be considered. The court may also consider the number of witnesses, though the preponderance is not necessarily with the greatest number.

SEC. 292. *The same rules in all cases in all courts of the Zone.*—The rules of evidence shall be the same in all courts of the Canal Zone and upon every trial, unless otherwise expressly provided.

SEC. 293. *Matter judicially recognized.*—The existence and territorial extent of the Canal Zone, its forms of government, and symbols of nationality, the law of nations, the admiralty and maritime courts of the world and their seals, the political constitution and history of the United States and of the Canal Zone, the seals of the several departments of the United States, and the states of the Union, and of the Canal Zone and Republic of Panama, public and private, and official acts of the legislative, executive, and judicial departments of the United States and of the Canal Zone, the laws of nature, and the measure of time, the geographical divisions and political history of the world, and all similar matters of public knowledge shall be judicially recognized by the court without the introduction of proofs; but the court may receive evidence upon any of these subjects, when it shall find it necessary for its own information, and may resort for its aid to appropriate books, documents, or evidence.

SEC. 294. *Personal knowledge and hearsay evidence.*—A witness can testify to those facts only which he knows of his own knowledge; that is, which are derived from his own perception, except in those few express cases in which his opinions or inferences from the declarations of others, as hereinafter stated, are admissible.

SEC. 295. *Rights of party not prejudiced by act, declaration, or omission of another.*—The rights of a party can not be prejudiced by the declaration, act, or omission of another, except by virtue of a particular relation between them, as hereinafter stated; therefore proceedings against one can not affect another.

SEC. 296. *Exception where one derives title to real property from another.*—Where, however, one derives title to real property from another, the declaration, act, or omission of the latter, while holding the title, in relation to the property, is evidence against the former.

SEC. 297. *Exception where declaration, act, or omission forms part of the transaction.*—Where, also, the declaration, act, or omission forms part of a transaction, which is itself a fact in dispute, or evidence of that fact, such declaration, act, or omission, is evidence as part of the transaction. Such evidence may be termed admissible as constituting a part of the *res gestae*.

SEC. 298. *Where dispute relates to obligation or duty of third person, prima facie evidence.*—Where the question in dispute between the parties is the obligation or duty of the third person whatever would be the evidence for or against such person is *prima facie* evidence between the parties; *prima facie* evidence being that which suffices for the proof of a particular fact, until contradicted and overcome by other evidence.

SEC. 299. *Hearsay evidence of questions of pedigree.*—The declaration, act, or omission of a member of a family who is not living, or is outside the jurisdiction of the Canal Zone, is admissible as evidence of pedigree of relationship, or family genealogy in cases where pedigree, relationship, or family genealogy are questions at issue.

SEC. 300. *Declaration, act, or omission of deceased person against his interest.*—The declaration, act, or omission of a deceased person, having sufficient knowledge of the subject, against his pecuniary interest, is admissible as evidence to that extent against his successor in interest.

SEC. 301. *When part of acts, declaration, or writing given in evidence, the remainder available to opposite party.*—When part of an act, declaration, conversation, or writing is given in evidence by one party, the whole of the same subject may be inquired into by the other, and when a detached act, declaration, conversation, or writing is given in evidence, any other act, declaration, conversation or writing which is necessary to make it understood, may also be given in evidence.

SEC. 302. *Original writing must ordinarily be produced.*—There can be no evidence of the contents of a writing, other than the writing itself, except in the following cases:

1. When the original has been lost or destroyed, in which case proof of the loss or destruction must first be made;
2. When the original is in possession of the party against whom the evidence is offered, who fails to produce it after reasonable notice;
3. When the original is a record or other document in the custody of a public officer;

4. When the original has been recorded and a certified copy of the record is made evidence by law ;

5. When the original consists of numerous accounts or other documents, which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole.

6. The books of account and documents of merchants, corporations, and business men kept in the regular course of business and shown to be genuine and the entries therein to have been made in the ordinary course of business before the possibility of litigation arising out of the items to which they relate, shall be prima facie evidence of what they purport to state, and it shall not be necessary under these circumstances to produce the parties making the original entries.

SEC. 303. *Written agreement presumed to contain all the terms of the agreement.*—When the terms of an agreement have been reduced to writing by the parties, it is to be considered as containing all those terms, and therefore there can be, between the parties and their representatives or successors in interest, no evidence of the terms of the agreement other than the contents of the writing, except in the following cases :

1. Where a mistake or imperfection of the writing, or its failure to express the true intent and agreement of the parties, is put in issue by the pleadings ;

2. Where the validity of the agreement is the fact in dispute. But this section does not exclude evidence of the circumstances under which the agreement was made with the view of better ascertaining its meaning, to which it relates, or evidence to establish its illegality or fraud.

The term "agreement" includes deeds and instruments conveying real estate, and wills as well as contracts between parties.

SEC. 304. *Writing to be interpreted according to legal meaning.*—The language of a writing is to be interpreted according to the legal meaning it bears in the place of its execution, unless the parties have reference to a different place.

SEC. 305. *Construction of a statute or instrument containing several provisions.*—In the construction of a statute the intention of the legislature, and in the construction of an instrument, the intention of the parties, is to be pursued ; and when a general and particular provision are inconsistent, the latter is paramount to the former. So a particular intent will control a general one that is inconsistent with it.

SEC. 306. *For construction of an instrument circumstances may be shown.*—For the proper construction of an instrument, the circum-

stances under which it is made, including the situation of the subject of the instrument and the parties to it, may also be shown, so that the judge may be placed in the position of those whose language he is to interpret.

SEC. 307. *Terms of a writing presumed to be in their ordinary sense.*—The terms of a writing are presumed to have been used in the primary and general acceptation, but evidence is nevertheless admissible that they have a local, technical, or otherwise peculiar signification, and were so used and understood in the particular instance, in which case the agreement must be construed accordingly.

SEC. 308. *Instruments partly written and partly printed.*—When an instrument consists partly of written words and partly of a printed form and the two are inconsistent, the former controls the latter.

SEC. 309. *Experts and interpreters to be used in explaining certain writings.*—When the characters in which an instrument is written are difficult to be deciphered or the language is not understood by the court, the evidence of a person skilled in deciphering the characters, or who understands the language, is admissible to declare the characters or meaning of the language.

SEC. 310. *Where intention of different parties to instruments not the same.*—When the terms of an agreement have been intended in a different sense by the different parties to it, that sense is to prevail against either party in which he supposed the other understood it, and when different constructions of a provision are otherwise equally proper, that is to be taken which is the most favorable to the party in whose favor the provision was made.

SEC. 311. *Construction in favor of natural right.*—When a statute or instrument is equally susceptible of two interpretations, one in favor of natural right and the other against it, the former is to be adopted.

SEC. 312. *Material allegations only need be proved.*—No allegation contained in the complaint or answer immaterial to the issues need be proved.

SEC. 313. *Evidence must be relevant.*—Evidence must correspond with the substance of the material allegations and be relevant to the questions in dispute. Collateral questions must therefore be avoided. It is, however, within the discretion of the court to permit the inquiry into a collateral fact when such fact is directly connected with the question in dispute and is essential to its proper determination, or when it affects the credibility of a witness.

SEC. 314. *Party must prove his affirmative allegation.*—Each party must prove his own affirmative allegation. Evidence need not be given in support of a negative allegation except when such negative allegation is an essential part of the statement of the right or title

on which the cause of action or defense is founded, nor even in such case when the allegation is a denial of the existence of a document the custody of which belongs to the opposite party.

SEC. 315. *To what facts evidence may be given.*—In conformity with the preceding provision evidence may be given upon a trial of the following facts:

1. The precise fact in dispute;
2. The act, declaration, or omission of a party as evidence against such party;
3. An act or declaration of another in the presence and within the observation of a party, and his conduct in relation thereto, where the act or declaration is such as naturally to call for action or comment by such party;
4. The act or declaration, verbal or written, of a deceased person, or a person not in the Canal Zone, in respect to the relationship, birth, marriage, or death of any person related by blood or marriage to such deceased person or persons; the act or declaration of a deceased person done or made against his interests in respect to his real property;
5. After proof of a partnership or agency, the act or declaration of a partner or agent of the party within the scope of the partnership or agency during its existence. The same rule applies to the act or declaration of a joint owner, or joint debtor, or other person jointly interested with the party;
6. After proof of a conspiracy, the act or declaration of a conspirator relating to the conspiracy;
7. The act, declaration, or omission forming part of a transaction;
8. The testimony of a witness deceased or out of the jurisdiction, or unable to testify, given in a former action between the same parties, relating to the matter;
9. The opinion of a witness respecting the identity or handwriting of a person, when he has knowledge of the person or handwriting; his opinion on a question of science, art, or trade, when he is skilled therein;
10. The opinion of a subscribing witness to a writing, the validity of which is in dispute, respecting the mental sanity of the signer; and the opinion of an intimate acquaintance respecting the sanity of a person, the reason for the opinion being given;
11. Common reputation existing previous to the controversy, respecting facts of a public or general interest more than thirty years old, and in cases of pedigree and boundary;
12. Usage, to explain the true character of an act, contract, or instrument, where such true character is not otherwise plain; but usage is never admissible except as an instrument of interpretation;
13. Monument and inscription in public places, as evidence of

common reputation; and entries in family bibles or other family books or charts; engravings on rings, family portraits and the like, as evidence of pedigree;

14. The contents of a writing, when oral evidence thereof is admissible;

15. Any other facts from which the facts in issue are presumed or are logically inferable;

16. Such facts as serve to show the credibility of a witness by affecting his reputation for truth, and by showing his motives, and by evidence of contradictory statements made by him as to the subject-matter of his evidence.

SEC. 316. *Public writings.*—The written acts or record of the acts of the sovereign authority, of official bodies and tribunals and of public officers, legislative, judicial, and executive of the Canal Zone, or of the United States, or of any State of the United States or of a foreign country, and public records kept in the Canal Zone of private writings are public writings. A copy of a public writing, duly certified to be a true copy thereof, is admissible evidence in like cases and with like effect as the original writing.

SEC. 317. *Printed laws of the State or country.*—Books printed or published under the authority of the United States, or one of the States of the United States, or a foreign country, and purporting to contain statutes, codes, or other written law of such State or country or proved to be commonly admitted in the tribunals of such State or country as evidence of the written law thereof, are admissible in the Canal Zone as evidence of such law.

SEC. 318. *Attested copy of foreign law.*—A copy of the written law or other public writing of any state or country attested by the certificate of the officer having charge of the original, under the seal of the state or country, is admissible as evidence of such law or writing.

SEC. 319. *Oral proof of United States or foreign unwritten law.*—The oral testimony of witnesses, skilled therein, is admissible as evidence of the unwritten law of the United States or of any State of the United States, or foreign country, as are also printed and published books of reports of decisions of the courts of the United States or of such State or country, or proved to be commonly admitted in such courts.

SEC. 320. *Proof of domestic judicial records.*—A judicial record of the proceedings in a court of justice, or of official acts of a judicial officer in an action or special proceeding within the United States or any State or Territory thereof, or within the Canal Zone, 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 annexed, together with a certificate of the

chief judge or presiding magistrate that the attestation is in due form.

SEC. 321. *Proof of foreign judicial records.*—A judicial record of a foreign country may be proved by the attestation of the clerk, with the seal of the court annexed, if there be a clerk and seal, or of the legal keeper of the record, with the seal of his office annexed, if there be a seal, together with a certificate of the chief judge or presiding magistrate that the person making the attestation is the clerk of the court, or legal keeper of the record, and, in either case, that the signature of such person is genuine and that the attestation is in due form. The signature of the chief judge or presiding magistrate must be authenticated by the certificate of a minister or ambassador, or a consul, vice-consul, or consular agent of the United States in such foreign country.

SEC. 322. *Proof of foreign judicial record by examined copy.*—A copy of the judicial record of a foreign country is also admissible in evidence, upon proof:

1. That the copy has been compared by the witness with the original, and is an exact transcription of the whole;
2. That such original was in the custody of the clerk of the court, or other legal keeper of the same;
3. That the copy is duly attested with the seal, if there prove to be a seal of the court where the record remains, if it be the record of the court; or if there be no such seal, or if it be not the record of the court, by the signature of the legal keeper of the original.

SEC. 323. *Effect of judgment.*—The effect of a judgment or final order in an action or special proceeding before a court or judge of the Canal Zone or of the United States, or of any State or Territory of the United States, having jurisdiction to pronounce the judgment or order, shall be as follows:

1. In case of a judgment or order against a specific thing, or in respect to the probate of a will, or the administration of the estate of a deceased person, or in respect to the personal, political, or legal condition or relation of a particular person, the judgment or order is conclusive upon the title of the thing, the will or administration, or the condition or relation of the person: *Provided*, That the probate of a will or granting of letters of administration shall only be prima facie evidence of the death of the testator or intestate;
2. In other cases the judgment so ordered is, in respect to the matter directly adjudged, conclusive between the parties and their successors in interest by title subsequent to commencement of the action or special proceeding, litigating for the same thing and under the same title and in the same capacity.

SEC. 324. *What is deemed to have been adjudged in a former judgment.*—That only is deemed to have been adjudged in a former judg-

ment which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto.

SEC. 325. *When principal bound by judgment against surety.*—When the party is bound by a record, and such party stands in the relation of surety for another, the latter is also bound from the time that he has notice of the action or proceeding, and an opportunity at the surety's request to join in the defense.

SEC. 326. *Effect of judicial record of a court in the United States.*—The effect of a judicial record of a court of the United States or of a court of one of the States or Territories of the United States, is the same in the Canal Zone as in the United States, or in the State or Territory where it is made, except that it can only be enforced here by an action or special proceeding, and except, also, that the authority of a guardian, or executor or administrator does not extend beyond the jurisdiction of the Government under which he was invested with his authority.

SEC. 327. *Effect of judicial record of a court of admiralty for a foreign country.*—The effect of a judicial record of a court of admiralty of a foreign country is the same as if it were the record of a court of admiralty of the Canal Zone.

SEC. 328. *Effect of other foreign judgment.*—The effect of a judgment of any other tribunal of a foreign country, having jurisdiction to pronounce the judgment, is as follows:

1. In case of a judgment against a specific thing, the judgment is conclusive upon the title to the thing;

2. In case of a judgment against a person, the judgment is presumptive evidence of a right as between the parties and their successors in interest by a subsequent title; but the judgment may be repelled by evidence of a want of jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law or fact.

SEC. 329. *How judicial record may be impeached.*—Any judicial record may be impeached by evidence of a want of jurisdiction in the court or judicial officer, of collusion between the parties, or of fraud in the party offering the record, in respect to the proceedings.

SEC. 330. *Proof of other official documents.*—Official documents may be proved, as follows:

1. Acts of the Chief Executive of the Canal Zone, by the record of his office, certified by his secretary under the seal thereof, if there be one; acts of the Executive of the United States, by the records of the Departments of the United States Government, wherein are contained the records of such acts, certified by the heads of such departments. They may also be proved by public documents printed by order of the Chief Executive of the Canal Zone, or the President of the United States, or by order of Congress, or either House thereof, or by the order of the Isthmian Canal Commission, or by the order of

any legislative assembly which may be provided for the Canal Zone. Acts of the Executive of the territory now known as the Republic of Panama under Colombian or Panamanian administration may be proved by the records thereof in the custody of the United States officials, or officials of the said Governments, certified by the legal keeper of the records. They may also be proved by public documents printed by the order of the Chief Executive of the said Canal Zone. Acts of the Chief Executive of the Republic of Panama may be proved by the records of any department of that Executive, certified by the head of the department in which the record is;

2. The proceedings of the United States Isthmian Canal Commission, or of any legislative body that may be provided for the Canal Zone, or of Congress, by the journals of those bodies, or of either House thereof, or by published statutes or resolutions, or by copies certified by the clerk or secretary, or printed by their order. The proceedings of the legislative branch of the Government of Colombia or Panama prior to the twenty-third day of February, nineteen hundred and four, may be proved by public documents, or statutes or resolutions, printed by the order of the executive or legislative departments of the said Governments, or commonly received in those countries as such, or by copy certified under the seal of either the executive or the legislative branch of said Governments, or by a recognition thereof in some public act of the Executive of the United States;

3. The acts of the executive or the proceedings of the legislature of any State or Territory of the United States, in the same manner as provided in paragraphs one and two;

4. The acts of the executive or the proceedings of the legislature of a foreign country, by journals published by their authority, or commonly received in that country as such, or by a copy certified under the seal of the country or sovereign, or by recognition thereof in some public act of the Executive of the United States;

5. The acts of a municipal corporation of the Canal Zone, or of a board or department thereof, by a copy certified by the legal keeper thereof, or by a printed book published by the authority of such corporation;

6. Official documents of any other class in the Canal Zone, by the original, or by copy certified by the legal keeper thereof;

7. Official documents of any other class in the United States, or in any State or Territory thereof by the original, or by a copy, certified by the legal keeper thereof, together with the certificate of the secretary of state, judge of the supreme, superior, or county court, or a mayor of a city of the United States, or of such State or Territory, that the copy is duly certified by the officer having the legal custody of the original;

8. Official documents of any other class of a foreign country, by the original, or by a copy certified by the legal keeper thereof, with a certificate, under the seal of the country or sovereign, that the document is a valid and subsisting document of such country, and that the copy is duly certified by the officer having the legal custody of the original;

9. Official documents in departments of the United States Government, by the certificate of the legal custodian thereof.

SEC. 331. *Proof of public record of private writing.*—An authorized public record of a private writing may be proved by the original record, or by a copy thereof, certified by the legal keeper of the record.

SEC. 332. *Entries in official book.*—Entries in public or other official books or records, made in the performance of his duty by a public officer of the Canal Zone; or by another person in the Zone in the performance of a duty specially enjoined by law, are prima facie evidence of the facts therein stated.

SEC. 333. *Proof of judgment of justice of the peace.*—A transcript from the record or docket of a justice of the peace within the United States, or any State or Territory thereof, or of a district judge within the Canal Zone, of a judgment rendered by him of the proceedings in the action before the judgment, of the execution and return, if any, subscribed by the justice or judge and verified in the manner prescribed in the next section, is admissible evidence of the facts stated therein.

SEC. 334. *Certificate attached to transcript of justice's record.*—There must be attached to the transcript a certificate of the justice or district judge that the transcript is in all respects correct, and that he had jurisdiction of the action, and also a further certificate of the clerk of the county, if within the United States, or a State or Territory thereof, under the seal of the county, certifying that the person subscribing the transcript was at the date of the judgment a justice of the peace in the said county, and that the signature is genuine. Such judgment, proceedings, and jurisdiction may also be proved by the justice or judge himself, on the production of his docket, or by a copy of the judgment and his oral examination as a witness.

SEC. 335. *What certificate of copy of writing must state.*—Whenever a copy of a writing is certified for the purpose of evidence, the certificate must state, in substance, that the copy is a correct copy of the original, or a specific part thereof, as the case may be. The certificate must be under the official seal of the certifying officer, if there be any, or if he be the clerk of a court having a seal, under the seal of such court.

SEC. 336. *Historical works, books of science, and maps.*—Historical works, books of science, or art, published maps or charts, when

made by persons indifferent between the parties, are prima facie evidence of facts of general notoriety and interest.

SEC. 337. *Secondary evidence of the contents of a lost writing.*—An original writing must be produced and proved except as otherwise provided. If it has been lost, proof of the loss must first be made before evidence can be given of its contents. Upon such proof being made, together with proof of the due execution of the writing, its contents may be proved by a copy or by a recital of its contents in some authentic document, or by the recollection of a witness.

SEC. 338. *Secondary evidence of writing in custody of adverse party.*—If the writing be in the custody of the adverse party, he must have reasonable notice to produce it. If he then fail to do so, the contents of the writing may be proved as in the case of its loss. But the notice to produce it is not necessary where the writing is itself a notice, or where it has been wrongfully obtained or withheld by the adverse party.

SEC. 339. *Party calling for writing not bound to offer it as evidence.*—Though a writing called for by one party is produced by the other, and is thereupon inspected by the party calling for it, he is not obliged to produce it as evidence in the case.

SEC. 340. *Proof of writing.*—Any writing may be proved, either;

1. By anyone who saw the writing executed; or
2. By evidence of the genuineness of the handwriting of the maker; or
3. By a subscribing witness.

SEC. 341. *Denial of execution by subscribing witness.*—If the subscribing witness denies, or does not recollect the execution of the writing, its execution may still be proved by other evidence.

SEC. 342. *When other evidence of the execution of writing need not be produced.*—Where a writing is more than thirty years old, and evidence is given that the party against whom the writing is offered has at any time admitted its execution, or where the writing is one produced from the custody of the adverse party, and has been acted upon by him as genuine, no other evidence of the execution need be given.

SEC. 343. *Proof of handwriting.*—The handwriting of a person may be proved by anyone who believes it to be his, and has seen him write, or has seen writing purporting to be his, upon which he has acted, or been charged, and he has thus acquired knowledge of his handwriting. Evidence respecting the handwriting may also be given by comparison, made by the court, with writings admitted or treated as genuine by the party against whom the evidence is offered, or proved to be genuine to the satisfaction of the judge. Where the writing is more than thirty years old, the comparisons may be made with writings purporting to be genuine and generally respected and

acted upon as such by persons having an interest and knowing the fact.

SEC. 344. *Writings of a deceased person.*—The entries and other writings of a deceased person, made at or near the time of the transaction, and in a position to know the facts stated therein, may be read as a prima facie evidence of the facts therein stated, in the following cases:

1. When the entry was made against the interests of the person making it;

2. When it was made in a professional capacity, and in the ordinary course of professional conduct;

3. When it was made in the performance of a duty specially enjoined by law, or in the course of the ordinary and regular duties of the person making the entry.

SEC. 345. *What are original entries.*—When an entry is repeated in the regular course of business, one being copied from another at or near the time of the transaction, all the entries are equally regarded as originals.

SEC. 346. *Original records not to be removed from office.*—The record of a conveyance of real property, or any other record, transcript of which is admissible in evidence, must not be removed from the office at which it is kept, except upon order of a court, in cases where the inspection of the record is shown to be essential to the just determination of the cause or action or proceeding pending, or where the court is held in the same building with such office.

SEC. 347. *Proof of real-estate titles.*—Every instrument conveying or affecting real property situated in the Canal Zone acknowledged or proved and certified as provided by law, may, together with the certificate of the acknowledgment or proof, be read in evidence in an action or proceeding without further proof; also the original record of such conveyance or instrument thus acknowledged or proved, or a certified copy of the record of such conveyance or instrument thus acknowledged or proved, may be read in evidence with the like effect as the original instrument, without further proof.

SEC. 348. *View of an object by the court.*—Whenever an object has such a relation to the fact in dispute as to afford reasonable grounds of belief respecting it, such object may be exhibited to the court, or its existence, situation, or character proved by witnesses, as the court in its discretion may determine.

SEC. 349. *Conclusive presumption.*—The following presumptions or deductions, which the law expressly directs to be made from particular facts, are deemed conclusive:

1. Whenever a party has, by his own declaration, act, or omission, intentionally and deliberately led another to believe a particular thing true, and to act upon such belief, he can not, in any litigation

arising out of such declaration, act, or omission, be permitted to falsify it;

2. The tenant is not permitted to deny the title of his landlord at the time of the commencement of the relation of landlord and tenant between them;

3. The issue of a wife cohabiting with her husband, who is not impotent, is indisputably presumed to be legitimate, if not born within the one hundred and eighty days immediately succeeding the marriage, or after the expiration of three hundred days following its dissolution;

4. The judgment or order of a court, when declared by the court to be conclusive.

SEC. 350. *Disputable presumptions.*—The following presumptions are satisfactory, if uncontradicted, but they are disputable, and may be contradicted by other evidence:

1. That a person is innocent of crime or wrong;
2. That an unlawful act was done with an unlawful intent;
3. That a person intends the ordinary consequence of his voluntary act;
4. That a person takes ordinary care of his own concerns;
5. That evidence willfully suppressed would be adverse if produced;
6. That money paid by one to another was due to the latter;
7. That a thing delivered by one to another belonged to the latter;
8. That an obligation delivered up to the debtor has been paid;
9. That former rent or installments had been paid when a receipt for the later ones is produced;
10. That things which a person possesses are owned by him;
11. That a person is the owner of property from exercising acts of ownership over it, or from common reputation of his ownership;
12. That a person in possession of an order on himself for payment of money, or the delivery of anything, has paid the money or delivered the thing accordingly;
13. That a person acting in a public office was regularly appointed or elected to it;
14. That official duty has been regularly performed;
15. That a court, or judge acting as such, whether in the Canal Zone or elsewhere, was acting in the lawful exercise of his jurisdiction;
16. That all the matters within an issue in an action were laid before the court and passed upon by it; and in like manner that all matters within a submission to arbitration were laid before the arbitrators and passed upon by them;
17. That private transactions have been fair and regular;

18. That the ordinary course of business has been followed;
19. That a promissory note or bill of exchange was given or indorsed for a sufficient consideration;
20. That an indorsement of a negotiable promissory note or bill of exchange was made after the time and at the place of making the note or bill;
21. That a writing is duly dated;
22. That a letter duly directed and mailed was received in the regular course of the mail;
23. Identity of person from identity of name;
24. That a person not heard from in seven years is dead;
25. That acquiescence resulted from a belief that the thing acquiesced in was conformable to the law or fact;
26. That things have happened according to the ordinary course of nature and the ordinary habits of life;
27. That persons acting as copartners have entered into a contract of copartnership;
28. That a man and woman deporting themselves as husband and wife have entered into a lawful contract of marriage;
29. That a child born in lawful wedlock, there being no divorce, absolute or from bed and board, is legitimate;
30. That a thing once proved to exist continues as long as is usual with things of that nature;
31. That the law has been obeyed;
32. That a document or writing more than thirty years old is genuine, when the same has since been generally acted upon as genuine by persons having an interest in the question, and its custody has been satisfactorily explained;
33. That a printed or published book, purporting to be printed or published by public authority was so printed or published;
34. That a printed or published book, purporting to contain reports of cases adjudged in tribunals in the State or country where the book is published, contains correct reports of such cases;
35. That a trustee or other person whose duty it was to convey real property to a particular person has actually conveyed to him when such presumption is necessary to perfect the title of such person or his successor in interest;
36. That there was a good and sufficient consideration for a written contract;
37. When two persons perish in the same calamity, such as wreck, battle, or conflagration, and it is not shown who died first, and there are no particular circumstances from which it can be inferred, the survivorship is presumed from the probabilities resulting from the strength and age of the sexes, according to the following rules:

First. If both those who have perished were under the age of fifteen years, the older is presumed to have survived;

Second. If both were above the age of sixty, the younger is presumed to have survived;

Third. If one be under fifteen and the other above sixty, the former is presumed to have survived;

Fourth. If both be over fifteen and under sixty, and the sexes be different, the male is presumed to have survived. If the sexes be the same, then the older;

Fifth. If one be under fifteen or over sixty, and the other between those ages, the latter is presumed to have survived.

38. That a writing written merely as a receipt or acknowledgment is true, but the same, if produced in evidence, may be shown to have been given by mistake, or procured by fraud, or explained as to its legal effect.

SEC. 351. *Agreements invalid unless made in writing.*—In the following cases an agreement hereafter made shall be unenforceable by action unless the same, or some note or memorandum thereof, be in writing, and subscribed by the party charged, or by his agent; evidence, therefore, of the agreement can not be received without the writing, or secondary evidence of its contents:

1. An agreement that by its terms is not to be performed within a year from the making thereof;

2. A special promise to answer for the debt, default, or miscarriage of another;

3. An agreement made upon the consideration of marriage, other than a mutual promise to marry;

4. An agreement for the sale of goods, chattels, or things in action, at a price not less than fifty dollars, unless the buyer accept and receive part of such goods and chattels, or the evidences, or some of them of such things in action, or pay at the time some part of the purchase money; but when a sale is made by auction and entry is made by the auctioneer in his sales book, at the time of the sale, of the amount of property sold, terms of sale, price, names of the purchasers, and person on whose account the sale is made, it is a sufficient memorandum;

5. An agreement for the leasing for a longer period than one year, or for the sale of real property, or of an interest therein, and such agreement, if made by the agent of the party sought to be charged, is invalid unless the authority of the agent be in writing and subscribed by the party sought to be charged;

6. No evidence is admissible to charge a person upon a representation as to the credit 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.

SEC. 352. *Alteration in writing.*—The party producing a writing as genuine which has been altered, and appears to have been altered after its execution, in a part material to the question in dispute, must account for the appearance of the alteration. He may show that the alteration was made by another, without his concurrence, or was made with the consent of parties affected by it or otherwise properly or innocently made, or that the alteration did not change the meaning or language of the instrument. If he do that he may give the writing in evidence, but not otherwise.

SEC. 353. *Leading questions.*—A question which suggests to the witness the answer which the examining party desires is a leading question. On direct examination, leading questions are not allowed, except in the sound discretion of the court under special circumstances making it appear that the interest of justice require it.

SEC. 354. *Witness may refer to memorandum.*—A witness may be 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 such case the writing must be produced and may be seen by the adverse party, who may, if he choose, cross-examine the witness upon it, and may read it in evidence.

So, also, a witness may testify from such writing, though he retain no recollection of the particular facts, if he is able to swear that the writing correctly stated the transaction when made; but such evidence must be received with caution.

SEC. 355. *Leading questions on cross-examination.*—The opposite party may cross-examine a witness to any facts stated in his direct examination, or connected therewith, and in so doing he 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.

SEC. 356. *Party may not impeach his own witness.*—The party producing a witness is not allowed to impeach his credit by evidence of a bad character, but may contradict him by other evidence, and in the discretion of the court, in order to show that the witness has misled him into calling him to the stand, may also show that he has made at other times statements inconsistent with present testimony, and may, if the court permit, cross-examine said witness as to such conflicting statements.

SEC. 357. *Recalling witness.*—After the examination of a witness by both sides has been concluded, the witness can not be recalled without leave of the court. The court will grant or withhold leave in its discretion, as the interests of justice may require.

SEC. 358. *Impeaching witness.*—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, honesty, or integrity is bad; 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.

SEC. 359. *Impeachment of witness by inconsistent statements.*—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, the statement must be related to him, with the circumstances of the times and places and the persons present, and he must be asked whether he made such statements, and, if so, allowed to explain them. If the statements be in writing they must be shown to the witness before any question is put to him concerning them.

SEC. 360. *Evidence of good character of the witness.*—Evidence of the good character of the party or witness is not admissible in a civil action until the character of such party or witness has been impeached, or unless the issue involved is character.

SEC. 361. *Right of opposite party to inspect writing shown to a witness.*—Whenever a writing is shown to a witness, it may be inspected by the opposite party.

SEC. 362. *Offer to compromise.*—An offer to compromise is not an admission that anything is due, and is not admissible in evidence.

SEC. 363. *Unaccepted offer in writing equivalent to tender.*—An offer in writing to pay a particular sum of money, or to deliver a written instrument or specific personal property is, if rejected, equivalent to the actual production and tender of the money, instrument, or property.

Affidavits and depositions.

SEC. 364. *Use of affidavit.*—An affidavit is a written declaration under oath, made without notice to the adverse party, and may be used to verify a pleading, or paper in a special proceeding, to prove the service of a summons, notice, or other paper, in an action or special proceeding to obtain a provisional remedy, examination of witnesses, or stay of proceedings, or upon a motion, and in any other case specially permitted by any other provision of this Code. Evidence of the publication of a document, or notice required by law, or by an order of a court or judge, to be published in a newspaper, may be given 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. If such affidavit be made in an action or special proceeding pending in a court, it may be filed with the court or the clerk thereof. In such case the original affidavit or a copy thereof, certi-

fied by the judge of the court or the clerk having it in custody, is prima facie evidence of the facts stated therein.

SEC. 365. *Who may administer oath for affidavit to be used in the Zone.*—An affidavit to be used before any court, judge, or officer of the Canal Zone, may be taken before any judge of any court, or any notary public in the Zone.

SEC. 366. *Who may administer oath for affidavit taken in the United States.*—An affidavit taken in the United States, or in any State or Territory thereof, to be used in the Canal Zone, may be taken before a commissioner, appointed by the Chief Executive of the Canal Zone, to take affidavits and depositions in the United States, or in such State or Territory, or before any notary public in the United States, or in such State or Territory, or before any judge, or clerk of a court of record having a seal.

SEC. 367. *Affidavit taken in a foreign country.*—An affidavit taken in a foreign country, to be used in the Canal Zone, may be taken before an ambassador, minister, consul, or vice-consul, or consular agent of the United States, or before any judge of a court of record having a seal, in any foreign country.

SEC. 368. *Certification of affidavit taken in the United States or a foreign country.*—When an affidavit is taken before a judge or a court in the United States, or in any State or Territory thereof, or in a foreign country, the genuineness of the signature of the judge, the existence of the court, and the fact that such judge is a member thereof must be certified by the clerk of the court under the seal thereof.

Depositions.

SEC. 369. *Depositions may be used.*—In all cases other than those expressly provided in this Code, where a written declaration under oath is used, it must be a deposition, as prescribed by this Code.

SEC. 370. *Testimony of a witness out of the Zone may be taken by deposition.*—Testimony of a witness out of the Canal Zone may be taken by deposition in an action at any time after the service of a summons or the appearance of the defendant; and, in a special proceeding, at any time after a question of fact has arisen therein.

SEC. 371. *Depositions of a witness within the Canal Zone.*—The testimony of a witness in the Canal Zone, may be taken by deposition, in an action, any time after the service of the summons or the appearance of the defendant, and, in a special proceeding after the question of fact has arisen therein, in the following cases:

1. When the witness is a party to the action or proceeding, or an officer, or a member of a corporation which is a party to the action or proceeding, or a person for whose immediate benefit the action or proceeding is prosecuted or defended;

2. When the witness is about to leave the Canal Zone and will probably continue absent when the testimony is required;
3. When the witness otherwise liable to attend the trial is nevertheless too ill or infirm to attend;
4. When the testimony is required upon a motion, or in any other case, when the oral examination of a witness is not required;
5. When the witness is the only one who can establish facts or a fact material to the issue: *Provided*, The deposition of such witness shall not be used if his presence can be procured at the time of the trial of the cause.

SEC. 372. *How deposition of a witness out of the Canal Zone may be taken.*—The deposition of a witness out of the Canal Zone may be taken upon a commission issued from the court in which the action or proceeding is pending, under the seal of the court, upon an order of the court, or a judge or justice thereof, on the application of either party, upon five days' previous notice to the other. If the court be that of a district judge, the commission shall have attached to it a certificate under seal by the clerk of the Circuit Court of the circuit in which the court is held, to the effect that the person issuing the same was an acting district judge at the date of the commission. If issued to any place within the United States, or any State or Territory thereof, it may be directed to a person agreed upon by the parties, or, if they do not agree, to any justice of the peace, or notary public, or to any Federal or State judge, or to any commissioner authorized by the laws of the United States to administer oaths and write depositions. If issued to any country out of the United States, or the territories thereof, it may be directed to a minister, ambassador, consul, vice-consul, or consular agent of the United States in such country, or to any person agreed upon by the parties.

SEC. 373. *Interrogatories may be annexed to the commission.*—Such proper interrogatories, direct and cross, as the respective parties may prepare, to be settled, if the parties disagree as to their form, by the judge or officer granting the order for the commission, at a day fixed in the order, may be annexed to the commission; or, when the parties agree to that mode, the examination may be oral and without written interrogatories.

SEC. 374. *Duties of official taking the deposition.*—The commission must 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 interrogatories, in answer to oral questions, in respect to the question in dispute, and to certify the deposition to the court, in a sealed envelope directed to the clerk or other person designated or agreed upon, and forwarded to him by mail or other channel of conveyance.

SEC. 375. *Trial not necessarily delayed pending taking of deposition.*—A trial or other proceeding must not be postponed by reason of a commission not returned, except upon evidence satisfactory to the court that the testimony of the witness is necessary, and that proper diligence has been used to obtain it.

SEC. 376. *Such deposition may be used by either party.*—The deposition mentioned in the four preceding sections may be used by either party on the trial or other proceeding against any other party giving or receiving a notice, subject to all just exceptions.

SEC. 377. *Taking depositions within the Canal Zone.*—Either party may have the deposition taken of a witness in the Canal Zone in either of the cases mentioned, before any judge, or notary public, on serving on the adverse party previous notice of the time and place of examination, together with a copy of an affidavit showing that the case is within such section. Such notice must be served at least two days before the time is fixed for taking the deposition, and must in all cases give the party reasonable time after notice to be present at the taking thereof, and without a notice of such reasonable length of time the deposition shall not be admissible in evidence. The court shall determine, if the deposition is offered in evidence, whether a reasonable notice of taking has been given.

SEC. 378. *Manner of taking, certifying, and transmitting depositions.*—Either party may attend the examination and put such questions, direct and cross, as may be proper. The deposition, when completed, must be carefully read to the witness and corrected by him in any particular, if desired; it must then be subscribed by the witness, certified by the judge or officer taking the deposition, inclosed in an envelope or wrapper, sealed, and directed to the clerk of the court in which the action is pending, or to such person as the parties in writing may agree upon, and either delivered by the judge or officer to the clerk or such person, or transmitted through the mail, or by some other private conveyance, and thereupon such deposition may be used by either party upon the trial or other proceedings against any party giving or receiving a notice, subject to all legal exceptions, which may be taken when the deposition is read; except that objections to the form of a question which might be corrected if the adversary party's attention were invited thereto at the time, shall be deemed to have been waived unless noted at the time the deposition is taken. The deposition thus taken may be also read in case of the death of the witness; but the deposition may be excluded if the court finds that the taking was in any respect unfair or fraudulent.

SEC. 379. *A stenographer may be employed in taking deposition.*—The deposition shall be written by the judge or officer taking it, or

by some disinterested person in the presence and under the direction of the judge or officer. Such disinterested person may be a stenographer and may take the deposition in shorthand, but must forthwith reproduce it in longhand, and then it shall be subscribed by him and certified, inclosed and forwarded as provided.

SEC. 380. *Deposition may be read at any stage of action.*—When a deposition has been once taken, it may be read by either party in any stage of the same action or proceeding where the reception of evidence is proper, or in any other action between the same parties upon the same subject-matter, and is then deemed the evidence of the party reading it.

SEC. 381. *Deposition to be used outside of the Canal Zone.*—Any party to an action or special proceeding in a court, or before a judge of the United States, or any State or Territory thereof, or of any foreign country, may obtain the testimony of a witness residing in the Canal Zone, to be used in such action or proceeding, in the cases mentioned in the next two sections.

SEC. 382. *Summoning witnesses to appear before commissioner.*—If a commission to take such testimony has been issued from the court, or a judge thereof, before which such action or proceeding is pending, on producing the commission to any judge in the Canal Zone, with an affidavit satisfactory to him of the materiality of the testimony, he may issue a subpoena to the witness, requiring him to appear and testify before the commissioner named in the commission, at a specified time and place.

SEC. 383. *When commission has not been issued.*—If a commission has not been issued, and it is made to appear to any judge by an affidavit satisfactory to him :

1. That the testimony of the witness is material to either party ;
2. That a commission to take the testimony of such witness has not been issued ;
3. That according to the law of the State or country where the action or special proceeding is pending, the deposition of a witness taken under such circumstances and before such judge or justice, will be received in the action or proceeding ; he must issue his subpoena requiring the witness to appear and testify before him, at a specified time and place.

SEC. 384. *Taking the deposition.*—Upon the appearance of the witness, the judge or justice of the peace, or commissioner, as the case may be, must cause his testimony to be taken in writing, and must certify and transmit the same to the court or judge before whom the action or proceeding is pending, in such manner as the law of that State or country requires.

SEC. 385. *Oath of witness giving deposition.*—Every witness giving a deposition shall take an oath that the deposition by him subscribed

contains the truth, the whole truth, and nothing but the truth, and the authority taking the deposition shall certify that such oath has been administered.

SEC. 386. *Perpetuation of testimony.*—The testimony of any witness may be taken for perpetual preservation, when the party desiring to take it shall present to any judge of the Supreme Court, or Circuit Court, a petition verified by oath of the applicant, stating:

1. That the applicant expects to be a party to an action in a court in the Canal Zone, and giving the names of the persons who he expects will be adverse parties; or

2. That the proof of some fact is necessary to perfect the title of property in which he is interested, or to establish marriage, descent, heirship, or any other matter which may hereafter become material to establish, though no action may at the time be anticipated, or, if anticipated, the names of the parties thereto may not be known; and

3. The name of the witness to be examined, his place of residence, and a general statement of facts expected to be proved.

SEC. 387. *Order of judge for perpetuation of testimony.*—The judge to whom such petition is presented shall make an order allowing the examination, before himself, and prescribing the time and place for taking the testimony, and the notice to be given, which notice, if the parties expectant are known to reside within the Canal Zone, must be personally served, or, if unknown, must be served on the clerk of the Circuit Court where the property to be affected by such evidence is situated, and by publication thereof in some newspaper of general circulation on the Isthmus where the property is situated, to be designated by the judge, for three successive weeks prior to the time of taking the testimony.

SEC. 388. *Taking the testimony.*—At the time and place designated in the notice provided in the last preceding section the judge shall require proof that the order of notice has been complied with, and certify that fact, and shall thereupon proceed to take the deposition named in the order of the judge; or, if more than one witness is thus named, such of them as appear before him at the time designated, but the taking of the same may be continued from time to time.

SEC. 389. *Manner of conducting examination.*—The examination must be by question and answer. The deposition when completed, must be carefully read to and subscribed by the witness, and certified by the judge taking the same, who shall also certify that the witness was duly sworn, and the deposition shall then, together with the petition and order of the judge for taking the testimony, be sealed up and delivered or transmitted to the clerk of the Circuit Court of the circuit in which the applicant resides. The clerk shall indorse on the deposition the date when the same with its accompanying papers was

filed in his office, and shall securely retain the same, for the use hereinafter provided.

Any party having a legal interest in the subject-matter of the deposition shall be entitled to receive from the clerk of the court having the lawful custody thereof a certified copy of the deposition, upon payment of lawful fees for making and certifying such copy.

SEC. 390. *Papers filed prima facie evidence of regularity.*—The petition and order, and certificate of service, and papers filed by the judge as provided in the last preceding section, are prima facie evidence of the facts stated therein, to show compliance with the provisions of the four preceding sections.

SEC. 391. *Use of such deposition.*—If a trial be had between the parties named in the petition as parties expectant, or their successors in interest, or between any parties wherein it may be material to establish the facts which such deposition proves or tends to prove and whose interest was unknown to the party taking the deposition at the time of taking, upon proof that the witnesses whose depositions have thus been taken are dead or insane, or can not be found, or are unable, by reason of age or other infirmity, to give their testimony in court, the depositions, or certified copies thereof, may be used by either party, subject to all legal objections.

SEC. 392. *Effect of testimony so taken.*—The deposition so taken and read in evidence shall have the same effect as the oral testimony of the witness. Any objection which would be proper to take if the witness were testifying orally may be taken to the witness or to any part of his deposition when the same is read upon the trial.

CHAPTER XIII.

VENUE OF ACTIONS.

SEC. 393. *Venue of actions.*—Actions to confirm titles to real estate, or to secure a partition of real estate, or to cancel clouds, or remove doubts from the titles of real estate, or to obtain possession of real estate, or to recover damages for injuries to real estate, or to establish any interest, right, or title in or to real estate, or actions for the condemnation of real estate for public use, shall be brought in the judicial circuit where the land, or some part thereof, is situated; actions against executors, administrators, and guardians touching the performance of their official duties, and actions for account and settlement by them, and actions for the distribution of the estates of deceased persons among the heirs and distributees, and actions for the payment of legacies, shall be brought in the circuit in which the will was admitted to probate, or letters of administration were granted, or the guardian was appointed. And all actions not herein

otherwise provided for may be brought in any circuit where the defendant or necessary party defendant may reside or be found, or in any circuit where the plaintiff or one of the plaintiffs resides, at the election of the plaintiff, except in cases where other special provision is made in this Code. In case neither the plaintiff nor the defendant resides within the Canal Zone and the action is brought to seize or obtain title to property of the defendant within the Canal Zone, the action shall be brought in the circuit where the property which the plaintiff seeks to seize or to obtain title to is situated or is found: *Provided*, That in an action for the foreclosure of a mortgage upon real estate, when the service upon the defendant is not personal, but is by publication, in accordance with law, the action must be brought in the circuit where the land lies. And in all cases process may issue from the court in which an action or special proceeding is pending, to be in force in any circuit to bring in defendants and to enforce all orders and decrees of the court. The failure of the defendant to object to the venue of the action at the time of entering his appearance in the action shall be deemed a waiver on his part of all objection to the place or tribunal in which the action is brought, except in the actions referred to in this section relating to real estate, and actions against executors, administrators, and guardians, and for the distribution of estates and payment of legacies.

CHAPTER XIV.

PROCEEDINGS WHEN JUDGE IS DISQUALIFIED OR DISABLED.

SEC. 394. *Proceeding when judge disqualified.*—Whenever a judge in a Circuit Court is disqualified, under the provisions of the Code, to sit in any action, the judge shall immediately notify the Chief Justice of the Supreme Court of his disqualification, and thereupon the judges of the Supreme Court shall designate some other judge of a Circuit Court, to hold such a term of court, or such part thereof as may be necessary where such action may be pending, and to preside at the trial thereof, and the judge so designated shall in all respects have the same power in the action as though he had been the regular judge whose duty it was to preside in the court. But if the judges of the Supreme Court shall certify to the Chief Executive that it is inconvenient to assign any other judge to hold a term, or to try the action, the Chief Executive shall thereupon commission some person learned in the law to attend and hold said court, with the same power as though he had been the regular judge thereof. Any special judge ordered under the provisions of this section, shall receive a compensation of fifteen dollars, United States money, per day, and necessary expenses for the time actually employed in the trial.

SEC. 395. *Proceeding where judge is physically disabled.*—When a judge of a Circuit Court is unable, from sickness or other physical disability, to attend and hold any court, at the time and place required by law, temporary provision for a judge to hold the term of court shall be made, as provided in the preceding section.

CHAPTER XV.

WITNESSES.

SEC. 396. *Witnesses.*—The testimony of all witnesses, except such as has been taken in writing in the form of depositions as provided by law, shall be given on oath in open court orally, and each witness may be orally cross-examined by the adverse party or his counsel with sufficient fullness and freedom to test his accuracy and truthfulness and freedom from interest or bias, or the reverse, and to elicit all important facts bearing upon the issue. The court shall be liberal in allowing cross-examination, but shall have the power to restrict it so as to confine it to the purposes last above specified and to prevent irrelevant or insulting interrogatories.

SEC. 397. *Qualification of witness.*—All persons, without exception, otherwise than as specified in the next section, who, having organs of sense, can perceive, and, perceiving, make known their perceptions to others, may be witnesses. Neither the parties nor other persons, who have an interest in the event of an action or proceeding shall be excluded; nor shall those who have been convicted of crime; nor shall any person be excluded on account of his opinion on matters of religious belief. But in every case the credibility of the witness may be drawn in question by competent evidence, and the court in weighing the testimony of any witness shall make due allowance for the interest or credibility of the witness, as the facts disclosed may require.

SEC. 398. *Incompetency of witnesses.*—The following persons can not be witnesses:

1. Those who are of unsound mind at the time of their production for examination, to such degree as to be incapable of perceiving and making known their perceptions to others;

2. Children who appear to the court to be of such tender age and inferior capacity as to be incapable of receiving the just impressions of the facts respecting which they are examined, or of relating them truly;

3. A husband cannot 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 communication made by one to the other during the marriage; but this exception does not

apply to a civil action or proceeding by one against the other, or to a criminal action or proceeding for a crime committed by one against the other;

4. An attorney cannot, without the consent of his client, be examined as to any communication made by the client to him, or his advice given thereon in the course of professional employment; nor can an attorney's secretary, stenographer, or clerk be examined, without the consent of client concerning any fact, the knowledge of which has been acquired in such capacity;

5. A clergyman or priest cannot, without the consent of the person making the confession, be examined as to any confession made to him in his professional character in the course of discipline enjoined by the church to which he belongs;

6. A public officer cannot be examined during his term of office or afterwards as to communications made to him in official confidence, when the court finds that the public interests would suffer by the disclosure;

7. Parties or assignors of parties to an action or proceeding, or persons in whose behalf an action or proceeding is prosecuted, against an executor or administrator or other representative of a deceased person, or against a person of unsound mind, upon a claim or demand against the estate of such deceased person or against such person of unsound mind, cannot testify as to personal transactions with such deceased person, or person of unsound mind, unless the personal representative of such person shall have first introduced proof as to such transactions.

CHAPTER XVI.

DUTIES OF THE CLERK OF THE CIRCUIT COURT.

SEC. 399. *General duties of the clerk.*—The clerk shall be the recording officer of all the proceedings of the court. He or his deputy may, at any time, receive and file all complaints, answers, motions, reports, injunctions, orders, judgments, decrees, or other papers affecting an action or special proceeding offered for that purpose; and shall indorse upon all such papers the time when and the party by whom they were respectively filed, and may issue under the seal of the court, all process authorized by law to be issued by him and proper in any action or proceeding pending in the court of which he is clerk. He may administer oaths in all cases where oaths are proper to be administered. He shall preserve and keep all records, files, papers, and books belonging to his office. He shall in person or by deputy attend all sessions of the court, and keep minute books, in which he shall record, under the direction of the judge, all the proceedings of the

court. He may issue certified copies of all papers and records within his office, under the seal of the court. His acts shall at all times be under the direction of the judge.

He shall also act as ex officio registrar of land titles until relieved by law, and shall keep proper books of record which shall at all reasonable hours be open to the public.

SEC. 400. *The docket.*—The minute book prescribed in the preceding section shall be called a docket, and each page thereof shall be properly prepared for receiving all the entries appertaining to a single action. It shall contain the names of the plaintiff and defendant, the date when the complaint, answer, demurrer, bill of exceptions, execution, and all motions, and all other papers in the action have been filed or issued, and a brief statement of all orders, judgments, and other proceedings therein, so that by a reference to a single page the whole history of the action may be briefly outlined. The docket shall be duly indexed, both direct and indirect, in the alphabetical order of the names of the parties, and of each of them, so that the page of the docket containing the entries in each case may be readily found.

SEC. 401. *New dockets.*—A new docket shall be prepared by the clerk when ordered by the court, omitting therefrom all actions standing upon the old docket and which have been finally disposed of before the preparation of the new docket. Upon the new docket, actions shall be entered in the same order in which they stood upon the last former docket and upon the page devoted to each action shall be copied all the entries pertaining to that action contained in the former docket. The new docket shall be indexed as provided in the preceding section.

SEC. 402. *Books of final record.*—Immediately after the final termination of an action in which no further proceedings, appellate or otherwise, can be had except the enforcement of the judgment, the clerk shall record the final judgment, in a book to be kept for that purpose, and styled "The Judgment Docket," but he shall not record the evidence which has been taken in the action, nor any part of the arguments of counsel; nor shall he record the pleadings or other proceedings in the action, except so far as it may be necessary to show the important steps taken in the litigation, unless specially ordered by the court to do so.

SEC. 403. *Custody of moneys paid into court.*—Whenever moneys are paid into or deposited in court, the same shall be delivered to the clerk in person, or to such of his deputies as shall be specially authorized by his appointment in writing to receive the same. He must keep the same subject to the order of the court and shall keep each fund distinct, and open an account with each.

CHAPTER XVII.

PROCESS.

Preliminary process.

SEC. 404. *Commencement of actions.*—Civil actions must be commenced by filing a complaint with the clerk of the court in which the action is to be instituted. The date of the filing of the complaint upon which process is issued and duly served shall be deemed to be the true time of the commencement of the action.

SEC. 405. *Proceedings of clerk on filing complaint.*—The clerk must endorse on the complaint the day, month, and year that it is filed; and shall forthwith issue one summons or more for calling the defendants into court.

SEC. 406. *Defendants residing in different circuits.*—If the defendants reside in different circuits, one summons shall issue for all the defendants living in one circuit and another for all the defendants living in another circuit, and in the same way until a summons has been issued for all of the defendants.

SEC. 407. *The summons.*—The summons must be directed to the defendant, signed by the clerk and issued under the seal of the court, and must contain:

1. The names of the parties to the action, the court in which it is brought, and the circuit in which the complaint is filed;

2. The direction that the defendant appear within ten days, if the summons is served within the Canal Zone; within forty days, if served elsewhere; and answer the complaint within the time fixed by the rules of court;

3. A notice that unless the defendant so appears and answers, plaintiff will take judgment by default and demand from the court the relief applied for in the complaint;

4. A copy of the complaint.

SEC. 408. *Summons lost or not served.*—If a summons is returned without being served upon any or all of the defendants or if it has been lost, the clerk, upon demand of the plaintiff, may issue other summons, as occasion may require, in the same form as the original.

SEC. 409. *Service of summons.*—The summons may be served by the marshal of the Supreme Court or the marshal of the circuit where the defendant is found, or in which service is made, or by his authorized deputy or by the complainant, his agent or attorney. A copy of the summons and complaint must be served upon each of the defendants. When service of the summons has been completed it must be returned with a certificate of its service to the office of the clerk from which it is issued. The certificate of service must state in full the time, place, and manner of making service.

SEC. 410. *Service by indifferent person.*—When neither the marshal of the Supreme Court nor the marshal of the circuit nor his deputy is conveniently available for the service of a summons, the judge or clerk of the court may, by writing indorsed upon the summons, appoint some disinterested person to serve the summons. When the service has been completed by such disinterested person, it shall be returned to the office of the clerk from which it issued, with a certificate of the time, place, and manner of its service, signed by the party making the service, together with an affidavit of such person that the facts stated in his certificate are true.

SEC. 411. *Manner of serving summons.*—The summons must be served by delivering a copy thereof, as follows:

1. If the suit is against a corporation formed under the laws of the Canal Zone, to the President or other head of the corporation, secretary, cashier, or managing agent thereof;

2. If the suit is against a foreign corporation, or a non-resident joint stock company, or association doing business in and having a managing or business agent, cashier, or secretary within the Canal Zone, to such agent, cashier, or secretary; or to any agent authorized by the corporation, joint stock company, or association to accept service for it or them;

3. If against a minor under the age of thirteen years residing within the Canal Zone, to such minor, personally, and also to his father, mother, or guardian; or, if there be none within the Zone, then to any person having the care or control of such minor, or with whom he resides, or in whose service he is employed;

4. If against a person residing within the Zone who has been judicially declared of unsound mind, or incapable of conducting his own affairs, and for whom a guardian has been appointed, to such person and also to his guardian;

5. If against a city or municipality, to the mayor or president, or other head of the legislative department thereof, or to the clerk or secretary thereof;

6. In all other cases, to the defendant personally, or by leaving a copy at his usual place of residence, in the hands of some person resident therein of sufficient discretion to receive the same. But service upon a corporation, as provided, may be made by leaving the copy at the office of the proper officer thereof if such officer cannot be found.

SEC. 412. *What equivalent to service.*—An acknowledgment on the back of a summons by the defendant or his voluntary appearance in the action shall be equivalent to service.

SEC. 413. *Service upon absent or unknown defendants.*—Where the person on whom service is to be made resides out of the Canal Zone, or has departed therefrom, or cannot, after due diligence, be found

within the Zone, or conceals himself to avoid the service of summons, or is a foreign corporation having no managing or business agent, cashier, or secretary within the Zone, and the fact appears by affidavit to the satisfaction of the judge of the court where the action is pending, and it also appears by such affidavit that a cause of action exists against the defendant in respect to whom the service is to be made, or that he is a necessary or proper party to the action; and when it appears by such affidavit, or by the complaint on file that it is an action which relates to, or the subject of which is, real or personal property within the Zone, in which such person defendant or foreign corporation defendant, has or claims a lien or interest, actual or contingent, or in which the relief demanded consists wholly or in part in excluding such person or foreign corporation from any interest therein, such judge may make an order that the service may be made by publication of the order which shall fix the date on which the defendant is required to appear.

SEC. 414. *Order for service by publication.*—The order must direct the publication to be made in such newspaper or newspapers, to be designated by the judge, as is, or are most likely to give notice to the person to be served, and for such length of time as may be deemed reasonable, at least once a week for three consecutive weeks; but the last publication against a defendant residing out of the Zone, or absent therefrom, must not be less than forty days before the day on which the defendant is required to appear. In case of publication, where the residence of a non-resident or absent defendant is known, the judge must direct a copy of the summons and complaint to be forthwith deposited by the clerk in the postoffice, postage prepaid, directed to the person to be served, at his place of residence. If the residence of the defendant is unknown then to his last known place of residence with the request to forward if not called for in five days. When publication is ordered, personal service of a copy of the summons and complaint outside of the Zone is equivalent to publication and deposit in the postoffice and in either case the service of the summons is complete at the expiration of the time prescribed by the order of publication. Said order of publication shall be made as brief as a proper notice will permit.

SEC. 415. *Proof of the service.*—Proof of the service of summons and complaint must be made, as follows:

1. If served by a marshal or deputy, by his certificate thereof on the summons;
2. If by any other person, by his affidavit thereof; or
3. In case of publication, by the affidavit of the printer or his foreman, or principal clerk, to which affidavit a copy of the publication shall be attached; and an affidavit showing the deposit of a

copy of the summons, in the postoffice, that the same has been deposited; or

4. The written admission of the defendant. The certificate or affidavit must state the time and place of service.

SEC. 416. *Service in actions affecting the title to land.*—In an action affecting the title or right of possession of real property, the plaintiff, at the time of filing the complaint, and the defendant, at the time of filing his answer, when affirmative relief is claimed in such answer, or at any time afterwards, may record in the office of the registrar of land titles in the circuit in which the property is situated a notice of the pendency of the action, containing the real names of the parties and the object of the action, and a description of the property in that circuit affected thereby. From the time only of filing such notice for record shall a purchaser, or incumbrancer of the property affected thereby, be deemed to have constructive notice of the pendency of the action.

CHAPTER XVIII.

SUBPÆNAS, AND COMPELLING ATTENDANCE OF WITNESSES.

SEC. 417. *Subpœna or process to procure the attendance of witness.*—The process by which the attendance of a witness is required is called a subpœna. It is a writ directed to a person and requiring his attendance at a particular time and place to testify as a witness. 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, in which case it is called a subpœna duces tecum.

SEC. 418. *Issuing of the subpœna.*—The subpœna shall be issued as follows:

1. To require the attendance before a court or at the trial of an issue therein, it shall be issued and shall be signed by the judge or clerk of the court before which the attendance is required and in which the issue is pending.

2. To require attendance out of the court before a judge, justice, or other officer authorized to administer oaths, or to take testimony in any manner under the laws of the Canal Zone, it shall be issued by the judge, justice or other officer before whom the attendance is required;

3. To require attendance before a commissioner appointed to take testimony by a court of a foreign country or of the United States, of any of the States of the United States, or before any officer or officers empowered by the laws of the Canal Zone to take depositions or testimony, it may be issued by any judge of the Supreme Court, or by any judge in places within their respective jurisdiction; with like power to enforce attendance, and, upon certificate of contumacy

to said court, to punish contempt of their process, as such justice or judge could exercise if the subpoena directed the attendance of the witness before their courts in a matter pending therein.

SEC. 419. *Service of the subpoena.*—The service of a subpoena shall be made by delivering a copy thereof, attested by the officer making the service to be a true copy, to the witness personally, giving or offering to him at the same time, if demanded by him, the fees to which he is entitled for travel to the place designated, and one day's attendance there. The service must be made so as to allow the witness a reasonable time for preparation and travel to the place of attendance. Such service may be made by the marshal of the Supreme Court or of the circuit, or his deputy, or (for want thereof) by any disinterested person specially authorized in writing up the subpoena by the authority issuing the same to make service thereof.

SEC. 420. *Service where witness is concealed.*—If a witness is concealed in a building or vessel, so as to prevent the service of a subpoena upon him, any court, or judge, or any officer issuing a subpoena may, upon proof by affidavit of the concealment, and of the materiality of the witness, make an order that the marshal, or his deputy, shall forthwith serve the same, and the officer must serve it accordingly, and for that purpose may break into the building or vessel where the witness is concealed.

SEC. 421. *Witness obliged to go outside the circuit to testify.*—A witness upon a tender of the fees allowed by law may be required to attend and testify in any civil action before any court or judge of the Canal Zone.

SEC. 422. *Person present in court.*—A person present in court before a judicial officer may be required to testify in the same manner as if he were in attendance upon a subpoena issued by such court or officer.

SEC. 423. *Disobedience to a subpoena or refusal to testify.*—Disobedience to a subpoena, or a 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 issuing the subpoena, or requiring the witness to be sworn, and, if the witness be a party, his complaint or answer may be stricken out.

SEC. 424. *Civil liability of witness disobeying subpoena.*—A witness, willfully and without cause, disobeying a subpoena, shall be liable for all damages which may be sustained by reason of the failure of the witness to attend, which damages may be recovered in a civil action.

SEC. 425. *Compelling attendance of witness.*—In case of failure of a witness to attend, the court or officer issuing the subpoena, upon proof of the service thereof, and of the failure of the witness, may issue a warrant to the marshal, or his deputy, to arrest the witness

and bring him before the court or officer where his attendance is required, and the costs of such warrant and seizure of such witness shall be paid by the witness if the authority issuing it shall determine that his failure to answer the subpoena was willful and without just excuse.

SEC. 426. *If witness imprisoned.*—If the witness be a prisoner confined in a jail or prison within the Zone, an order for his examination in the jail or prison, upon deposition, or for his temporary removal and production before a court or officer, for the purpose of being orally examined, may be made, as follows:

1. By the court itself in which the action or special proceeding is pending, unless it be a district court;

2. By a judge of the Supreme Court or a judge of the Circuit Court where the action or proceeding is pending before a district court, or before a judge or other person out of court.

An order under subsection two hereof can only be made upon the motion of a party upon affidavit, showing the nature of the action or proceeding, testimony expected from the witness, and its materiality.

CHAPTER XIX.

ARREST OF DEFENDANT.

SEC. 427. *Arrest.*—A defendant may be arrested in the following cases:

1. In an action for the recovery of money or damages on a cause of action arising upon contract, express or implied, when the defendant is about to depart from the Zone with intent to defraud his creditors;

2. In an action for money or property embezzled or fraudulently misapplied or converted to his own use by a public officer, or an officer of a corporation, or an attorney, factor, broker, agent, or clerk, in the course of his employment as such, or by any other person in a fiduciary capacity, or for a willful violation of duty;

3. 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, to prevent its being found or taken by the officer;

4. When the defendant has been guilty of a fraud in contracting the debt or incurring the obligation upon 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;

5. When the defendant has removed or disposed of his property, or is about to do so, with intent, to defraud his creditors.

SEC. 428. *Who may grant order for arrest.*—An order for the

arrest of the defendant must be obtained from the circuit judge or the district judge before whom the action is brought. Without such order the defendant cannot be arrested.

SEC. 429. *Granting order of arrest.*—A judge shall grant an order of arrest when it is made to appear to him by affidavit of the plaintiff, or some other person who knows the facts, that a sufficient cause of action exists, and that the cause is one of those mentioned in section 427.

If the order for arrest is made, the affidavit must be filed with the clerk of the court or the district judge, as the case may be.

SEC. 430. *Obligation for damages in case of arrest.*—Before making the order, the party applying for it or some person on his behalf must execute to the defendant an obligation in an amount to be fixed by the judge and with sufficient surety, to be approved by him, which obligation must be at least three hundred dollars, that the plaintiff will pay all costs which may be adjudged to the defendant, and all damages which he may sustain by reason of the arrest, if the same shall finally be adjudged to have been wrongfully made or without sufficient cause.

SEC. 431. *Executing order of arrest.*—The officer making the arrest must deliver to the defendant a copy of the affidavit and of the order of arrest, and keep the defendant in custody until discharged by law.

SEC. 432. *Discharge of defendant.*—The defendant, at any time before execution, may be discharged from arrest, either upon depositing with the clerk or district judge in whose court the action is pending the amount mentioned in the order of arrest, or upon giving bail as provided in the next section.

SEC. 433. *Giving bail.*—The defendant may give bail by causing an obligation to be executed to the plaintiff, with two or more sufficient sureties to be approved by the judge who granted the order of arrest, that the defendant will 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 that they will pay to the plaintiff the amount of any judgment which may be recovered in the action.

SEC. 434. *Exoneration of bail.*—At any time before the issuance of execution, the sureties may surrender the defendant to the officer of the court, who shall thereafter retain him in custody, until he is otherwise discharged by law; and for that purpose the sureties may themselves arrest, or, by written authority indorsed on a certified copy of the obligation, may empower the officer of the court to arrest the defendant. If the bail do not surrender the defendant or cause him to be surrendered before the issuing of execution on the judgment, they shall be finally charged on their obligation and bound to

pay upon demand the amount of the judgment, which may be collected from them after notice and summary hearing in the same action, except in the cases hereinafter provided.

SEC. 435. *Death or imprisonment of defendant.*—Bail shall be exonerated by the death of the defendant, or his imprisonment in a public penitentiary, or by his legal discharge from the obligation.

SEC. 436. *Filing order of arrest and bond.*—The officer serving the order of arrest shall immediately after perfecting the arrest file the order with this return thereon, together with the obligation, in the office of the clerk of the court in which the action is pending.

SEC. 437. *Disposition of money deposited.*—Where money has been deposited in lieu of bail, it shall be applied under the direction of the court to the satisfaction of such judgment, if any, as may have been rendered in favor of the plaintiff, and after satisfying the judgment the balance shall be refunded to the defendant or his assignee. If the judgment is in favor of the defendant, the whole sum deposited must be refunded to him, or his assignee.

SEC. 438. *Application by defendant for reduction of bail or vacating order of arrest.*—A defendant arrested may, at any time before the trial of the action, apply to the judge who made the order, or to the court in which the action is pending, upon reasonable notice, to vacate the order of arrest, or to reduce the amount of bail. Upon such application, the judge or court shall grant immediate hearing, after notice to the parties, and, upon hearing, make such orders as appear to be just, either as to continuing the order of arrest, or vacating the same, or reducing the amount of bail required.

SEC. 439. *Jail limits.*—A defendant arrested under this chapter and confined to jail in the absence of bail may be given the jail limits, either for the circuit in which the action against him is pending, or for the Canal Zone, in the discretion of the court, upon taking an oath that he is insolvent and is unable to procure bail, and upon filing an undertaking that he will not depart from the jail limits until the debt be paid or bail be furnished: *Provided*, however, that at the expiration of one year from the time at which he may be given the jail limits he may apply to the court for relief from the jail limits, and the judge thereof may grant such relief and discharge from the order of arrest, upon its being made to appear by satisfactory evidence that he is insolvent and by reason of any just cause has not been able to satisfy the judgment against him.

CHAPTER XX.

ATTACHMENT OF DEFENDANT'S PROPERTY.

SEC. 440. *Attachment.*—A plaintiff may, at the commencement of his action, or at any time afterwards, have the property of the de-

defendant not exempt from execution attached as security for the satisfaction of any judgment that may be recovered, unless the defendant gives security to pay such judgment, in the manner hereinafter provided:

1. In all cases providing for the arrest of a defendant; but the plaintiff must make an election as to whether he will ask for an order of arrest or an order of attachment; he shall not be entitled to both orders;

2. In an action against a defendant not residing in the Canal Zone.

SEC. 441. *Who may issue order of attachment.*—An order for attachment may be granted by a judge of the Supreme Court or by a judge of the Circuit Court for the circuit in which the action is pending, or by a district judge in an action properly brought before his court.

SEC. 442. *Granting order of attachment.*—A judge shall grant an order of attachment when it is made to appear to the judge by the affidavit of the plaintiff, or of some other person who knows the facts, that a sufficient cause of action exists, and that the case is one of those authorized by this code and that there is no other sufficient security for the claim sought to be enforced by the action, and that the amount due to the plaintiff above all legal set-offs or counterclaims is as much as the sum for which the order is granted.

SEC. 443. *Obligation for damages in case of attachment.*—Before the order is made, the party applying for it, or some person on his behalf, must execute to the defendant an obligation in an amount to be fixed by the judge, and with sufficient surety to be approved by him, which obligation shall be for a sum not less than two hundred dollars, and not exceeding the amount claimed by the plaintiff, that the plaintiff will pay all the costs which may be adjudged to the defendant, and all damages which he may sustain by reason of the attachment, if the same shall finally be adjudged to have been wrongful or without sufficient cause.

SEC. 444. *Executing order of attachment as to movables.*—The order of attachment shall be served by the officer of the court by attaching and safely keeping all the movable property of the defendant in the Canal Zone, or so much thereof as may be sufficient to satisfy the plaintiff's demands, unless the defendant gives security by obligation to the plaintiff, with sufficient surety, to be approved by the judge who granted the order of attachment, in an amount equal to the value of the property which has been or is about to be attached. The property so attached shall be held to await final judgment, in execution, unless released as provided in this code.

SEC. 445. *Executing order of attachment as to real property.*—Real property, standing upon the records in the name of the de-

defendant or not appearing at all upon the record, shall be attached by filing with the registrar of titles of land, for the circuit in which the land is situated, a copy of the order of attachment, together with a description of the property attached, and a notice that it is attached, and by leaving a similar copy of the order, description, and notice with an occupant of the property, if there is one.

Real property or an interest therein, belonging to the defendant and held by any other person, or standing on the records in the name of any person, shall be attached by filing with the registrar of land titles in the circuit in which the land is situated, a copy of the order of attachment, together with a description of the property, and a notice that such real property and any interest of the defendant therein, held by or standing in the name of such other person (naming him) are attached; and by leaving with the occupant, if any, and with such other person, or his agent, if known and within the circuit, a copy of the order, description and notice. The registrar must index attachments filed under the first paragraph of this section, in the names, both of the plaintiff and of the defendant, and must index attachments filed under the second paragraph of this section, in the names of the plaintiff and of the defendant and of the person by whom the property is held or in whose name it stands on the records.

SEC. 446. *Executing order of attachment as to stocks or shares.*—Stocks or shares, or an interest in stocks or shares, of any corporation or company shall be attached by leaving with the president, or other head of the same, or the secretary, cashier, or other managing agent thereof, a copy of the order of attachment and a notice stating that the stock or interest of the defendant is attached, in pursuance of such order.

SEC. 447. *Executing order of attachment as to debts and credits.*—Debts and credits, and other personal property not capable of manual delivery, shall be attached by leaving with the person owing such debts or having in his possession or under his control, such credits and other personal property, a copy of the order of attachment, and a notice that the debts owing by him to the defendant, or the credits and other personal property in his possession or under his control, belonging to the defendant, are attached in pursuance of such order.

SEC. 448. *Effect of attachment of debts and credits.*—All persons having in their possession or under their control any credits or other personal property belonging to the defendant, or owing any debts to the defendant at the time of service upon them of a copy of the order of attachment and notice as provided in the last section, shall be, unless such property be delivered up or transferred, or such debts be paid to the clerk of the court in which the action is pending, liable to the plaintiff for the amount of such credits, property, or

debts, until the attachment be discharged, or any judgment recovered by him be satisfied.

SEC. 449. *Disposition of debts and credits attached.*—Any person owing debts to the defendant, or having in his possession or under his control any credits or other personal property belonging to the defendant, may be required to attend before the court in which the action is pending or before a referee appointed by the court, and be examined on oath respecting the same. The defendant may also be required to attend, for the purpose of giving information respecting his property, and may be examined on oath. The court may, after such examination, order personal property capable of manual delivery, belonging to the defendant, in the possession of the person so required to attend before the court, to be delivered to the clerk of the court on such terms as may be just, having reference to any liens thereon or claims against the same, to await the final result of the action.

SEC. 450. *Return of order of attachment.*—The officer of the court making the attachment shall indorse upon its back a full statement of all his proceedings under the order, including a complete inventory of the property attached, and sign the same, and shall return the order of attachment to the clerk of the court in which the action is pending to be filed with the other papers in the action.

SEC. 451. *Disposition of perishable property.*—Whenever it shall be made to appear to the judge or the court in which the action is pending, by hearing, after notice to both parties if practicable, that the property attached is perishable, or that the interests of all the parties to the action will be subserved by the sale thereof, the judge may, on motion, order such property to be sold at public auction in such manner as he may direct, and the proceeds to be deposited in court to abide the judgment in the action.

SEC. 452. *Final disposition of property attached.*—If judgment be received by the plaintiff, the officer of the court must cause the same to be satisfied, out of the property attached, if it be sufficient for that purpose, in the following manner:

1. By paying to the plaintiff the proceeds of all sales of perishable or other property sold by him in pursuance of the order of the judge, or so much as shall be necessary to satisfy the judgment.

2. If any balance remain due, and execution shall have been issued on the judgment, he shall sell under the execution so much of the property, real or personal, as may be necessary to satisfy the balance, if enough for that purpose remains in his hands, or in that of the clerk of the court.

3. By collecting from all persons having in their possession credits belonging to the defendant, or owing debts to the defendant at the

time of the service upon them of the order of attachment of such credits or debts, the amount of such credits and debts as determined by the court in the action, and stated in the final judgment, and paying the proceeds of such collection over to the plaintiff.

The officer shall make return in writing to the court of his proceedings under this action.

SEC. 453. *Collections of balance of execution.*—If, after realizing upon all the property attached, including the proceeds in extinguishment of the judgment, less the expenses of proceedings upon the judgment, any balance shall remain due, the officer of the court must proceed to collect such balance as upon an execution in other cases. Whenever the judgment shall have been paid, the officer, upon reasonable demand, must deliver over to the defendant the attached property remaining in his hands, and any proceeds of the property attached unapplied on the judgment.

SEC. 454. *Proceedings after return of execution unsatisfied.*—If the execution be returned unsatisfied, in whole or in part, the plaintiff may maintain an action upon the obligations, if any, given.

SEC. 455. *Disposition of attached property in case of judgment for defendant.*—If the defendant recovers judgment against the plaintiff, all the proceeds of sales and money collected by the officer of the court, under the order of attachment, and all the property attached remaining in said officer's hands shall be delivered to the defendant, and the order of attachment discharged, and the defendant may have judgment against the plaintiff upon the obligation given for any damages he may have sustained by reason of the attachment, after summary hearing in the same action on due notice.

SEC. 456. *Dissolution of order of attachment.*—At any time, after the commencement of an action upon which an order of attachment has been made, the defendant may upon reasonable notice to the plaintiff, apply to the judge who granted the order of attachment, or to the judge of the court in which the action is pending, for an order to discharge the attachment, wholly or in part; and the judge shall, after hearing, on due notice to both parties, discharge the order of attachment provided the defendant shall execute an obligation to the plaintiff with surety to be approved by the judge, to the effect that in case the plaintiff recover judgment in the action, the defendant will, on demand, redeliver the attached property so released to the officer of the court, to be applied to the payment of the judgment, or, in default thereof, that the defendant and surety, will, on demand, pay to the plaintiff the full value of the property released. The judge making such order may fix the sum for which the undertaking must be executed, and for that purpose may take such steps as he finds necessary to determine the value of the property attached, which obligation shall be filed with the other papers in the

cause, and upon its approval by the judge and the making of the order by him for a discharge of the attachment, all of the property so released, and all of the proceeds of the sales thereof, shall be delivered to the defendant, the obligation aforesaid standing in place of the property so released.

SEC. 457. *Discharge of attachment on motion.*—The defendant may also at any time either before or after the release of the attached property, or before any attachment shall have been actually levied, upon reasonable notice to the plaintiff, apply to the judge who granted the order of attachment, or to the judge of the court in which the action is pending, for an order to discharge the attachment on the ground that the same was improperly or irregularly issued or was levied upon property exempt from execution. If the motion be made on affidavits on the part of the defendant. but not otherwise, the plaintiff may oppose the same by affidavits or other evidence in addition to those on which the attachment was made.

If upon such application it satisfactorily appears that the writ of attachment was improperly or irregularly issued, it must be discharged.

SEC. 458. *Right of third party against officer.*—If the property taken be claimed by any other person than the defendant or his agent and such person make an affidavit of his title thereto or right to the possession thereof, stating the grounds of such right or title, and serve the same upon the officer while he has possession of the property, the officer shall not be bound to keep the property under the attachment, unless the plaintiff, on demand of him, or his agent, indemnify the officer against such claim by an obligation with two sufficient sureties; and no claim to such property or damage for its seizure by any other person than the defendant or his agent shall be valid against the officer unless so made, but nothing herein contained shall prevent such third person from vindicating his claim to the property by any proper action.

CHAPTER XXI.

MANNER OF GIVING AND ENTERING JUDGMENT.

SEC. 459. *Entering judgment.*—In all cases judgment must be entered by the clerk in conformity with the decision, after the rendition of the judgment, unless the court orders the case to be reserved for argument or further consideration, or grants a stay of proceedings.

SEC. 460. *When judgment reserved.*—When the case is reserved for argument or further consideration, as mentioned in the last section, it may be brought by either party before the court for argument.

SEC. 461. *Judgment for affirmative relief for defendant.*—If the counter-claim established at the trial, exceeds the plaintiff's demand,

judgment for the defendant must be given for the excess; or if it appear that the defendant is entitled to any other affirmative relief, judgment must be given accordingly.

SEC. 462. *Judgment possession personal property, in contract.*—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. If the property has been delivered to the plaintiff, and the defendant claim a return thereof, judgment for the defendant may be had for the return of the property; or the value thereof, in case a return can not be had, and damages for taking and withholding the same. In an action on a contract or obligation in writing, for the direct payment of money, made payable in a specified kind of money or currency, judgment for the plaintiff, whether it is by default or other decision, may follow the contract or obligation, and be made payable in United States Currency of the value of the money or currency specified therein, at the date of the obligation, and in all actions for the recovery of money, if the plaintiff alleges in his complaint that the same was understood or agreed by the respective parties to be payable in a specified kind of money or currency, and this fact is admitted by the default of the defendant, or established by evidence, the judgment for the plaintiff must be made payable in United States Currency of the value of the money or currency so alleged in the complaint, at the date of the obligation; and in an action against any person for the recovery of money received by such person in a fiduciary capacity or to the use of another, judgment for the plaintiff must be made payable in United States Currency of the value of the money or currency so received by such person at the date it was so received.

SEC. 463. *Judgment where party dies.*—If a party die after a judgment or decision upon any issue of fact and before judgment, the court may nevertheless, render judgment thereon. Such judgment is not a lien on the real property of the deceased party, but is payable in the course of administration on his estate.

SEC. 464. *Clerk's dockets.*—The dockets kept by the clerk are open at all times during office hours for the inspection of the public, without charge. The clerk must arrange the several dockets kept by him in such manner as to facilitate their inspection.

CHAPTER XXII.

EXECUTION.

SEC. 465. *Issuance, form and requisites of execution.*—The writ of execution must be issued in the name of "The United States of America, The Canal Zone." ss., sealed with the seal of the Court and subscribed by the clerk. and be directed to the marshal, and it must

intelligently refer to the judgment, stating the court, the circuit where the judgment was entered, and if it be for money, the amount thereof, and the amount actually due thereon, the execution must also state the value of the money or currency in which the judgment is payable in United States currency, and must require the marshal substantially as follows:

1. If it be against the property of the judgment debtor, it shall require the marshal to satisfy the judgment, with interest, out of the personal property of such debtor, and if sufficient personal property can not be found, then out of his real property; or if the judgment be a lien upon real property, then out of the real property belonging to him on the day when the judgment was rendered or at any time thereafter.

2. If it be against real or personal property, in the hands of the personal representatives, heirs, devisees, legatees, tenants or trustees, it must require the marshal to satisfy the judgment, with interest, out of such property.

3. If it be for delivery of real or personal property, it must require the marshal to deliver the possession of the same, describing it to the party entitled thereto, and may at the time require the marshal to satisfy any costs, damages, rents or profits recovered by the said judgment, out of the personal property of the person against whom it was rendered, and the value of the property for which the judgment was rendered, to be specified therein; if a delivery thereof can not be had, and if sufficient personal property can not be found, then out of real property.

SEC. 466. *Executions under special judgments.*—When the judgment requires the sale of property, the same may be enforced by a writ reciting such judgment, or the material parts thereof, and directing the proper officer, to execute the judgment by making the sale and applying the proceeds in conformity therewith. When the judgment requires the performance of any other act than as above designated, a certified copy of the judgment may be served upon the party against whom the same is rendered, or upon the person or officer required thereby or by law to obey the same, and obedience thereto may be enforced by the court.

SEC. 467. *Judgment lien, lapse thereof.*—A judgment of a court of record shall be a lien on the real estate of the person against whom it is obtained situated within the circuit for which the court is held from the time the same is rendered or revived for the period of five years and no longer: *Provided*, That there shall be no priority of the lien of one judgment over that of another rendered at the same term of court, or on the same day in vacation; and upon the filing in the office of the clerk of any court of record in any circuit of the Zone, of a transcript of a judgment or decree rendered in any other circuit of the Zone,

such judgment shall have the like force and effect and shall be a lien upon the real estate of the party against whom the same is obtained in said circuit where filed, and execution may issue thereon in said circuit, in like manner as in the circuit where originally obtained. When execution is not issued on a judgment within one year from the time the same becomes a lien it shall thereafter cease to be a lien, but execution may issue upon such judgment at any time within said five years, and shall become a lien on such real estate from the time it shall be delivered to the marshal or other proper officer, to be executed.

SEC. 468. *Exemption in favor of party restrained.*—When the party in whose favor a judgment is rendered is restrained, by injunction, or by appeal, or by the order of a judge or court, or is delayed, on account of the death of the defendant, either from issuing execution or selling thereon, the time he is so restrained or delayed shall not be considered as any part of the time before mentioned.

SEC. 469. *Real estate, definition.*—The term “real estate,” when used in this act shall include lands, tenements, hereditaments, and all legal and equitable rights and interest therein and thereto, including estates for the life of the debtor or of another person, and estates for years, and leasehold estates, when the unexpired term exceeds one year.

SEC. 470. *Execution on judgment.*—The person in whose favor any judgment, as aforesaid, may be obtained, may have execution thereon in the usual form, directed to the proper officer of any circuit, in this Zone, against the lands and tenements, goods and chattels of the person against whom the same is obtained, or against his body, when the same is authorized by law.

SEC. 471. *Execution after expiration of judgment lien.*—No execution shall issue upon any judgment after the expiration of five years from the time the same becomes a lien, except upon the revival of the same by scire facias; but real estate levied upon within five years may be sold upon a venditio rei exonas, as any time within one year after the expiration of said five years.

SEC. 472. *Interest on judgment.*—Every execution issued upon a judgment shall direct the collection of interest thereon, from the day of recovery of the judgment until the same is paid, at the rate of six per centum per annum.

SEC. 473. *Return of execution.*—Executions and writs of venditio rei exonas shall be made returnable sixty days after the date thereof.

SEC. 474. *Binding personal property by execution.*—No execution shall bind the goods and chattels of the person against whom it is issued, until it is delivered to the marshal or other proper officer to be executed; and for the better manifestation of the time, the marshal or other officer shall, on receipt of such writ, indorse upon the back

thereof the day of the month and year and hour when he received the same.

SEC. 475. *Property subject to execution.*—All and singular the lands, tenements, real estate, goods and chattels (except such as is by law declared to be exempt) of every person against whom any judgment has been or shall be hereafter obtained in any court of record, for any debt, damages, costs, or other sum of money, shall be liable to be sold upon execution, to be issued upon such judgment.

SEC. 476. *Order of levy under execution.*—The person in whose favor execution is issued, may elect on what property not exempt from execution he will have the same levied, provided real property shall be last taken.

SEC. 477. *Property taken on execution, how sold.*—When real or personal property is taken on execution, if the same is susceptible of division it shall be sold in separate tracts, lots or articles, and only so much shall be sold as is necessary to satisfy the execution and costs.

SEC. 478. *Where there are concurrent judgments.*—When the lien of several judgments is concurrent, by reason of the same having been rendered at the same term of court or on the same day in vacation, and execution issued upon any one of such judgments is levied upon property subject to such lien, the property so levied upon shall be sold for the benefit of all executions issued upon such judgments, and delivered to the same officer or any of his deputies before sale: and the proceeds of such sale shall be divided upon the several executions, pro rata, according to their several amounts.

SEC. 479. *Advertisement of real property for sale.*—No real estate shall be sold by virtue of any execution aforesaid, except at public vendue, between the hours of nine in the morning and the setting of the sun of the same day, nor unless the time (specifying the particular hour of said day at which said sale shall commence) and the place of holding such sale shall have been previously advertised three successive weeks, once in each week, in a public newspaper printed and published in the Canal Zone, or the cities of Colon or Panama, and by putting up written or printed notices thereof in at least three of the most public places in the circuit where the real estate is situated, specifying the name of the plaintiff and defendant in the execution, in all of which said notices the real estate to be sold shall be described with reasonable certainty; and if there shall be more than one newspaper published in the Zone, or Colon or Panama, the judgment creditor or his attorney may designate the newspaper in which such notice shall be published: *Provided*, That no greater charge shall be made for publishing said notices than two dollars for each one hundred words contained therein.

SEC. 480. *Irregular sale, liability of marshal.*—If any marshal or other officer shall sell any real estate by virtue of any such execution,

otherwise than in the manner aforesaid, or without such previous notice, the officer so offending shall, for every such offense, forfeit and pay the sum of fifty dollars to be recovered with costs of suit, by the person whose property is sold. *Provided*, however, that no such offense, nor any irregularity on the part of the marshal, or other officer having the execution, shall be deemed to affect the validity of any sale made under it, unless it shall be made to appear that the purchaser had notice thereof.

SEC. 481. *Sale of real estate, marshal's certificate.*—When any real estate is sold by virtue of an execution, judgment, or decree of foreclosure of mortgage, or enforcement of mechanic's lien, or vendor's lien, or for the payment of money, it shall be the duty of the marshal, or other officer, instead of executing a deed for the premises sold, to give to the purchaser a certificate describing the premises purchased by him, showing the amount paid therefor, or if purchased by the person in whose favor the execution or decree is, the amount of his bid, the time when the purchaser will be entitled to a deed, unless the premises shall be redeemed, as provided in this act.

SEC. 482. *Filing duplicate of such certificate.*—The marshal, or other officer making the sale, shall, within ten days from such sale, file in the office of the registrar a duplicate of such certificate, which shall be recorded by such registrar; and such certificate or duplicate, or record, and certified copy of the record thereof, shall be evidence of the facts therein stated.

SEC. 483. *Redemption of real estate sold under execution.*—Any defendant, his heirs, administrators, or assigns, or any person acting on behalf of and with the authority of the defendant, may, within twelve months from said sale, redeem the real estate so sold by paying to the purchaser thereof, his executors, administrators or assigns or to the marshal or other officer who sold the same, or his successor in office, for the benefit of such purchaser, his executors, administrators or assigns, the sum of money for which the premises were sold or bid off, with interest thereon at the rate of six per centum per annum from the time of such sale, whereupon such sale and certificate shall be null and void.

SEC. 484. *Right of purchaser pending redemption period—Waste.*—If the purchaser pays his bid price in cash, or credits the amount of his bid upon the judgment of sale, he shall be entitled to be put into possession of the property by order of court and to receive the rents and profits therefrom; otherwise the defendant shall remain in possession of the property pending the redemption period. But the court shall, pending redemption, have power to restrain by injunction the commission of waste upon the property at the suit of any interested party.

SEC. 485. *Rights of purchaser after lapse of redemption period.*—At the expiration of the period for redemption allowed under the previous section the purchaser, his executors, heirs, or assigns, may file a petition in the cause in which the property was sold, making a part thereof the certificate of sale, and demand the execution of a deed by the marshal, conveying the defendant's entire interest in the property sold. If it appear to the court that the property was sold for not less than three-fourths of its market value, to ascertain the truth of which the court, on its own motion, or on the application of the defendant, his executors, or heirs, or any judgment creditor may appoint two appraisers who shall file with the court within a specified time a sworn report estimating the actual value of the real estate sold under execution, the court shall order the deed to be made upon the payment of the bid price and interest, if not already paid. If it appear to the court that the property was sold for less than three-fourths of its market value, or that for any other cause an injustice has been done the defendant, the court may order a resale of the property under such conditions with respect to advertising, and deferred payments not exceeding one year, as to the court seems equitable. There shall be no further right of redemption in the property resold. If the price at which the property resells shall not exceed the price paid at the first sale, together with interest, costs, and any taxes or assessments that may have been paid by the holder of the original certificate of purchase, a deed for the property shall be ordered by the court to be made to the original purchaser. If the property brings more than such amount, and the sale has been fairly conducted, it shall be confirmed, and the court shall order a deed to be executed by the marshal, upon the payment of the last purchase price with interest, to the purchaser at the resale, his heirs, executors, or assigns, and the purchase money shall be distributed as justice requires.

SEC. 486. *Deed prima facie evidence of regularity of sale.*—Any deed which has been heretofore, or which may hereafter be so executed, or a certified copy of the record thereof, shall be prima facie evidence that the provisions of the law in relation to the sale of the property for which it is or may be given were complied with: and in case of the loss or destruction of the record of the judgment or decree, or of the execution or levy thereon such deed or certified copy of the record thereof shall be prima facie evidence of the recovery and existence of the judgment or decree and issuing and levy of the execution as therein recited.

SEC. 487. *Perfecting execution lien in another circuit.*—When a writ of execution is issued from a court of a circuit to a marshal or other officer of another circuit, and levied upon any real estate in the latter circuit, the officer making such levy shall make a certificate

thereof and file the same in the office of the registrar of land titles in said circuit. Until the filing of such certificate such levy shall not take effect, as against creditors and bona fide purchasers, without notice.

SEC. 488. *Same.*—The certificate may be substantially in the following form:

——— Circuit of the Canal Zone, *ss*:

I (here state the name of the officer and the title of his office) do hereby certify that by virtue of an execution to me directed, from the _____ court of _____, in favor of _____, against _____, dated the ____ day of _____, 19—, I did, on the ____ day of _____, 19—, levy upon the following premises, (Here describe the premises.)

(Signature.)

SEC. 489. *Same.*—Such certificate shall be recorded by the registrar of land titles of said circuit, in a book to be kept for that purpose. The fee for recording such certificate shall be collected as other costs.

SEC. 490. *Death of plaintiff, enforcing judgment.*—The collection of a judgment or decree of a court of record shall not be delayed or hindered, or the lien created by law abate, by reason of the death of any person in whose favor such judgment or decree shall be; but the executor or administrator, the administrator de bonis non, or with the will annexed may cause his letters testamentary or of administration to be recorded in such court, after which execution may issue and proceeding be had in the name of the executor or administrator as such, in the same manner as if the judgment or decree had been recovered in his name.

SEC. 491. *Rights of plaintiff's executors, etc.*—When it is necessary, in order to secure the collection of a judgment or decree belonging to any estate, it shall be the duty of the executor or administrator to bid for and become the purchaser of real estate at the sale thereof by the marshal or other officer. The premises so purchased shall be assets in his hands, and may be again sold by him, with the approval of the court appointing him, and the moneys arising from such sale shall be accounted for and paid over as other moneys in his hands.

SEC. 492. *Death of defendant, enforcing judgment.*—When a person shall die after the rendition of a judgment or decree for the payment of money against him is obtained in a court of record, execution may issue against the real estate of such deceased person, or sale may be made under such decree without reviving the judgment or decree against his heirs or legal representatives: *Provided*, That no execution shall issue or sale be made until after the expiration of twelve months from the death of such deceased person, nor shall any sale be had on any such execution or decree until the person in whose

favor the judgment or decree if sought to be enforced shall give to the executor or administrator, or if there be neither, the heirs of the deceased, at least two months' notice of the existence of such judgment or decree, before issuing execution or proceeding to sell, which notice shall be in writing when the parties required to be notified reside or may be found within the Zone, and their place of residence known, otherwise publication notice shall be given as in this Code provided.

SEC. 493. *Property subject to execution.*—All goods and chattels, real and personal, including money, may be taken and sold on execution, except as otherwise provided by law: *Provided*, That when any officer shall levy an execution on live stock, or other personal property and the same shall not be immediately replevied or restored to the debtor such officer shall provide for the proper care and storage of such personal property and shall provide sufficient sustenance for the support of such live stock until the same shall be replevied, sold or discharged from such execution. Said officer shall receive a reasonable compensation, therefor, to be ascertained and determined by the court out of which the writ issued, or any judge thereof in vacation, to be advanced to him, from time to time, by the plaintiff in the execution, and the amount of such compensation shall be collectible as a part of the costs in the case.

SEC. 494. *Officer may take indemnity bond in doubtful cases.*—If there is reasonable doubt as to the ownership of the goods, or as to their liability to be taken on execution, the officer may require sufficient security to indemnify him for taking them.

SEC. 495. *Delivery bond.*—When personal property is levied upon, or about to be levied upon, if the defendant will give bond with sufficient security, to be approved by the officer, payable to the creditor, in double the amount of the execution conditioned to deliver the property levied upon uninjured at the time and place where the same is to be sold, which shall be named in the condition, the marshal may allow the property to remain with the defendant.

SEC. 496. *Same.*—If the property is not delivered according to the condition of the bond, the officer having such execution may proceed to execute the same in the same manner as if no levy had been made.

SEC. 497. *Same.*—If the officer does not obtain satisfaction of the execution, he shall return the bond with such execution, and the creditor shall be allowed to recover thereon the amount of his judgment, with interest and cost, or if the value of the property so levied upon shall be shown by the defendant to be less than such judgment and cost, the value thereof, with ten per cent damages for the delay.

SEC. 498. *Same.*—No second delivery bond shall be taken in behalf of a defendant so failing to comply with the first, nor shall a delivery bond be taken of his surety without the consent of the creditor.

SEC. 499. *Advertisement of personal property to be sold.*—Before any goods and chattels shall be sold by virtue of any execution, at least ten days' previous notice of such sale shall be given by posting notices thereof in three of the most public places in the circuit where such sale is to be, specifying the time when and place where the same are to be sold.

SEC. 500. *Postponement of sale.*—The officer may postpone such sale from time to time, not exceeding ten days at one time, whenever, for want of bidders or other good cause, he shall think it for the interest of the parties concerned. Notice of such postponement may be given at the time and place fixed for the sale, or by posting notices as hereinbefore provided, but if the postponement exceed one day he shall post notices thereof.

SEC. 501. *Return of execution against personal property.*—The officer making such sale, shall, in his return of the execution, particularly describe the goods sold, and the sum for which each article was sold; and if he is guilty of fraud in the sale or return, he shall be liable in any proper action at the suit of the party injured, for five times the amount of the actual damage sustained by reason of such fraud.

SEC. 502. *Levying execution from district court on real estate.*—No execution issued by a district court shall be levied upon real estate, nor shall any redemptions be made under any judgment rendered by a district court, except when the same shall be certified into a court of record, as provided by law.

SEC. 503. *Fraudulent withholding of property from execution.*—Where it appears by affidavit of the judgment creditor that the debtor fraudulently conceals any specified estates, goods, chattels, or tenements nonexempt from execution in order to avoid a levy upon the same, or that he fraudulently refuses to surrender the same, or that the debtor, in anticipation of the levy of an execution, has fraudulently removed or concealed his property, the court from which the execution issues may summon the debtor to appear before it and deal with the debtor as in the case of contempt of court.

SEC. 504. *What property of married woman exempt from execution against husband.*—All real and personal estate belonging to any married woman at the time of her marriage, or subsequently acquired by her with her own earnings or property, or conveyed to her by any third party, and all the rents, issues and profits thereof, and all compensation due and owing for her personal services, is exempt from execution against her husband.

SEC. 505. *Property liable to execution.*—All goods, chattels, moneys, and other property, both real and personal, or any interest therein of the judgment debtor, not exempt by law, and all property and

rights of property seized and held under attachment in the action, shall be liable to execution. Shares and interest in any corporation or company, and debts, credits, and all other property, both real and personal, or any interests in either real or personal property, and all other property not capable of manual delivery, may be attached on execution, in like manner as upon writs of attachment.

SEC. 506. *Exemptions from executions.*—The following property shall be exempt from attachment and execution, except as herein otherwise provided:

1. The debtor's homestead, in which he resides, and land necessarily used in connection therewith, both not exceeding in value two hundred dollars;

2. Tools and implements necessarily used by him in his trade of employment;

3. Two domestic animals such as the debtor may select, not exceeding one hundred dollars in value, and necessarily used by him in his ordinary occupation;

4. His necessary clothing, and that of all his family;

5. Household furniture and utensils necessary for house keeping and used for that purpose by the debtor, such as the debtor may select, of a value not exceeding fifty dollars;

6. Provisions actually provided for individual or family use sufficient for three months;

7. The professional libraries of lawyers, judges, clergymen, doctors, school teachers, and music teachers, not exceeding two hundred and fifty dollars in value;

8. One fishing boat and net, not exceeding the total value of twenty-five dollars, the property of any fisherman by the lawful use of which he earns a livelihood;

9. Lettered gravestones.

But no articles or species of property mentioned in this section shall be exempt from execution issued upon a judgment recovered for its price or upon a judgment of foreclosure of a mortgage thereon. All property other than as hereinbefore stated is subject to execution.

SEC. 507. *Claims by third persons to property levied on.*—Property levied on can be claimed by a third person as his property, by a written claim, verified by the oath of such claimant, setting out his title thereto, his right to possession, stating the grounds of such title, and served upon the marshal, or his deputy, or officer making the levy. The officer in such case is not bound to keep the property, unless the plaintiff, or the person in whose favor the writ of execution runs, on demand, indemnify the officer against such claim by an obligation,

signed by the plaintiff, with good and sufficient surety, and no claim to such property shall be valid against the officer, or shall be received or be notice of any rights against him unless made as herein provided; but nothing herein contained shall prevent such third person from vindicating his claim to the property by any proper action.

SEC. 508. *Claim by debtor that property is exempt from execution.*—The defendant by a similar proceeding may also claim that the property is exempt from execution, and the officer shall not be compelled to take it unless the plaintiff indemnify him as provided in the last section.

SEC. 509. *Executions between same parties.*—Executions between the same parties, issued in their individual rights, may be set off against each other, under direction of the court.

SEC. 510. *Several executions against same property.*—Where several executions are levied upon property, the same shall be sold under the first execution, and the proceeds of the sale shall be devoted to the discharge of the several executions in the order in which they have become liens.

SEC. 511. *Execution against several made out of the property of one.*—When property liable to an execution against several persons is sold thereon, and more than a due proportion of the judgment is satisfied out of the proceeds of the sale of the property of one of them, or one of them pays, without a sale, more than his proportion he may compel a contribution from the others; and when a judgment is against several, and is upon an obligation 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.

SEC. 512. *Who may execute the officer's deed.*—In case of the death of the officer making the sale, before the expiration of the period of redemption, the deed may be executed by his successor in office. In case the officer's term of office expires before the termination of the period of redemption, he may execute the deed at the expiration of such period notwithstanding he has ceased to remain in office, and such deed shall have the same validity as though he had continued in the office.

CHAPTER XXIII.

PROCEEDINGS SUPPLEMENTARY TO THE EXECUTION.

SEC. 513. *Right of judgment creditor to examine debtor when execution returned unsatisfied.*—When an execution against property of a judgment debtor, or of any one of several debtors in the same judgment, issued to the marshal or his deputy, for the circuit where the defendant resides, or, if he do not reside in the circuit, to the marshal or his deputy of the circuit where the judgment was rendered, is

returned unsatisfied, in whole or in part, the judgment creditor, at any time after such return is made, shall be entitled to an order from a judge of the Circuit Court of the circuit wherein the judgment was rendered, requiring such judgment debtor to appear and answer concerning property before such judge, or a referee appointed by him, at a time and place specified in the order; but no judgment debtor must be required to attend before a judge or referee out of the circuit in which he resides or is found.

SEC. 514. *Method of obtaining such examination.*—After the issuing of execution against property and upon proof, by affidavit of a party or otherwise, to the satisfaction of the judge, that any judgment debtor has property which he unjustly refuses to apply towards the satisfaction of the judgment, such judge may, by an order, require the judgment debtor to appear at a specified time and place, before such judge, or a referee appointed by him, to answer concerning the same; and such proceedings may thereupon be had for the application of the property of the judgment debtor toward the satisfaction of the judgment as hereinafter prescribed. Instead of the order requiring the attendance of the judgment debtor, the judge may, upon affidavit of the judgment creditor, his agent or lawyer, if it appear to him that there is danger of the debtor absconding, order the officer to arrest the debtor, and bring him before such judge. Upon being brought before the judge, he may be ordered to enter into an undertaking, with sufficient surety, that he will attend from time to time before the judge or referee, as may be directed, during the pendency of the proceedings, and until final termination thereof, and will not in the meantime dispose of any portion of his property not exempt from execution. In default of entering into such undertaking, he may be committed to prison as for contempt.

SEC. 515. *Examination of debtor of judgment debtor, etc.*—After the return of an execution against the property of a judgment debtor, or of one of the several debtors in the same judgment, unsatisfied in whole or in part, and upon proof, in writing, and by affidavit or otherwise, to the satisfaction of the judge, that a person or corporation has property of such judgment debtor or is indebted to him, the judge may, by an order, require such person or corporation, or any officer or member of the corporation to appear at a specified time and place, within the circuit in which such person or corporation is served with the order, and answer concerning the same; the service of the order shall bind the property in the possession or under the control of such person or corporation from the time of service; and the person or corporation so served with the order shall be liable to the judgment creditor for all property, money, and credits in his hands belonging to the judgment debtor, or due

to him from such person or corporation, from the time of service; and the person or corporation so served with the order shall be liable to the judgment creditor for all property, money, and credits in his hands belonging to the judgment debtor, or due to him from such person or corporation, from the time of service and the judge may also require notice of such proceeding to be given to any party to the action, in such manner as may seem to him proper.

SEC. 516. *Reference by a judge.*—The judge may, in his discretion, order a reference to a referee agreed upon or appointed by him to report the evidence or the facts.

SEC. 517. *Proceedings to compel attendance.*—A party or witness may be compelled by an order of the judge, or a subpoena, to attend before a judge or referee to testify. If a person, party, or witness disobeys an order of the judge, court, or referee duly served, he may be punished as for contempt; and such referee may at his discretion, report the case to the court or judge, and such court or judge may punish for contempt the persons or party or witness so disobeying.

SEC. 518. *Proceedings may be continued.*—The judge or referee acting under the provisions of this chapter, may continue his proceedings from time to time, until they are completed.

SEC. 519. *Proceedings before a referee.*—If the examination is before a referee, it must be taken by the referee in writing and certified to the judge. All examinations and answers before a judge or referee must be on oath. When a corporation answers, the answer must be on the oath of an officer thereof.

SEC. 520. *Debtor may pay execution against creditor.*—After the issue of an execution against property, a person indebted to the judgment debtor may pay to the officer holding the execution the amount of his debt, or so much thereof as may be necessary to satisfy the execution; the officer's receipt shall be a sufficient discharge for the amount so paid, or directed to be credited by the judgment creditor on the execution.

SEC. 521. *Judge may order property to be applied on execution.*—The judge may order any property of the judgment debtor or money due to him, not exempt by law, in the hands either of himself or the person, or the corporation, to be applied toward the satisfaction of the judgment; but the earnings of the debtor for his personal services at any time within one month preceding the order can not be applied when it is made to appear by the affidavit of the debtor, or otherwise, that such earnings are necessary for the use of a family supported wholly or in part by his labor.

SEC. 522. *Judge may appoint receiver and prohibit transfers, and so forth.*—The judge may, by order, appoint the marshal, or his deputy of the proper circuit, or other suitable person, a receiver of

the property of the judgment debtor; and he may also, by order, forbid a transfer or other disposition of, or any interference with, the property of the judgment debtor not exempt by law.

SEC. 523. *Liability of officer on official bond.*—If the marshal, or his deputy, be appointed receiver, he and his sureties shall be liable on his official bond as such receiver; but, if another person be appointed, he shall give an undertaking or bond as in other cases of receivers.

SEC. 524. *Proceedings when the judgment debtor has interest in real estate as mortgagee or mortgagor, or otherwise.*—If it appears that the judgment debtor has an interest in real estate, in the circuit in which proceedings are had, as mortgagee or mortgagor, or otherwise, and his interest can be ascertained as between himself and the person holding the legal estate, or the person having a lien on or interest in the same, without controversy as to the interest of such person holding such legal estate or interest therein, or lien on the same, the receiver may be ordered to sell and convey such real estate or the interest of the debtor therein; such sale shall be conducted in all respects in the same manner as is provided for the sale of real estate upon execution; and the proceedings of such sale shall, before the execution of the deed, be approved by the court in which the judgment was rendered.

SEC. 525. *Proceedings when indebtedness denied or another claims the property.*—If it appears that a person or corporation, alleged to have property of the judgment debtor or to be indebted to him, claims an interest in the property adverse to him or denies the debt, the court or judge may authorize, by an order made to that effect, the judgment creditor to institute an action against such person or corporation for the recovery of such interest or debt, and the court or judge may, by order, forbid a transfer or other disposition of such interest or debt until an action can be commenced and prosecuted to judgment, and may punish disobedience of such order as for contempt. Such order may be modified or vacated by the judge granting the same, or by the court in which the action is brought at any time, upon such terms as may be just.

CHAPTER XXIV.

COSTS IN THE SEVERAL COURTS.

SEC. 526. *Costs ordinarily follow result of suit.*—Costs shall ordinarily be allowed to the prevailing party as a matter of course, but the court shall have power, for special reasons, to adjudge that either party shall pay the costs of an action, or that the same be divided, as may be equitable.

SEC. 527. *When action dismissed for want of jurisdiction.*—If an action is dismissed for want of jurisdiction, courts nevertheless shall have power to render judgment for costs as justice may require.

SEC. 528. *Lawyer's fees as costs.*—No lawyer's fees shall be taxed as costs against the adverse party, except as herein specially provided. But this section shall have no relation to the fees to be charged by a lawyer as against his client.

SEC. 529. *Restriction of costs.*—If the plaintiff in any action shall recover a sum not exceeding five dollars as debt or damages, he shall recover no more costs than debt or damages, unless the court shall certify that the action involved a substantial and important right to the plaintiff, in which case full costs may be allowed, notwithstanding the debt or damages do not exceed five dollars.

SEC. 530. *Costs in District Courts.*—In an action pending before a district judge, the plaintiff may recover the following costs, and no others:

For the complaint, fifty cents.

For the attendance of himself, or his counsel, or both, on the day of trial, fifty cents.

For each additional day's attendance required in the actual trial of the case, twenty-five cents.

For each witness produced by him, for each day's necessary attendance at the trial, the witness' lawful fees.

For each deposition lawfully taken by him and produced in evidence, two dollars and fifty cents.

For original documents, deeds, or papers of any kind produced by him, nothing.

For official copies of such documents, deeds, or papers, the lawful fees necessarily paid for obtaining such copies.

The lawful fees paid by him for service of the summons and other process in the action.

The lawful fees charged against him by the court in trying the action.

If the judgment is for the defendant, he may recover the following costs, and no others:

For the attendance of himself, or his counsel, or both, on the day of trial, fifty cents.

For each additional day's attendance required in the actual trial of the case, fifty cents.

For each witness produced by him, for each day's necessary attendance at the trial, the witness' lawful fees.

For each deposition lawfully taken by him and produced in evidence, two dollars and fifty cents.

For original documents, deeds, or papers of any kind produced by him, nothing.

For official copies of such deeds or papers, the lawful fees necessarily paid for obtaining such copies.

The lawful fees paid by him for service of any process in the action.

SEC. 531. *Costs in Circuit Court.*—In an action pending in a Circuit Court, the prevailing party may recover the following costs and no others:

For the complaint or answer, four dollars.

For his own attendance and that of his lawyers, down to and including final judgment, ten dollars.

For each witness necessarily produced by him, for each day's necessary attendance of such witness at the trial the witness' lawful fees.

For each deposition lawfully taken by him, and produced in evidence, two dollars and fifty cents.

For original documents, deeds, or papers of any kind produced by him, nothing.

For official copies of such documents, deeds, or papers, the lawful fees necessarily paid for obtaining such copies.

The lawful fees paid by him for the service of any process in the action, and all lawful clerk's fees paid by him.

SEC. 532. *Costs in Supreme Court.*—In an action pending in the Supreme Court, the prevailing party may recover the following costs and no others:

For his own attendance, and that of his lawyers, down to and including final judgment, twenty dollars.

For official copies of bills of exception and the printing thereof, and all other copies required by rules of court, the sum actually paid for the same, within the limits to be established by rules of the Supreme Court.

All lawful fees charged against him by the clerk of a Supreme Court, in entering and docketing the action and recording the judgment therein and for the issuing of all process.

No allowance shall be made to the prevailing party in the Supreme Court for the brief or written or printed arguments of his lawyer, or copies thereof, aside from the twenty dollars above stated.

If testimony is received in the Supreme Court, not taken in another court and transmitted thereto, the prevailing party shall be allowed in the Supreme Court the same costs for witness fees, depositions, and process and service thereof as he would have been allowed for such items had the testimony been introduced in a Circuit Court.

The lawful fees of referees and commissioners in an action may also be taxed against the defeated party, or a portion, as justice requires.

CHAPTER XXV.

PROCEEDINGS IN SUPREME COURT.

General procedure of the Supreme Court and procedure on bills of exception.

SEC. 533. *General procedure in the Supreme Court.*—The Supreme Court may, in the exercise of its appellate jurisdiction, affirm, reverse, or modify any final judgment, order, or decree of a Circuit Court, regularly entered in the Supreme Court by bill of exceptions, appeals, or writ of error, and may direct the proper judgment, order, or decree to be entered, or direct a new trial, or further proceedings to be had, and if a new trial shall be granted, the court shall pass upon and determine all the questions of law involved in the case presented by such bill of exceptions and necessary for the final determination of the action.

SEC. 534. *Hearings confined to matters of law, with certain exceptions.*—In hearings upon appeals, in civil actions and special proceedings, the Supreme Court shall not review the evidence taken in the court below, nor re-try the questions of fact, except as in this section hereinafter provided; but shall determine only questions of law raised by the bill of exceptions. But the Supreme Court may review the evidence taken in the court below, and affirm, reverse, or modify the judgment there rendered, as justice may require, in the following cases:

1. If before the final determination of an action pending in the Supreme Court on bill of exceptions, new and material evidence be discovered by either party, which could not have been discovered before the trial in the court below by the exercise of due diligence, and which is of such a character as probably to change the result, the Supreme Court may receive and consider such new evidence, together with that adduced on the trial below, and may grant or refuse a new trial, or render such other judgment as ought, in view of the whole case, to be rendered, upon such terms as it may deem just. The party seeking a new trial, or the reversal of the judgment on the ground of newly discovered evidence, may petition the Supreme Court for such new trial, and shall attach to the petition affidavits showing the facts entitling him to a new trial and newly discovered evidence. Upon the filing of such petition in the Supreme Court, the court shall, on notice to both parties, make such order as to taking further testimony by each party, upon the petition either orally or in court, or by depositions, upon notice as it may deem just. The petition, with the evidence, shall be heard at the same time as the bill of exceptions;

2. If the excepting party file a motion in the Circuit Court for a new trial, upon the ground that the findings of facts are plainly and

manifestly against the weight of evidence, and the judge overrule said motion, and due exception be taken to his order overruling the same, the Supreme Court may review the evidence and make such finding upon the facts, and render such final judgment, as justice and equity require. But, if the Supreme Court shall be of the opinion that this exception is frivolous and not made in good faith, it may impose double or treble additional costs upon the excepting party and may order them to be paid by the counsel prosecuting the bill of exceptions, if in its opinion justice so requires.

SEC. 535. *Procedure on appeal from special proceedings.*—On appeal from special proceedings had before a Circuit Court, the Supreme Court shall determine the questions of fact from the evidence certified from the judge or court below, and shall also decide all questions of law arising upon the appeal. But, if the appeal involves such a number of items of account as to render the re-examination of the evidence by the Supreme Court inconvenient and unduly burdensome, the court may refer the accounting to a commissioner to be appointed by it, who shall be thoroughly competent to adjust complicated accounts. The commissioner shall have power to administer oaths, and to re-examine all controverted items of the account, upon the testimony already taken and certified from the judge or court below, and upon such further testimony as the Supreme Court shall for special reasons authorize. He shall be sworn to a faithful performance of his duties as commissioner and shall have power to issue subpoenas for witnesses. He shall state the items of the account as allowed or disallowed, and report to the court his findings of facts and his allowances or disallowances, and his rulings upon all questions of law, and shall return to the court all testimony taken by him. The court shall thereupon render, upon notice and hearing, such judgment as justice requires, in view of the findings of the commissioner and of the evidence. The court shall not be bound by his findings, but may review the evidence, or may recommit the report to the same or another commissioner for further findings, if justice so requires. The final judgment of the Supreme Court in such special proceedings shall be certified to the Circuit Court immediately upon its rendition, and shall be conclusive.

SEC. 536. *Judge failing to sign exceptions, how compelled.*—If from any cause the bill of exceptions is not certified by the judge of the court below, without fault of the party tendering the bill of exceptions, such party, or his attorney, may apply at the next term of the Supreme Court, and on petition obtain from said court a mandamus directed to the judge:

1. Such petition must set out substantially the bill of exceptions tendered, and shall be verified by oath by the lawyer as to the truth

of the bill of exceptions as tendered by the party or his lawyer and as to the other facts stated thereon;

2. Upon the filing of such petition, the Supreme Court shall issue a mandamus directed to the judge of the Circuit Court requiring him forthwith to make return of his reasons for not certifying the bill of exceptions, and the judge shall forthwith make such return, and the Supreme Court shall hear the original parties and determine the validity of the reasons given by the judge for his failure or refusal;

3. If the reasons be insufficient, or the judge fails or refuses to make any return to the mandamus, the Supreme Court shall issue a mandamus absolute, commanding the judge to sign and certify the bill of exceptions, as set forth in the petition or as modified by the Supreme Court;

4. If he still refuses to do so, the cause shall be heard by the Supreme Court on the exceptions as verified in the petition for mandamus;

5. In the hearing upon the judge's return, as provided in subdivision two of this section, the Supreme Court may, in its discretion, receive other testimony than the judge's return, in determining the validity of the reasons given by the judge for his failure or refusal to sign the bill of exceptions.

SEC. 537. *Dismissal of bills of exception.*—Bills of exception may be dismissed with costs, when it appears upon the face thereof that the Supreme Court has not jurisdiction, or that the action has not been properly brought to that court by bill of exceptions, or that the exceptions have not been allowed by the judge of the Circuit Court or for unreasonable failure to prosecute or perfect the bill of exceptions. But no such dismissal shall be made for purely formal defects not affecting the rights of the parties, nor for any defect which can be removed, and the Supreme Court shall give such reasonable time as may be necessary to remove such defect, if it can be removed. Nor shall such dismissal be made as a penalty upon lawyer or client for non-compliance with any rule or rules of the court, where there has been a substantial compliance with the law prescribing the method of bringing actions into the Supreme Court; nor for any want of technical conformity to the laws or rules regulating the practice of carrying cases to that court, where there is enough in the bill of exceptions presented to enable the court to ascertain substantially the real questions presented in the case which the parties seek to have decided therein; nor shall such dismissal be granted whereby an amendment to the bill of exceptions, which is hereby declared to be lawful and allowable, and imperfections or omissions of necessary and proper allegations, could be corrected from the record in the case.

SEC. 538. *Incomplete record, how corrected.*—If at any time when a case is called for trial, or during the trial, or afterwards, while the

Supreme Court may have the same under consideration, it is discovered that the record is so incomplete that justice requires the case to be postponed until the record can be made complete, the court shall postpone the further consideration of the same and make such order as may be proper and necessary to complete the record, in the interests of justice. But the court may dismiss a bill of exceptions for failure of the excepting party within a reasonable time to comply with the orders made for the perfection of the bill of exceptions.

SEC. 539. *Effect of dismissing bill of exceptions.*—The dismissal of a bill of exceptions by the Supreme Court will leave the action as though no bill of exceptions had ever been filed, and the judgment of the Circuit Court may be enforced at any time after such dismissal. But the execution shall include additional costs allowed by the Supreme Court upon the dismissal of the bill of exceptions.

SEC. 540. *Judgment not to be reversed on technical grounds.*—No judgment shall be reversed on formal technical grounds or for such error as has not prejudiced the real rights of the excepting party.

SEC. 541. *May order trial before another judge.*—Whenever a judgment of a Circuit Court shall be reversed and a new trial be ordered, the Supreme Court may assign one of its own members, or any judge of another Circuit Court, to hear the action upon the new trial, instead of the judge whose judgment has been vacated, if, in the opinion of the Supreme Court, fairness to the parties requires such order.

SEC. 542. *Procedure upon new trial.*—In a new trial ordered by the Supreme Court, all the evidence taken upon the former trial which is competent and admissible shall be used upon the new trial without retaking; but additional evidence may be presented upon the second trial by either party.

SEC. 543. *Certificate of judgment to be remitted to the Circuit Court.*—In all cases heard by the Supreme Court on bills of exception, its judgments shall be remitted to the Circuit Courts from which the actions respectively came into the Supreme Court; and for this purpose it shall be the duty of the clerk of the Supreme Court, within ten days after the close of any term, to remit to the clerks of the Circuit Courts, notices of all judgments of the Supreme Court in actions brought from the Circuit Courts respectively. Upon receiving the notice so remitted, the clerk of the Circuit Court shall enter the same upon his docket and file the notice with the other papers in the action.

The judgment so remitted shall be executed by the Circuit Court in the same manner as though the action had not been carried to the Supreme Court. But the Supreme Court may, by special order, direct any particular judgment to be remitted to the proper Circuit Court at any time, without awaiting the end of the term.

SEC. 544. *The clerk of the Circuit Court to give notice of judgments remitted.*—It shall be the duty of the clerks of the Circuit Courts, upon receiving notice of any judgment remitted by the Supreme Court, immediately in writing, to notify the counsel of all parties of the judgment that has been received.

SEC. 545. *Copy of opinion certified to court below.*—In all cases in which the Supreme Court shall reverse the judgment of the court below, and remand the action to be proceeded with in such court, by a new trial or otherwise, the clerk of the Supreme Court shall prepare and certify a copy of the opinion of the Supreme Court in the action, and send it with the certificate of the judgment rendered in the action by the Supreme Court, to the clerk of the court from which the action was brought, or to which it may be remanded; and the fees of the clerk for certifying the opinion shall be a part of the taxable costs of the case in the Supreme Court; and the copy of the opinion furnished shall be preserved by the clerk to whom it is delivered, for the use of the court and parties.

SEC. 546. *Excepting party not entitled to reversal as to another.*—In all actions, civil and criminal, a judgment excepted to may be affirmed as to some of the excepting parties, and reversed as to others; and one of several excepting parties shall not be entitled to a judgment of reversal because of an error in the judgment against another not affecting his rights in the case; and when a judgment shall be affirmed as to some of the excepting parties and reversed as to others the case shall thereafter be proceeded with, so far as necessary, as if separate actions had been begun and prosecuted; and execution of the judgment of affirmance may be had accordingly, and costs may be adjudged in such cases, as the Supreme Court shall deem proper.

SEC. 547. *Interest on judgment affirmed.*—When the Supreme Court shall affirm a judgment of a court below, for the recovery of money, or shall reverse a judgment of a court below, and award a sum of money as debt or damages, it shall direct that interest be added to the original judgment or sum determined to be due, from the date of the former judgment until the date of the final judgment, at the rate of six per cent per annum.

SEC. 548. *Extraordinary orders enforced by lower court, when.*—When judgments are rendered in injunction or other extraordinary cases, the judges of the Circuit Court are clothed with the power to give immediate effect to them either in term time or in vacation, after the judgment of the Supreme Court has been remitted to the Circuit Court as above provided.

SEC. 549. *Bills of exception to be printed.*—The Supreme Court may cause ten copies of all bills of exceptions to be printed, for the use of the judges and all counsel in the case. The expense of print-

ing shall be paid primarily by the excepting party, and shall be taxed as a part of costs in the case.

CHAPTER XXVI.

PROCEEDINGS OF SUPREME COURT IN THE EXERCISE OF ITS ORIGINAL JURISDICTION.

SEC. 550. *Procedure in cases of default caused by fraud, accident, or mistake.*—When a judgment is rendered by a Circuit Court upon default, and a party thereto is unjustly deprived of a hearing by fraud, accident, mistake, or excusable negligence, and the Circuit Court which rendered the judgment has finally adjourned so that no adequate remedy exists in that court, the party so deprived of a hearing may present his petition to the Supreme Court within sixty days after he first learns of the rendition of such judgment, and not thereafter, setting forth the facts and praying to have such judgment set aside. The court shall summarily on notice to both parties hear such petition, upon oral or written testimony as it shall direct, and the judgment shall be set aside and a trial upon the merits granted, upon such terms as may be just, if the facts set forth in the complaint are found to be true, otherwise the complaint shall be dismissed with costs.

If a trial on the merits is granted, the order shall forthwith be certified to the Circuit Court. Pending such petition, any judge of the Supreme Court for cause shown, may order a suspension of further proceedings to enforce the judgment complained of, upon taking sufficient security from the petitioner for all costs and damages that may be awarded against him in case the petition is dismissed.

SEC. 551. *Procedure in certiorari.*—The Supreme Court shall have concurrent jurisdiction with the Circuit Court in certiorari proceedings over any other inferior tribunal, board, or officer exercising judicial functions that has exceeded the jurisdiction of such tribunal, board, or officer and where there is no appeal or any plain, speedy, or adequate remedy, and shall likewise have original jurisdiction by certiorari proceedings over the proceedings of Circuit Courts wherever said courts have exceeded their jurisdiction, and there is no plain, speedy and adequate remedy by bill of exception, or appeal, or otherwise. The proceedings of the Supreme Court in certiorari proceedings shall be the same as those provided for such proceedings for Circuit Courts.

SEC. 552. *Procedure in mandamus.*—The Supreme Court shall have concurrent jurisdiction with the Circuit Courts in all cases where any inferior tribunal, corporation, board, or person unlawfully neglects the performance of an act which the law specially enjoins as a duty resulting from an office of trust or station, or unlawfully

excludes the plaintiff from the use and enjoyment of a right or office to which he is entitled, and from which he is unlawfully excluded by such inferior tribunal, corporation, board, or person, and also shall have original jurisdiction over Circuit Courts and judges thereof wherever said court or judge unlawfully neglects the performance of a duty which the law specifically or specially enjoins as a duty imposed upon such court or judge. The procedure of the Supreme Court in mandamus proceedings shall be the same as those provided for mandate in this Code.

SEC. 553. *Prohibition.*—The Supreme Court shall have concurrent jurisdiction with Circuit Courts over inferior tribunals, corporations, boards, or persons, whether exercising functions judicial or ministerial, which are without or in excess of the jurisdiction of such tribunal, corporation, board, or person, and also have original jurisdiction over Circuit Courts when such courts are exercising functions without or in excess of their jurisdiction. The proceedings of the Supreme Court in prohibition shall be the same as those provided for prohibition in this Code.

SEC. 554. *Preliminary injunctions in certiorari, mandate, prohibition proceedings.*—In certiorari, mandamus, and prohibition proceedings an injunction may be granted by any judge of the Supreme Court, if in his judgment such injunction is necessary for the preservation of the rights of the parties pending litigation.

SEC. 555. *Expediting such proceedings.*—The court may, in its discretion, make such orders as it deems necessary for expediting proceedings in petitions for certiorari, mandamus, or prohibition proceedings.

SEC. 556. *Quo warranto.*—The Supreme Court shall have concurrent jurisdiction with Circuit Courts over actions brought by reason of the usurpation of a public civil office, or franchise, or an office in a corporation created by authority of the government of the Canal Zone without being legally incorporated, or without lawful authority to do so; and over corporations that have forfeited their privileges and franchise by a nonuser, and when they have committed or omitted an act which amounts to a surrender of their corporate rights, privileges, or franchises, or when they have misused a franchise, privilege, or right conferred upon them by law, or when they have exercised a franchise, privilege, or right in contravention of law. Its proceedings in the exercise of this original jurisdiction shall be in accordance with the provisions of this Code.

CHAPTER XXVII.

THE CLERK OF THE SUPREME COURT AND HIS DUTIES.

SEC. 557. *The clerk.*—The clerk of the Supreme Court shall carefully keep a minute of the proceedings of the court for each day,

drawn up in a record book to be kept by him for that purpose; he shall seasonably record the judgments, decrees, orders, and decisions of the court. He shall safely keep all records, files, books, and papers committed to his charge, including the library of the Supreme Court and also all seals and furniture belonging to his office, and deliver such records, files, books, seals, and furniture to his successor in office; and in case of refusal or failure to deliver whatever belong to his office to his successor, his bondsmen shall be holden for such refusal or failure; he shall prepare for any person demanding the same, a certified copy of any paper, record, decree, judgment, or entry on file in his office, proper to be certified, for the fees prescribed by law. He shall issue all ordinary process incident to proceedings in the Supreme Court, not including injunctions, appointment of receivers and other extraordinary functions appertaining to the court or judge only. The transcript filed in the Supreme Court, the process in each case, and the judgment or decree entered therein shall be the final record in the cause in the Supreme Court, certified as such by the clerk whenever an exemplification of a judgment or a decree of the court may be required.

SEC. 558. *Dockets*.—It shall be the duty of the clerk of the court to make out and keep a general docket or register of actions and proceedings wherein all actions and proceedings, civil and criminal, shall be entered and numbered consecutively in the order in which they are received. He shall enter upon his docket, under the head of each action or proceeding, in brief form, a note of everything done therein. He shall also prepare and keep such other books as the court shall direct.

CHAPTER XXVIII.

SPECIAL PROCEEDINGS.

Power of judge or court in special proceedings.

SEC. 559. Any act required or authorized to be performed by a Circuit Court in special proceedings may be performed by the judge thereof, and the orders, judgments, and decrees made by him as judge at any time, within his jurisdiction, in such proceedings, shall be equally effective as though made in open court at a regular session thereof.

CHAPTER XXIX.

PROCEEDINGS IN HABEAS CORPUS.

SEC. 560. *To what habeas corpus extends*.—The writ of habeas corpus shall extend to all cases of illegal confinement or detention by which any person is deprived of his liberty, or by which the

rightful custody of any person is withheld from the person entitled thereto, except in cases expressly excepted.

SEC. 561. *Who may grant the writ.*—The writ of habeas corpus may be granted by the Supreme Court, or any judge thereof, in term time or in vacation, and if so granted it shall be enforceable anywhere in the Canal Zone, and it shall be enforceable before the court or any judge thereof. It may also be granted by a Circuit Court, or a judge thereof, in term time or in vacation, and returnable before himself, enforceable within the Canal Zone.

SEC. 562. *Requisites of application therefor.*—Application for the writ shall be by petition signed and verified either by the party for whose relief it is intended, or by some person for him, and shall specify:

1. That the person in whose behalf the application is made is imprisoned or restrained of his liberty;

2. The officer or name of the person by whom he is so confined or restrained or, if both are unknown or uncertain, he may be described by an assumed appellation, and the person who is served with the writ shall be deemed the person intended;

3. The place where he is so imprisoned or restrained, if known;

4. A copy of the commitment or cause of detention of such person shall be exhibited, if it can be procured, without impairing the efficiency of the remedy; or, if the imprisonment or detention is without any legal authority, such fact shall appear.

SEC. 563. *When the writ shall not be allowed.*—If it appears that the person alleged to be restrained of his liberty is in custody of an officer under process issued by a court or magistrate, or by virtue of a judgment or order of a court of record, and that the court or magistrate had jurisdiction to issue the process, render the judgment, or make the order, the writ shall not be allowed; or if no jurisdiction appear after the writ is allowed, the person shall not be discharged by reason of any informality or defect in the process, judgment, or order.

SEC. 564. *Not to apply in certain cases.*—Nothing in this chapter shall authorize the discharge of any person convicted of an offense, or charged with an offense, committed in any other part of the Canal Zone, or in any part of the United States, and who, agreeably to law, ought to be delivered up to the executive power of the United States or of any State thereof, where the offense is charged to have been committed; nor of any person suffering imprisonment under lawful judgment.

SEC. 565. *When the writ must be granted.*—A judge or a court authorized to grant a writ must, when a petition therefor is presented, if it appear that the writ ought to issue, grant the same forthwith.

SEC. 566. *Who to issue the writ.*—The writ, upon its allowance, shall be issued forthwith, by the clerk of the court whereof the person who granted it is a judge, under the seal of such court; or in case of emergency, such judge may issue the writ under his own hand, and may depute any officer or person to serve it.

SEC. 567. *How prisoner may be designated.*—The person to be produced should be designated by his name, if known, and if not known, or uncertain, he may be described in any other way so as to make known who is intended.

SEC. 568. *Requisites of writ in certain cases.*—In case of confinement, imprisonment, or detention by an officer, the writ shall be directed to him and shall command him to have the body of such person before the court or judge designated in the writ, at the time and place therein specified.

SEC. 569. *Form of writ when prisoner not in custody of an officer.*—In case of confinement, imprisonment, or detention, by a person not an officer, the writ shall be substantially in the form following:

“ UNITED STATES OF AMERICA,

“ *Canal Zone, ss:*

“ *To the marshal or his deputy of any circuit, greeting:*

“ We command you that the body of _____, of _____ by _____ of _____, imprisoned and restrained of his liberty, as it is said, you take and have before _____, a judge of our _____ court (or before the court, as the case may be) or in case of his absence or disability, before some other judge of the same court at _____, forthwith to do and receive what the said judge shall then and there consider, concerning him in this behalf; and summon the said _____ then and there to appear before our said judge (or court) to show the cause of the taking and detention of the said _____.

“ Witness my hand at _____ this ____ day of _____ in the year 19__.

“(Seal.) _____,

“ *Judge of the _____ Court (as the case may be).*”

SEC. 570. *How and where writ may be served.*—The writ may be served in any circuit, by the marshal or his deputy, or by a person deputed by the court or judge.

SEC. 571. *How executed and returned.*—The officer or person to whom the writ is directed shall convey the person so imprisoned or detained, and named in the writ, before the judge allowing the writ, or, in case of his absence or disability, before some other judge of the same court, on the day specified in the writ: and he shall make due return of the writ, together with the day and the cause of the caption and detention of such person according to the demand thereof.

SEC. 572. *When it may be returned to another judge or court.*—When the writ is issued by a court in session, if the court has adjourned when the same is returned, it shall be returned before any judge of the same court; and when the writ is returned before one judge, at a time when the court is in session, he may adjourn the case into the court there to be heard and determined.

SEC. 573. *What shall be stated in the return of the writ.*—When the person to be produced is imprisoned or restrained by an officer, the person who makes the return shall state therein, and in other cases, the person in whose custody the prisoner is found, shall state, in writing, to the court or judge before whom the writ was returnable plainly and unequivocally:

1. Whether he has or has not the party in his custody or power or under restraint;

2. If he has the party in his custody or power, or under restraint, he shall set forth, at large, the authority and the true and whole cause of such imprisonment and restraint, with a copy of writ, warrant, execution, or other process, if any, upon which the party is detained;

3. If he has had the party in his custody or power, or under restraint, and has transferred such custody or restraint to another, he shall state particularly to whom, at what time, for what cause, and by what authority such transfer was made.

SEC. 574. *The return must be signed and sworn to.*—The return or statement shall be signed by the person who makes it; and shall also be sworn to by him, unless he is a sworn public officer, and makes the return in his official capacity.

SEC. 575. *Adjournment of cause.*—The court or judge to whom the writ is returned, or the court into which it is adjourned, may, for good cause shown, continue the cause, and shall make such order for the safe-keeping of the person imprisoned or detained as the nature of the cause requires.

SEC. 576. *When prisoner shall be discharged.*—When the judge or court has examined into the cause of caption and detention of the person so brought before it, and is satisfied that he is unlawfully imprisoned or detained, he shall forthwith discharge him from confinement. On such examination the judge shall disregard matters of form or technicalities in any warrant, mittimus, or order of commitment by a court or officer authorized to commit by law.

SEC. 577. *When prisoner may be committed to jail, or let to bail.*—When the prisoner is confined or detained in a legal manner, on a charge of having committed a crime or offense which is bailable, the judge or court shall, in its discretion, recommit him to confinement, or “let him to bail”; if he be let to bail, the judge shall cause him to enter into a recognizance, with sufficient surety, in such a sum

as he deems reasonable—the circumstances of the prisoner, and the nature of the offense charged, considered—conditioned for his appearance at the court where the offense is properly cognizable; the judge shall certify his proceedings, together with the recognizance, forthwith to the proper court; and if the person charged fail to enter into such recognizance, he shall be committed to prison by the judge.

SEC. 578. *When prisoner must be committed.*—If it appear that the prisoner was committed by a judge or justice, and is plainly and specifically charged in the warrant of commitment with a high crime, punishment whereof is capital, he shall not be released, discharged, or bailed.

SEC. 579. *When the return is evidence, and when only a plea.*—If it appear that the prisoner is in custody under a warrant of commitment in pursuance of law, the return shall be considered prima facie evidence of the cause of detention; but if he is restrained of his liberty by any alleged private authority, the return of the writ shall be considered only as a plea of the facts therein set forth, and the party claiming the custody shall be held to make proof of such facts; and upon the final disposition of any cause, the court or judge shall make such order as to costs as the case requires.

SEC. 580. *Penalty upon clerk for refusing to issue the writ.*—If a clerk of a court refuse to issue the writ, after allowance thereof and demand therefor, he shall forfeit to the party aggrieved the sum of five hundred dollars, to be recovered in a proper action.

SEC. 581. *Penalty for disobeying the writ.*—A person to whom a writ is directed, who neglects or refuses to obey or make return of the same, according to the command thereof, or makes false return thereof, or who, upon demand made by the prisoner or any person on his behalf, refuses to deliver to the person demanding, within six hours after the demand therefor, a true copy of the warrant of commitment and detainer of the prisoner shall, for the first offense forfeit to the party aggrieved two hundred dollars, and for the second offense four hundred dollars, and may also be dealt with by the judge of the court as for contempt.

SEC. 582. *Persons set at liberty upon the writ not to be again imprisoned.*—A person who is set at liberty upon a writ of habeas corpus shall not be again imprisoned for the same offense unless by the legal order or process of the court wherein he is bound by recognizance to appear, or other court having jurisdiction of the cause of offense; and a person who knowingly, contrary to the provisions of this chapter, recommits or imprisons, or causes to be committed or imprisoned, for the same offense, or pretended offense, any person so set at liberty, or knowingly aids or assists therein, shall forfeit to the party aggrieved five hundred dollars notwithstanding any colorable pretense or variation in the warrant of

commitment, and may also be dealt with as for a contempt by the judge or court granting the writ.

SEC. 583. *Prisoner not to be removed from the custody of one officer to another, unless, and so forth.*—A person committed to prison, or in the custody of an officer, for any criminal matter, shall not be removed therefrom into the custody of another officer, unless by legal process, or the prisoner be delivered to an inferior officer to carry to jail, or, by order of the proper court, be removed from one place to another within the Canal Zone, for trial, or in case of fire, infection, insurrection, or other necessity; and a person who, after such commitment, makes, signs, or countersigns any warrants, for such removal contrary to this section, shall forfeit to the party aggrieved five hundred dollars.

SEC. 584. *Record of writ, and so forth.*—The proceedings upon a writ of habeas corpus shall be recorded by the clerks respectively.

SEC. 585. *Fees and costs.*—The fees of officers and witnesses shall be taxed by the judge, on his return of his proceedings on the writ, and when the prisoner is discharged, the costs shall be taxed to the Government of the Canal Zone, and paid out of its treasury; but no officer or person shall have the right to demand payment in advance of any fees which he is entitled to by virtue of the proceedings when the writ is demanded or issued for the discharge from custody or the person confined under color of proceedings in any criminal case; when a person in custody by virtue or under color of proceedings in any civil case is discharged the costs shall be taxed against the party at whose instance he was so in custody; and if he be remanded to custody, costs shall be taxed against him.

CHAPTER XXX.

GUARDIANS, THEIR APPOINTMENT, DUTIES, POWERS, AND ACCOUNTS.

Guardians of minors.

SEC. 586. *Judge of Circuit Court may appoint guardian.*—The judge of a Circuit Court of each circuit, when it appears necessary or convenient, may appoint guardians for the persons and estates, or either of them, of minors, who have no guardian legally appointed by will or deed, and who are inhabitants or residents of the Canal Zone, or who reside without the Canal Zone and have estates within the circuit. Such appointment may be made on the petition of a relative, or other person on behalf of the minor, or on petition of the minor, if fourteen years of age. Before making such appointment the judge must cause such notice as he deems reasonable to be given to any person having the care of such minor, and to such relatives of a minor residing in the circuit as he may deem proper.

SEC. 587. *Spanish law as to power of family council in guardianship matters repealed.*—All provisions of Spanish law heretofore prevailing in the Canal Zone giving to the family council any authority in the appointment of guardians for minors or other persons, are hereby repealed.

SEC. 588. *Father or mother natural guardians and to be appointed guardian of estate, if competent.*—The father, or, in case of his death or legal disqualification, the mother, of a minor child is to be deemed the natural guardian of the child, and as such is entitled to the custody and care for the education of the child, but not of his estate unless so ordered by the court, preference being given in the order just named; but the court shall have the power to set aside the order of preference here provided and to appoint any suitable person as guardian, either of the person or of the estate of the minor, or both, as the best interests of the child may require. The authority of the guardian can not be extinguished or affected by the marriage of the guardian.

SEC. 589. *Guardian to care for minor's education.*—A guardian duly appointed shall have the custody and care of the education of the minor, if the court shall so order, and likewise the care and management of his estate, if the court shall so order, until such minor arrives at the age of majority, or marries, or until the guardian is legally discharged.

SEC. 590. *Bond of guardian.*—Before the order appointing any person guardian under this chapter takes effect, and before letters of guardianship issue, the judge must require of such person a bond to the minor, with sufficient surety, to be approved by the judge, and in such sum as he shall order, conditioned that the guardian will faithfully execute the duties of his trust according to law, and the following conditions shall form a part of such bond without being expressed therein:

1. To make an inventory of all the estate, real and personal, of his ward, that comes to his possession or knowledge, and to return the same within such time as the court may order;

2. To dispose of and manage the estate according to law for the best interests of the ward, and faithfully to discharge his trust in relation thereto, and also in relation to the care, custody, and education of the ward;

3. To render an account on oath of the property, estate, and moneys of the ward in his hands, and all proceeds or interest derived therefrom, and of the management and disposition of the same, within three months after his appointment, and at such other times as the judge directs, and at the expiration of his trust, to settle his accounts with the Circuit Court and to pay over and deliver all the estate, moneys, and effects remaining in his hands, and due from him on

such settlement, to the person lawfully entitled thereto. Upon filing the bond duly approved, letters of guardianship must issue from the judge to the person appointed. The oath of the guardian shall be indorsed thereon that he will perform the duties as such guardian according to law.

SEC. 591. *Recording letters of guardianship.*—All letters of guardianship issued, and all guardians' bonds executed under the provisions of this chapter, together with the oaths thereon, must be recorded by the clerk of the Circuit Court of the circuit within and for which the appointment is made.

SEC. 592. *Testamentary guardians.*—Every guardian appointed by the will of a parent must give bond and qualify, and has the same powers and has the same duties in regard to the person and estates of his ward as guardians appointed by the court, except so far as their powers and duties are legally modified, enlarged, or changed by the will by which such guardian was appointed.

SEC. 593. *Guardians ad litem not affected by this chapter.*—Nothing contained in this chapter affects or impairs the power of any court to appoint a guardian ad litem, to defend the interest of any minor interested in any action or matter pending therein.

Guardians of persons of unsound mind.

SEC. 594. *Appointment of guardians of persons of unsound mind.*—When it is represented to a Circuit Court or a judge thereof by petition verified by oath of any relative or friend, that any person who is an inhabitant or resident of the circuit, is insane or a spendthrift, incompetent to manage his estate, praying that a guardian may be appointed for such person, such court or judge must cause a notice to be given to the supposed insane or incompetent person of the time and place of hearing the petition, not less than five days before the time so appointed; and such person, if able to attend, must be produced on the hearing.

SEC. 595. *Duty of court to appoint.*—If after a full hearing and examination upon such petition, it appears to the court or judge that the person in question is incapable of taking care of himself and managing his property, such court or judge must appoint a guardian of his person and estate, with the powers and duties thereafter specified.

SEC. 596. *Power and bond of guardian.*—Every guardian appointed, as provided in the preceding section, shall have the care and custody of the person of his ward and the management of all his estate, until such guardian is legally discharged; and he must give bond to such ward in like manner and with like conditions as before prescribed with reference to the guardian of a minor.

SEC. 597. *Restoration of competency.*—Any person who has been declared insane or incompetent, or the guardian or any relative of such person within the third degree, or any friend, may apply, by petition to the Circuit Court in which the appointment of guardian was made, and have the fact of his restoration to capacity judicially determined. The petition shall be verified by oath, and shall state that such person is then sane and competent. Upon receiving the petition, the court must appoint a day for hearing before the court, and shall cause notice of the trial to be given to the guardian of the person so declared insane or incompetent and to the ward. On the trial, the guardian, or relatives of the person so declared insane or incompetent, and in the discretion of the court any other person, may contest the right to the relief demanded. Witnesses may be required to appear and testify, and may be called and examined by the court on its own motion. If it be found that the person be of sound mind, and capable of taking care of himself and property his restoration to capacity shall be adjudged and the guardianship of such person, if such person be not a minor, shall cease.

SEC. 598. *Guardian to pay debts of ward.*—Every guardian appointed under the provisions of this chapter, whether for a minor or any other person, must pay all just debts due from his ward out of his personal estate and the income of his real estate if sufficient; if not, then out of his real estate, upon obtaining an order for the sale thereof, and disposing of the same, in the manner provided in this Code for the sale of real estate of deceased persons.

SEC. 599. *Guardian to settle all affairs of ward.*—Every guardian must settle all accounts of the ward, and demand, sue for, and receive all debts due to him, or may, with the approbation of the judge, compound for the same and give discharges to the debtor, on receiving a fair and just dividend of the estate and effects; he must appear for and represent his ward in all legal suits and proceedings, unless another person be appointed for that purpose.

SEC. 600. *Management of ward's estate.*—Every guardian must manage the estate of his ward frugally and without waste, and apply the income and profits thereof, so far as may be necessary, for the comfortable and suitable maintenance of the ward and his family, if there be any; and if such income and profits be insufficient for that purpose, the guardian may sell the real estate, upon obtaining an order of the judge therefor, as provided in the preceding section. He must apply the proceeds of such sale, so far as may be necessary, for the maintenance and support of his ward and his family if there be any.

SEC. 601. *Entrusting ward with a portion of his estate.*—Where it is made to appear to the court by satisfactory proof that it is to the advantage of the ward to engage in business, the court under such

restrictions as it deems necessary to impose for the protection of the ward, may authorize the guardian to entrust him with a portion of the ward's estate, in no event to exceed one half thereof. The order of the court shall provide that the guardian at his next accounting shall produce vouchers or other satisfactory evidence showing that the authorized amount of the estate has been so invested.

SEC. 602. *Action of guardian in partition proceedings.*—The guardian may join in and assent to a partition of the real or personal estate of the ward, held by the ward jointly or in common with others, after leave granted by the judge or court having jurisdiction over the estate; but such leave shall not be granted except after a careful investigation of the necessity and propriety of the proposed action by the judge or court, after such notice to relatives of the ward as the judge or court may deem necessary.

SEC. 603. *Inventory and accounts of guardians.*—Every guardian must return to the court an inventory of the estate of his ward within three months after his appointment and annually thereafter. The court or judge may upon application made for that purpose by any person interested compel the guardian to render an account to the court of the estate of his ward. The inventories and accounts so to be returned or rendered must be sworn to by the guardian. All the estate of the ward described in the first inventory must be sworn to by the guardian. All the estate of the ward described in the first inventory must be appraised by two appraisers appointed and sworn by the judge. Such inventory, with the appraisement of the property therein described, must be recorded by the clerk of the court in a proper book kept in his office for that purpose. Whenever any other property of the ward is discovered, not included in the inventory of the estate already returned, and whenever any other property has been succeeded to or acquired by any ward, for his benefit, the like proceedings must be had for the return and appraisement thereof within the time provided for the first inventory and return.

SEC. 604. *Settlement of guardian's accounts.*—The guardian must upon the expiration of a year, from the time of his appointment, and as often thereafter as may be required, present his account to the court for settlement and allowance.

In the settlement of the account, the guardian shall be allowed the amount of his reasonable expenses incurred in the execution of his trust and also such compensation for his services as the court, in which his accounts are settled, deems just and reasonable; but not exceeding two dollars per day for the time actually spent, and a commission upon disbursements made by him which commission shall be the same as that in this Code provided for disbursements made by executors and administrators. But in cases of exceptional

importance, a larger compensation may be allowed for the services of the guardian.

SEC. 605. *Sale or reinstatement of portions of estate.*—When the income of an estate under guardianship is insufficient to maintain the ward and his family, or to maintain and educate the ward when a minor, or when it appears to the satisfaction of the court that it is for the benefit of the ward that his real estate or some part thereof should be sold, and the proceeds thereof put out at interest, or invested in some productive security, or in the improvement or security of other real estate of the ward, the guardian may present to the judge or court by which he was appointed a verified petition, setting forth the condition of the estate of his ward and the facts and circumstances on which the petition is founded, tending to show the necessity or expediency of the sale. If it appears to the court or judge that it is necessary or would be beneficial to the ward that the estate or some part of it should be sold, the court shall thereupon make an order directing the next of kin to the ward, and all persons interested in the estate, to appear before the judge or court, at the time and place therein specified, not less than four nor more than eight weeks from the time of making such order, to show cause why an order should not be granted for the sale of such estate. If it appears that it is necessary, or would be beneficial to the ward, to sell the estate, or some portion of it, the court shall order the sale to be made and the proceeds thereof to be expended for the maintenance of the ward and his family, or the education of the ward, if a minor, or for the putting of the same out at interest, or the investment of the same as the circumstances may require. Upon the hearing, the court or judge shall hear the proofs and allegation of the petitioner and next of kin, and other persons interested, together with their witnesses, and may grant or refuse the order, as the best interests of the ward may require, and make such order as to costs of the hearing as may be just.

If the prayer of the petition is granted, the order of sale shall specify the causes why the sale is necessary, or beneficial, and may order the sale to be made; but all sales of wards' estates shall be made at public auction to the highest bidder after public advertisement for such time and in such manner as the court may direct, unless a private sale is expressly authorized by the court; and no sale of a ward's real estate shall be valid to pass title thereto until the same be confirmed by the court. The original bond of the guardian shall stand as security for the proper appropriation of the sale, but the judge or court may, if deemed expedient, require an additional bond as a condition for the granting of the order of sale. No order of sale granted in pursuance of this section shall continue in force more than one year after granting the same, without a sale being had. The petition, notice to heirs, and parties interested, and order of the court or judge

in the premises, shall be recorded by the clerk of the court as a part of the record of the guardianship.

SEC. 606. *Sales must be for cash or other adequate security.*—All sales of real estate of wards must be for cash or for part cash and part deferred payments, the credit in no case to exceed two years from the date of sale, as in the discretion of the court is deemed most beneficial to the ward. In case of deferred payments, the guardian must receive notes for the deferred payments secured by the retention of a lien upon the property conveyed or by a mortgage thereon, with such additional security, if any, as the court deems necessary.

SEC. 607. *Reinvestment of the proceeds of sale.*—The court or judge may authorize and require the guardian to invest the proceeds of sales and any other of his ward's money in his hands, in real estate, or in any other manner most to the interest of all concerned and may make such other orders, and give such directions, as are needful for the management, investment, and disposition of the estate and effects, as circumstances may require.

SEC. 608. *Guardian of nonresident.*—When a person liable to be put under guardianship, according to the provision of this chapter, resides without the Canal Zone and has estate therein any friend of such person, or any one interested in his estate, in expectancy or otherwise, may apply to the circuit in which there is any estate of such absent person, for the appointment of a guardian, and if, after notice given to all interested in such manner as such court orders, by publication or otherwise, and a full hearing and examination, it appear proper, a guardian for such absent person may be appointed; and every guardian appointed under this section shall have the same powers, and perform the same duties with respect to the estate of the ward found within the Canal Zone and with respect to the person of the ward, if he shall come to reside therein, as are prescribed with respect to any other guardian appointed under this chapter.

Such guardian must give bond in the manner and with the like conditions hereinbefore provided for other guardians, except that the provisions respecting the inventory and the disposition of the estate and effects, and accounts to be rendered by the guardian, must be confined to such estate and effects as come into his hands in the Canal Zone.

The guardianship which is here first lawfully granted, of any person residing without the Canal Zone extends to all the estate of the ward within the Canal Zone and excludes the jurisdiction of the court of every other circuit.

SEC. 609. *Examination of persons suspected of defrauding wards or concealing property.*—Upon complaint made to him by any guardian, ward, creditor, or other persons interested in the estate or hav-

ing a prospective interest therein, as heir or otherwise against anyone suspected of having concealed, embezzled, or conveyed away, any money, goods, or interests, or an instrument in writing belonging to the ward or to his estate, the Circuit Court or judge thereof wherein the guardian was appointed, may cite such suspected person to appear before such court or judge, and may examine him touching such money, goods, effects, or instrument, and may make such order as is necessary to secure the estate against such concealment, embezzlement, or conveyance.

SEC. 610. *Removal and resignation of guardian.*—When a guardian, appointed either by the testator or a court becomes insane or otherwise incapable of discharging his trust or unsuitable therefor, or has wasted or mismanaged the estate, or failed for thirty days to render an account or make a return, the judge or court may, upon such notice to the guardian as the judge may require, remove him, and compel him to surrender the estate of the ward to the person found to be lawfully entitled thereto. Every guardian may resign when it appears proper to allow the same. Upon the resignation or removal of a guardian as herein provided, whether appointed by will or otherwise, the court may appoint another in the place of the guardian who resigns or was removed.

SEC. 611. *Termination of guardianship.*—The marriage of a minor ward terminates the guardianship of the person of such ward, but not of the estate; the guardian of an insane or other person may be discharged by the court when it appears, upon the application of the ward or otherwise, that the guardianship is no longer necessary.

SEC. 612. *New bond may be required.*—The court may require a new bond to be given by the guardian whenever such court deems it necessary, and may discharge the existing sureties from further liability, after due notice given, as such court may direct, when it shall be made certain that no injury can result therefrom to those interested in the estate.

SEC. 613. *Guardian's bond to be filed and action thereon.*—Every bond given by a guardian shall be filed and recorded in the office of the clerk of the Circuit Court of the circuit; and in case of a breach of the conditions thereof, may be prosecuted for the use and benefit of the ward, or of any person legally interested in the estate.

SEC. 614. *Limitation of action on bond.*—No action can be maintained against the sureties on any bond given by a guardian, unless it be commenced within three years from the discharge or removal of the guardian; but if, at the time of such discharge, the person entitled to bring such action is under legal disability to sue, the action may be commenced at any time within three years after such disability is removed.

SEC. 615. *Limitations of action for the recovery of property sold.*—No action for the recovery of any estate sold by a guardian can be maintained by the ward, or by any person claiming under him, unless it is commenced within three years next after the termination of the guardianship, or, when a legal disability to sue exists by reason of minority or otherwise, at the time when the cause of action accrues, within three years next after the removal of such disability.

SEC. 616. *Orders and guardianship proceedings to be matters of record.*—Orders appointing and removing guardians, authorizing the sale of property, investment of the proceeds thereof, and settling of accounts, shall be made matters of record in the Circuit Court.

SEC. 617. *Pending guardianships to proceed in accordance with Spanish law, with certain exceptions.*—All proceedings in cases of guardianship pending in the Canal Zone shall proceed in accordance with the existing Panamanian procedure under which the guardians were appointed; *Provided* nevertheless, that any guardian appointed under existing Panamanian law may be removed in accordance with the provisions of this Code and his successor may be appointed as therein provided, and every successor to a guardian so removed shall, in the administration of the person or estate, or either, as the case may be, of his ward, be governed by the provisions of this Code.

CHAPTER XXXI.

TRUSTS, TRUSTEES, AND PROCEEDINGS IN RELATION THERETO.

Trusts and Trustees.

SEC. 618. *Proceedings when trustee under will is necessary.*—If a testator has omitted in his will to appoint a trustee in the Canal Zone, and if such appointment is necessary to carry into effect the provisions of a will, the Circuit Court of the circuit wherein the property that would be affected by the trust, or some portion thereof, is situated may, after notice to all persons interested, appoint a trustee, who shall have the same rights, powers, and duties and in whom the estate shall vest, in the same manner as if he had originally been appointed by the testator.

SEC. 619. *When trustee declines, resigns, dies, or is removed.*—When a trustee under a written instrument declines, resigns, dies, or is removed before the objects of the trust are accomplished, and when no adequate provision is made in such instrument for supplying the vacancy, the Circuit Court wherein the will was established, if such instrument was a will, or, if it was an instrument other than a will, the Circuit Court wherein the property, or some portion thereof, affected by the trust is situated shall, after due notice to all

persons interested, appoint a new trustee to act alone or jointly with the others, as the case may be.

SEC. 620. *Powers and bond of new trustee.*—A new trustee appointed under the preceding section or appointed in place of a former trustee, in conformity with a written instrument creating a trust, shall, upon giving such bond as may be required, which bond shall be of sufficient size to fully protect the trust estate, and shall be determined and the sureties thereof be approved, by the judge, have and exercise the same powers, rights, and duties, whether as a sole or joint trustee, as if he had been originally appointed, and the trust estate shall vest in him in like manner as it had vested, or would have vested, in the trustee in whose place he is substituted: and the court may order any conveyances, to be made by the former trustee or his representative, or by the other remaining trustees, which it may deem proper and convenient, to vest the trust estate in the new trustee, either alone or jointly with the other.

SEC. 621. *Trustee appointed abroad must have new appointment here.*—When lands in the Canal Zone are held in trust for persons resident here, by a trustee who derives his appointment or authority from a court having no jurisdiction within the Canal Zone such trustee shall, on petition made to the Circuit Court in the circuit in which the lands lie, and after due notice to all persons interested, be required to take out letters of trust from said court: and upon his neglect or refusal to comply with such order the court shall declare such trust vacant, and shall appoint a new trustee in whom the trust estate shall vest in like manner as if he had been originally appointed, or authorized by said court.

SEC. 622. *Notice to trustee.*—The notice to the trustee required by the preceding section, may be given by serving on him a copy of the petition, and of the citation of the court issued thereon, fourteen days at least before the time fixed for the return of such citation, or by such other notice as the court may order.

SEC. 623. *Removal of trustee.*—Circuit Courts in the several circuits may, upon application of the parties beneficially interested in the trust, remove a trustee under a written instrument, if such removal appears essential in the interests of the applicant. The trustee shall have notice of the application and opportunity to be heard and show cause why the removal should not be made. The court may also, after notice to the trustee and to all other persons interested, remove any such trustee who has become insane or otherwise incapable of discharging his trust or evidently unsuitable therefor.

SEC. 624. *Resignation of trustee.*—Every trustee under a written instrument, and every trustee appointed by the court may, upon his own request, resign his trust if it appears to the court proper to allow such resignation.

SEC. 625. *Executor, etc., of former trustee not bound to accept trust.*—No person succeeding to a trust as executor or administrator of a former trustee shall be required to accept such trust.

SEC. 626. *Bonds of trustees.*—Every trustee under a will and every trustee appointed by the court, before entering on the duties of his trust shall, unless it is otherwise specially provided by law, give bond with sufficient surety or sureties, to be approved by the judge, in such sum as the judge or court having jurisdiction of the trust may order, payable to the government of the Canal Zone and available for the protection of any party in interest. The bond shall be lodged with the clerk of the Circuit Court and be by him recorded in the books of the office; and the following conditions shall be deemed to be a part of the bond, whether written therein or not:

1. To make and return to the court, at such time as it may order, a true inventory of all the real and personal estate belonging to him as trustee, which at the time of the making of such inventory shall have come to his possession or knowledge;

2. To manage and dispose of all such estate, and faithfully to discharge his trust in relation thereto according to law and the will of the testator, or the provisions of the instrument under which he is appointed;

3. To render upon oath at least once a year until his trust is fulfilled, unless he is excused therefrom in any year by the court a true account of the property in his hands, and of the management and disposition thereof, and also to render such account at such other times as said court may order;

4. At the expiration of his trust to settle his account in full and to pay over and deliver all the estate remaining in his hands, or due from him on such settlement, to the person or persons entitled thereto. But when the trustee is appointed as a successor to a prior trustee the court may dispense with the making of return of an inventory. If it appears to be unnecessary, in such case the conditions of the bond shall be altered accordingly.

SEC. 627. *Appraisal.*—When an inventory is required to be returned by a trustee, the estate and effects shall be appraised by two suitable persons who shall be appointed by the court, and sworn to make a just appraisal of the estate and effects belonging to the trust.

SEC. 628. *When bond may be dispensed with.*—A trustee under a will, except as hereinafter provided shall be exempt from giving a surety or sureties on his bond, when the testator has ordered or requested such exemption, and any trustee shall, except as herein-after provided, be so exempt when all persons beneficially interested in the trust, being of full age, request such exemption; but the trustee shall, in all cases, give his own personal bond: *Provided, nevertheless,* That any trustee either under a will or appointed by

the court or judge who has not given a bond with surety or sureties, may be required by the court or judge at any time, when it deems it proper, to give such bond.

SEC. 629. *Neglect to give bond.*—Any trustee who neglects to give bond in accordance with the preceding section shall be considered to have declined or resigned the trust.

SEC. 630. *Sale of trust estate.*—When the sale and conveyance or transfer of any real or personal estate held in trust appears to be necessary or expedient, the court having jurisdiction of the trust may, after notice and other proceedings, when required, order such sale and conveyance, and transfer, to be made, and the reinvestment and application of the proceeds of such sale in such manner as will best effect the objects of the trust. The application to the court, notice, hearing, order of sale, and record of proceedings, shall all be in the manner hereinbefore provided with reference to the sale by a guardian of the property of minors or other wards.

SEC. 631. *General jurisdiction over trusts.*—Circuit Courts in the several circuits may hear and determine all matters in relation to trusts created by will, not particularly mentioned in this chapter, and shall have jurisdiction over all matters relating to the termination of trusts created by will, deed, or other instrument of like nature. When the Circuit Court of any circuit has lawfully taken jurisdiction of any trust estate, its jurisdiction shall be exclusive, and shall exclude the Circuit Court of any other circuit from taking jurisdiction of any matter subsequently arising in relation to the same trust.

CHAPTER XXXII.

ESTATES OF DECEASED PERSONS.

Settlement of estates without legal proceedings.

SEC. 632. *Settlement of intestate estates, without legal proceeding, in certain cases.*—Whenever all the heirs of a deceased person are of lawful age and legal capacity, and there are no debts due from the intestate estate, or all the debts have been paid by the heirs, the heirs may, by a family council as known under Panamanian law, or by agreement between themselves, duly executed in writing, apportion and divide the estate among themselves, as they may see fit, without proceedings in court.

SEC. 633. *In such case distributees liable for debts.*—But if it shall appear, at any time within two years after such settlement and distribution of the estate, that there are debts outstanding against the estate which have not been paid, any creditor may compel the settlement of the estate in the courts in the manner hereinafter provided, unless his debts shall be paid, with interest; and the administrator

appointed by the court may recover the assets of the estate from those who have received them, for the purpose of paying the debts; and the real estate belonging to the deceased shall remain charged with the liability to creditors for the full period of two years after such distribution, notwithstanding any transfers thereof that may have been made.

CHAPTER XXXIII.

JURISDICTION OVER ESTATES OF DECEASED PERSONS.

SEC. 634. *The word jurisdiction.*—Circuit Courts shall have jurisdiction in all matters relating to the settlement of estates and probate of wills of deceased persons, the appointment and removal of guardians and trustees, and the powers, duties, and rights of guardians and wards, trustees, and cestuis que trustent. This jurisdiction shall be called probate jurisdiction.

SEC. 635. *Where resident's estate settled.*—If an inhabitant of the Canal Zone dies, whether a citizen or alien, his will shall be proved, or letters of administration granted, and his estate settled, in the Circuit Court in the Circuit in which he resided at the time of his death.

SEC. 636. *Where nonresident's estate settled.*—If a person resided out of the Canal Zone at the time of his death, his will shall be allowed and recorded, and letters testamentary or of administration shall be granted in the Circuit Court of any Circuit in which he has estate.

SEC. 637. *The court once taking, to retain jurisdiction.*—When a Circuit Court has first taken cognizance of the settlement of the estate of a deceased person, as mentioned in the preceding sections, such court shall have jurisdiction of the disposition and settlement of such estate, to the exclusion of all other courts.

SEC. 638. *Jurisdiction, when may be contested.*—The jurisdiction assumed by a Circuit Court, for the settlement of an estate, so far as it depends on the place of residence of a person, or of the location of his estate, shall not be contested in a suit or proceeding, except in an appeal from that court, in the original case, or when the want of jurisdiction appears on the record.

SEC. 639. *The clerk.*—The clerk of the court shall keep a record of each order, sentence, or decree of the court, and of other things proper to be recorded in the settlement of estates, and give attested copies of files, records, and proceedings of the court as in other cases, on the fees being paid.

SEC. 640. *Their copies and certificates to be evidence.*—Copies, when attested, shall be evidence in all courts: and certificates of the allowance of a will, of administration, of guardianship, or of

trusteeship, attested by the clerk, may be given in evidence and have the same effect as an original record of the allowance of a will, letter of administration, letters of guardianship or trusteeship.

SEC. 641. *Clerk to sign protest, and so forth.*—The clerk may, under the direction of the judge, make out and sign letters of administration, guardianship, and trusteeship, and the warrants or other process or written instruments issuing from the court; but any act required to be performed by the clerk shall be valid if performed by the judge.

SEC. 642. *Additional duties of clerk in absence of judge.*—In the absence of the judge, the clerk may perform all the duties of the judge in receiving applications, petitions, inventories, reports and the issuance of all orders and the notices that follow as a matter of course under the directions of the law, and may also, when directed so to do by the judge, receive the accounts of executors, administrators, and trustees, and all evidence appertaining to them, and offered on hearings in relation to them, or in relation to any other matters appertaining to the settlement of estate of deceased persons, or guardianship, or trusteeship, and forthwith transmit such reports, accounts, and testimony to the judge, together with his findings in relation to the same, if the judge shall direct him to make findings and include the same in his report.

SEC. 643. *Proceedings when judge disqualified.*—When a judge, his wife, or child, is an heir or legatee, or when he is an executor or administrator of the estate of a deceased person, or is interested as a creditor or otherwise in a question to be decided by the court, he shall not act as judge, and in such case the Supreme Court shall designate some other judge to act in his place in relation to matters wherein he is disqualified after the manner hereinbefore provided.

SEC. 644. *Fees, and the account thereof.*—The clerk, under the direction of the judge, shall keep a book in which shall be entered the items of fees which have accrued for transaction of business covered by the provisions of this chapter, for which fees are payable specifying for what business each item of fees has accrued. Receipts shall be given for all fees so received and they shall be accounted for in the manner provided in relation to the fees of clerks of courts in actions. The book of fees kept by the clerk shall be subject to the inspection of auditing officers and others interested therein.

SEC. 645. *May issue process, and so forth.*—In the exercise of probate jurisdiction Circuit Courts may issue warrants and process in conformity with the rules of law necessary to compel the attendance of witnesses or to carry into effect the orders, sentences, or decrees of such courts, or the powers granted them by law.

SEC. 646. *May enforce orders by commitment.*—If a person does not perform the order, sentence, or decree of the court in the exercise of its probate jurisdiction, it may issue a warrant for the apprehension and imprisonment of such person until he performs such order, sentence, or decree, or is released by law: *Provided*, That nothing in this section shall be construed to authorize imprisonment for ordinary debt.

SEC. 647. *Depositions.*—Depositions taken in accordance with the provisions and under the circumstances provided in this Code for the taking of depositions may be received in probate proceedings.

SEC. 648. *Costs.*—When a person is cited, on complaint of another, to appear before the court to be examined in probate proceedings, the court may, in its discretion, tax costs for the person so cited and issue execution therefor, allowing the same fees as for witnesses in Circuit Courts.

CHAPTER XXXIV.

WILLS AND THE ALLOWANCE THEREOF, AND DUTIES OF EXECUTORS.

SEC. 649. *Who may make wills.*—Every person of age and sound mind may devise, bequeath, and dispose of his estate, real and personal, and of any right or interest which he has in his real or personal estate, by his last will and testament; and the words “every person,” shall include married women: *Provided*, That no person can by will deprive a husband, or wife, or heir of such interest in his estate as the law provides shall appertain to such husband, wife, or heir, notwithstanding the execution of a will.

SEC. 650. *Real estate acquired afterwards may pass by will.*—Real estate acquired after making a will shall pass thereby, as if the testator had possessed it at the time of making the will, if it appears by the will that such was his intention.

SEC. 651. *Whole interest to pass, and so forth.*—Every devise of land by will shall convey all the estate which the devisor could devise in such land unless it clearly appears by the will that he intended to convey a less estate.

SEC. 652. *Spanish wills.*—A will executed by a Panamanian, or a resident of the Canal Zone shall also be valid and allowed, if duly executed in accordance with the Civil Code now in force in the Canal Zone, whether such will be an open will or a sealed will, or one termed a verbal will under that law. but the provisions of this Code shall control as to the testamentary capacity of the testator, and the competency of attesting witnesses, and all such wills must be established and the estate administered in accordance with the provisions of this Code.

SEC. 653. *Requisites of a will.*—No will, except as provided in the preceding section, shall be valid to pass any estate, real or personal,

nor charge or affect the same unless it be in writing and signed by the testator, or by the testator's name written by some other person in his presence, and by his express direction, and attested and subscribed by three or more credible witnesses in the presence of the testator and of each other. The attestation shall state the fact that the testator signed the will, or caused it to be signed by some other person, at his express direction, in the presence of three witnesses, and that they attested and subscribed it in his presence and in the presence of each other. But the absence of such form of attestation shall not render the will invalid if it is proven that the will was in fact signed and attested as in this section provided.

SEC. 654. *Custody of a will after its execution.*—After the due execution of a will, the testator may retain it in his own possession, or he may deposit it with any other person, official or corporation, to hold for him; but it shall always be subject to his control and direction and right of possession, down to the time of his death.

SEC. 655. *Who are competent witnesses.*—Any person of sound mind, and of the age of eighteen years or more, and not blind, may be a witness at the execution of a will.

SEC. 656. *Subsequent incompetency immaterial.*—If the witnesses attesting the execution of the will are competent at the time of attesting, their becoming subsequently incompetent shall not prevent the allowance of the will.

SEC. 657. *When devise or legacy to witness void.*—If a person attests the execution of a will, to whom or to whose wife or husband, or parent, or child, a beneficial devise, legacy, or interest, of or affecting real or personal estate, is given by such will, such devise, legacy, or interest shall, so far only as concerns such person, or the wife or husband, or parent, or child, be void, unless there are three other competent witnesses to such will, and such person so attesting shall be admitted as a witness as if such devise, legacy, or interest had not been made or given. But a mere charge on the real or personal estate of the testator, for the payment of debts, shall not prevent his creditors from being competent witnesses to his will.

SEC. 658. *Will, how revoked.*—No will shall be revoked, except by implication of law, otherwise than by some will, codicil, or other writing executed as provided in case of wills; or by burning, tearing, cancelling, or obliterating the same with the intention of revoking it, by the testator himself, or by some other person in his presence, and by his express direction.

If burned, torn, canceled, or obliterated by some other person, without the express direction of the testator, the will may still be established by the court, and the estate distributed in accordance therewith, if its contents, and due execution, and the fact of its

unauthorized destruction, cancellation, or obliteration is established by full evidence to the satisfaction of the court.

SEC. 659. *To be recorded with registrar of land titles.*—Attested copies of wills devising real estate and the allowance thereof by the court, shall be recorded in the office of the Registrar of land titles of the Circuit in which the lands lie.

SEC. 660. *Allowance necessary, and conclusive as to execution.*—No will shall pass either the real or personal estate, unless it be proved and allowed in the Circuit Court, or by appeal to the Supreme Court; and the allowance by the court of a will of real or personal estate shall be conclusive as to its due execution.

SEC. 661. *Custodian of will to deliver.*—The person who has the custody of a will, shall, within thirty days after he knows of the death of the testator, deliver the will into the court which has jurisdiction, or to the executor named in the will.

SEC. 662. *Executor to present will and accept or refuse trust.*—A person named as executor in a will, shall within thirty days after he knows of the death of the testator, or within thirty days after he knows that he is named executor, if he obtained such knowledge after knowing of the death of the testator, present such will to the court which has jurisdiction, unless the will has been otherwise returned to said court, and shall, within such period, signify to the court his acceptance of the trust, or make known in writing his refusal to accept it.

SEC. 663. *Penalty.*—A person who neglects any of the duties required in the two preceding sections, unless he gives a satisfactory excuse to the court, shall be subject to a fine not exceeding one thousand dollars.

SEC. 664. *Person retaining will may be committed.*—If a person having custody of a will after the death of the testator neglects without reasonable cause to deliver the same to the court having jurisdiction, after notice by the court so to do, he may be committed to prison by a warrant issued by the court, and there kept in close confinement until he delivers the will.

SEC. 665. *Court to appoint hearing on will.*—When a will is delivered to the court having jurisdiction of the same, the court shall appoint a time and place when all concerned may appear to contest the allowance of the will, and shall cause public notice thereof to be given by publication in such newspaper or newspapers as the court directs of general circulation in the circuit, two weeks successively, previous to the time appointed, and no will shall be allowed until such notice has been given. At the hearing all testimony shall be taken under oath, reduced to writing and signed by the witnesses.

SEC. 666. *How approved when not contested.*—If no person appears to contest allowance, at the times appointed, the court may grant

allowance thereof, on the testimony of one of the subscribing witnesses only, if such witness testify that the will was executed as is required in this chapter.

SEC. 667. *When the witness does not remember signing.*—A will may be allowed notwithstanding the fact that one or more of the witnesses do not remember the fact of having attested it, provided the court is satisfied from all the evidence that the will was executed and attested in the manner herein required.

SEC. 668. *When the witness does not reside in the Canal Zone.*—If none of the subscribing witnesses reside in the Canal Zone at the time of the death of the testator, the court may admit the testimony of other witnesses to prove the sanity of the testator, and the due execution of the will, although the subscribing witnesses are living; and as evidence of the execution of the will, it may admit proof of the handwriting of the testator and of the subscribing witnesses, in cases where the names of the witnesses are subscribed to a certificate stating that the will was executed as required in this chapter. In case one or more of the subscribing witnesses has deceased, the sanity of the testator and the due execution of the will may also be proven in the manner in this section hereinbefore provided.

SEC. 669. *Grounds for disallowing the will.*—The will shall be disallowed in either of the following cases:

1. If not executed and attested as in this Code or in the Civil Code provided;

2. If the testator was insane or otherwise mentally incapable of the execution of such an instrument at the time of its execution;

3. If it was executed under duress, or the influence of fear, or threats;

4. If it was procured by undue and improper pressure and influence, on the part of the beneficiary, or some other person for his benefit;

5. If the signature of the testator was procured by fraud or trick, and he did not intend that the instrument should be his will at the time of fixing his signature thereto.

SEC. 670. *Will made out of the Canal Zone.*—A will made out of the Canal Zone which might be proved and allowed by the laws of the state or country in which it was made, may be proved, allowed, and recorded in the Canal Zone, and shall have the same effect as if executed according to the laws of the Zone.

SEC. 671. *Will made here by alien.*—A will made within the Canal Zone by a citizen or subject of another state or country, which is executed in accordance with the law of the state or country of which he is a citizen or subject, and which might be proved and allowed by the law of his own state or country, may be proved,

allowed, and recorded in the Canal Zone, and shall have the same effect as if executed according to the laws of the Zone.

SEC. 672. *Wills proved outside may be allowed here.*—Wills proved and allowed in the United States, or any State or Territory thereof, or in a foreign state or country, according to the law of such State, Territory, or country, may be allowed, filed, and recorded in the Circuit Court of the circuit in which the testator has real or personal estate on which such will may operate.

SEC. 673. *Hearing on question of allowance.*—When a copy of such will, and the probate and allowance thereof, duly authenticated, is produced by the executor, or other person interested, to the Circuit Court, such court shall appoint a time and place of hearing, and notice shall be given as in case of an original will presented for allowance.

SEC. 674. *Court may order it recorded.*—If it appears to the court on the hearing, that the instrument ought to be allowed in the Canal Zone, as the last will and testament of the deceased, it shall be allowed, and a copy shall be filed and recorded, and the will shall have the same effect as if originally proved and allowed in the same court.

SEC. 675. *Estate, how administered.*—When a will is thus allowed, the court shall grant letters testamentary, or letters of administration with the will annexed, and such letters testamentary or of administration, shall extend to all the estate of the testator in the Canal Zone. Such estate, after the payment of just debts and expenses of administration, shall be disposed of according to such will, so far as such will may operate upon it; and the residue, if any, shall be disposed of as provided by law in cases of estates in the Zone belonging to persons who are inhabitants of another state or country.

EXECUTORS AND ADMINISTRATORS, WHO MAY ACT, AND THEIR BONDS.

SEC. 676. *When will proved, letters to issue to executor.*—When a will has been proved and allowed, the court shall issue letters testamentary thereon to the person named as executor therein, if he accepts the trust and gives the bond as required by law. The term “executor” in this Code shall include an administrator.

SEC. 677. *To whom administration granted.*—If no executor is named in the will, or if a person dies intestate, administration shall be granted:

1. To the surviving husband or wife, as the case may be, or next of kin, or both, in the discretion of the court, or to such person as such surviving husband or wife, or next of kin, requests to have appointed, if suitable to discharge the trust;

2. If such surviving husband or wife, as the case may be, or next

of kin, or the person selected by them, be unsuitable, or if the husband or widow, or next of kin neglect for thirty days after the death of the person to apply for administration, or to request that administration be granted to some other person, it may be granted to one or more of the principal creditors, if competent and willing to serve;

3. If there is no such creditor competent and willing to serve, the same may be committed to such other person as the court may appoint.

SEC. 678. *Bond, generally.*—Before an executor, or an administrator, enters upon the execution of his trust, and letters testamentary or of administration are issued, the person to whom they are issued shall give a bond in such reasonable sum as the court directs, with one or more sufficient sureties, conditioned as follows:

1. To make and return to the court, within three months, a true and perfect inventory of all goods, chattels, rights, credits, and estate of the deceased, which shall come to his possession or knowledge, or to the possession of any other person for him;

2. To administer according to law, and, if an executor, according to the will of the testator, all goods, chattels, rights, credits, and estate, which shall at any time come to his possession, or to the possession of any other person for him, and out of the same to pay and discharge all debts, legacies, and charges on the same, or such dividends thereon as shall be decreed by the court;

3. To render a true and just account of his administration to the court within one year, and at any other time when required by the court;

4. To perform all orders and decrees of the court by him to be performed.

SEC. 679. *Bond of executor who is residuary legatee.*—An executor who is a residuary legatee, instead of the bond prescribed in the preceding section, may give a bond in such sum, and with such sureties, as the court directs, with the condition only to pay the debts and legacies of the testator, and in such case he shall not be required to return an inventory. If the testator in his will directs that no bond, or only the individual bond of the executor be required, instead of the bond prescribed in the preceding section, he may give his individual bond, as directed in the will; but he shall also give a bond in such sum and with such surety as the court requires, with the condition only to pay the debts of the testator; but the court may require of the executor a further bond, in case of a subsequent change in his circumstances, and for other sufficient cause, with the second, third, and fourth conditions named in the preceding section.

SEC. 680. *Bonds of joint executors and administrators.*—When two or more persons are appointed administrators or executors, the court

may take separate bond from each, with sureties, or a joint bond, with sureties from all.

SEC. 681. *Executor neglecting to give bond.*—No person named executor in a will, who refuses to accept the trust, or neglects to give a bond, for twenty days after the allowance of such will, shall intermeddle or act as executor, and in case of such neglect to accept, or refusal to give bond, the court may grant letters testamentary to the other executors who are capable and willing to accept the trust; and if there is no other executor who will give a bond, administration shall be granted with the will annexed to the person who would have been entitled to the same if the testator had died intestate.

SEC. 682. *When executor is a minor.*—When a person named executor in a will is under age at the time of proving the will, administration shall be granted, with the will annexed, during the minority of the executor, to the person who would have been entitled to the same if the testator had died intestate, unless there is another executor who accepts the trust and gives the bond and in that case, the executor who gives a bond shall have letters testamentary, and shall administer the estate until the minor is of age, when he may be admitted, on giving a bond, as joint executor.

SEC. 683. *Executor of executor not to administer estate.*—The executor of an executor shall not, as such, administer the estate of the first testator.

DEATH, REMOVAL, ETC., OF EXECUTOR OR ADMINISTRATOR.

SEC. 684. *In case of vacancy, who to administer.*—When an executor or administrator, dies, resigns, or is removed, or his authority is extinguished, the remaining executor or administrator may administer the trust, and if there is no other executor or administrator, administration may be granted to a suitable person.

SEC. 685. *Power of new administrator.*—An administrator, appointed in the place of a former executor or administrator, shall have the same power in settling the estate not administered as the former administrator or executor had; and may prosecute or defend actions commenced by or against the former executor or administrator, and may have execution on judgments recovered in the name of such former executor or administrator.

SEC. 686. *Appointment of administrator to act with survivor.*—When an executor or administrator dies, resigns, is removed, or his authority is extinguished leaving a remaining executor or administrator, administration may be granted to some suitable person, with such remaining executor or administrator upon the application of any person interested in the estate of the deceased, as surviving husband, widow, heir, creditor, devisee, legatee, or other legal representative.

SEC. 687. *His powers.*—An administrator appointed under the preceding section shall have the same power as the remaining executor or administrator has, and with said executor or administrator may prosecute or defend actions commenced by or against the former executors or administrators, and have execution on judgments recovered in the names of the former executors or administrators.

SEC. 688. *The court may remove or accept resignations of executor or administrator.*—If an executor or administrator neglects, after notice by the court, to render his account and settle the estate according to law, or to perform an order or decree of such court, or absconds, or becomes insane, or otherwise incapable or unsuitable to discharge the trust, the court may, in its discretion, remove him, and may allow an executor or administrator to resign.

SEC. 689. *Married women.*—A married woman may be administratrix or executrix, and the marriage of a single woman shall not affect her authority so to act under a previous appointment.

SEC. 690. *One of co-executors disqualified, others may act.*—When executors appointed in a will cannot, according to the provisions of this chapter, act as such, those who can act may perform the duties and discharge the trust required by the will.

SEC. 691. *Estate of person unheard from for fifteen years may be administered.*—A person absent and unheard from for fifteen years shall be deemed to be dead from the time of his disappearance, or when last heard from, and the court having jurisdiction of his estate may grant administration thereof, and proceed with said estate as in the settlement of intestate estates and decree distribution thereof to the known heirs of such absent person: but if such absent person proves to be alive, he shall be entitled to his estate notwithstanding the settlement and distributions aforesaid, and may recover, in any proper action, any portion thereof, which any one has received in such settlement and distribution.

SEC. 692. *Administration revoked if will discovered.*—If, after granting letters of administration by a court on the estate of a person as if he had died intestate, a will of such deceased person is proved and allowed by the court, the letters of administration shall be revoked and the powers of the administrator cease, and he shall thereunder surrender the letters of administration to the court, and render his account within such time as the court directs.

SEC. 693. *Power of executor in such case.*—The executor of the will, in such case, may demand, sue for, and collect the goods, chattels, rights, and credits, of the estate of the deceased remaining unadministered, and may prosecute to final judgment suits commenced by the administrator before the revocation of his letters of administration.

SEC. 694. *Acts before revocation to be valid.*—The acts of an executor or administrator, before the revocation of his letters testamentary or of administration, shall be valid, the same as if there had been no revocation.

SEC. 695. *Appointment of special administrator.*—When there is delay in granting letters testamentary or letters of administration occasioned by an appeal from the allowance or disallowance of a will, or from any other cause, the court may appoint an administrator to act in collecting and taking charge of the estate of the deceased until the questions causing the delay are decided and executors or administrators are thereupon appointed; no appeal shall be allowed from the appointment of such special administrator.

SEC. 696. *Powers of special administrator.*—Such special administrator shall collect the goods, chattels, and credits of the deceased and preserve the same for the executor or administrator afterwards appointed, and for that purpose may commence and maintain suits as an administrator, and may sell such perishable and other personal property as the court orders sold. A special administrator shall not be liable to an action by a creditor, or pay any debts of the deceased.

SEC. 697. *To give bond.*—A special administrator shall, before entering upon the duties of his trust give a bond as the court directs, with a condition that he will make and return a true inventory of the goods, chattels, rights, credits, and effects of the deceased which come to his possession or knowledge, and that he will truly account for such as are received by him, when required by the court, and will deliver the same to the person afterwards appointed executor or administrator or such person authorized to receive the same.

SEC. 698. *When powers cease.*—Upon granting letters testamentary or of administration upon the estate of the deceased, the powers of such special administrator shall cease; and he shall forthwith deliver to the executor or administrator the goods, chattels, money, and effects of the estate of the deceased in his hands. The executor or administrator may prosecute to final judgment suits commenced by such special administrator.

CHAPTER XXXV.

GENERAL DUTIES OF EXECUTORS AND ADMINISTRATORS.

SEC. 699. *Executor or administrator may have access to partnership books.*—The executor or administrator of a deceased partner shall at all times have access to, and may make examination and take copies of the books and papers relating to the partnership business; and shall at all times have the right to examine and make invoices of the property belonging to such partnership, and the surviving

partner or partners, on request, shall exhibit to him all such books, papers, and property in their hands or control.

SEC. 700. *Court may enforce compliance.*—The court having charge of the settlement of such deceased partner, upon application therefor in writing, by such executor or administrator, may cite such surviving partner or partners before it, and by a proper order or decree compel the granting of the rights given in the preceding section, and may enforce such order or decree by commitment to jail.

SEC. 701. *To keep buildings in repair.*—An executor or administrator shall maintain in tenantable repair the houses, buildings, and fences belonging to the estate, and deliver the same in such repair when directed by the court, to the heirs or devisees.

SEC. 702. *Executor to administer estate not willed.*—An executor shall administer the estate of the testator not disposed of by will.

INVENTORY, APPRAISAL, AND ACCOUNT.

SEC. 703. *Inventory to be returned.*—Every executor or administrator, unless he is a residuary legatee and has given the bond prescribed for the residuary legatee, shall, within three months after his appointment, return to the court a true inventory of the real estate and all the goods, chattels, rights, and credits of the deceased which come into his possession or knowledge.

SEC. 704. *Committee to be appointed.*—The court at the time of granting letters testamentary or of administration, or at such other times as it deems proper, shall, by warrant, appoint a committee of two or more disinterested persons to appraise the estate of the deceased, and the executor or administrator shall cause the estate and effects in the inventory to be appraised by such committee.

SEC. 705. *Committee to be sworn.*—Such committee shall be sworn to make a true appraisal, and shall appraise its value in money, and shall return their warrant with such appraisal to the court within the time specified in the warrant, and shall deliver a copy of the appraisal to the executor or administrator.

SEC. 706. *Apparel, and so forth, not to be inventoried.*—The wearing apparel of the surviving husband or wife, and of the minor children, and such provisions and other articles as will necessarily be consumed in the subsistence of the family of the deceased, under the direction of the court, shall not be considered as assets, nor administered as such, and shall not be included in the inventory.

SEC. 707. *Account to be rendered and examination to be under oath.*—Every executor or administrator shall render an account of his administration within one year from the time of receiving letters testamentary or of administration unless the court extends the time on account of an extension of the time for selling the estate and

paying the debts; and he shall render further accounts of his administration as may be required by the court until the estate is wholly settled; and he may be examined upon oath upon every matter relating to account.

SEC. 708. *For what to account.*—The executor or administrator shall be chargeable in his account with the goods, chattels, rights, and credits of the deceased which come to his possession; also with the proceeds of the real estate sold for the payment of the debts and legacies, and with the interest, profit, and income which come to his hands from the estate of the deceased; and for the personal estate of the deceased at its appraisal except as hereafter provided.

SEC. 709. *Not to profit by increase or to lose by decrease in value.*—The executor or administrator shall not profit by the increase nor suffer loss by the decrease or destruction, without his fault of any part of the personal estate; and he shall account for the excess when he sells any personal estate for more than the appraisal; and if he sells for less than the appraisal he shall not be responsible for the loss, if it appears to be beneficial to the estate to sell it. When he sells personal estate under the special order of the court, he shall account for the same at the price for which it was sold.

SEC. 710. *Accountable for proceeds of real estate sold.*—The proceeds of real estate sold for the payment of the debts and charges of administration, shall be assets in the hands of the administrator, as if the same had been part of the goods and chattels of the deceased. The executor or administrator and sureties on his bond shall be accountable therefor.

SEC. 711. *When not accountable for debts due.*—No executor or administrator shall be accountable for the debts due the deceased if it appears that they remain uncollected without his fault.

SEC. 712. *Accountable for income from realty.*—The executor or administrator shall account for the income of real estate while it remains in his possession; and if he uses or occupies any part of it himself, he shall account for it as may be agreed upon between him and the parties interested, or adjusted by the court with their assent; and if the parties do not agree upon the sum to be allowed, the same may be ascertained by the court, whose determination in this respect shall be final.

SEC. 713. *Accountable if he improperly neglects to raise money.*—When an administrator neglects, or unreasonably delays, to raise money, by collecting the debts or selling the real or personal estate of the deceased, or neglects to pay over the money he has in his hands, and the value of the estate is thereby lessened or necessary costs or interest accrues, or the persons interested suffer loss, the same shall be deemed waste, and the damage sustained may be

charged and allowed against him in his account, and he shall be liable therefor on his bond.

SEC. 714. *To be allowed money paid as costs, when.*—The amount paid by an executor or administrator for costs awarded against him shall be allowed in his administration account, unless it appears that the suit or proceedings in which the costs are taxed was prosecuted or resisted without just cause, and not in good faith.

SEC. 715. *How allowed for services.*—The executor or administrator shall be allowed the necessary expenses in the care, management, and settlement of the estate, and for his services, two dollars per day for the time actually and necessarily employed and a commission of five per cent upon all sums disbursed in the payments of debts, expenses, and distributive shares, if the amount of such disbursements does not exceed one thousand dollars. If the amount exceeds one thousand dollars and does not exceed five thousand dollars, then five per cent upon the first one thousand dollars and two and one half per cent upon the excess, if the whole amount does not exceed ten thousand dollars. If the total disbursements exceed five thousand dollars, then the percentage as above provided, and one per cent on the excess above ten thousand dollars. Where there are more than one executor the fees shall be divided between them, except that on estates exceeding ten thousand dollars each executor shall receive one per cent upon the excess over ten thousand dollars. In any exceptional case, where the estate is large, and the settlement has been attended with extraordinary difficulty, and has required a high degree of capacity on the part of the executor or administrator, a greater sum may be allowed. But if objection to the fees allowed be taken the allowance may be reexamined by the Supreme Court on appeal.

When the administrator or executor is a lawyer, he shall not be allowed to charge against the estate any professional fees, as such, for services rendered by himself. When the deceased by will makes some other provision for compensation to his executor, that provision shall be a full satisfaction for his services, unless by a written instrument filed in the court he renounces all claims to the compensation provided by the will.

SEC. 716. *Account, how verified.*—The court shall examine every executor and administrator upon oath as to the correctness of his account, before the same is allowed, except when no objection is made to the allowance of the account, and its correctness is satisfactorily established by competent testimony. The heirs, legatees, and distributees, and creditors of an estate, shall have the same privilege of being examined on oath in any matter relating to an administration account that the executor or administrator has.

SEC. 717. *Account to be settled on notice.*—Before the account of an executor or administrator is allowed, notice shall be given to persons interested of the time and place of examining and allowing the same; and such notice may be given personally to such persons interested, or by advertisement in a newspaper or newspapers, or both, as the court directs.

SEC. 718. *Sureties on bond may be party to accounting.*—Upon the settlement of the account of an executor or administrator, trustee, or guardian, a person liable as surety in respect to such account may, upon application, be admitted as a party to such accounting, and may have the right to appeal as hereinafter provided.

SEC. 719. *Allowance to widow and family, and descent of estate.*—The widow and minor children of a deceased person, during the settlement of estate, shall receive therefrom, under the direction of the court, such allowances as are provided by the law in force in the Canal Zone, on and immediately prior to the twenty-third day of February, nineteen hundred and four, and the descent of all property and estates to heirs shall be regulated by that law as to all property belonging to intestate estates, and as to all property belonging to testate estates, but not disposed of by the will of the testator. A husband or wife of the deceased person shall receive such portion of his or her estate not disposed of by will as the said law in force on the twenty-third day of February, nineteen hundred and four, gives to him or to her.

SEC. 720. *Community property.*—One half of the community property as determined by the law in force in the Canal Zone before the twenty-third day of February, nineteen hundred and four, belonging to a husband and wife, shall be deemed to belong to the deceased husband or wife, and shall be inventoried and accounted for, and distributed as a part of the estate, in the same manner as all other property belonging to the estate.

CHAPTER XXXVI.

CLAIMS AGAINST ESTATES, HOW ALLOWED.

SEC. 721. *Executor or administrator to notify times and places of meeting.*—The executor or administrator shall appoint convenient times and places for the examination and allowance of claims, and, within sixty days from the time of his qualification, shall post a notice in four public places in the circuit stating the times and places, and the time limited for creditors to present their claims, and shall publish the same three weeks successively in a newspaper of general circulation in the circuit, to be designated by the court, and give such other notice as the court directs.

SEC. 722. *Court to limit time for presenting claims.*—The court

shall allow such time as the circumstances of the case require for the creditors to present their claims to the executor or administrator for examination and allowance; but not, in the first instance, more than twelve months, or less than six months. The court may extend the time as circumstances require, but not so that the whole time shall exceed eighteen months.

SEC. 723. *When time may be extended.*—On application of a creditor who has failed to present his claim, if made within six months after the time previously limited, or, if the executor or administrator fails to give the notice required by this chapter, and such application is made before the final settlement of the estate, the court may, for cause shown, and on such terms as are equitable, allow further time, not exceeding one month, for the presentation and examination of such claim.

SEC. 724. *Executor to report.*—At the expiration of the time limited the executor or administrator shall make a report to the court, with lists of the claims presented, or exhibited in offset, stating how much was allowed and how much was disallowed, with the final balance, whether in favor of the creditor or the estate; and the report shall state the manner in which notice was given to the claimants.

SEC. 725. *Executor or administrator to notify certain claimants at the time of filing report.*—The executor shall give notice to claimants whose claims are disallowed to the amount of twenty dollars or more, of the time of filing his report in the clerk's office, which notice shall be given personally or by letter, on the day of filing such report.

SEC. 726. *Claims not presented, barred.*—A person having a claim against a deceased person, proper to be allowed, who does not, after publication of the required notice, exhibit his claim to the executor as provided in this chapter, shall be barred from recovering such demand or from pleading the same in offset in any action, except as hereinafter provided.

SEC. 727. *Estate's claims to be offset.*—When a creditor against whom the deceased has claims, presents a claim to the executor or administrator, the executor or administrator shall offset the claims of the deceased against the claims of the creditor, and shall ascertain and allow the balance for or against the estate, as the case may be.

Claims of the estate against a creditor who presents a claim for allowance against the estate of which the executor or administrator has or ought to have knowledge shall be barred, unless so offset.

SEC. 728. *Claim of executor or administrator against an estate.*—If the executor or administrator has a claim against the estate he represents, he shall give notice thereof, in writing, to the court, and the court shall adjust the same directly.

SEC. 729. *Exceptions by creditors and distributees.*—Any creditor or distributee dissatisfied with the action of the executor or adminis-

trator disallowing or allowing a claim may file exceptions thereto, and, upon notice to the executor or administrator or creditor, bring the same on to be heard at the next term of the court. The court thereupon shall hear the proof for and against the claim, and may allow or disallow the claim directly, or may approve the executor's or administrator's action thereon, or may direct issues to be framed and a formal trial to be held upon the claim as in the case of a regular action. From the final judgment of the court, with respect to the claim, an appeal may be allowed to the Supreme Court, as in other cases provided. A distributee may likewise except to and appeal from the action of the executor or administrator in failing to offset a claim of the estate against a creditor.

SEC. 730. *Estate of joint debtor liable for the whole claim.*—When two or more persons are indebted on a joint contract, or upon a judgment founded on a joint contract, and either of them dies, his estate shall be liable therefor, and it shall be allowed by the committee as if the contract had been with him alone or the judgment against him alone. But the estate shall have the right to recover contribution from the other joint debtor.

SEC. 731. *Executor or administrator not to be sued.*—No action or suit shall be commenced or prosecuted against the executor or administrator upon a claim against the estate to recover a debt due from the estate until the same has been presented to the executor and rejected; but actions to recover the seizin and possession of real estate and personal chattels claimed by the estate may be commenced against him.

SEC. 732. *An executor or administrator may sue.*—Nothing in this chapter shall prevent an executor or administrator from commencing and prosecuting an action commenced by the deceased in his lifetime, for the recovery of a debt or claim, to final judgment, or from having execution on a judgment, and in such case the defendant may plead in offset the claims he has against the deceased, instead of presenting them to the executor, and mutual claims may be offset in such actions; and if final judgment is rendered in favor of the defendant, the judgment so rendered shall be considered the true balance against the estate, as though the claim had been duly presented.

Such actions shall be prosecuted in the same circuit and same court as they would have been if brought by the deceased person while alive.

CHAPTER XXXVII.

SUITS BY AND AGAINST EXECUTOR AND ADMINISTRATOR.

SEC. 733. *Heir may not sue until share assigned.*—When an executor or administrator is appointed and assumes the trust, no action to

recover the title or possession of land, or for damages done to such lands, shall be maintained against him by an heir or devisee, until there is a decree of the court assigning such lands to such heir or devisee, or until the time allowed for paying debts has expired, unless the executor or administrator surrenders the possession to the heir or devisee.

SEC. 734. *Representative may be cited to appear.*—If the executor or administrator does not voluntarily appear and prosecute or defend any action pending against the deceased, and which would survive according to the provisions of this chapter, the surviving party may take out a citation from the court before which the case is pending, requiring the executor or administrator to appear and prosecute or defend the action, which citation shall be served at least twelve days before the time at which he is required to appear. If the executor or administrator, after being so cited, neglects to become a party to the suit, he shall be nonsuited, or defaulted, as the case may be, and judgment rendered against him as administrator or executor; but he shall not be personally liable for costs; but the costs shall be paid the same as the debt or damages, out of the estate of the deceased. If there is no executor or administrator appointed, the death of the party may be suggested on the record, and the suit continued until an executor or administrator is appointed.

SEC. 735. *Representative may compound with debtor.*—An executor or administrator may compound with the debtor of the deceased for a debt due, with the approval of the court, and may give a discharge of such debt, on receiving a just dividend of the estate of the debtor.

SEC. 736. *Mortgage debt due to estate.*—Debt secured by mortgage, together with the security, belonging to the estate of a deceased person, as mortgagee or assignee of the right of a mortgagee, when such mortgage was not foreclosed in the lifetime of deceased, shall be deemed to be personal assets in the hands of the executor or administrator and administered and accounted for as such; and the executor or administrator may foreclose the mortgage, and the proceeds of foreclosure which may be ultimately realized shall be deemed to be personal assets to be administered and accounted for as such.

SEC. 737. *Mortgage debt due from estate.*—A creditor holding a claim against the deceased, secured by mortgage or other collateral security, may abandon the security and prosecute his claim before the executor or administrator, and share in the general distribution of the estate: or he may foreclose his mortgage or realize upon his security, by ordinary action in court, making the executor or administrator a party defendant; and if there is a judgment for a deficiency, after the sale of the mortgaged premises, or the property

pledged, in the foreclosure or other proceeding to realize upon the security, he may prove his deficiency judgment before the executor or administrator, against the estate of the deceased; or he may rely upon his mortgage or other security alone, and foreclose the same at any time, within the period of the statute of limitations, and in that event he shall not be admitted as a creditor, and shall receive no share in the distribution of the other assets of the estate; but nothing herein contained shall prohibit the executor or administrator from redeeming the property mortgaged or pledged, by paying the debt for which it is held as security, under the direction of the court, if the court shall adjudge it to be for the best interests of the estate that such redemption shall be made.

CHAPTER XXXVIII.

PROPERTY EMBEZZLED OR SECRETED, OR FRAUDULENTLY CONVEYED.

SEC. 738. *Proceedings for the recovery of property embezzled or fraudulently conveyed.*—If an executor or administrator, heir, legatee, creditor, or other person interested in the estate of a deceased person, complains to the court having jurisdiction of the estate, that a person is suspected of having concealed, embezzled, or conveyed away any of the money, goods, or chattels of the deceased, or that such person has in his possession, or has knowledge of any deed, conveyance, bond, contract, or other writing which contains evidence of, or tends to disclose the right, title, interest, or claim of the deceased to real or personal estate, or the last will and testament of the deceased, the court may cite such suspected person to appear before it, and may examine him on oath on the matter of such complaint; if the person so cited refuses to appear and answer such examination, or to answer such interrogatories as are put to him, the court may, by warrant, commit him to the jail or prison of the circuit, there to remain in close custody until he submits to the order of the court; and such interrogatories and answers shall be in writing and signed by the party, and filed in the clerk's office.

SEC. 739. *Persons intrusted with estates may be compelled to render account.*—The Court, on complaint of an executor or administrator, may cite a person who is intrusted by an executor or administrator with any part of the estate of the deceased person, to appear before it, and may require such person to render a full account, on oath, of the money, goods, chattels, bonds, accounts, or other papers belonging to such estate, as came into his possession, in trust for such executor or administrator, and of his proceedings thereon; and if the person so cited refuses to appear to render such account, the court may proceed against him as provided in the preceding section.

SEC. 740. *Embezzlement before letters issued.*—If a person, before the granting of letters testamentary or of administration on the estate of a deceased person, embezzles, or alienates, any of the money, goods, chattels, or effects of such deceased person, such person shall be liable to an action in favor of the executor or administrator of such estate for double of the value of the property sold, embezzled, or alienated, to be recovered for the benefit of such estate.

SEC. 741. *Estate fraudulently conveyed by deceased may be recovered.*—When there is a deficiency of assets in the hands of an executor or administrator for the payment of debts and expenses of administration, and the deceased person in his lifetime had conveyed real estate, or a right or interest therein, with an intent to defraud his creditors or to avoid a right, debt, or duty of a person; or had so conveyed such estate that by law the conveyance would be void as against his creditors and the estate attempted to be conveyed would be liable to attachment or execution by a creditor of the deceased in his lifetime, the executor or administrator may commence and prosecute to final judgment an action for the recovery of such real estate or interest therein, for the benefit of the creditors; and he may also, for the benefit of the creditors, sue and recover, for such goods, chattels, rights, or credits fraudulently conveyed by the deceased in his lifetime, with the intent in this section stated; but no executor or administrator shall be bound to institute such proceedings in such actions unless on application of the creditors of the deceased, nor unless the creditors making the application pay such part of the costs and expenses, or give security therefor to the executor or administrator as the court deems equitable.

SEC. 742. *Creditor under certain circumstances may sue.*—When there is a deficiency of assets in the hands of an executor or administrator to pay debts and expenses, and when the deceased person made in his lifetime such fraudulent conveyance of such real or personal estate or of a right or interest therein, as is stated in the preceding section, any creditor of the estate may, by permission of the court, if the executor or administrator has not commenced such action, commence and prosecute to final judgment, in the name of the executor or administrator, an action for the recovery of the same, and may recover for the benefit of the creditors, such real or personal estate, or interest therein so conveyed. But such action shall not be commenced until the creditor files in court a bond with sufficient surety, to be approved by the judge, conditioned, to indemnify the executor or administrator against the costs of such actions. Such creditor shall have a lien upon the judgment by him so recovered, for the costs incurred and such other expenses as the court deems equitable.

CHAPTER XXXIX.

SALE OF ESTATE.

SEC. 743. *Realty may be sold though personalty not exhausted.*—When the personal estate of the deceased is not sufficient to pay the debts and charges of administration without injuring the business of those interested in the estate, or otherwise prejudicing their interests, and where a testator has not otherwise made sufficient provision for the payment of such debts and charges, the court, on application of the executor or administrator, with the consent and approbation, in writing, of the heirs, devisees, and legatees, residing in the Canal Zone, may grant a license to the executor or administrator to sell for that purpose real estate, in lieu of personal estate, if it clearly appears that such sale of real estate would be beneficial to the persons interested and will not defeat any devise of land; in which case the assent of the devisee shall be required.

SEC. 744. *If part can not be sold without injury, the whole may be.*—When an executor or administrator makes application to the court for license to sell real estate for payment of debts or charges of administration, and it appears that a part can not be sold without injury to those interested in the remainder, the court may grant license to sell the whole of such estate, or such part as is necessary or beneficial to those concerned therein.

SEC. 745. *Persons interested may prevent sale.*—No such license to sell real estate shall be granted if any of the persons interested in the estate give a bond, in such sum and with such sureties as the court directs, conditioned to pay the debts and expenses of administration within such time as the court directs; and such bond shall be for the security of, and may be prosecuted for the benefit of the creditors, as well as for the executor or administrator.

SEC. 746. *The court may order personalty sold.*—The court, on application of the executor or administrator, may order the personal estate, or part of it, to be sold, if it appears necessary for the purpose of paying debts, legacies, or expenses of administration, or for the preservation of the property.

SEC. 747. *Estate may be sold when beneficial to heirs.*—When it appears to the court that it will be beneficial to the heirs, devisees, or legatees, or those interested in an estate, by reason of their residing out of the Canal Zone or otherwise, that a part or the whole of the personal estate, or a part or the whole of the real estate, or both the real and personal estate, should be sold, the court may, upon application of the administrator or executor, with the consent and approbation, in writing, of the heirs, devisees, and legatees, who are interested in the estate to be sold, grant license to sell the whole

or a part of said estate, although not necessary to pay debts, legacies, or charges of administration; but such license shall not be granted if inconsistent with the provisions of a will. In case of such sale, the proceeds shall be decreed and assigned to the persons entitled to the estate, and in the same proportions.

SEC. 748. *May be sold to pay debts and legacies in other countries.*—When the sale of real or personal estate is not necessary to pay the debts against the deceased person in the Canal Zone, and it appears to the court by records and proceedings of a probate court in another state or country, that the estate of the deceased in such other state or country is not sufficient to pay the debts and legacies in that country, the Circuit Court in the Canal Zone may license the executor or administrator to sell the real or personal estate for the payment of debts or legacies in the other state or country, in the same manner as provided for the payment of debts or legacies in the Zone.

SEC. 749. *Realty acquired on execution, and so forth, may be sold.*—The court may grant license to an executor or an administrator to sell real estate acquired by such administrator or executor on execution or foreclosure sale, although not necessary for the payment of debts, legacies, or charges of administration, when it appears that such sale will be beneficial to all persons interested in such real estate.

Such license shall be granted under the same regulations as prescribed in this chapter for the sale of other real estate.

SEC. 750. *Realty may be sold to pay legacies.*—When a legacy is given by a will, which, for want of sufficient estate or otherwise, is chargeable upon the real estate of deceased, the executor may be licensed by the court to sell such real estate for the purpose of paying such legacy, as provided in the sale of real estate for the payment of debts.

SEC. 751. *Regulations for license to sell.*—When an executor or administrator considers it necessary or beneficial to sell real or personal estate, in cases provided by law, he may make application to the court having jurisdiction of the estate, and such court may grant license, when it appears necessary or beneficial, under the following regulations:

1. The executor or administrator shall present to the Court his petition in writing, setting forth the amount of debts due from the deceased, with charges of administration, the value of the personal estate, situation of the estate to be sold, or such other facts as show that the sale is necessary or beneficial;

2. In cases where the consent of heirs, devisees, and legatees is required, the executor or administrator shall produce to the court their assent in writing, and signed by such heirs, devisees, or legatees,

or by the guardians of such as are minors or otherwise under guardianship;

3. The court shall thereupon appoint a time and place of hearing for deciding upon such application, and shall require notice to be given of such application, and of the time and place of hearing to the persons interested; which notice shall state the nature of the application and the reason for the same, the time and place of hearing, and shall be published two weeks successively previous thereto, in a newspaper of general circulation in the neighborhood of those interested, to be designated by the court; and the court may order such further notice as is adjudged proper. If personal notice is given to the persons interested, the public notice may be dispensed with;

4. If the court requires it, the executor or administrator, before license is granted, shall give a new bond, in such sum and with such sureties as the court directs, conditioned that such executor or administrator shall account for the proceeds of such sale;

5. If the proof produced satisfies the court and if the regulations in the first four sub-divisions of this section are complied with, the court may, by decree, authorize the executor or administrator to sell such part of the estate as is deemed necessary, either at public or private sale, as would be most beneficial to all parties concerned, and furnish the executor or administrator with a certified copy of such license or order of sale;

6. If the order is to sell the estate at auction, the court shall designate the mode of giving notice of the time and place of the sale, which shall be stated in the copy or certificate of such order furnished the executor or administrator;

7. The record of the order of sale in the court, and the copy or the certificate of such order furnished the executor or administrator, shall state that such of the requisites prescribed in the first four sub-divisions of this section, as are required in the case, are complied with; and such certificate or copy of the order of sale shall be recorded in the office of the Registrar of Land Titles of the circuit in which the lands thus to be sold are situated.

SEC. 752. *Effect of deed.*—The deed of an executor or administrator of the real estate of deceased persons, having such certificate or copy of an order of sale from the probate court shall be as valid to convey the estate authorized to be sold as if the deed had been executed by the deceased in his lifetime.

SEC. 753. *When administrator dies pending sale, new license to issue.*—In case of the death, resignation, or removal of an executor or administrator before the completion of the sale of real estate under a license granted as above provided, the court may, upon application, at any time within two years after issuing such prior

license, issue a new license to his successor without further notice or hearing thereon.

SEC. 754. *When deceased under contract to convey.*—Where a deceased person was in his lifetime under contract, binding in law, to deed land, or an interest therein, the court having jurisdiction of an estate may, on application for that purpose, grant license to the executor or administrator to convey such land, according to such contract or with such modifications as are agreed upon by the parties, and approved by the court; and if the contract is to convey lands to the executor or administrator, the judge of the court shall execute the deed. The deed executed by such executor, administrator, or judge, shall be as effectual to convey such lands as if executed by the deceased person in his lifetime; but no court shall grant such license to deed the lands of the deceased person until notice of the application for that purpose has been given to all parties interested, under an order of such court, and published two weeks successively previous thereto, in such newspaper as the court directs; nor if it appears to the court on a hearing that the assets in the hands of the executor or administrator will thereby be reduced so as to prevent a creditor from receiving his full debt or diminish his dividend.

SEC. 755. *Lands held in trust to be conveyed.*—Where a deceased person in his lifetime held lands in trust for another person, the court may, after notice given as required in the preceding section, grant license to the executor or administrator to deed such lands to the person, his executor, or administrator, for whose use and benefit they are holden; and the court may decree the execution of such trust, whether created by deed or by law.

CHAPTER XL.

FROM WHAT ESTATE DEBTS TO BE PAID.

SEC. 756. *Personalty first chargeable for debts.*—The personal estate of a deceased person shall be first chargeable with the payment of debts and expenses; and if the personal estate is not sufficient for that purpose, the whole of the real estate, or so much thereof as is necessary, may be sold for that purpose by the executor or administrator, after obtaining license therefor; and the executor or administrator shall have the right to the possession of the real as well as the personal estate of the deceased, so long as is necessary for that purpose.

SEC. 757. *From what part of testate estate debts to be paid.*—If the testator makes provision by his will, or designates the estate to be ap-

appropriated for the payment of his debts and the expenses of administration or family expenses, they shall be paid according to the provisions of the will. But if the provision made by the will or the estate appropriated is not sufficient for that purpose, such part of the estate of the testator, real or personal, as is not disposed of by will, if any, shall be appropriated for that purpose.

SEC. 758. *Legacy and devise liable for payment of debts.*—The estate, real or personal, given by will to the devisees, or legatees, shall be liable for the payment of the debts, expenses of administration, and family expenses, in proportion to the amount of the several devises or legacies, except that specific devises and legacies may be exempted if it appears to the court necessary to carry into effect the intention of the testator, and if there is sufficient other estate.

SEC. 759. *Executor to retain possession of an estate, when.*—When the estate given by will is liable for the payment of debts and expenses, or is liable to be taken to make up the share of a child born after the execution of a will, or of a child or of the issue of a child not provided for in the will, and not intentionally excluded therefrom, the executor may retain possession of the same until such liability is settled by order of the court, and until the devises and legacies so liable, are accordingly assigned by order of the court; and a devisee or legatee may make his claim to the court to have such liability settled and his devise or legacy assigned to him.

SEC. 760. *Devisees, legatees, and heirs, in possession, must contribute.*—Devisees and legatees who, with the consent of the executor or otherwise, have possession of the estate given to them by will before such liability is settled by the court, shall hold the same, subject to the several liabilities mentioned in the preceding section, and shall contribute according to their respective liabilities to the executor, or to a devisee or legatee, from whom the estate devised to him has been taken for the payment of debts or expenses, or to make up the share of a child born after the making of the will, or of a child or of the issue of a child omitted in the will and not intentionally excluded thereby; and the persons who, as heirs, have received the estate not disposed of by will, shall be liable to contribute like the devisees or legatees.

SEC. 761. *When person liable to contribute is insolvent or dead.*—If a person liable to contribute, according to the provisions of the preceding section, is insolvent and unable to pay his share the others shall be severally liable for the loss occasioned by such insolvency, in proportion to and to the extent of the estate they have received; and if a person liable to contribute dies before paying his share, the claim shall be valid against his estate as if it had been his proper debt.

SEC. 762. *Court to fix contributor's shares.*—The court having jurisdiction of the estate, may, by decree for that purpose, after hearing, settle the amount of the several liabilities as provided in the preceding section, and decree how much, and in what manner, each person shall contribute, and may issue execution if circumstances require.

CHAPTER XLI.

PAYMENT OF DEBTS.

SEC. 763. *Debts to be paid in full if estate sufficient.*—If, after the amount of the claims against an estate is ascertained, as hereinbefore provided, it appears that the executor or administrator has in his possession sufficient assets to pay the debts, he shall pay the same within a time to be fixed by the court.

SEC. 764. *Order of payment if estate insolvent.*—If the assets which can be appropriated for the payments are not sufficient for that purpose, the executor or administrator shall, after paying the necessary expenses of administration, pay the debts against the estate in the following order:

1. The necessary funeral expenses;
2. The expenses of the last sickness;
3. Debts due to the United States;
4. Taxes and assessments due to the Government, or any branch or subdivision thereof;
5. Debts due to the Government;
6. Debts due to other creditors.

SEC. 765. *Dividends to be paid in proportion to claim.*—If there are not assets sufficient to pay the debts of any one of the aforesaid classes, after paying the preceding ones, each creditor within the class for which there are not sufficient assets for payment in full, shall be paid a dividend in proportion to his claim. No creditor of any one class shall receive any payment until those of the preceding class are paid.

SEC. 766. *Estate of insolvent nonresident.*—In case administration is taken in the Canal Zone of the estate of a person who was at the time of his decease an inhabitant of another country or state, and who died insolvent, his estate found in the Canal Zone shall, as far as practicable, be so disposed of that his creditors here and elsewhere, may receive each an equal share in proportion to their respective debts.

SEC. 767. *Payment of claims outside the Canal Zone, against insolvent resident's estate.*—If it appears to the court having jurisdic-

tion of the estate that claims have been duly proven in another state or country against the estate of an insolvent debtor, who was at his decease an inhabitant of the Canal Zone, the executor or administrator within the Canal Zone having had knowledge of the presentation of such claims under foreign jurisdiction, and an opportunity to contest their allowance, such court shall receive a certified list of such claims, when perfected in such other state or country, and add the same to the list of claims proven against the estate of the deceased person in the Zone, so that a just distribution of the whole estate may be made equally among all creditors, according to their respective claims; but the benefit of this and the preceding sections shall not be extended to the creditors in another state or country, if the property of such deceased person there found is not appropriated to the creditors residing in the Canal Zone with other creditors, according to their respective debts.

SEC. 768. *Decree for payment of debts.*—Upon the filing of the executor's or administrator's report, the court shall order the payment of the debts and the distribution of the assets received by the executor or administrator at the time, for that purpose, among the creditors, as the circumstances of the estate require, according to the provisions of this chapter.

SEC. 769. *In case of appeal.*—If exceptions have been taken from the action of the executor or administrator in rejecting a claim, the court may suspend the order for the payment or may order the distribution among the creditors whose claims are uncontested, leaving in the hands of the executor or administrator sufficient assets to pay the claim disputed and appealed.

When a disputed claim is finally settled, the court having jurisdiction of the estate shall order the same to be paid out of the assets retained, to the same extent and in the same proportion with the claims of other creditors.

SEC. 770. *Subsequent distributions.*—If the whole of the debts are not paid by the first distribution and if the whole assets are not distributed, or other assets afterwards come into the hands of the executor or administrator, the court may from time to time, make further order for the distribution of assets.

SEC. 771. *After time fixed for payment, executor or administrator personally liable.*—When an order is made for the distribution of assets among creditors, the executor or administrator, after the time of payment arrives, shall be personally liable to the creditors for their debts, or the dividend thereon, as for his own debt: he shall also be liable on his bond.

SEC. 772. *Court to fix time for paying debts and legacies.*—The court, at the time of granting letters testamentary or of administra-

tion, shall allow to the executor or administrator a time for disposing of the estate and paying the debts and legacies of the deceased person, which time shall not, in the first instance, exceed one year; but the court may, on application of the executor or administrator, from time to time, as the circumstances of the estate require, extend the time not exceeding six months at a time, nor so that the whole time allowed to the original executor or administrator shall exceed two years.

SEC. 773. *Hearing on question of extending time.*—When an executor or administrator makes application to have the time for paying debts or legacies extended beyond one year, the court shall appoint a time for hearing and deciding on such application, and cause notice thereof to be given to all persons interested, by publication two weeks successively in a newspaper of general circulation in the Zone, to be designated by the court; and an order extending the time shall not be granted unless such notice has been given.

SEC. 774. *Successor of executor or administrator dying, may have time extended.*—When an executor or administrator dies and a new executor or administrator of the same estate is appointed, the court may extend the time allowed for the payment of the debts or legacies beyond the time allowed to the original executor or administrator, not exceeding six months at a time, and not exceeding six months beyond the time which the court might have allowed to such original executor or administrator; and notice shall be given of such application and of the time and place of hearing, as required in the preceding section.

CONTINGENT CLAIMS.

SEC. 775. *Claims may be presented to executor or administrator.*—If a person is liable as surety for deceased, or has other contingent claims against his estate which can not be proved as a debt before the executor, the same may be presented with the proof, to the executor, who shall state in his report that such claim was presented.

SEC. 776. *Estate to be retained to meet claims.*—If the court is satisfied from the report of the executor, or from proofs exhibited to it, that such contingent claim is valid, it may order the executor to retain in his hands sufficient estate to pay such contingent claim, when the same becomes absolute, or if the estate is insolvent, sufficient to pay a portion equal to the dividend of the other creditors.

SEC. 777. *Claim becoming absolute in two years, how allowed.*—If such contingent claim becomes absolute and is presented to the court, or to the executor or administrator, within two years from the time limited for other creditors to present their claims, it may be allowed by the court if not disputed by the executor or administrator,

and, if disputed, it may be settled by the court upon a hearing as in the case of exceptions to an executor's report.

SEC. 778. *Such creditor to receive in same proportion as others.*— If such contingent claim is allowed, the creditors shall receive payment to the same extent as the other creditors, if the estate retained by the executor or administrator is sufficient. But if the claim is not established within the time limited in the preceding section, or if the assets retained in the hands of the executor or administrator are not exhausted in the payment of such claims, such assets, or the residue of them, shall be disposed of by the order of the court to the persons entitled to the same; but the assets so distributed shall still remain subject to the liability of the claim when established, and the creditor may maintain an action against the distributees to recover his debt, and such distributees and their estates shall be liable for such debts in proportion to the estate they have respectively received from the property of the deceased.

CHAPTER XLIII.

ESCHEATS.

SEC. 779. *Procedure when person dies intestate without heirs.*— When a person dies intestate, seized of real or personal property in the Canal Zone, leaving no heir or person by law entitled to the same, the collector of revenues of the Zone or other officer discharging his duties may file a petition with the court of the circuit where the intestate resided or any portion of his real estate lies for an inquisition in the premises; the court shall thereupon appoint a time and place of hearing and cause a notice thereof to be published in some newspaper of general circulation. The notice shall recite the substance of the facts and request set forth in the petition, the time and place at which persons claiming the estate may appear and be heard before the court, and shall be published at least four weeks successively, the last of which publication shall be at least four weeks before the time appointed by the court to make inquisition.

SEC. 780. *Decree of court in such case.*— If, at the time appointed for that purpose, the court finds that the person died intestate, seized of real or personal property in the Zone leaving no heir or persons entitled to the same, and no sufficient cause is shown to the contrary, the court shall order and decree that the estate of the deceased in the Canal Zone, after the payment of just debts and charges, shall escheat; and the said estate shall be administered upon by the collector of revenues and the proceeds be paid in to the Zone treasurer, the proceeds of the personal estate for the use of the schools of the administrative district where the deceased resided, and the proceeds of the real estate for the use of the schools of the respective administrative districts where the real estate lies.

SEC. 781. *Right of heir, and so forth, subsequently appearing.*—If a devisee, legatee, heir, widow, husband, or other person entitled to such estate, within ten years from the date of such decree, appears and files claim with the court to such estate, he shall have possession of the same, or if sold, the government of the Canal Zone shall be accountable to him for the avails, after deducting reasonable charges for the same of the estate; but if the claim is not made within the time mentioned it shall be forever barred.

CHAPTER XLIII.

DISTRIBUTION OF ESTATE.

SEC. 782. *Order of distribution.*—After payment of the debts, funeral charges, and expenses of administration, and the allowance, if any, made for the expense of maintenance of the family of deceased, the court shall assign the residue of the estate to the persons entitled to the same, and in its order the court shall name the persons and proportions, or parts to which each is entitled, and such persons may demand and recover their respective shares from the executor or administrator, or any other person having the same in his possession: *Provided, however.* That nothing in this Code contained shall be construed to alter the existing Panamanian law as to the restriction of the right of the testator to disinherit his children or other relatives.

SEC. 783. *Parties interested may have order.*—Such order may be made on the application of the executor or administrator, or of a person interested in the estate; but the heirs, devisees, or legatees, shall not be entitled to an order for their share, until the payment of the debts and allowances mentioned in the preceding section, and the several expenses therein mentioned have been made or provided for, unless they give a bond with such surety or sureties as the court directs, to secure the payment of such debts, expenses or allowances, or any part thereof as remain unpaid or unprovided for, and to indemnify the executor or administrator against the same.

SEC. 784. *Share of child born after making will.*—When a child of a testator is born after the making of a will, and no provision is therein made for him, such child shall have the same share in the estate of the testator as if he had died intestate; and the share of such child shall be assigned to him as in cases of intestate estates, unless it was apparent from the will that it was the intention of the testator that no provision should be made for such child.

SEC. 785. *Share of child or issue of child omitted from will.*—When a testator omits to provide in his will for any of his children, or for issue of a deceased child and it appears that such omission was made by mistake, or accident, such child, or the issue of such child

shall have the same share in the estate of the testator as if he had died intestate, to be assigned to him as in the case of intestate estates.

SEC. 786. *From what part of estate such shares taken.*—When a share of a testator's estate is assigned to a child born after the making of the will, or to a child or issue of a child omitted in the will, the same shall first be taken from the estate not disposed of by the will, if there is any, and if there is not sufficient so much as is necessary shall be taken from the devisees or legatees in proportion to the value of the estate they respectively receive under the will; but if the obvious intention of the testator as to some specific devise or bequest, or other provision of the will, would thereby be defeated, such specific devise, legacy, or provision, may be exempted from such apportionment and a different apportionment adopted, in the discretion of the court.

SEC. 787. *Devisee dying before testator.*—When a devise or legacy is made to a child or other relation to the testator, and the devisee or legatee dies before the testator, leaving issue surviving the testator, such issue shall take the estate so given as the devisee or legatee would have done, if he had survived the testator, unless a different disposition is required by law.

SEC. 788. *Share of person absent and unheard of.*—If a person entitled to a distributive share of the estate of a deceased person is absent and unheard of for ten years, either before or after the death of such deceased person, the court may two years after the deceased person's death order the share of such absent person distributed among his lineal heirs, if he has any, otherwise among the heirs of such deceased person; but if such absent person proves to be alive he shall be entitled to his estate notwithstanding such distribution, and may recover any portion thereof which any one has received under such order; and before an order is made for the payment or distribution of any money or estate herein authorized, the court shall cause the same notice to be given as upon the settlement of an administrator's account, and such other notice, by publication or otherwise, as the court deems proper.

SEC. 789. *Advancement to lineal heirs.*—Estate, real or personal, given by the intestate in his lifetime to a child or lineal descendant, shall be reckoned toward the share of such heir, and for that purpose shall be considered a part of the estate of the intestate, under the following circumstances only:

1. When in the gift or grant it is expressed to be an advancement;
2. When such estate is charged to the child or lineal descendant, in writing, by the deceased upon his books or papers;
3. When such estate is acknowledged as such by the child or lineal descendant in writing:

4. When personal estate is delivered expressly as advancement before two witnesses requested to take notice of it. If the amount so advanced exceeds the share of the heir, he shall be excluded from any further share in the estate; but he shall not be liable to refund any part of the share so advanced; and if the advancement is less than the share of such heir, he shall receive such further sum as, with such advancement, will be equal to his legal share in the estate. If the amount so advanced is in real estate, the same shall be set off, first, toward the heir's share of real estate, and if more than his share of real estate, the balance shall be set off toward his share of personal estate, and if the advancement is in personal estate, the same shall be set off, first, toward the heir's share, in personal estate, then toward his share in the real estate. But if the heirs consent, a different application of the advancement may be made.

If the child or other lineal descendant, to whom such advancement is made, dies before the intestate, the advancement shall be reckoned toward the share of the representative of such child, or other lineal descendant, as it would be reckoned toward the share of the heir, if living.

Where the value of the advancement is expressed in the conveyance, or the charge of the same, or in the acknowledgment of the person receiving it, or by the intestate at the time of delivering it before two witnesses, such advancement shall be taken to be of the value so expressed; otherwise it shall be estimated according to the value at the time of making it.

SEC. 790. *Questions as to advancement to be determined by the court.*—Questions as to advancement made, or alleged to have been made, by the deceased, to any heirs or lineal descendants, may be heard and determined by the court having jurisdiction of the estate, and shall be specified in the decree directing the distribution of the estate; and the final decree of the court, either originally or on appeal, shall be binding on the person interested in the estate.

SEC. 791. *Partition of an estate already assigned.*—Where the real estate assigned to two or more heirs, devisees, or legatees is in common and undivided, and their respective shares are not separated and distinguished, partition and distribution of the same, wherever situate, may be made, upon application to the court or judge having jurisdiction of the estate by any party in interest, by petition for that purpose. Upon the filing of the petition the court or judge shall appoint commissioners to make the partition, and the proceedings of such commissioners, and of the court in its action upon the report of the commissioners, shall be in all respects the same as in this Code provided for partition of real estate by action. Such partition may be made although some of the original heirs or devisees have

conveyed their shares to other persons; and such shares shall be set to the persons holding the same as they would have been to the heirs or devisees. The whole estate may be assigned to one or more of the heirs or may be sold under the directions of the court as provided in this Code in relation to partition of real estate by action. The fees of the commissioners shall be the same as provided in this Code for commissioners for partition of real estate by action.

SEC. 792. *Expenses of partition may be paid from estate.*—If, at the time of partition or distribution of the estate, the executor or administrator has retained sufficient effects in his hands which may lawfully be applied for that purpose, the expenses of such partition or distribution may be paid by such executor or administrator when it appears equitable to the court and not inconsistent with the intention of the testator; otherwise, they shall be paid by the parties in proportion to their respective shares or interest in the premises, and the apportionment shall be settled and allowed by the court, and, if any person interested in the partition does not pay his proportionate share, the court may issue an execution in the name of the executor or administrator against the party not paying, for the sum assessed.

SEC. 793. *Recording the decrees of partition of estate.*—Certified copies of final orders of the court, relating to the estate or the partition thereof, shall be recorded in the registry of land titles of the circuit where the land is situated.

CHAPTER XLIV.

ADOPTION AND CUSTODY OF MINORS.

SEC. 794. *How a child may be adopted.*—An inhabitant of the Canal Zone, not married, or a husband and wife jointly, may petition the Circuit Court of the circuit in which they reside for leave to adopt a minor child; but a written consent must be given for the adoption by the child, if of the age of fourteen years, and by each of his or her living parents who is not hopelessly insane or intemperate, or has not abandoned such child, or if there are no such parents, or if the parents are unknown, or have abandoned such child, or if they are hopelessly insane or intemperate, then by the legal guardian, or if there is no such guardian, then by a discreet and suitable person appointed by the court to act in the proceedings as the next friend of such child; but when such child is an inmate of a charitable or eleemosynary institution within the Canal Zone, and has been previously abandoned by its parents or guardians thereto, then the written consent of the head of such institution must be given: *Provided, nevertheless,* That nothing herein contained shall

authorize a guardian to adopt his ward before the termination of the guardianship and the final settlement an dapproval of his accounts as guardian by the court.

SEC. 795. *Adoption by stepfather.*—Any inhabitant of the Canal Zone, being the husband of any woman who has a minor child by a former husband, may petition the court of the circuit in which he resides for leave to adopt such minor child and for a change in the name of such child; but the written consent must be given to the adoption by the child, if of the age of fourteen years, and by the mother of such child, if she is not hopelessly insane or intemperate, or if such mother is hopelessly insane or intemperate, then by the legal guardian of such child, or if there is no such guardian, then by a discreet and suitable person appointed by the court to act in the proceedings as the next friend of such child or children.

SEC. 796. *Order of the court.*—When the foregoing provisions are complied with, if the court is satisfied with the ability of the petitioner to bring up and educate the child properly, having reference to the degree and condition of the child's parents and the fitness and propriety of such adoption, it shall make an order setting forth the facts and declaring that from that date said child, to all legal intents and purposes, is the child of the petitioner and that its name is thereby changed. The order shall be recorded in the records of the court.

SEC. 797. *Effect of the order.*—The natural parents, except when such child is adopted under the provisions of the second preceding section shall, by such order, be divested of all legal rights and obligations in respect to the child, and the child shall be free from all legal obligations of obedience and maintenance with respect to them. Such child shall be to all intents and purposes the child and legal heir of the person adopting him or her, entitled to all the rights and privileges, and subject to all the obligations of a child of such person begotten in lawful wedlock: *Provided, nevertheless,* That the child so adopted shall remain the legal heir of his father and mother, and in case of the death of the child, his father and mother and relatives by nature, shall remain his legal heirs.

SEC. 798. *Illegitimate child.*—If the child to be adopted is illegitimate, the consent of the father to adoption shall not be required.

SEC. 799. *Order as to vagrant, incorrigible, neglected, or abused child.*—When the parent or parents of any minor child shall be unable through vagrancy, negligence, or misconduct to support such child, or if able, shall neglect or refuse to support such child, or when such parent or parents shall unlawfully beat or otherwise habitually maltreat such child, or cause or allow it to engage in common begging, the Circuit Court of the Circuit in which the parents live or

in which the child is found, if vagrant, upon complaint by affidavit of some reputable citizen of the Circuit, in behalf of such child, setting forth the facts bringing the case within this section, may issue a summons requiring such parent or parents to appear and answer such complaint, and if the parent or parents can not be found, the summons may require his nearest relative to appear in the interest of his parent or parents; and if, upon hearing, all the matters complained of, the court find the same to be true, and that it is for the best interest of such child to be taken from such parent or parents, the court may make an order to that effect, and it may order the placing of such child in any suitable orphan asylum or children's home, or with some other benevolent society, to be taken and cared for and placed in homes found for them, by adoption or otherwise, by such asylum, children's home or society.

SEC. 800. *Children of parents separated or divorced.*—When husband and wife are living separate and apart from each other, or are divorced, and the question as to the care, custody and control of the offspring of their marriage is brought before a Circuit Court, by petition or otherwise, or rises as an incident to any other proceeding, the father and mother of such offspring shall stand upon an equality before the court as to the care, custody, and control of the offspring, so far as it relates to their being either the father or mother of the children. The Court, upon hearing the testimony of either or both of the parents, and such other testimony as the court deems pertinent, shall decide which one of them shall have the care, custody, and control of such offspring, taking into account that which will be for the best interest of the children: *Provided*, That if such offspring be ten years of age or more they be allowed to choose which parent they prefer to live with, unless the parent so selected by such child be unfitted to take charge of such child by reason of moral depravity, habitual drunkenness, incapacity, or poverty, in which case the court shall determine the custodian of such child. If, upon such hearing, it should be proven to the court that both parents are improper persons to have the care, custody, and control of such child, the court may, in its discretion, either designate some reputable and discreet person to take charge of such child, or may commit it to any asylum, children's home, or other similar benevolent society within the Canal Zone. The court may order either or both parents to support or help support said child, irrespective of who may be its custodian. The court shall have full power and authority to make any order or decree that is just and reasonable, permitting the parent who is deprived of such care and custody of said child to visit it and to have temporary custody thereof.

SEC. 801. *Appeal.*—Either parent may appeal from the order of

court, made in accordance with the last preceding section, to the Supreme Court in the manner provided for appeals in special proceedings.

CHAPTER XLV.

APPEALS IN SPECIAL PROCEEDINGS.

SEC. 802. *Appeal from settlement of account of administrator, executor, trustee, or guardian.*—Any person legally interested in a final order, or decree, or judgment of a Circuit Court settling the account of an executor, administrator, trustee, or guardian, may appeal from such order, decree, or judgment, to the Supreme Court and such appeal shall be heard by the Supreme Court in the manner provided in this Code. All items of the account shall be open on the appeal. The decision of the Supreme Court thereon shall be final.

SEC. 803. *Method of perfecting such appeal.*—The person thus appealing shall perfect his appeal within twenty-one days after the entry of the order, decree, or judgment by the Circuit Court, by filing with the clerk of that court a statement in writing that he appeals to the Supreme Court from such order, decree, or judgment. The clerk shall thereupon transmit to the Supreme Court a certified transcript of the account embraced in the order, decree, or judgment, and of the order, decree, or judgment appealed from, and of the appeal.

SEC. 804. *Bond for appeal.*—Before an appeal is allowed the person appealing under the two preceding sections shall give a satisfactory bond to the court, conditioned that he will prosecute the appeal to effect and pay the intervening damages and costs occasioned by such appeal.

SEC. 805. *Appeal in case of allowance or disallowance of wills.*—Any person interested in the allowance or disallowance of a will by a Circuit Court, may appeal to the Supreme Court from such allowance or disallowance, by filing with the Circuit Court an application for an appeal, within twenty days after the entry of the judgment allowing or disallowing the will, and by the execution and filing of a bond such as is provided in the preceding section. Upon the filing of such appeal and bond, it shall be the duty of the clerk forthwith to transmit to the Supreme Court a certified copy of the will, and of all the evidence taken upon the trial, and of the judgment of the court thereon, and also the original will itself, in case any question of the handwriting is involved in the controversy. In case the original will is transmitted to the Supreme Court the clerk of the Circuit Court shall retain in his files a certified copy thereof.

SEC. 806. *Appeal from decree of distribution.*—If there shall be a

controversy before the Circuit Court as to who the lawful heirs of the deceased person are, or as to the distributive share to which each person is entitled under the law, the testimony as to such controversy shall be taken in writing by the judge, under oath, and signed by the witnesses. Any party in interest whose distributed share is affected by the determination of such controversy may appeal from the judgment of the Circuit Court determining such controversy, to the Supreme Court, within the time and in the manner provided in the last preceding section, and it shall thereupon be the duty of the clerk of the Circuit Court forthwith to transmit to the Supreme Court a certified copy of all the testimony taken upon that issue, and of the judgment of the court thereon.

SEC. 807. *Appeals allowed in other cases affecting settlement of estate.*—Any person legally interested in any other order, decree, or judgment of a Circuit Court in the exercise of its jurisdiction in special proceedings in the settlement of the estates of deceased persons or the administration of guardian and trustees, may appeal to the Supreme Court from such order, decree, or judgment when such order, decree, or judgment constitutes a final determination of the rights of the parties so appealing, and the appeal shall be effected in the manner provided in the two preceding sections: *Provided*, That no appeal shall be allowed from the appointment of a special administrator.

CHAPTER XLVI.

FORMS AND FEES.

SEC. 808. *Forms.*—The following forms may be used in civil courts in the Canal Zone in actions and special proceedings, and shall, as near as circumstances will permit be adopted; but alterations may be made and allowed by rules of court, and pleadings and process not in these forms, but in substantial compliance with the law, shall be sufficient.

1. Form of general heading for all written pleadings in an action.

UNITED STATES OF AMERICA,

Canal Zone.

In the Circuit Court for the _____ Circuit.

Between A B., plaintiff, and C D., defendant, (or in the matter of _____).

2. *Form of complaint to recover money lent.*—The plaintiff says that:

1. On the ____ day of _____, 19__, at _____, he lent the defendant the sum of \$_____ repayable on demand (or, on the ____ day of _____ 19__) with interest on the same from the said ____ day

of _____, 19__, until payment at the rate of __ per centum per annum.

2. The defendant has not paid the said sum or interest thereon or any part of the same (except as follows _____);

3. The plaintiff prays judgment for the said sum of \$_____, remaining unpaid, with interest from the said ____ day of _____, 19__, at the above rate, together with the costs of the action.

3. *For money received to plaintiff's use.*—The plaintiff says that:

1. On or about the ____ day of _____, 19__, the defendant received \$_____ (or, a certain bank check or draft upon the bank of _____ amounting to \$_____) from one E. F., for the use of the plaintiff;

2. The defendant has not paid (or delivered) the same;

3. The plaintiff prays judgment for \$_____ with interest at __ per cent from the _____ day of _____, 19__, together with the cost of the action.

4. *For price of goods sold by a factor.*—The plaintiff says that:

1. On the ____ day of _____ 19__, at _____, he delivered to the defendant (here state the goods delivered) for sale on commission;

2. On the ____ day of _____, 19__, (or, on some day unknown to the plaintiff before the ____ day of _____ 19__,) the defendant sold the said merchandise for \$_____;

3. The commission and expenses of the defendant thereon amounting to \$_____;

4. On the ____ day of _____, 19__, the plaintiff demanded from the defendant the proceeds of said merchandise.

5. The defendant has not paid the same.

6. The plaintiff prays judgment for said sum of \$_____ with interest from said ____ day of _____, 19__, at the rate of __ per cent per annum, together with the costs of the action.

5. *For goods sold at a fixed price and delivered.*—The plaintiff says that:

1. On the ____ day of _____, 19__, at _____, he sold and delivered to the defendant (here describe the goods sold and delivered);

2. The defendant promised to pay \$_____, for said goods on delivery (or, state manner in which payment was to be paid);

3. The defendant has not paid the same.

4. (Demand for judgment as in previous forms.)

6. *For goods sold at a reasonable price and delivered.*—The plaintiff says that:

1. On the ____ day of _____, 19__, at _____, he sold and delivered to the defendant (here state the goods sold and delivered), but no express agreement was made as to price.

2. The said goods were reasonably worth \$_____.

3. The defendant has not paid the same.

4. (Demand for judgment as in previous forms.)

7. *For goods made at defendant's request and not accepted.*—The plaintiff says that:

1. On the ---- day of -----, 19--, at -----, the defendant agreed with the plaintiff that the plaintiff should make for the defendant (here describe the articles), and that the defendant should pay for the same upon delivery thereof \$-----;

2. The plaintiff made the said goods, and on the --- day of -----, 19--, offered to deliver the same to the defendant, and has ever since been ready and willing so to do.

3. The defendant has not accepted the goods or paid for the same;

4. (Demand for judgment.)

8. *For deficiency upon the sale of goods sold at auction.*—The plaintiff says that:

1. On the ---- day of -----, 19--, at -----, the plaintiff put up at auction (sundry articles of merchandise) subject to the condition that all goods not paid for and removed by the purchaser thereof immediately after the sale should be resold by auction on his account, of which condition the defendant had notice;

2. The defendant purchased (describe the articles) at the said auction at the price of \$-----;

3. The plaintiff was ready and willing to deliver the same to the defendant on the said date, of which the defendant had knowledge;

4. The defendant did not take away the said goods purchased by him nor pay therefor, at the time of said purchase nor since;

5. On the same day at the same place, the plaintiff resold the said goods on account of the defendant at public auction for \$-----;

6. The expenses attendant upon such resale amounted to \$-----;

7. The defendant has not paid the deficiency thus arising amounting to \$-----;

8. (Demand for judgment.)

9. *For services at a fixed price.*—The plaintiff says that:

1. On the ---- day of -----, 19--, at -----, the defendant employed plaintiff as clerk at a salary of \$----- per year (or otherwise employed him, as the case may be);

2. From the said date until the ---- day of -----, 19--, the plaintiff served the defendant as clerk (or otherwise, as the case may be);

3. The defendant has not paid the said salary (except the sum of \$-----);

4. (Demand for judgment.)

10. *For rent reserved in lease.*—The plaintiff says that:

1. The plaintiff, by deed, let to the defendant a piece of land (or certain buildings) for ---- years (or months, or days as the case

may be), to hold from the ____ day of _____, 19__, at \$_____ a year, payable quarterly (or upon other terms, as the case may be);

2. Of such rent _____ quarters are due and unpaid, amounting to \$_____.

3. (Demand for judgment.)

11. *For use and occupation at a reasonable rent.*—The plaintiff says that:

1. The defendant used and occupied the (land or building, located at _____), belonging to the plaintiff from the ____ day of _____, 19__, but no agreement was made as to amount of payment for the use of said premises;

2. The use of the said premises for the said period was reasonably worth \$_____;

3. Defendant has not paid the same;

4. (Demand for judgment.)

12. *For carriage of goods.*—The plaintiff says that:

1. On the ____ day of _____, 19__, the plaintiff at the request of the defendant, carried in his ship (wagons, railroad cars, by hand, or otherwise, as the case may be) certain goods (stating them) from _____ to _____;

2. The defendant promised to pay the plaintiff the sum of \$_____, as freight thereon;

3. The defendant has not paid the same or any part thereof;

4. (Demand for judgment.)

13. *Payee against maker of promissory note.*—The plaintiff says that:

1. On the ____ day of _____, 19__, at _____, the defendant, by his promissory note, now overdue, promised to pay to the plaintiff \$_____, on the ____ day of _____, 19__, (or _____ days after date);

2. The said note was in the words and figures following (here copy note):

3. The defendant has not paid the same (except \$_____ on the ____ day of _____, 19__).

4. (Demand for judgment.)

14. *First endorsee against maker of note.*—The plaintiff says that:

1. On the ____ day of _____, 19__, at _____ the defendant, by his promissory note, now overdue, promised to pay to the order of _____ \$_____ on the ____ day of _____ 19__ (or _____ days after date).

2. The said _____ endorsed the same to the plaintiff.

3. The said note and endorsements are in words and figures following: (here copy);

4. The defendant has not paid the same;

5. (Demand for judgment.)

15. *Subsequent endorsee against maker.*—The plaintiff says that:

1. On the ____ day of _____, 19__, at _____ the defendant, by his promissory note, now overdue, promised to pay to the order of E. F. \$_____ on the ____ day of _____, 19__, (or, _____ days after date);

2. The same was by the endorsement of the said E. F. (and others, if they were endorsers) transferred to the plaintiff;

3. The said note and endorsements were in words and figures following: (here copy);

4. The defendant has not paid the same;

5. (Demand for judgment.)

16. *First endorsee against first endorser.*—The plaintiff says that:

1. On the ____ day of _____, 19__, at _____ E. F. by his promissory note, now overdue, promised to pay to the order of the defendant \$_____ on the ____ day of _____, 19__, (or _____ days after date);

2. The defendant endorsed the same to the plaintiff;

3. The said note and endorsements were in words and figures following: (here copy);

4. On the ____ day of _____, 19__, the same was duly presented for payment, but was not paid (or, state facts excusing want of presentment);

5. The defendant had due notice thereof;

6. The defendant has not paid the same;

7. (Demand for judgment.)

17. *Subsequent endorsee against maker, first and second endorser.*—The plaintiff says that:

1. On the ____ day of _____, 19__, at _____ the defendant, C. D., by his promissory note, now overdue, promised to pay to the order of the defendant E. F., \$_____ on the ____ day of _____, 19__, (or, _____ days after date);

2. The said defendant endorsed the same to the defendant, G. H., who endorsed it to plaintiff;

3. The said promissory note and the endorsements thereon were in the words and figures following: (here copy)

4. On the ____ day of _____, 19__, the same was presented (or, state facts excusing the want of presentment) to the said C. D. for payment, but was not paid;

5. The said E. F. and G. H. had due notice thereof;

6. The defendants, or either of them, have not paid the same;

7. (Demand for judgment.)

18. *On a marine insurance policy on a vessel lost by the perils of the sea.*—The plaintiff says that:

1. The plaintiff was the owner of (or, had an interest in) the ship _____ at the time of its loss as hereinafter mentioned;

2. On the ____ day of _____, 19__, the defendant in consideration of \$----- to him paid (or, which plaintiff then promised to pay) executed to him a policy of insurance upon said ship, whereby he promised to pay the plaintiff _____ days after the proof of loss and interest, all loss and damage accruing to him by reason of the destruction or injury of the said ship during its next voyage from _____ to _____ whether by perils of the sea of fire or by other causes therein mentioned, not exceeding \$-----;

3. The said vessel while proceeding on the voyage mentioned in the said policy, was on or about the ____ day of _____, 19__, totally lost by the perils of the sea (or otherwise);

4. The plaintiff's loss thereby was \$-----;

5. The plaintiff duly performed all the conditions of the said policy on his part;

6. The defendant has not paid the said loss;

7. (Demand for judgment.)

19. *Action on a fire insurance policy.*—The plaintiff says that:

1. The plaintiff was the owner of (or, had an interest in) a dwelling house (or other building) known as No. _____, _____ street, in the city of _____, at the time of its destruction (or injury) by fire, as hereinafter mentioned;

2. On the ____ day of _____, 19__, at _____, in consideration of \$-----, paid to it (or _____, promised to be paid to it) the defendant executed to the plaintiff a policy of insurance on said premises for the amount of \$-----;

3. On the ____ day of _____, 19__, the said (dwelling house, or other building) was totally destroyed (or greatly damaged) by fire;

4. The plaintiff's loss thereby was \$-----;

5. The plaintiff has duly performed all the conditions of said policy on his part;

6. The defendant has not paid the said loss;

7. (Demand for judgment.)

20. *For breach of agreement to convey land.*—The plaintiff says that:

1. On the ____ day of _____, 19__, at _____, the plaintiff and defendant entered into an agreement, in writing, under their hands (here state the terms of agreement);

2. On the ____ day of _____, 19__, (the date mentioned in the agreement, if any,) the plaintiff demanded the conveyance of the said property from the defendant and tendered the said sum of \$-----, to the defendant, and all conditions were fulfilled, and the time has elapsed necessary to entitle the plaintiff to have the said agreement performed by the defendant on his part;

3. The defendant has not executed any conveyance of the said property to the plaintiff;

4. (Here state damages, ordinary and special.)

5. The plaintiff prays judgment for \$-----, compensation for breach of said agreement, together with the costs of the action.

21. *For breech of contract to serve.*—The plaintiff says that:

1. The plaintiff and defendant mutually agreed that the plaintiff should employ the defendant at (an annual or other) compensation of \$-----, and that the defendant should serve the plaintiff (as clerk or otherwise), for the term of -----;

2. The plaintiff has always been ready and willing to perform his part of the said agreement, and on the ---- day of -----, 19--, offered to do so;

3. The defendant entered upon the service of the plaintiff on the above-mentioned day, but afterwards, on the ---- day of -----, 19--, without just cause, refused longer to serve the plaintiff aforesaid;

4. (Here state damages, ordinary or special);

5. (Demand for judgment.)

22. *For breach of warranty of chattels.*—The plaintiff says that:

1. On the ---- of -----, 19--, at -----, the defendant warranted to the plaintiff (a steam engine, or other chattel) to be in good working order, and thereby induced the plaintiff to purchase the same of him, and to pay him (or to promise to pay him) \$----- therefor;

2. The said (steam engine or other chattel) was not then in good working order, whereby the plaintiff incurred expense in having the same (engine) repaired, and lost the profit which would otherwise have accrued to him while the (engine) was under repair;

3. The expenses incurred in such repair was \$-----, and the loss of profit which would otherwise have occurred to him while the engine was under repair was \$-----;

4. (Demand for judgment.)

23. *Trespass on land.*—The plaintiff says that:

1. On the ---- day of -----, 19--, at -----, the defendant entered upon certain land of the plaintiff, known as (insert brief description of the premises) and depastured the same with cattle, trod down the grass, cut the timber, and otherwise injured the same;

2. The damages sustained by the plaintiff by reason thereof amount to \$-----;

3. (Demand for judgment.)

24. *For the conversion of chattels.*—The plaintiff says that:

1. On the ---- day of -----, 19--, at -----, the plaintiff was in possession of certain goods (described in the schedule hereto annexed), or (or, say, was in possession of one hundred barrels of flour, for instance) of the value of \$-----;

2. On that day, at _____ the defendant converted the same to his own use and wrongfully deprived the plaintiff of the possession of the same;

3. (Demand for judgment.)

25. *For damages and an injunction for carrying on a noxious manufactory.*—The plaintiff says that:

1. The plaintiff is, and for _____ years has been, possessed of certain lands called _____ situated at _____;

2. Continually since the ____ day of _____, 19__, the defendant has wrongfully caused to issue from certain smelting works owned by the defendant large quantities of offensive and unwholesome smoke and other vapors and noxious matter, which spread themselves over and upon the said lands, and corrupt the air and settle on the surface of the said lands, and still continues to do so;

3. Thereby the trees, hedges, herbage and crops of the plaintiff, growing on the said lands, were damaged and deteriorated in value, and the cattle and live stock of the plaintiff on said lands became unhealthy and divers of them were poisoned and died;

4. By reason of the facts aforesaid, the plaintiff was unable to pasture the said lands with cattle and sheep, as he otherwise might have done, and was obliged to remove his cattle, sheep, and farming stock therefrom, and has been prevented from having so beneficial and healthy a use and occupation of the said lands as he otherwise would have had;

5. The damages sustained by the plaintiff by reason of the said wrongful acts of the defendant amount to \$_____.

6. The plaintiff prays judgment for the said sum of \$_____ damages, and that a final injunction may issue restraining the defendant from a continuance of said wrongful acts, or any of them, and for the costs of this action.

26. *For assault and battery, with special damage.*—The plaintiff says that:

1. On the ____ day of _____, 19__, at _____, the defendant assaulted and beat the plaintiff;

2. The plaintiff was thereby disabled from attending to his business (for a period stated), and was compelled to pay \$_____, for medical attendance and nursing, and has been ever since disabled from using his right arm (or otherwise state the damage, as the case may be);

3. By reason of the premises the plaintiff sustained damage to the amount of \$_____ in all:

4. (Demand for judgment.)

27. *For libel.*—The plaintiff says that:

1. The plaintiff is and was on and before the ____ day of _____, 19__, a merchant doing business in the city of _____;

2. On the ____ day of _____, 19__, at _____ the defendant published in a certain newspaper called _____ (or otherwise show how published), the following words concerning the plaintiff (here insert the words of the publication) ;

3. The defendant meant thereby and in said publication charged that the plaintiff had been guilty of (here insert the meaning of the charge) ;

4. The said publication was false and malicious ;

5. By reason of such false and malicious publication, the plaintiff was injured to the amount of \$----- ;

6. (Demand for judgment.)

28. *To recover possession of land, and for damages.*—The plaintiff says that :

1. The defendant on the ____ day of _____, 19__, unlawfully took possession of certain land (or building) belonging to the plaintiff, being (here describe the premises) ;

2. The defendant has retained possession of the said land from the said ____ day of _____ and still retains possession thereof, and withholds the same from the plaintiff ;

3. The plaintiff has sustained damages to the amount of \$----- in loss of profits and otherwise from the unlawful retention of said premises by the defendant ;

4. The plaintiff prays judgment for the possession of said land, and for said sum of \$----- damages and profits, and for costs of the action.

29. *For movable property wrongfully taken.*—The plaintiff says that :

1. On the ____ day of _____, 19__, at _____, the plaintiff owned (here state fact showing the right to the possession) the goods mentioned in the schedule hereto annexed (or describe the goods), the value of which is \$----- ;

2. From that day until the commencement of this action the defendant has detained the same from the plaintiff ;

3. Before the commencement of this action, to wit, on the ____ day of _____, 19__, at _____, the plaintiff demanded the same of the defendant, but he wrongfully refused to deliver them ;

4. The plaintiff prays judgment for the possession of said goods, or for \$-----, damages, in case such possession can not be had, and for \$----- damages for the detention thereof, and for costs of the action.

30. *For specific performance.*—The plaintiff says that :

1. On the ____ day of _____, 19__, the defendant was absolutely entitled to the parcel of land described in the agreement hereto annexed ;

2. On the same day the plaintiff and defendant entered into an agreement under their hands, a copy of which is hereto annexed;

3. On the ____ day of _____, 19__, at _____, the plaintiff tendered \$_____ to the defendant and demanded a conveyance of said property;

4. The defendant then and there refused to convey the same to the plaintiff;

5. The defendant has not executed such conveyance;

6. The plaintiff is still ready and willing to pay the purchase money for the said property, to the defendant;

7. The plaintiff prays judgment that the defendant be ordered to execute to the plaintiff a conveyance of said property in accordance with the terms of said agreement, and damages to the amount of \$_____ for withholding the same, and for costs of the action.

31. *Answer, general denial.*—The defendant denies each and every allegation in each and every paragraph of the plaintiff's complaint.

32. *More specific answer.*—For answer to the plaintiff's complaint the defendant says that:

1. He admits (or denies) the first paragraph;

2. He admits (or denies) the second paragraph, etc.

33. *Answer of duress to action on promissory note.*—For answer to the plaintiff's complaint the defendant says that:

1. He admits each paragraph thereof;

2. For special defense the defendant says that the promissory note sued on was extorted from the defendant by threats of bodily harm (or during imprisonment brought about by the plaintiff for that purpose) and was executed by the defendant under fear of the same (or from fear while in prison). (In either case state particulars);

3. Said note was executed by the defendant without any consideration therefor.

34. *Accord and satisfaction.*—For answer to the plaintiff's complaint the defendant says that;

1. He admits each paragraph of the complaint;

2. For special defense the plaintiff says:

a. That on the ____ day of _____ 19__, at _____ the defendant delivered to the plaintiff the promissory note of (_____);

b. That the plaintiff then and there accepted the same in full satisfaction and discharge of the claim set up in his complaint.

35. *Statute of limitations.*—For answer to the plaintiff's complaint the defendant says that:

1. He admits each paragraph of the complaint;

2. For special defense the defendant says that the cause of action set forth in plaintiff's complaint did not accrue within _____ year before the filing of the said complaint.

36. *Demurrer stating grounds therefor.*—The defendant demurs to the complaint; and he shows the following causes for demurrer:

1st.

2d.

3d.

(Setting out each cause separately.)

37. *Demurrer to answer.*—The plaintiff demurs to the answer (or to the answer of defendant _____), and he shows the following causes for demurrer, to wit:

38. *Subpoena.*—

To _____, of _____, *greeting:*

You are hereby commanded to be and appear at the Circuit Court in and for the _____ circuit on the ____ day of _____, 19__, at ____ o'clock in the forenoon (or afternoon) then and there to testify in the action of _____ against _____ there pending.

Fail not, under penalty of the law.

Witness the Honorable _____, judge of said court this ____ day of _____, 19__,

_____ *Clerk.*

39. *Subpoena duces tecum.*—

To _____ of _____ *greeting:*

You are hereby required to appear before the Circuit Court in and for the _____ circuit, on the ____ day of _____, 19__, at ____ o'clock in the forenoon (or afternoon) and to bring with you into court the following described (book, deed, writing, or other document); it being necessary to use the same as testimony in a cause there pending, wherein _____ is plaintiff and _____ is defendant.

Hereof fail not, under penalty of the law.

Witness the Honorable _____, judge of said court, this ____ day of _____, 19__,

_____ *Clerk.*

40. *Summons.*—

To _____, of _____, *in the Canal Zone:*

You are hereby required to enter your appearance in the clerk's office of the above named court at _____ in the said Canal Zone within twenty days after the service of this summons upon you, exclusive of the day of such service, if it is served on you in the said Canal Zone; otherwise within forty days; and to answer the complaint of the said plaintiff which is hereto attached and herewith served upon you, within the time fixed by the rules of said Court. If you fail to appear within the time aforesaid, the plaintiff will take judgment against you by default and demand from the said court the relief applied for in said complaint.

Witness the Honorable ----- judge of said court this ---- day of -----, 19--,

----- Clerk.

41. *Officer's return of service.*—

UNITED STATES OF AMERICA,

Canal Zone, ----- Judicial Circuit.

I have this day served a copy of the within complaint and process upon ----- personally (or state the other manner of service employed).

Dated this ---- day of ----- 19--.

----- Marshal.

42. *Order of attachment of property.*—

UNITED STATES OF AMERICA,

Canal Zone, ----- Judicial Circuit.

To the marshal of the Supreme or any Circuit Court or deputy, greeting:

Whereas -----, of -----, (or ----- as agent or attorney, of ----- for the plaintiff) has complained on oath to the Circuit Court of the ----- circuit, that -----, of -----, is justly indebted to the said ----- (plaintiff), in the amount of \$-----, and that said ----- (defendant) is a nonresident (or is about to abscond from the Canal Zone, etc), (reciting the affidavit) and whereas security has been given by the plaintiff according to law; we, therefore, command you, that you attach the estate, real and personal, of the said -----, defendant in your circuit, to the value of the said demands and costs of suit, and that you safely keep the same according to law, unless the defendant give security to pay such judgment as may be recovered in the said action, in the manner provided by law, and that you summon the said -----, defendant, if to be found in your circuit, to appear before the Circuit Court of the said circuit, on the ---- day of ----- to answer the above complaint, a copy of which is hereto annexed, and do you have there in said court then this writ with your proceeding endorsed thereon.

Witness my hand this ---- day of -----, 19--,

-----, Judge.

An order for arrest of the person of the defendant may be in the same form with the necessary modifications.

43. *Ordinary execution.*—

UNITED STATES OF AMERICA,

Canal Zone, ----- Judicial Circuit.

To the marshal of the Supreme or any Circuit Court or deputy, greeting:

We command you that of the goods and chattels of ----- (the defendant) you cause to be made the sum of \$----- damages, together with interest thereon from the date of this execution until

the date of payment at the rate of ---- per cent per annum; and the further sum of \$----- for costs of suit, together with your lawful fees for the service of this execution, all in money of the United States, which ----- (the plaintiff) recovered in our Circuit Court for the said circuit on the ---- day of -----, 19--, against ----- (the defendant) for damages, interest, and costs, and that you render the same to the said ----- (the plaintiff), aside from your own fees on this execution, and do you likewise return this writ into court within ----- days from date, with your proceedings endorsed hereon. But, if sufficient personal property cannot be found whereof to satisfy this execution and lawful fees thereon, then we command you of the land and buildings of the said defendant, to make the said sums of money in the manner required by law, and to make return of your proceedings with this writ within ----- days from date.

Witness the Honorable -----, judge of said court, this ---- day of -----, 19---

----- Clerk.

FEEES.

SEC. 809. *Lawful to demand specific fees only.*—It shall be lawful for the clerk of the Supreme Court, the clerks of the Circuit Courts, referees, and commissioners appointed by the Circuit Courts, bailiffs, marshals, district judges, notaries public, and other officers and persons hereinafter mentioned, together with their assistants and deputies, to demand, and receive, the hereinafter mentioned fees and no more; but all fees collected by officers drawing a regular salary or fixed compensation from the Government of the Canal Zone shall be paid into the treasury thereof.

SEC. 810. *Clerk of the Supreme Court.*—For filing bill of exceptions or an appeal, entering appearance of all the parties, entering all orders of the court in the action or proceeding, filing and docketing all motions, docketing of case on all proper dockets, and indexing the same, entering the final judgment or decree, recording the final judgment or decree and certificate of judgment or decree to the lower court, taxing the costs, administering all necessary oaths or affirmations in the action or proceeding, recording the opinion of the court, issuing all necessary process in the action or proceeding not herein otherwise provided for, for each action or special proceeding, twelve dollars; but if the record of the decree or judgment or the opinion of the court contains more than three hundred and fifty words, then an additional fee shall be charged of ten cents for each additional one hundred words in the record.

For furnishing transcripts of the record or copies of any record, decree, judgment, or entry of which any person is entitled to demand

and receive a copy, for each one hundred words, ten cents. For each certificate not on process, twenty-five cents. For every search for anything above a year's standing and reading the same, twenty-five cents.

For a commission on all money coming into his hands by law or order of the court and caring for the same, one-half of one per cent on all sums not exceeding one thousand dollars, and one-quarter of one per cent on all sums in excess of one thousand dollars, and one-eighth of one per cent on all sums in excess of ten thousand dollars.

For any other services as clerk not provided for in this section if such there be, such sum as the judges of the Supreme Court shall fix by general rules.

SEC. 811. *Fees to be paid by the advancing party.*—The fees of the clerk of the Supreme Court shall be paid to him at the time of the entry of the action in the Supreme Court by the party who enters the action in the Supreme Court by bill of exceptions, or appeal, or otherwise, and the clerk shall in all cases give a receipt for the same and shall enter the amount received upon his book, specifying the date when received, person from whom received, name of action in which received, and amount received. If the fees are not paid, the court may refuse to proceed with the action until they are paid and may dismiss the bill of exceptions or appeal for failure to prosecute if the fees are not paid within a reasonable time and after reasonable notice.

SEC. 812. *Clerks of Circuit Courts.*—For filing all complaints, answers, motions, amendments and pleadings for making all entries upon proper dockets, for entering all appearances, for entering all judgments, orders, and decrees, for issuing all processes, preliminary and final, approving all bonds to be by him approved, filing same, for administering all oaths or affirmations, certifying the same, taxing costs, making necessary entries on indexes, and for all other services performed by him, his deputies, or assistants, in any one action, eight dollars.

For all clerical services in the allowance of wills, granting letters of administration, appointment of guardians, trustees, settlement of the accounts of executors, administrators, guardians, trustees, and recording final and interlocutory orders, judgments, and decrees therein, filing all inventories and appraisement, and for all other work as clerk pertaining to any one estate, twelve dollars; but when any record of a final decree or judgment of the court in a special proceeding, including an allowance of an account, or of an inventory of property, contains more than three hundred and fifty words, for each one hundred words in addition to three hundred and fifty words in such record, ten cents. For all services as referee or as commis-

sioner to take testimony under appointment by the court, such sum as the judge shall allow, but the allowance shall be proportionate to the other fees in this section provided. For certifying the official act of a district judge or other certificate, with seal, twenty-five cents. For filing and recording all papers relating to an adoption, in each case of adoption, three dollars. For certified copies of any paper, record, decree, judgment, or entry of which any person is entitled to demand and receive a copy, for each one hundred words, ten cents. For all copies of record, or bills of exception, or testimony or of other documents for transmission to the Supreme Court, ten cents for each one hundred words.

For a commission on all money coming into his hands by law or order of court and caring for the same, one half of one per cent on all sums not exceeding one thousand dollars, and one quarter of one per cent upon all sums in excess of one thousand dollars, but not in excess of ten thousand dollars, and one eighth of one per cent on all sums in excess of ten thousand dollars. For any other services as clerk, not provided for in this section, if such there be, such sum as the judges of the Supreme Court shall fix by general rules.

SEC. 813. *Marshal, and other persons serving process.*—For executing process, preliminary and final judgments, and decrees of any court, for each mile of travel in the service of process going one way, reckoned from the place of service to the place to which the process is returnable, ten cents; for serving an attachment against the property of defendant, one dollar, together with a reasonable allowance to be made by the court for expenses, if any, necessarily incurred in caring for the property attached; for arresting each defendant fifty cents; for serving summons and copy of complaint for each defendant, one dollar; but if the complaint exceeds three hundred and fifty words, then for each additional one hundred words, ten cents; but in special proceedings, testamentary or administrative, where several members of a family residing at the same place are defendants the fee for each defendant shall be fifty cents; for serving subpoenas, for each witness served, twenty-five cents besides travel fees; for each copy of any process necessarily deposited in the office of registrar of deeds ten cents for each one hundred words, but not less than fifty cents in each case; for taking bonds or other instruments of indemnity or security, for each, twenty-five cents; for executing a writ of process to put a person in possession of real estate, one dollar; for attending with prisoner on habeas corpus trial, each day, one dollar; for transporting each prisoner on habeas corpus or otherwise, when required, for every mile going and returning, ten cents; for furnishing food for prisoner, for each day, twenty cents; for advertising sale, besides printer's charge, fifty cents;

for taking inventory of goods levied upon, to be charged only when the inventory is necessary, a sum fixed by the court not exceeding the actual reasonable cost of the same to be shown by vouchers; for levying an execution on property, one dollar.

On all money collected by him by order or any decree, execution, attachment, or any other process, the following sums, to wit:

On the first one hundred dollars or less two per centum.

On the second one hundred dollars, one and one half per centum; on all sums between two hundred dollars and one thousand dollars, one per centum; on all sums in excess of one thousand dollars, one-half per centum.

SEC. 814. *District Judges.*—For each action tried, including entry of action, judgment, and record, and swearing all witnesses, one dollar; for each summons or subpoena containing one name twenty cents; for each additional name therein four cents; for issuing execution twenty-five cents; for administering oath upon any affidavit or other paper with certificate of oath, twenty cents; for an appeal, with proceedings taking bond, making and forwarding transcript of record, seventy-five cents; for each certificate not otherwise provided for, fifteen cents; for writing and certifying deposition, including the administration of oath to the witness, ten cents for each one hundred words in the deposition and certificate; for certified copies of any record of proceeding of which any person is entitled to receive a copy, ten cents for each one hundred words.

A district judge upon receiving payment of fees allowed to him by law, must render to the person or persons so paying an itemized account thereof.

SEC. 815. *Notaries public.*—Notaries public shall receive the following fees only for their services:

For protesting bill or note for non-acceptance or non-payment and giving notice, seventy-five cents; for registering such protest and making record, twenty-five cents; for attesting letters of attorney with seal, twenty-five cents; for notarial affidavit to an account or other writing, with seal, twenty-five cents; for each oath or affirmation, with seal, twenty-five cents; for taking proof of debts to be sent abroad, twenty-five cents; for a certified copy of record and affidavit of its correctness, fifty cents; for writing depositions and affidavit, ten cents for each one hundred words; for taking proof or acknowledgment of any writing concerning real or personal estate and certificate thereof, for each party, twenty-five cents.

SEC. 816. *Other officers taking depositions.*—Other officers taking depositions shall receive the same compensation as above provided for notaries public for taking and certifying depositions.

SEC. 817. *Witness fees.*—Witnesses in the Supreme Court and in Circuit Courts, either in actions or special proceedings, shall be

entitled to one dollar per day and ten cents for each mile going to the place of trial from their homes by the nearest route of usual travel; but mileage shall be charged but once in the action unless witness is compelled to attend more than one term of court, nor shall any allowance be made for mileage except that traveled within the Canal Zone.

Witnesses before district courts and other inferior tribunals shall be allowed one half dollar per day and the travel fees above provided and no more.

Fees to which witness may be entitled in a civil action shall be allowed, on the affidavit of the witness, stating the number of days he has attended, the amount of mileage to which he is entitled, to be taken and preserved by the clerk of the court, district judge or other officer before whom the witness was called to testify, and a certificate of the allowance shall be given to the witness. But on final taxation of costs the truth of the affidavit may be contested and this allowance may be set aside in whole or in part as the facts require. A witness shall not be allowed compensation for his attendance in more than one case or on more than one side of the same case at the same time, but may elect in which of several cases or on which side of the case, when he is summoned by both sides, to claim his attendance; a person who is compelled to attend court on other business shall not be paid as a witness.

SEC. 818. *Other fees to be fixed by general rules of the Supreme Court.*—If it shall appear that legal services are required of clerks of court, marshals, or officers of the court, other than those for which specific fees have been provided in this chapter, the judges of the Supreme Court shall by general rules provide for a scale of fees for such other services, which scale shall be proportionate to the fees in this chapter provided for similar services.

SEC. 819. *Suing in forma pauperis.*—Any judge or clerk of any circuit or district court may authorize any person to sue as a pauper in their respective courts, when he files an affidavit setting forth facts showing that he has good cause of action, and that he is unable to procure a bond, when such bond is required, accompanied by a certificate of a practicing attorney in good standing that the plaintiff has fully stated the facts of his claim to him and that the attorney believes he has a good cause of action, and that he further believes the plaintiff is unable to pay the costs of the action or procure bond.

CHAPTER XLVII.

FINAL PROVISIONS.

SEC. 820. *Repeal of existing codes, etc.*—All codes, statutes, acts, decrees, and orders and parts thereof heretofore promulgated, en-

acted or enforced in the Canal Zone, prescribing the procedure in civil actions or special proceedings in any court or tribunal, and all provisions of the Civil Code of the Canal Zone now in force in so far as they are in conflict with the express provisions of this Code, are hereby repealed; and the procedure in all civil actions and special proceedings in all courts and tribunals shall hereafter be in accordance with the provisions of this Code: Provided, nevertheless;

1. That the procedure in all actions and special proceedings now pending in the Supreme Court may be in accordance with the existing procedure, except in so far as the Supreme Court may determine that the provisions of this Code can be conveniently applied to such actions and procedure;

2. That all actions and special proceedings now pending in Circuit Courts, the trial of which has been commenced and not finished, under the existing procedure, may be completed in accordance with that procedure in Circuit Courts and in the Supreme Court, except in so far as the Judge of the Circuit Court, or the Supreme Court, may determine that the provisions of this Code can conveniently be applied to such actions and proceedings;

3. That no action or special proceeding now pending in a Circuit Court, the trial of which has not already been commenced, shall be discontinued or abated because not commenced in accordance with the provisions in this Code, but all future procedure in such action or special proceeding shall be in accordance with the provisions of this Code so far as this Code may be conveniently applicable to the conduct of such actions or proceeding;

4. That the Supreme Court shall not reverse or annul the proceedings in any Circuit Court in actions or special proceedings now pending therein, because of want of conformity in the proceedings to the provisions of this Code, unless such want of conformity shall have impaired a substantial right of the party attempting to set aside such proceedings;

5. That nothing in this Code contained shall be so construed as to divest or injuriously affect any property right that has already become vested under existing law.

SEC. 821. *When to take effect.*—This Code shall take effect on the first day of May, 1907.

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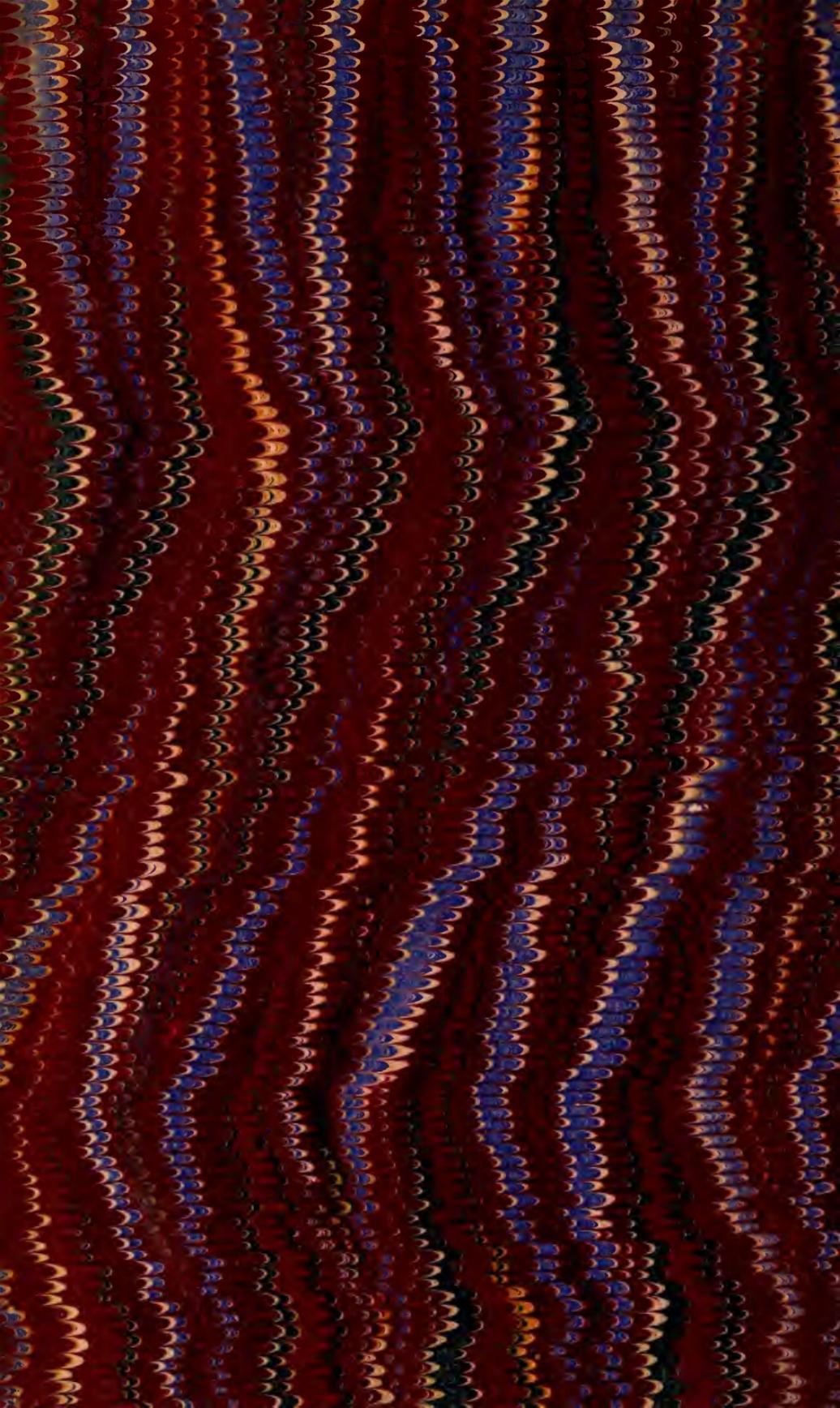
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