TITLE 5—CIVIL PROCEDURE AND EVIDENCE

PART 1—CIVIL PROCEDURE GENERALLY

CHAPTER 1—GENERAL PROVISIONS

§ 1. Application of Federal Rules of Civil Procedure

(a) Except as otherwise provided in this Code, the forms of process writs, pleadings, and motions, and the practice and procedure of the district court in civil actions and proceedings are governed by the then current Federal Rules of Civil Procedure prescribed by the Supreme Court of the United States pursuant to section 2072 of Title 28, United States Code.

(b) Where the Federal Rules of Civil Procedure make applicable the law of the State in which the district court is held, the law of the Canal Zone governs proceedings in the United States District Court for the District of the Canal Zone. The words "state", "district", and "insular possession" include, if appropriate, the Canal Zone. The term "district court" includes the United States District Court for the District of the Canal Zone. The term "statute of the United States" includes, as far as concerns proceedings in the United States District Court for the District of the Canal Zone, an Act of Congress locally applicable to and in force in the Canal Zone.

§ 2. Admiralty procedure; fees and costs

The practice and procedure in admiralty in the district court, including fees and costs, is the same as in the United States district courts.

§ 3. Construction of title

The rule of the common law, that statutes in derogation thereof are to be strictly construed, does not apply to this title. This title establishes the law of the Canal Zone respecting the subjects to which it relates, and its provisions and all proceedings under it shall be liberally construed for the purpose of effecting its objects and promoting justice.

§ 4. Division of judicial remedies

Judicial remedies are divided into (1) actions and (2) special proceedings.

§ 5. Action defined

An action is an ordinary remedy in a court of justice by which one party prosecutes another for the declaration, enforcement, or protection of a right, the redress or prevention of a wrong, or the punishment of a public offense.

§ 6. Special proceeding defined

Every remedy other than an action as defined by section 5 of this title is a special proceeding.

§ 7. Civil and criminal remedies not merged

When the violation of a right admits of both a civil and criminal remedy, the right to prosecute the one is not merged in the other.

§ 8. Pending action defined

An action is pending from the time of its commencement until its final determination upon appeal, or until the time for appeal has passed, unless the judgment is sooner satisfied.

§ 9. Lost pleadings and papers

If an original pleading or paper is lost, the court may authorize a copy thereof to be filed and used instead of the original.

CHAPTER 3—LIMITATION OF ACTIONS

SUBCHAPTER I—LIMITATION GENERALLY

SUBCHAPTER II—COMPUTATION OF TIME; TOLLING OF STATUTE OF LIMITATIONS

Subchapter I—Limitation Generally

§ 41. Limitation of civil actions generally; special proceedings

(a) Civil actions are barred unless commenced within the periods prescribed in this chapter, after the cause of action has accrued, except where a different limitation is prescribed by statute.

(b) As used in this chapter, "action" includes, when necessary, a special proceeding of a civil nature.

§ 42. Periods of limitation

The periods for the commencement of actions are:

(1) Five years

(A) upon a judgment or decree of a court of the United States or of a State of the United States;

(B) for mesne profits of real property.

(2) Four years

(A) upon a contract, obligation, or liability founded upon an instrument in writing;

(B) subject to the provisions of section 44 of this title, to recover:

(i) upon a book account whether consisting of one or more entries;

(ii) upon an account stated based upon an account in writing, although the acknowledgment of the account stated need not be in writing;

(iii) a balance due upon a mutual, open, and current account, the items of which are in writing.

(3) Three years

(A) upon a liability created by statute, other than a penalty or forfeiture;

(B) for trespass upon or injury to real property;

(C) for taking, detaining, or injuring goods or chattels, including actions for the specific recovery of personal property;

(D) for relief on the ground of fraud or mistake in which case the cause of action does not accrue until the discovery by the aggrieved party of the facts constituting the fraud or mistake.

(4) Two years

(A) upon a contract, obligation, or liability not founded upon an instrument in writing; other than that mentioned in paragraph (2)(B) of this section;

(B) founded upon a contract, obligation, or liability, evidenced by a certificate, or abstract or guaranty of title of real property, or by a policy of title insurance, in which case the cause of action does not accrue until the discovery of the loss or damage suffered by the aggrieved party thereunder;

(C) against a marshal, coroner, or constable upon a liability incurred by the doing of an act in his official capacity and in virtue of his office, or by the omission of an official duty including the nonpayment of money collected upon an execution; except an action for an escape as provided by paragraph (5)(D) of this section.

(5) One year

(A) upon a statute for a penalty or forfeiture, when the action is given to an individual, or to an individual and the Government, except when the statute imposing it prescribes a different limitation;

(B) upon a statute, or upon an undertaking in a criminal action for a forfeiture or penalty to the Government of the Canal Zone;

(C) for libel, slander, assault, battery, false imprisonment, seduction, or for injury to or for the death of one caused by the wrongful act or neglect of another, or by a depositor against a bank for the payment of a forged or raised check, or a check that bears a false or unauthorized indorsement;

(D) against the marshal or other officer for the escape of a prisoner arrested or imprisoned on civil process.

§ 43. Actions not otherwise provided for

An action for relief not otherwise provided for is barred unless commenced within four years after the cause of action has accrued.

§ 44. Actions on accounts

For the purposes of section 42 of this title:

(1) "Book account" means a detailed statement which constitutes the principal record of one or more transactions between a debtor and a creditor arising out of a contract or a fiduciary relation, and shows the debits and credits in connection therewith, and against whom and in favor of whom entries are made, is entered in the regular course of business as conducted by the creditor or fiduciary, and is kept in a reasonably permanent form and manner and is (A) in a bound book, or (B) on a sheet or sheets fastened in a book or to backing but detachable therefrom, or (C) on a card or cards of a permanent character, or is kept in any other reasonably permanent form and manner.

(2) Where an account stated is based upon an account of one item, the cause of action accrues from the date of said item, and where an account stated is based upon an account of more than one item, the cause of action accrues from the date of the last item.

(3) In an action brought to recover a balance due upon a mutual, open, and current account, where there have been reciprocal demands between the parties, the cause of action accrues from the time of the last item proved in the account on either side.

§ 45. No limitation; action to recover bank deposits; effect of insolvency

There is no limitation to actions brought to recover money or other property deposited with a bank, banker, trust company, building and loan association, or savings and loan society.

This section does not apply to banks, bankers, trust companies, building and loan associations, and savings and loan societies which have become insolvent and are in process of liquidation and in such cases the statute of limitations shall be deemed to have commenced to run from the beginning of the process of liquidation. This section does not relieve a stockholder of a banking corporation or trust company from the stockholder's liability provided by law.

Subchapter II—Computation of Time; Tolling of Statute of Limitations

§ 71. Commencement of action

An action is commenced, within the meaning of this chapter, when the complaint is filed.

§ 72. Absence from Canal Zone

If, when the cause of action accrues against a person, he is absent from the Canal Zone, the term herein limited does not begin to run until his return to the Canal Zone. If, after the cause of action accrues against a person, he departs from the Canal Zone, the time of his absence is not part of the time limited for the commencement of the action.

§ 73. Persons under disabilities

If a person entitled to bring an action is at the time the cause of action accrues:

(1) under the age of majority; or

(2) mentally incompetent; or

(3) imprisoned on a criminal charge, or in execution under the sentence of a criminal court for a term less than for life; or

(4) a married woman, and her husband is a necessary party with her in commencing the action—

the time of the disability is not a part of the time limited for the commencement of the action.

§ 74. Death before expiration of limitation period

If a person entitled to bring an action dies before the expiration of the time limited for the commencement thereof, and the cause of action survives, an action may be commenced by his representatives, after the expiration of that time, and within six months from his death.

If a person against whom an action may be brought dies before the expiration of the time limited for the commencement thereof, and the cause of action survives, 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.

§ 75. Alien enemies in time of war

If a person is an alien subject or citizen of a country at war with the United States, the time of the continuance of the war is not part of the period limited for the commencement of an action.

§ 76. New action after reversal of judgment

If an action is commenced within the time prescribed therefor, and a judgment therein for the plaintiff is reversed on appeal, the plaintiff, or, if he dies and the cause of action survives, his representatives, may commence a new action within one year after the reversal.

§ 77. Commencement stayed by injunction or statute

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.

§ 78. Time of existence of disability

A person may not avail himself of a disability unless it existed at the time his right of action accrued.

§ 79. Two or more disabilities

When two or more disabilities coexist at the time the right of action accrues, the limitation does not attach until they are removed.

§ 80. Acknowledgment or promise; payment on account

(a) An acknowledgment or promise is not sufficient evidence of a new or continuing contract, by which to take the case out of the operation of this chapter, unless it is contained in a writing, signed by the party to be charged thereby.

(b) Notwithstanding subsection (a) of this section, a payment on account of principal or interest due on a promissory note made by the party to be charged is a sufficient acknowledgment or promise of a continuing contract to stop, from time to time as the payment is made, the running of the time within which an action may be commenced upon the principal sum or upon an installment of principal or interest due on the note, and to start the running of a new period of time, but such a payment of itself does not revive a cause of action once barred.

§ 81. Limitation laws of other jurisdictions

When a cause of action has arisen in a State of the United States, or in a foreign country, and by the laws thereof an action thereon may not there be maintained against a person by reason of the lapse of time, an action thereon may not be maintained against him in the Canal Zone, except in favor of one who has been a resident of the Zone, and who has held the cause of action from the time it accrued.

CHAPTER 5—PARTIES

Sec.
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§ 121. Assignment of thing in action not to prejudice defense

In the case of an assignment of a thing in action, the action by the assignee is without prejudice to any setoff or other defense existing at the time of, or before, notice of the assignment; but this section does not apply to a negotiable promissory note or bill of exchange, transferred in good faith, and upon good consideration, before maturity.

§ 122. Married woman as party

A married woman may be sued without her husband's being joined as a party, and may sue without her husband's being joined as a party in all actions, including those for injury to her person, libel, slander, false imprisonment, or malicious prosecution, or for the recovery of her earnings.

§ 123. Defense by married woman

If a husband and wife are sued together, the wife may defend for her own right, and if the husband neglects to defend, she may defend for his right also.

§ 124. Seduction; action by unmarried female

An unmarried female may maintain, as plaintiff, an action for her own seduction occurring at a time when she was below the age of 21 years or when she was incapable of giving legal consent through temporary or permanent unsoundness of mind, and may recover therein such damages, pecuniary or exemplary, as are assessed in her favor.

§ 125. Same; action by parents

(a) An action for the seduction of an unmarried female occurring at a time when she was below the age of 21 years or when she was incapable of giving legal consent through temporary or permanent unsoundness of mind may be maintained by:

(1) the parent entitled to the services and earnings of the female; or

(2) if both parents are equally entitled to the services and earnings, the father, or upon his failure to act, the mother; or

(3) if the female is illegitimate, the mother.

(b) In an action brought pursuant to this section every element of damages to either parent may be recovered. The action may be maintained even though the child is not living with or in the service of the plaintiff at the time of the seduction or afterwards, and there is no loss of service.

§ 126. Actions for wrongful death

(a) Whenever, by an injury done or happening within the Canal Zone, the death of a person is caused by the wrongful act, neglect, or default of a person or corporation, and the act, neglect or default is such as will, if death does not ensue, entitle the person injured, or if the person injured is a married woman, entitle her or her husband,

either individually or jointly, to maitain an action and recover damages, the person who or corporation which is liable if death does not ensue is liable to an action for damages, notwithstanding the death of the person injured, and even though the death is caused under circumstances which constitute a felony.

(b) An action pursuant to this section shall be brought by and in the name of the personal representatives and within one year after the death of the deceased person. This section does not preclude assignment under section 26 of the Federal Employees' Compensation Act (5 U.S.C., sec. 776), by beneficiaries under that Act or their legal representatives, of causes of action created by this section.

(c) An action may not be maintained pursuant to this section if the person suffering injury and death, or any person for him, has recovered damages on account of the injury.

(d) In an action pursuant to this section the court or jury shall award such damages as it deems to be a fair and just compensation assessed with reference to the pecuniary injury, resulting from the death, to the surviving spouse and the children of the deceased, and if there is neither a surviving spouse nor child, then to the parents of the deceased, and if there is no parent, then to the brothers and sisters and other blood relatives dependent upon the deceased for support.

(e) Damages recovered in an action pursuant to this section shall be for the exclusive benefit of the surviving spouse and other persons enumerated by subsection (d) of this section, and shall be distributed to them, in the order named in that subsection, according to the laws in force in the Canal Zone applicable to the distribution of estates.

(f) This section does not authorize a suit against the United States nor modify or repeal any other law.

§ 127. Substitution of parties

An action or proceeding does not abate by the death or disability of a party, or by the transfer of an interest therein, if the cause of action survives or continues. The substitution of parties is governed by Rule 25 of the Federal Rules of Civil Procedure, including the time limitations specified in that rule.

§ 128. Actions by or against associates under common name; service; judgment

When two or more persons, associated in a business, transact the business under a common name, whether it comprises their names or not, the associates may sue or be sued by the common name. In actions against the associates, the summons may be served on one or more of the associates; and the judgment binds the joint property of all the associates, and the individual property of the party or parties served with process, in the same manner as if all had been named defendants and had been sued upon their joint liability.

§ 129. Suing party by fictitious name

When the plaintiff is ignorant of the name of a defendant, he shall state that fact in the complaint, and the defendant may be designated in a pleading or proceeding by any name, and when his true name is discovered, the pleading or proceeding must be amended accordingly.

§ 130. Interpleader

If a plaintiff or defendant makes a claim for interpleader pursuant to Rule 22 of the Federal Rules of Civil Procedure and deposits with the court the money or thing which is the subject of the claim as provided by Rule 67 of the Federal Rules of Civil Procedure, the court may make an order discharging him from liability to any of the conflicting claimants.

CHAPTER 7—COMMENCEMENT OF ACTIONS; SERVICE OF PROCESS

Sec.

§ 161. Service on infant or incompetent person

(a) Service upon an infant is made by delivering a copy of the summons and of the complaint to him personally; and if he is under the age of 14 years and resides within the Canal Zone also to his father, mother, or guardian, or if there is none within the Canal Zone then to any person having the care or control of the infant, or with whom he resides, or in whose service he is employed.

(b) Service upon an incompetent person is made by delivering a copy of the summons and of the complaint to him personally; and if he resides within the Canal Zone and has been judicially declared to be incapable of conducting his own affairs and a guardian has been appointed for him, also to his guardian.

§ 162. Service by publication; actions in which authorized

The court may order that service be made by the publication of the summons when:

(1) it appears by affidavit to the satisfaction of the court that the person on whom service is to be made:

(A) resides out of the Canal Zone; or

(B) has departed from the Zone; or

(C) after due diligence cannot be found within the Zone; or

(D) conceals himself to avoid the service of summons; or

(E) is a corporation having no officer or other person upon whom summons may be served who, after due diligence, can be found within the Zone; and

(2) it also appears by affidavit, or by the verified complaint on file, that:

(A) a cause of action exists against the defendant upon whom service is to be made, or that he is a necessary or proper party to the action; or

(B) it is an action which relates to or the subject of which is real or personal property in the Zone, in which the defendant person or corporation has or claims a lien or interest, actual or contingent, or in which the relief demanded consists wholly or in part in excluding the person or corporation from any interest therein.

§ 163. Same; manner of publication; service outside Canal Zone

(a) The court by its order for publication shall prescribe the form of the summons to be published, which shall include a brief statement of the relief demanded.

(b) The court shall direct the publication to be made in such newspaper or newspapers designated by the court 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. The last publication against a defendant residing out of the Canal Zone, or absent therefrom, may not be less than 40 days before the day on which the defendant is required to appear.

(c) In case of publication, if the residence of the nonresident or absent defendant is known, the court shall direct a copy of the summons and complaint to be forthwith deposited by the clerk in the post office, directed to the person to be served, at his place of residence. If the residence of the defendant is unknown, it shall be directed to his last known place of residence with the request to forward if not called for in five days.

(d) Upon application of the plaintiff in a case where service by publication may be ordered, the court shall authorize personal service upon the defendant outside the Canal Zone by delivery to him in person of a true copy of the summons and the complaint, by any person not a party to or otherwise interested in the subject matter in controversy. That service has only the effect of service of summons by publication. Return on that service shall be made under oath, with a notation of the time and place of service.

§ 164. Same; personal judgment

Except as provided by a statute of the United States other than sections 162 and 163 of this title, if jurisdiction is acquired over a person who is outside the Canal Zone by publication of summons or by service outside the Canal Zone, the court may render a personal judgment against him only if he was personally served with a copy of the summons and complaint, and was a resident of the Canal Zone (1) at the time of the commencement of the action, or (2) at the time that the cause of action arose, or (3) at the time of service.

§ 165. Same; default judgment

If the defendant fails to answer the complaint in an action where the service of the summons was by publication or where the summons was served outside the Canal Zone, the plaintiff, upon the expiration of the time for answering, may, upon proof of the publication or service, and that no answer has been filed, apply for judgment. The court shall thereupon require proof to be made of the allegations of the complaint; and require the plaintiff, or his agent, to be examined, on oath, respecting any payments that have been made to the plaintiff, or to anyone for his use, on account of any demand mentioned in the complaint, and may render judgment for the amount which he is entitled to recover. In actions involving merely the possession of real property where the complaint is verified and shows by proper allegations that no party to the action claims title to the real property involved, either by accession, transfer, will, or succession but only the possession thereof, the court may render judgment upon proof of occupancy by plaintiff and ouster by defendant.

§ 166. Relief from judgment; defendant not personally served

If the summons in an action has not been personally served on the defendant, the court, on such terms as may be just, may allow the defendant or his legal representative, at any time within one year after the rendition of any judgment in the action, to answer to the merits of the original action.

§ 167. Proof of service

(a) Proof of the service of summons and complaint is as follows:

(1) if served by the marshal or deputy, his certificate thereof;

(2) if by any other person, his affidavit thereof;

(3) in case of publication, the certificate of the clerk of the court to which a copy of the publication shall be attached; and a certificate of the clerk showing the deposit of a copy of the summons and complaint in the post office, if the same has been deposited; or

(4) the written admission of the defendant.

(b) In case of service otherwise than by publication, the certificate or affidavit shall state the time and place of service.

§ 168. When jurisdiction acquired; voluntary appearance

From the time of the service of a copy of the summons and of the complaint in a civil action, where service of a copy of the complaint is required, or of the completion of the publication when service by publication is ordered, the court has jurisdiction of the parties and control of all the subsequent proceedings.

The voluntary appearance of a defendant is equivalent to personal service of a copy of the summons and of the complaint upon him.

§ 169. Failure to serve all defendants

If the action is against two or more defendants jointly or severally liable on a contract, and the summons is served on one or more, but not on all of them, the plaintiff may proceed against the defendants served in the same manner as if they were the only defendants.

§ 170. Service on nonresident motorists and absent motorists

(a) The use or operation in the Canal Zone of a motor vehicle:

(1) by a nonresident; or

(2) in the business of a nonresident; or

(3) owned by a nonresident if so used or operated with his permission, express or implied—

is equivalent to an appointment by the nonresident of the executive secretary of the Canal Zone Government to be his true and lawful attorney upon whom may be served the summons in an action against him, growing out of an accident or collision in which the nonresident may be involved while using or operating the motor vehicle in the Canal Zone, or in which the motor vehicle may be involved while being used or operated in the Canal Zone in the business of the nonresident or with the permission, express or implied, of the nonresident owner. That use or operation shall be a signification of the nonresident's agreement that the summons against him which is served in the manner provided in this section shall be of the same legal force and validity as if served on him personally within the Canal Zone, and that the appointment of the executive secretary shall be irrevocable and binding on his executor or administrator.

(b) If the nonresident dies prior to the commencement of an action brought pursuant to this section, service of process shall be made on his executor or administrator in the same manner and on the same notice as is provided in the case of the nonresident himself. If an action has been duly commenced under this section by service upon a nonresident who dies thereafter, the court shall allow the action to be continued against his executor or administrator upon motion with such notice as the court deems proper.

(c) Service of the process shall be made by delivering a copy of the summons and complaint with a fee of $2 for each nonresident to be served to the executive secretary of the Canal Zone Government and such service shall be a sufficient service on the nonresident subject to compliance with subsection (d) or (e) of this section.

(d) A notice of the service on the executive secretary of the Canal Zone Government and a copy of the summons and complaint shall be forthwith sent by or on behalf of the plaintiff to the defendant by registered or certified mail with return receipt requested. The plaintiff shall file with the court the original summons, an affidavit of compliance with this section, and either a return receipt purporting to be signed by the defendant or a person qualified to receive his registered or certified mail, in accordance with postal rules and customs; or, if acceptance was refused by the defendant or his agent, the original envelope bearing a notation by the postal authorities that

receipt was refused, and an affidavit by or on behalf of the plaintiff that notice of the mailing or refusal was forthwith sent to the defendant by ordinary mail. If notice of service is mailed to a foreign country, other official proof of delivery of the mail may be filed in case the postal authorities are unable to obtain a return receipt. The foregoing papers shall be filed within 30 days after the return receipt, other official proof of delivery, or original envelope bearing a notation of refusal is received by the plaintiff. Service of process is complete 10 days after such papers are filed. The return receipt or other official proof of delivery shall constitute presumptive evidence that the notice mailed was received by the defendant or a person qualified to receive his registered or certified mail; and the notation of refusal shall constitute presumptive evidence that the refusal was by the defendant or his agent.

(e) In lieu of the mailing required by subsection (d) of this section, a notice of service on the executive secretary of the Canal Zone Government and a copy of the summons and complaint may be served on the defendant personally outside the Canal Zone. The service may be made by a resident of the Canal Zone not interested in the action, by a duly constituted public officer qualified to serve like process in the place where the service is made, by an attorney at law duly qualified to practice in the state or country where the service is made, or by a United States marshal or his deputy. Proof of personal service outside the Canal Zone shall be filed with the court within 30 days after the service, and service of process is complete 10 days after proof thereof is filed.

(f) The court may order necessary continuances to afford the defendant reasonable opportunity to defend the action.

(g) The executive secretary shall keep a record of all process served upon him under this section and the record shall show the day and hour of service.

(h) This section also applies to a resident who departs from the Canal Zone subsequent to the accident or collision and remains absent therefrom for 30 days continuously, whether the absence is intended to be temporary or permanent, and to his executor or administrator.

CHAPTER 9—PLEADINGS

Sec.

§ 201. Statute of limitations, how pleaded

In pleading the statute of limitations it is not necessary to state the facts showing the defense, but it may be stated generally that the cause of action is barred by the provisions of section——[giving the number of the section and subdivision thereof, if it is so divided, relied upon] of the title. If the allegation is controverted, the party pleading must establish, on the trial, the facts showing that the cause of action is so barred.

§ 202. Counterclaim not barred by death or assignment

When cross demands have existed between persons under such circumstances that, if one had brought an action against the other, a counterclaim could have been set up, the two demands shall be deemed compensated, so far as they equal each other, and neither can be deprived of the benefit thereof by the assignment or death of the other.

§ 203. Libel and slander; complaint

In an action for libel or slander it is not necessary to state in the complaint any extrinsic facts for the purpose of showing the application to the plaintiff of the defamatory matter out of which the cause of action arose; but it is sufficient to state, generally, that it was published or spoken concerning the plaintiff. If the allegation is controverted, the plaintiff must establish on the trial that it was so published or spoken.

§ 204. Same; answer

In the actions specified by section 203 of this title the defendant may, in his answer, allege both the truth of the matter charged as defamatory, and any mitigating circumstances to reduce the amount of damages; and whether he proves the justification or not, he may give in evidence the mitigating circumstances.

CHAPTER 11—PROVISIONAL REMEDIES

SUBCHAPTER I—CIVIL ARREST AND BAIL

SUBCHAPTER II—CLAIM AND DELIVERY OF PERSONAL PROPERTY

SUBCHAPTER III—INJUNCTIONS

SUBCHAPTER IV—ATTACHMENT

SUBCHAPTER V—RECEIVERS

SUBCHAPTER VI—DEPOSITS IN COURT; HANDLING OF FUNDS BY CLERK

Subchapter I—Civil Arrest and Bail

§ 241. Restriction on civil arrest

A person may not be arrested in a civil action, except as prescribed in this Code.

§ 242. Grounds for arrest

The defendant may be arrested:

(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 Canal Zone with intent to defraud his creditors;

(2) in an action for a fine or penalty, or 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 misconduct or neglect in office, or in a professional employment, or for a willful violation of duty;

(3) in an action to recover the possession of personal property unjustly detained, when the property, or a part thereof, has been concealed, removed, or disposed of, to prevent its being found or taken by the marshal;

(4) when the defendant has been guilty of a fraud in contracting the debt or incurring the obligation for which the action is brought; or in concealing or disposing of the property for the taking, detention, or conversion, of which the action is brought; or

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

§ 243. Affidavit to obtain order

An order for the arrest of the defendant may be made when it appears to the court, by the affidavit of the plaintiff, or other person, that a sufficient cause of action exists, and that the case is one of those specified by section 242 of this title. The affidavit shall be either upon personal knowledge or upon information and belief; and when upon information and belief, it shall state the facts upon which the information and belief are founded. If an order of arrest is made, the affidavit shall be filed with the clerk of the court.

§ 244. Security by plaintiff

Before making an order of arrest, the court shall require a written undertaking on the part of the plaintiff, with sureties in an amount to be fixed by the court, which must be at least $500, to the effect 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 arrest is wrongful or without sufficient cause, not exceeding the sum specified in the undertaking. The undertaking shall be filed with the clerk of the court.

§ 245. Time order made; form

An order of arrest may be made at the time of the issuing of the summons, or at any time afterwards before judgment.

The order shall require the marshal forthwith to arrest the defendant and hold him to bail in a specified sum, and to return the order at a time therein mentioned, to the clerk of the court.

§ 246. Delivery of order and affidavit to marshal and defendant

The order of arrest, with a copy of affidavit upon which it is made, shall be delivered to the marshal, who, upon arresting the defendant, shall deliver to him a copy of the affidavit, and also, if desired, a copy of the order of arrest.

§ 247. Arrest and custody of defendant

The marshal shall execute the order of arrest by arresting the defendant and keeping him in custody until discharged by law.

§ 248. Discharge on bail or deposit

The defendant, at any time before execution, shall be discharged from the arrest, either upon giving bail or upon depositing the amount mentioned in the order of arrest.

§ 249. Giving of bail

The defendant may give bail by causing a written undertaking to be executed by two or more sufficient sureties, to the effect that they are bound in the amount mentioned in 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.

§ 250. Surrender of defendant

At any time before judgment, or within 10 days thereafter, the bail may surrender the defendant in their exoneration; or he may surrender himself to the marshal.

§ 251. Arrest by bail; exoneration and liability of bail

For the purpose of surrendering the defendant, the bail, at any time or place before they are finally charged, may themselves arrest him, or, by a written authority indorsed on a certified copy of the undertaking, may empower the marshal to do so.

Upon the arrest of defendant by the marshal, or upon his delivery to the marshal by the bail, or upon his own surrender, the bail are exonerated, if the arrest, delivery, or surrender takes place before the expiration of 10 days after judgment; but if the arrest, delivery, or surrender is not made within 10 days after judgment, the bail are finally charged on their undertaking, and bound to pay the amount of the judgment within 10 days thereafter.

§ 252. Enforcement of liability of bail

If the bail neglect or refuse to pay the judgment within 10 days after they are finally charged, the court may, on motion made as provided by section 438 of Title 3, enter judgment against the bail for the amount of the original judgment.

§ 253. Exoneration of bail

The bail are exonerated by the death of the defendant or his imprisonment in jail or in the penitentiary, or by his legal discharge from the obligation to render himself amenable to the process.

§ 254. Return of marshal; filing of undertaking; acceptance or rejection of bail

Within the time limited for that purpose, the marshal shall file the order of arrest in the office of the clerk of the court in which the action is pending, with his return indorsed thereon, together with a copy of the undertaking of the bail. He shall retain in his possession the original undertaking until filed, as herein provided. If the plaintiff, within 10 days thereafter, does not serve upon the marshal a notice that he does not accept the bail, he is deemed to have accepted them, and the marshal is exonerated from liability. If a notice is not served within 10 days, the original undertaking shall be filed with the clerk of the court.

§ 255. Notice of justification of bail; new undertaking

Within five days after the receipt of notice, the marshal or defendant may give to the plaintiff or his attorney notice of the justification of the same, or other bail, specifying the places of residence and occupations of the latter, before the judge or clerk of the court, at a specified time and place; the time to be not less than five nor more than 10 days thereafter, except by consent of the parties. If other bail is given, there must be a new undertaking.

§ 256. Qualifications of bail

The qualifications of bail are as follows:

(1) each must be a resident of the Canal Zone; and

(2) each must be worth the amount specified in the order of arrest, or the amount to which the order is reduced, as provided in this subchapter, over and above all his debts and liabilities, exclusive of property exempt from execution; but the judge or clerk, on justification, may allow more than two sureties to justify severally, in amounts less than that expressed in the order, if the wnole justification is equivalent to that of two sufficient bail.

§ 257. Justification of bail

For the purpose of justification, each of the bail must attend before the judge or clerk, at the time and place mentioned in the notice, and may be examined on oath on the part of the plaintiff, touching his sufficiency, in such manner as the judge or clerk may think proper. The examination shall be reduced to writing, and subscribed by the bail, if required by the plaintiff.

§ 258. Allowance of bail; exoneration of marshal

If the judge or clerk finds the bail sufficient, he shall annex the examination to the undertaking, indorse his allowance thereon, and cause them to be filed, and the marshal is thereupon exonerated from liability.

§ 259. Cash deposit in lieu of bail

Instead of giving bail, the defendant may, at the time of his arrest, deposit with the marshal the amount mentioned in the order. If the amount of the bail is reduced, as provided in this subchapter, the defendant may deposit the reduced amount instead of giving bail. In either case the marshal shall give the defendant a certificate of the deposit made, and the defendant shall be discharged from custody.

§ 260. Payment of deposit into court

Immediately after the deposit, the marshal shall pay it into court, and take from the clerk receiving it two certificates of the payment, one of which he shall deliver to the plaintiff's attorney, and the other to the defendant. For any default in making the payment, the same proceedings may be had on the official bond of the marshal, to collect the sum deposited, as in other cases of delinquency.

§ 261. Substitution of bail for deposit

If money is deposited, as provided by sections 259 and 260 of this title, bail may be given and may justify upon notice, at any time before judgment; and on the filing of the undertaking and justification with the clerk, the money deposited shall be refunded to the defendant.

§ 262. Disposition of deposit

If money has been deposited and remains on deposit at the time of the recovery of a judgment in favor of the plaintiff, the clerk shall, under the direction of the court, apply it in satisfaction thereof; and after satisfying the judgment, refund the surplus, if any, to the defendant. If the judgment is in favor of the defendant, the clerk shall, under like direction of the court, refund to him the whole sum deposited and remaining unapplied.

§ 263. Liability of marshal as bail

If, after being arrested, the defendant escapes or is rescued, the marshal is liable as bail; but he may discharge himself from the liability by the giving of bail at any time before judgment.

§ 264. Proceedings on judgment against marshal

If a judgment is recovered against the marshal upon his liability as bail, and an execution thereon is returned unsatisfied in whole or in part, the same proceedings may be had on his official bond, for the recovery of the whole or any deficiency, as in other cases of delinquency.

§ 265. Vacation of order of arrest; reduction of bail

(a) A defendant arrested may, at any time before the trial of the action, or if there is no trial, before the entry of judgment, apply to the court, upon reasonable notice, to vacate the order of arrest or to reduce the amount of bail. If the application is made upon affidavits on the part of the defendant, but not otherwise, the plaintiff may

oppose it by affidavits or other proofs, in addition to those on which the order of arrest was made.

(b) If, upon the application, it appears that there was not sufficient cause for the arrest, the order shall be vacated; or if it appears that the bail was fixed too high, the amount shall be reduced.

Subchapter II—Claim and Delivery of Personal Property

§ 291. Claim for delivery

The plaintiff in an action to recover the possession of personal property may, at the time of issuing the summons, or at any time before answer, claim the delivery of the property to him as provided in this subchapter.

§ 292. Affidavit; contents

If a delivery is claimed, an affidavit shall be made by the plaintiff, or by someone 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 the 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 a statute; or seized, under an execution or an attachment against the property of the plaintiff; or, if so seized, that it is by statute exempt from such a seizure; and

(5) the actual value of the property.

§ 293. Requisition to marshal to take property

The plaintiff or his attorney may, thereupon, by an indorsement in writing upon the affidavit, require the marshal to take the property from the defendant.

§ 294. Undertaking by plaintiff; taking of property; service on defendant

Upon a receipt of the affidavit and notice, with a written undertaking, executed by two or more sufficient sureties, approved by the marshal, 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 defendants, if return thereof is adjudged, and for the payment to him of such sum as may from any cause be recovered against the plaintiff, the marshal shall forthwith take the property described in the affidavit, if it is in the possession of the defendant or his agent, and retain it in his custody. He shall, without delay, serve on the defendant a copy of the affidavit, notice, and undertaking, by delivering them to him personally, if he can be found, or to his agent from whose possession the property is taken; or, if neither can be found, by leaving them at the usual place of abode of either, with a person of suitable age and discretion, or, if neither has any known place of abode, by putting them in the nearest post office, directed to the defendant.

§ 295. Exception to plaintiff's sureties; justification

The defendant may, within two days after the service of a copy of the affidavit and undertaking, give notice to the marshal that he excepts to the sufficiency of the sureties. If he fails to do so, he is deemed to have waived all objections to them.

When the defendant excepts, the sureties shall justify on notice in like manner as upon bail on arrest. The marshal is responsible for the sufficiency of the sureties until the objection to them is either waived or until they justify. If the defendant excepts to the sureties,

he may not reclaim the property as provided by section 296 of this title.

§ 296. Undertaking by defendant for return of property

At any time before the delivery of the property to the plaintiff, the defendant may, if he does not except to the sureties of the plaintiff, require the return thereof, upon giving to the marshal a written undertaking, executed by 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 the delivery is adjudged, and for the payment to him of such sum as may, for any cause, be recovered against the defendant. If a return of the property is not so required within five days after the taking and service of notice to the defendant, it shall be delivered to the plaintiff, except as provided by section 301 of this title.

§ 297. Exception to defendant's sureties; justification

The plaintiff may, within two days after service upon him of a copy of the undertaking given to the marshal pursuant to section 296 of this title, give notice to the marshal that he excepts to the sufficiency of the sureties. If he fails to do so, he is deemed to have waived all objections to them.

If the plaintiff excepts, the defendant's sureties, upon notice to the plaintiff of not less than two nor more than five days, shall justify before the judge or clerk of the court, in the same manner as upon bail on arrest; and upon the justification the marshal shall deliver the property to the defendant. The marshal is responsible for the defendant's sureties until they justify, or until the justification is completed or waived, and may retain the property until that time. If they, or others in their place, fail to justify at the time and place appointed, he shall deliver the property to the plaintiff.

§ 298. Qualifications of sureties

The qualifications of sureties shall be such as are prescribed by this title, in respect to bail upon an order of arrest.

§ 299. Property concealed in building or inclosure

If the property, or any part thereof, is concealed in a building or inclosure, the marshal shall publicly demand its delivery. If it is not delivered, he shall cause the building or inclosure to be broken open, and take the property into his possession.

§ 300. Keeping and delivery of property; fees and expenses

When the marshal has taken property as provided by this subchapter, he shall keep it in a secure place, and deliver it to the party entitled thereto, upon receiving his fees for taking and his necessary expenses for keeping the same.

§ 301. Claims by third persons

If the property taken is claimed by a person other than the defendant or his agent, the provisions applicable in cases of third party claims after levy under execution apply.

§ 302. Filing and return by marshal

The marshal shall file the notice, undertaking, and affidavit, with his proceedings thereon, with the clerk of the court, within 20 days after taking the property mentioned therein.

§ 303. Order protecting plaintiff in possession

After the property has been delivered to the plaintiff as provided in this subchapter, the court shall, by appropriate order, protect the plaintiff in possession of the property until the final determination of the action.

§ 304. Affidavit stating incorrect value; judgment against officer or sureties

When, in an action to recover the possession of personal property, the person making an affidavit did not truly state the value of the property, and the officer taking the property or the sureties on a bond or undertaking are sued for taking it, the officer or sureties may in their answer set up the true value of the property, and that the person in whose behalf the affidavit was made was entitled to the possession of the property when the affidavit was made, or that the value in the affidavit stated was inserted by mistake, the court shall disregard the value as stated in the affidavit, and give judgment according to the right of possession of the property at the time the affidavit was made.

Subchapter III—Injunctions

§ 321. Injunction defined; grant and enforcement

An injunction is a writ or order requiring a person to refrain from a particular act. It may be granted by the district court, or the judge thereof, in any action brought in that court; and when granted by the judge, it may be enforced as an order of the court.

§ 322. Grounds for grant or denial of injunction

(a) An injunction may be granted when:

(1) it appears by the complaint that the plaintiff is entitled to the relief demanded, and the relief, or any part thereof, consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually;

(2) it appears by the complaint or affidavits that the commission or continuance of an act during the litigation would produce waste, or great or irreparable injury, to a party to the action;

(3) it appears, during the litigation, that a party to the action is doing, or threatens, or is about to do, or is procuring or suffering to be done, an act in violation of the rights of another party to the action respecting the subject of the action, and tending to render the judgment ineffectual;

(4) pecuniary compensation would not afford adequate relief;

(5) it would be extremely difficult to ascertain the amount of compensation which would afford adequate relief:

(6) the restraint is necessary to prevent a multiplicity of judicial proceedings; or

(7) the obligation arises from a trust.

(b) An injunction may not be granted to:

(1) stay a judicial proceeding pending at the commencement of the action in which the injunction is demanded, unless the restraint is necessary to prevent a multiplicity of proceedings;

(2) prevent the execution of a public statute by officers of the law for the public benefit;

(3) prevent the breach of a contract, the performance of which would not be specifically enforced; or

(4) prevent the exercise of a public or private office, in a lawful manner, by the person in possession.

Subchapter IV—Attachment

§ 341. Actions in which authorized

(a) The plaintiff, at the time of issuing the summons or at any time afterward, may have the property of the defendant attached, as security for the satisfaction of any judgment that may be recovered, unless the defendant gives security to pay the judgment, as provided in this subchapter, in the following cases:

(1) in an action upon a contract, express or implied, for the direct payment of money, where the contract is made or is payable in the Canal Zone, and is not secured by a mortgage or lien upon real or personal property, or a pledge of personal property, or, if originally so secured, the security has, without any act of the plaintiff or the person to whom the security was given, become valueless;

(2) in an action upon a contract, express or implied, against a defendant not residing in the Canal Zone, or who can not after due diligence be found within the Canal Zone, or who conceals himself to avoid service of summons; or

(3) in an action against a defendant not residing in the Canal Zone, or who has departed from the Canal Zone, or who can not after due diligence be found within the Canal Zone, or who conceals himself to avoid service of summons, to recover a sum of money as damages, arising from an injury to person or property in the Canal Zone, in consequence of negligence, fraud, or other wrongful act.

(b) An action upon any liability, existing under the laws of the Canal Zone, of a spouse, relative or kindred, for the support, maintenance, care or necessaries furnished to the other spouse, or other relatives or kindred, is deemed to be an action upon an implied contract within the term as used throughout all paragraphs of subsection (a) of this section.

§ 342. Affidavit for attachment

The clerk of the court shall issue the writ of attachment upon receiving an affidavit by or on behalf of the plaintiff showing:

(1) the facts specified by section 341 of this title which entitle him to the writ;

(2) the amount of the indebtedness claimed, over and above all legal setoffs or counterclaims, or the amount claimed as damages; and

(3) that the attachment is not sought, and the action is not prosecuted, to hinder, delay, or defraud any creditor of the defendant.

§ 343. Undertaking on attachment; exceptions to sureties

Before issuing a writ of attachment, the clerk shall require a written undertaking on the part of the plaintiff, in a sum not less than $200 and not exceeding the amount claimed by the plaintiff, with sufficient sureties, to the effect that if the defendant recovers judgment, the plaintiff will pay all costs that may be awarded to the defendant and all damages which he may sustain by reason of the attachment, not exceeding the sum specified in the undertaking, and that if the attachment is discharged on the ground that the plaintiff was not entitled thereto pursuant to section 341 of this title, the plaintiff will pay all damages which the defendant may have sustained by reason of the attachment, not exceeding the sum specified in the undertaking.

At any time after the issuing of the attachment, but not later than five days after actual notice of the levy thereof, the defendant may ex-

cept to the sufficiency of the sureties. If he fails to do so, he is deemed to have waived all objections to them. When excepted to, the plaintiff's sureties, upon notice to the defendant of not less than two or more than five days, shall justify before the judge or clerk of the court in the same manner as upon bail on arrest; and upon failure to justify, or if others in their place fail to justify, at the time and place appointed, the judge or clerk shall issue an order vacating the writ of attachment.

§ 344. Direction and command of writ; more than one defendant

(a) The writ of attachment shall be directed to the marshal, and require him to attach and safely keep all the property of the defendant within the Canal Zone not exempt from execution, or so much thereof as may be sufficient to satisfy the plaintiff's demand against the defendant, the amount of which shall be stated in conformity with the complaint, unless the defendant gives him security by the undertaking of at least two sufficient sureties in an amount sufficient to satisfy the demand against the defendant, besides costs, or in an amount equal to the value of the property of the defendant which has been or is about to be attached; in which case to take such undertaking.

(b) If the action is against more than one defendant, any defendant whose property has been or is about to be attached in the action may give the marshal the undertaking, and the marshal shall take the same, and the undertaking shall not subject the defendant to or be answerable for any demand against any other defendant, nor shall the marshal thereby be prevented from attaching or be obliged to release from attachment, any property of any other defendant. The defendant, at the time of giving the undertaking to the marshal, shall file with the marshal a verified statement wherein the defendant shall aver and declare that the other defendant or defendants in the action in which the undertaking was given has or have not any interest or claim of any nature whatsoever in or to the property. The statement shall further contain the character of the defendant's title and the manner in which he acquired title to the attached property. Before the attachment is released, the undertaking required by this section must be approved by the judge or, in the absence or disability of the judge, by the clerk of the court.

§ 345. Property subject to attachment; sale to satisfy judgment

The rights or shares which the defendant may have in the stock of a corporation or company, together with the interest and profit thereon, and all debts due the defendant, and all other property in the Canal Zone of the defendant not exempt from execution, may be attached, and if judgment be recovered, be sold to satisfy the judgment and execution.

§ 346. Method of attaching real and personal property; garnishment

The marshal to whom the writ of attachment is directed and delivered shall execute it without delay, and if the undertaking specified by section 344 of this title is not given, as follows:

(1) Real property shall be attached by filing with the registrar of property a copy of the writ, together with a description of the property attached, and a notice that it is attached; and by leaving a similar copy of the writ, description, and notice with an occupant of the property, if there is one; if not, then by posting it in a conspicuous place on the property attached.

(2) Real property, or an interest therein, belonging to the defendant, and held by any other person, shall be attached, by filing with the registrar of property a copy of the writ, together with a description of the property, and a notice that the real property, and any

interest of the defendant therein, held by or standing in the name of the other person [naming him], are attached; and by leaving with the occupant, if any, and with the other person, or his agent, if known and within the Canal Zone, or at the residence of either, if within the Canal Zone, a copy of the writ, with a similar description and notice. If there is no occupant of the property, a copy of the writ, together with the description and notice, shall be posted in a conspicuous place upon the property. The registrar shall index the attachment when filed, in the names both of the defendant and of the person by whom the property is held.

(3) Personal property, capable of manual delivery, shall be attached by taking it into custody.

(4) Stocks or shares, or 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 writ, and a notice stating that the stock or interest of the defendant is attached, in pursuance of the writ.

(5) Debts and credits and other personal property, not capable of manual delivery, shall be attached by leaving with the person owing the debts, or having in his possession, or under his control, the credits and other personal property, or with his agent, a copy of the writ, 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 the writ. In the case of attachment of growing crops, a copy of the writ, together with a description of the property attached, and a notice that it is attached, shall be recorded the same as in the attachment of real property.

§ 347. Attachment lien on real property

(a) The lien of the attachment on real property attaches and becomes effective upon the filing of a copy of the writ, together with a description of the property attached and a notice that it is attached, with the registrar of property. If the marshal does not complete the execution of the writ in the manner prescribed by section 346 of this title within 15 days next following the filing in the registrar's office the lien shall cease.

(b) The attachment shall be a lien upon all real property attached for a period of three years after the date of levy unless sooner released or discharged as provided by this subchapter, by dismissal of the action or by entry and docketing of judgment in the action. At the expiration of three years the lien shall cease and any proceeding or proceedings against the property under the attachment shall be barred. Upon motion of a party to the action, made not less than five nor more than 60 days before the expiration of the period of three years, the court in which the action is pending may extend the time of the lien for a period not exceeding two years from the date on which the original lien would expire, and the lien shall be extended for the period specified in the order upon the filing, before the expiration of the existing lien. of a certified copy of the order with the registrar of property. The lien may be extended from time to time in the manner herein prescribed.

§ 348. Garnishment; notice to garnishee

Upon receiving information in writing from the plaintiff or his attorney, that a person has in his possession, or under his control, credits or other personal property belonging to the defendant, or owes a debt to the defendant, the marshal shall serve upon the person a copy of the writ, and a notice that the credits, or other property or debts, as the case may be, are attached in pursuance of the writ.

§ 349. Same; liability of garnishee

Persons having in their possession, or under their control, credits or other personal property belonging to the defendant, or owing debts to the defendant at the time of service upon them of a copy of the writ and notice, as provided by sections 346 and 348 of this title, unless the property is delivered up or transferred, or the debts are paid to the marshal, are liable to the plaintiff for the amount of the credits, property, or debts, until the attachment is discharged, or any judgment recovered by him is satisfied.

§ 350. Same; examination of garnishee and defendant; order for delivery or memorandum of property

(a) Persons owing debts to the defendant, or having in their possession or under their control, credits or other personal property belonging to the defendant, may be required to attend before the court, or in case of the absence or disability of the judge before the clerk of 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.

(b) In lieu of, or in addition to, examination before the court, the plaintiff may examine any person referred to in subsection (a) of this section, including the defendant, in the manner provided by the Federal Rules of Civil Procedure for taking depositions.

(c) After the examination, the court may order personal property, capable of manual delivery, to be delivered to the marshal on such terms as may be just, having reference to any liens thereon or claims against it, and a memorandum to be given of all other personal property, containing the amount and description thereof.

§ 351. Marshal's return; inventory; memorandum of garnishee

The marshal shall make a full inventory of the property attached, and return it with the writ. To enable him to make a return as to debts and credits attached, he shall request, at the time of service, the party owing the debt or having the credit to give him a memorandum, stating the amount and description of each; and if the memorandum is refused, he shall return the fact of refusal with the writ. The party refusing to give the memorandum may be required to pay the costs of any proceedings taken for the purpose of obtaining information respecting the amounts and description of the debt or credit.

§ 352. Perishable property; custody of other property; collection of debts and credits

If any of the property attached is perishable, the marshal shall sell it in the manner in which such property is sold on execution. The proceeds, and other property attached by him, shall be retained by him to answer any judgment that may be recovered in the action, unless sooner subjected to execution upon another judgment recovered previous to the issuing of the attachment. Debts and credits attached may be collected by him, if it can be done without suit. The marshal's receipt is a sufficient discharge for the amount paid.

§ 353. Sale of attached property

If property is taken by an officer under a writ of attachment, and it is made to appear satisfactorily to the court that the interest of the parties to the action will be subserved by a sale thereof, the court may order the property to be sold in the same manner as property is sold under an execution, and the proceeds to be deposited in the court to abide the judgment in the action. The order may be made only upon notice to the adverse party or his attorney, if the party has been personally served with a summons in the action.

§ 354. Claims by third persons

If a third person claims any attached personal property as his property, the provisions applicable in cases of third party claims after levy under execution apply.

§ 355. Satisfaction of judgment

If judgment is recovered by the plaintiff, the marshal shall satisfy it out of the property attached by him which has not been delivered to the defendant or a claimant, or subjected to execution on another judgment recovered previous to the issuing of the attachment, if it is sufficient for that purpose:

(1) by paying to the plaintiff the proceeds of all sales of perishable property sold by him, or of any debts or credits collected by him, or so much as are necessary to satisfy the judgment: and

(2) if a balance remains due, and an execution has 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. Notices of the sales shall be given, and the sales conducted as in other cases of sales on execution.

§ 356. Collection of balance due; return of surplus

If, after selling all the property attached by him remaining in his hands, and applying the proceeds, together with the proceeds of any debts or credits collected by him, deducting his fees, to the payment of the judgment, any balance remains due, the marshal must proceed to collect the balance, as upon an execution in other cases. If the judgment has been paid, the marshal, upon reasonable demand, shall deliver over to the defendant the attached property remaining in his hands, and any proceeds of the property attached unapplied on the judgment.

§ 357. Plaintiff's remedies if execution is unsatisfied

If the execution is returned unsatisfied, in whole or in part, the plaintiff may enforce any undertaking given pursuant to sections 344 or 360 of this title, or he may proceed, as in other cases, upon the return of an execution.

§ 358. Judgment for defendant; discharge of attachment

If a defendant recovers judgment against the plaintiff and no appeal is perfected and undertaking executed, any undertaking received in the action, all the proceeds of sales and money collected by the marshal, and all the property attached, remaining in the marshal's hands, shall be delivered to the defendant or his agent, the order of attachment be discharged, and the property released therefrom.

§ 359. Discharge of attachment on defendant's undertaking

If a defendant has appeared in the action, he may, upon reasonable notice to the plaintiff, apply to the district court for an order to discharge the attachment wholly or in part; and upon the execution of the undertaking specified by section 360 of this title, an order may be made releasing from the operation of the attachment, any or all of the property of the defendant attached; and all the property so released and all the proceeds of the sales thereof, shall be delivered to the defendant upon the justification of the sureties on the undertaking, if required by the plaintiff. The justification must take place within five days after the notice of the filing of the undertaking.

§ 360. Requirements for defendant's undertaking

Before making an order prescribed by section 359 of this title, the court shall require an undertaking on behalf of the defendant, by at

least two sureties, to the effect that in case the plaintiff recovers judgment in the action against the defendant, by whom or in whose behalf the undertaking is given, the defendant will, on demand, redeliver the attached property so released to the proper officer, to be applied to the payment of any judgment in the action against the defendant, or in default thereof that the defendant and sureties will, on demand, pay to the plaintiff the full value of the property released not exceeding the amount of the judgment against the defendant. The court may fix the sum for which the undertaking must be executed, and if necessary in fixing the sum to know the value of the property released, it may be appraised by one or more disinterested persons, to be appointed for that purpose. The sureties may be required to justify before the court and the property attached may not be released from the attachment without their justification if it is required.

§ 361. Discharge of attachment irregularly issued

(a) The defendant may also at any time, either before or after the release of the attached property, or before any attachment has been actually levied, apply on motion, upon reasonable notice to the plaintiff, that the writ of attachment be discharged on the ground that it was improperly or irregularly issued.

(b) If the motion is made upon affidavits on the part of the defendant, the plaintiff may oppose it by affidavits or other evidence, in addition to those on which the attachment was made.

(c) If upon the application it satisfactorily appears that the writ of attachment was improperly or irregularly issued it shall be discharged; but the attachment may not be discharged if at or before the hearing of the application, the writ of attachment, or the affidavit, or undertaking upon which the attachment was based is amended and made to conform to this subchapter.

§ 362. Return of writ; filing order releasing attachment

The marshal shall return the writ of attachment with the summons, if issued at the same time; otherwise, within 20 days after its receipt, with a certificate of his proceedings indorsed thereon or attached thereto. If an order has been made discharging or releasing an attachment upon real property, a certified copy of the order may be filed in the office of the registrar of property.

§ 363. Release of real property from attachment

An attachment as to real property may be released by a writing signed by the plaintiff, or his attorney, or the officer who levied the writ and acknowledged in the manner provided by chapter 27 of Title 4; and upon the filing of the release, the registrar of property shall note it on the record of the copy of the writ on file in his office. Such an attachment may also be released by an entry in the margin of the record thereof, in the registrar's office, in the manner provided for the discharge of mortgages by section 4127 of Title 4.

§ 364. Attachment of interest in decedent's estate

The interest of a defendant in personal property belonging to the estate of a decedent, whether as heir, legatee, or devisee, may be attached by serving the personal representative of the decedent with a copy of the writ and a notice that the interest is attached. The attachment may not impair the powers of the representative over the property for the purposes of administration. A copy of the writ of attachment and of the notice shall also be filed in the office of the clerk of the court in which the estate is being administered and the personal representative shall report the attachment to the court when a petition for distribution is filed, and in the decree made upon the petition distribution shall be ordered to the heir, legatee, or devisee,

but delivery of the property shall be ordered to the officer making the levy subject to the claim of the heir, legatee, or devisee, or any person claiming under him. The property may not be delivered to the officer making the levy until the decree distributing the interest has become final.

Subchapter V—Receivers

§ 381. Appointment of receivers generally

A receiver may be appointed by the district court in an action pending therein:

(1) in an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject any property or fund to his claim, or between partners or others jointly owning or interested in any property or fund, on the application of the plaintiff, or of any party whose right to or interest in the property or fund, or the proceeds thereof, is probable, and where it is shown that the property or funds is in danger of being lost, removed, or materially injured;

(2) in an action by a mortgagee for the foreclosure of his mortgage and sale of the mortgaged property, where it appears that the mortgaged property is in danger of being lost, removed, or materially injured, or that the condition of the mortgage has not been performed, and that the property is probably insufficient to discharge the mortgage debt;

(3) after judgment, to carry the judgment into effect;

(4) after judgment, to dispose of the property according to the judgment, or to preserve it during the pendency of an appeal, or in proceedings in aid of execution, when an execution has been returned unsatisfied, or when the judgment debtor refuses to apply his property in satisfaction of the judgment;

(5) in the cases when a corporation has been dissolved, or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights; and

(6) in all other cases where receivers have heretofore been appointed by the usages of courts of equity.

§ 382. Appointment of receivers upon dissolution of corporations

Upon the dissolution of a corporation having its principal place of business in the Canal Zone, the district court, on application of a creditor of the corporation, or of a stockholder or member thereof, may appoint one or more persons to be receivers or trustees of the corporation, to take charge of the estate and effects thereof and to collect the debts and property due and belonging to the corporation, and to pay the outstanding debts thereof, and to divide the moneys and other property that remain over among the stockholders or members.

§ 383. Qualifications of receivers; undertaking on ex parte appointment

A party, or attorney of a party, or person interested in an action, may not be appointed receiver therein without the written consent of the parties, filed with the clerk.

If a receiver is appointed upon an ex parte application, the court, before making the order, shall require from the applicant an undertaking, with sufficient sureties, in an amount to be fixed by the court, to the effect that the applicant will pay to the defendant all damages he may sustain by reason of the appointment of the receiver and the entry by him upon his duties, in case the applicant has procured the appointment wrongfully, maliciously, or without sufficient cause. At any time after the appointment, the court may require an additional undertaking.

§ 384. Oath and undertaking of receiver

Before entering upon his duties, the receiver shall be sworn to perform them faithfully, and with two or more sureties, approved by the court, execute an undertaking to the Government of the Canal Zone in such sum as the court 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.

§ 385. Powers of receivers

The receiver may, under the control of the court, bring and defend actions in his own name, as receiver; take and keep possession of the property, receive rents, collect debts, compound for and compromise the same, make transfers, and generally do such acts respecting the property as the court authorizes.

§ 386. Investment of funds

Funds in the hands of a receiver may be invested upon interest, by order of the court made upon the consent of all the parties to the action.

§ 387. Unclaimed funds in receiver's hands

A receiver having funds in his hands belonging to a person whose whereabouts are unknown to him, shall, before receiving his discharge as receiver, publish a notice, in one or more newspapers of general circulation in the Canal Zone, at least once a week for four consecutive weeks, setting forth the name of the owner of any unclaimed funds, the last known place of residence or post office address of the owner and the amount of the unclaimed funds.

Any funds remaining in his hands unclaimed for 30 days after the date of the last publication of the notice, shall be reported to the court. Upon order of the court, all such funds shall be paid to the Canal Zone Government accompanied with a copy of the order, setting forth the facts required in the notice herein provided. The funds shall be paid out by the Canal Zone Government to the owner thereof or his order in such manner and upon such terms as the court directs.

All costs and expenses connected with the advertising shall be paid out of the funds the whereabouts of whose owners are unknown.

Subchapter VI—Deposits in Court; Handling of Funds by Clerk

§ 411. Order for deposit of money or property or delivery to another party

If it is admitted by the pleadings, or shown upon the examination of a party to the action, that he has in his possession, or under his control, money or another thing capable of delivery, which, being the subject of litigation, is held by him as trustee for another party, or which belongs or is due to another party, the court upon motion may order the same to be deposited in court or delivered to the party, upon such conditions as may be just, subject to the further direction of the court.

§ 412. Enforcement of order

If, in the exercise of its authority, a court has ordered the deposit or delivery of money, or other thing, and the order is disobeyed, the court, in addition to punishing the disobedience, may make an order requiring the marshal to take the money, or thing, and deposit or deliver it in conformity with the direction of the court.

§ 413. Money deposited in registry of court

Money deposited with the clerk of the district court, by or for the use of any party, upon a judgment of the court or in a pending action or proceeding by virtue of the law or by direction of the court, as soon as deposited with the clerk, shall be deemed to be in the registry of the court.

(b) Money paid into court pursuant to Rule 67 of the Federal Rules of Civil Procedure shall be deposited and withdrawn in accordance with the provisions of this subchapter.

§ 414. Deposit of sums over $200 in depositary; disbursements; records

The clerk shall deposit in a depositary designed by the judge of the district court, in the name of that court, every sum of money deposited in the registry of the court which exceeds $200, as soon as it is received. The money may thereafter be paid out only on a check, voucher, or order of the court, or the judge thereof, countersigned by the clerk of the court. The clerk in each division of the district court shall make a record showing the date of receipt, the amount received, from whom received, and the case in which any such money is deposited in the registry of the court; and the date, amount, and to whom the same was paid out.

§ 415. Maintenance of general deposit account; interest; commission; deposit of funds

The clerk shall maintain a general deposit account in a designated depositary in which shall be deposited every cash fund exceeding $200 deposited in the registry of the court. Interest earned on the general account shall be retained by the clerk as his commission for receiving and caring therefor and shall be accounted for by him as fees of his office. The clerk may not charge a commission for handling a fund of $200 or less.

If, however, a fund exceeding $200 is likely to remain in the registry of the court for six months or more, and the parties so stipulate or the court so directs, the fund shall be deposited in a designated bank in a savings account at interest. The clerk's commission for caring for the fund in such case shall be paid only out of interest earned thereon, to the amount of one-fourth of the interest. The remainder of the interest shall be deemed a part of the fund and shall be paid out on order or decree of the court according to the exigency of the case.

§ 416. Designation of depositaries

The judge of the district court shall designate one or more depositaries in which money deposited in the registry of the court shall be deposited by the clerk.

§ 417. Deputy clerks and acting clerks

As used in sections 413–416 of this title, the word "clerk" includes the clerk of the district court, the deputy clerks thereof, and any acting clerk when performing the duties of the clerk or deputy clerk when they or any of them are absent on account of illness or vacation, or are unable to act from any cause.

§ 418. Disposition of unclaimed funds by clerk

When the clerk of the district court has in his hands for a period of two years or more any fund or moneys belonging to any person or persons, which he has been unable to disburse to the person or persons because of his inability to locate them, or because of their refusal to accept the same, the clerk shall upon order of the court turn the same over to the Canal Zone Government to be held and disposed of as provided in this section.

A person claiming to be entitled to an amount so deposited with the Canal Zone Government may, within five years after the deposit, petition the court for an order directing payment to the claimant. A copy of the petition shall be served on the Canal Zone Government and thereafter the amount may not be covered into the Treasury of the United States, as provided by this section, until so ordered by the court.

If no one claims the amount, as herein provided, or if a claim is made and disallowed and the court so directs, the amount devolves to the United States and shall be covered into the Treasury as miscellaneous receipts.

CHAPTER 13—TRIAL

SUBCHAPTER I—TRIAL BY JURY

SUBCHAPTER II—CONDUCT OF TRIAL

Subchapter I—Trial by Jury

§ 451. Jury trial of right

Except as otherwise provided by law, a party has a right of trial by jury of issues of fact in a civil case at law originating in the district court.

§ 452. Challenges

(a) In civil cases, each party is entitled to four peremptory challenges. Several defendants or several plaintiffs may be considered as a single party for the purposes of making challenges, or the court may allow additional peremptory challenges and permit them to be exercised separately or jointly. If two or more actions are consolidated for trial, the court may allow each party the number of peremptory challenges he would have if the actions were tried separately.

(b) Challenges for cause or favor, whether to the array or panel or to individual jurors, shall be determined by the court.

§ 453. Challenges for cause

Challenges for cause may be taken on one or more of the following grounds:

(1) a want of any of the qualifications prescribed to render a person competent as a juror;

(2) consanguinity or affinity within the fourth degree to a party, or to an officer of a corporation which is a party;

(3) standing in the relation of guardian and ward, master and servant, employer and clerk, or principal and agent, or debtor and creditor, to either party, or to an officer of a corporation which is a party, or being a member of the family of either party; or a partner in business with either party; or surety on a bond or obligation for either party, or being the holder of bonds or shares of the capital stock of a corporation which is a party; or having stood within one year previous to the filing of the complaint in the relation of attorney and client with either party or with the attorney for either party; but a depositor of a bank is not deemed

a creditor of the bank for the purpose of this paragraph solely by reason of his being a depositor;

(4) having served as a juror in a civil action or been a witness on a previous trial between the same parties, for the same cause of action; or having been summoned and attended the district court as a petit juror at any term held within one year prior to the challenge;

(5) interest on the part of the juror in the event of the action, or in the main question involved in the action;

(6) having an unqualified opinion or belief as to the merits of the action founded upon knowledge of its material facts or of some of them;

(7) the existence of a state of mind evincing enmity against or bias to either party; or

(8) that he is a party to an action pending in the court for which he is drawn and which action is set for trial before the panel of which he is a member.

§ 454. Jury to be sworn

As soon as the jury is completed, an oath shall be administered to the jurors, in substance, that they and each of them will well and truly try the matter in issue between ———, plaintiff, and ———, defendant, and a true verdict render according to the evidence.

Subchapter II—Conduct of Trial

§ 471. Order of proceedings on trial

When the jury have been sworn, the proceedings shall be as follows, unless the judge, for special reasons, otherwise directs;

(1) the plaintiff, after stating the issue and his case, shall produce the evidence on his part;

(2) the defendant may then open his defense, and offer his evidence in support thereof;

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

(4) when the evidence is concluded, unless the case is submitted to the jury on either side or on both sides without argument, the plaintiff shall commence and may conclude the argument;

(5) if several defendants, having separate defenses, appear by different counsel, the court shall determine their relative order in the presentation of evidence and argument; and

(6) the court may then charge the jury.

§ 472. View by jury

When, in the opinion of the court, it is proper for the jury to have a view of the property which is the subject of litigation, or of the place in which a material fact occurred, it may order them to be conducted, in a body, under the charge of an officer, to the place, which shall be shown to them by some person appointed by the court for that purpose. While the jury are thus absent, no person, other than the person so appointed, may speak to them on any subject connected with the trial.

§ 473. Instructions to jury

In charging the jury the court may state to them all matters of law which it thinks necessary for their information in giving their verdict; and, if it states the testimony of the case, it shall inform the jury that they are the exclusive judges of all questions of fact. The court shall furnish to either party, at the time, upon request, a statement

in writing of the points of law contained in the charge, or sign, at the time, a statement of the points prepared and submitted by the counsel of either party.

§ 474. Admonition when jury permitted to separate

If the jury are permitted to separate, either during the trial or after the case is submitted to them, they shall be admonished by the court that it is their duty not to converse with, or suffer themselves to be addressed by any other person, on any subject of the trial, and that it is their duty not to form or express an opinion thereon until the case is finally submitted to them.

§ 475. Items taken with jury

Upon retiring for deliberation the jury may take with them all papers which have been received as evidence in the cause, except depositions or copies of such papers as ought not, in the opinion of the court, to be taken from the person having them in possession. They may also take with them any exhibits which the court thinks proper and notes of the testimony or other proceedings on the trial, taken by themselves or any of them, but none taken by any other person.

§ 476. Retirement and deliberation of jury; three-fourths verdict

After the case is finally submitted to the jury, they may decide in court or retire for deliberation. If they retire, they shall be kept together in a convenient place, under charge of an officer, until at least three-fourths of them agree upon a verdict or are discharged by the court. Unless by order of the court, the officer having them under his charge may not suffer any communication to be made to them, or make any himself, except to ask them if they or three-fourths of them are agreed upon a verdict, and he may not, before their verdict is rendered, communicate to any person the state of their deliberations or the verdict agreed upon.

§ 477. Return to court for instructions

After the jury have retired for deliberation, if there is a disagreement between them as to any part of the testimony, or if they desire to be informed of any point of law arising in the cause, they may require the officer to conduct them into court. Upon their being brought into court, the information required shall be given in the presence of, or after notice to, the parties or counsel.

§ 478. Discharge without verdict; retrial

If the jury are discharged, or prevented from giving a verdict, by reason of accident or other cause, during the progress of the trial, or after the cause is submitted to them, the action may be again tried immediately, or at a future time, as the court may direct, unless the court directs the entry of judgment in accordance with a motion for a directed verdict pursuant to Rule 50 of the Federal Rules of Civil Procedure.

§ 479. Adjournment while jury absent; sealed verdict

While the jury are absent the court may adjourn from time to time, in respect to other business; but it is nevertheless open for every purpose connected with the cause submitted to the jury, until a verdict is rendered or the jury discharged. The court may direct the jury to bring in a sealed verdict, at the opening of the court, in case of an agreement during a recess or adjournment for the day.

§ 480. Manner of giving verdict; three-fourths verdict; polling jury

When the jury, or three-fourths of them, have agreed upon a verdict, they shall be conducted into court, their names called by the clerk, and the verdict rendered by their foreman. The verdict must be in writing, signed by the foreman, and shall be read by the clerk to the jury, and the inquiry made whether it is their verdict. Either party may require the jury to be polled, which is done by the court or clerk asking each juror if it is his verdict. If upon such an inquiry or polling, more than one-fourth of the jurors disagree thereto, the jury shall be sent out again, but if no such disagreement is expressed, the verdict is complete and the jury discharged from the case.

§ 481. Correction of informal or insufficient verdict

When the verdict is announced, if it is informal or insufficient, in not covering the issue submitted, it may be corrected by the jury under the advice of the court, or the jury may be again sent out.

§ 482. Entry of verdict

Upon receiving a verdict, an entry shall be made by the clerk in the minutes of the court, specifying the time of trial, the names of the jurors and witnesses, and setting out the verdict at length; and where a special verdict is found, either the judgment rendered thereon, or if the case is reserved for argument or further consideration, the order thus reserving it.

CHAPTER 15—JUDGMENT AND EXECUTION

SUBCHAPTER I—JUDGEMENTS GENERALLY

SUBCHAPTER II—EXECUTION

SUBCHAPTER III—PROCEEDINGS SUPPLEMENTAL TO EXECUTION

SUBCHAPTER IV—JUDGMENTS AGAINST JOINT DEBTORS

SUBCHAPTER V—DISCHARGE OF PERSONS IMPRISONED ON CIVIL PROCESS

Subchapter I—Judgments Generally

§ 511. Interest on judgments

Judgments bear interest at the rate of 6 percent per annum from the date of entry.

§ 512. Satisfaction of judgment

Satisfaction of a judgment may be entered in the clerk's docket upon an execution returned satisfied, or upon an acknowledgment of satisfaction, which may recite payment of the judgment in full or the acceptance by the judgment creditor or assignee of record of any lesser sum in full satisfaction thereof. The acknowledgment may be made in the manner prescribed by chapter 27 of Title 4 and filed with the clerk or it may be made by indorsement on the face or the margin of the record. The acknowledgment or indorsement may be made by the judgment creditor, by the assignee of record, or by the attorney unless a revocation of his authority is filed.

Whenever a judgment is satisfied in fact, otherwise than upon an execution, the party or attorney shall give the acknowledgment, or make the indorsement, and, upon motion, the court may compel it, or may order the entry of satisfaction to be made without it.

§ 513. Death of party before judgment

If a party dies after a verdict or decision upon any issue of fact, and before judgment, the court may nevertheless render judgment thereon. The judgment is payable in the course of administration on his estate.

§ 514. Action against officer or person holding bond or covenant of indemnity; defense by and judgment against surety

If an action is brought against an officer or person for an act for the doing of which he had theretofore received a valid bond or

covenant of indemnity, and he gives seasonable notice thereof in writing to the persons who executed the bond or covenant, and permits them to conduct the defense of the action, the judgment recovered therein is conclusive evidence against the persons so notified; and the court may, on motion of the defendant, upon notice of five days, and upon proof of the bond or covenant, and of the notice and permission, enter judgment against them for the amount so recovered and costs.

§ 515. Confession of judgment without action

(a) A judgment by confession may be entered without action either for money due or to become due, or to secure any person against contingent liability on behalf of the defendant, or both, in the manner prescribed by this section. The judgment may be entered in any court having jurisdiction for like amounts.

(b) A statement in writing shall be made, signed by the defendant and verified by his oath:

(1) authorizing the entry of judgment for a specified sum;

(2) if it is for money due, or to become due, stating concisely the facts out of which it arose, and showing that the sum confessed therefor is justly due, or to become due; and

(3) if it is for the purpose of securing the plaintiff against a contingent liability, stating concisely the facts constituting the liability, and showing that the sum confessed thereunder does not exceed the same.

(c) If the judgment is to be entered in the district court, the plaintiff shall file the statement with the clerk of the district court and pay a fee of $8 to be recovered as costs in the judgment. Within 10 days after the filing, the clerk shall indorse upon the statement, and enter of record, a judgment of the district court for the amount confessed, with $8 costs.

(d) If the judgment is to be entered in a magistrate's court, the plaintiff shall file the statement with the magistrate and pay a fee of $5 to be recovered as costs in the judgment. The magistrate shall thereupon enter in his docket a judgment of the magistrate's court for the amount confessed, with $5 costs.

§ 516. Submission of controversy without action

(a) Parties to a question in difference, which might be the subject of a civil action, may, without action, agree upon a case containing the facts upon which the controversy depends, and present a submission of the same to any court which would have jurisdiction if an action had been brought; but it must appear, by affidavit, that the controversy is real and the proceedings in good faith, to determine the rights of the parties. The court shall thereupon hear and determine the case, and render judgment thereon, as if an action were pending.

(b) Judgment may be entered as in other cases, but without costs for any proceeding prior to the trial.

(c) The judgment may be enforced in the same manner as if it had been rendered in an action, and is in the same manner subject to appeal.

Subchapter II—Execution

§ 541. Time for issuance of execution

Subject to any stay of proceedings to enforce the judgment authorized by the Federal Rules of Civil Procedure, the party in whose favor judgment is given may, at any time within five years after the entry thereof, have a writ of execution issued for its enforcement upon the filing of a written request with the clerk of court. If, after

the entry of the judgment, the issuing of execution thereon is stayed or enjoined by any judgment or order of court, or by operation of law or the Federal Rules of Civil Procedure, the time during which it is so stayed or enjoined is excluded from the computation of the five years within which execution may issue.

§ 542. Issuance of execution; form and contents

A writ of execution shall be issued in the name of the Government of the Canal Zone, sealed with the seal of the court, and subscribed by the clerk, and be directed to the marshal, and intelligibly refer to the judgment, stating the court, the division where the judgment is entered, and if it is for money, the amount thereof, and the amount actually due thereon, and shall require the marshal to proceed substantially as follows:

(1) If it is against the property of the judgment debtor, it shall require the marshal to satisfy the judgment, with interest, out of the property of the debtor.

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

(3) If it is against the person of the judgment debtor, it shall require the marshal to arrest the debtor and commit him to jail until he pays the judgment, with interest, or is discharged according to law.

(4) If it is for the delivery of the possession of property, it shall require the marshal to deliver the possession of the property, describing it, to the party entitled thereto; and it may at the same time require the marshal to satisfy any costs, damages, rents, or profits recovered by the same judgment, out of the 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 cannot be had.

§ 543. Return of execution

An execution may be made returnable at any time not less than 10 nor more than 60 days after its receipt by the marshal, to the division in which the judgment is entered.

§ 544. Methods for enforcement of judgments and orders

(a) If a judgment is for money, or the possession of property, it may be enforced by a writ of execution.

(b) If a judgment directs that the defendant be arrested, the execution may issue against the person of the judgment debtor, after the return of an execution against his property unsatisfied in whole or part.

(c) If a judgment requires the sale of property, it may be enforced by a writ reciting the 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.

(d) If a 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 it is rendered, or upon the person or officer required thereby or by law to obey it, and obedience thereto may be enforced by the court.

(e) If an order for the payment of a sum of money is made by a court, it may be enforced by execution in the same manner as if it were a judgment.

§ 545. Execution after five years

A judgment may be enforced or carried into execution after the lapse of five years from the date of its entry, by leave of the court, upon motion, and after due notice to the judgment debtor accompanied by an affidavit or affidavits setting forth the reasons for failure to proceed in compliance with section 541 of this title. The failure to set forth reasons which are sufficient in the discretion of the court is ground for the denial of the motion. This section does not limit the jurisdiction of the court to order issuance of a writ of execution prior to the lapse of the five-year period in cases where the party in whose favor judgment is given is not entitled to a writ pursuant to section 541 of this title.

A judgment may also be enforced or carried into execution after the lapse of five years from the date of its entry, by judgment for that purpose founded upon supplemental proceedings; but this section does not revive a judgment for the recovery of money which has been barred by limitation on January 2, 1963.

§ 546. Execution after death of party

Notwithstanding the death of a party after the judgment, execution thereon may be issued, or it may be enforced, as follows:

(1) in case of the death of the judgment creditor, upon the application of his executor or administrator, or successor in interest; or

(2) in case of the death of the judgment debtor, if the judgment is for the recovery of property, or the enforcement of a lien thereon.

§ 547. Property liable to execution; manner and effect of levy

(a) All goods, chattels, moneys, and other real and personal property, 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, are liable to execution.

(b) Shares and interests in any corporation or company, and debts and credits, and all other real and personal property, and any interest in either real or personal property, and all other property not capable of manual delivery, may be levied upon or released from levy in like manner as like property may be attached or released from attachment.

(c) Until a levy, property is not affected by the execution. A levy does not bind any property for a longer period than one year from the date of the issuance of the execution; but an alias execution may be issued on the judgment and levied on any property not exempt from execution.

§ 548. Property exempt from execution or attachment

The following property is exempt from execution or attachment, except as herein otherwise specially provided, when claim for exemption is made to the same by the judgment debtor or defendant as provided by section 549 of this title:

(1) chairs, tables, desks, and books, to the value of $200 belonging to the judgment debtor;

(2) household furniture and utensils necessary for housekeeping and used for that purpose by the debtor, such as the debtor may select, of a value not exceeding $500; and all wearing apparel;

(3) tools and implements necessarily used by him in his trade or employment;

(4) the professional libraries of lawyers, judges, clergymen, doctors, school teachers, and music teachers, not exceeding $500 in value;

(5) the wages and earnings of all seamen and seagoing fishermen, not exceeding $300, regardless of where or when earned, and in addition to all other exemptions otherwise provided by any law; but where debts are incurred by any such person, or his wife or family for the common necessaries of life, one-half of the earnings above mentioned is nevertheless subject to execution or attachment to satisfy debts so incurred;

(6) the following percentages of the earnings of the defendant or judgment debtor, regardless of his place of residence, for his personal services rendered at any time within 30 days next preceding the levy of the process are exempt from attachment, execution, or garnishment without filing a claim for exemption as provided by section 549 of this title, and only one attachment or execution on the earnings of a defendant or judgment debtor shall be satisfied at one time:

(A) all the gross earnings exceeding $40 per week;

(B) 80 percent of the gross earnings exceeding $40 per week and not exceeding $100 per week; and

(C) 50 percent of the gross earnings exceeding $100 per week;

(7) all the nautical instruments and wearing apparel of a master, officer, or seaman of a vessel;

(8) all arms, uniforms, and accouterments required by law to be kept by any person, and also one gun, to be selected by the debtor;

(9) all moneys, benefits, privileges, or immunities accruing or in any manner growing out of life insurance, if the annual premiums paid do not exceed $500, and if they exceed that sum a like exemption exists which bears the same proportion to the moneys, benefits, privileges, and immunities so accruing or growing out of the insurance that $500 bears to the whole annual premiums paid; in addition to the foregoing, all moneys, benefits or privileges belonging to or inuring to the benefit of the insured's spouse or minor children growing out of life insurance purchased with annual premiums not exceeding $500, or if the annual premiums exceeded that sum, a like exemption exists in favor of those persons which bears the same proportion to the moneys, benefits or privileges growing out of the insurance that $500 bears to the whole annual premiums paid; and

(10) all money received by a person as a pension or retirement or disability or death or other benefit from the United States Government, whether it is in his actual possession or deposited, loaned, or invested by him.

An article, however, or species of property specified by this section is not exempt from execution issued upon a judgment recovered for its price, or upon a judgment of foreclosure of a mortgage or other lien thereon.

§ 549. Procedure for asserting and determining claims for exemption

The following procedure shall be followed in asserting and determining claims for exemption of property as provided by section 548 of this title:

(1) Unless otherwise specially provided, if the property specified by section 548 of this title is levied upon under writ of attachment or execution, the defendant or judgment debtor, in order to avail himself of his exemption rights as to the property, shall deliver to the levying officer an affidavit of himself or his agent, together with a copy thereof, alleging that the property levied upon, identifying it, is exempt, specifying the paragraphs of section 548 on which he relies

for his claim to exemption, and all facts necessary to support his claim, and also stating therein his address for the purpose of permitting service by mail upon him of the counter-affidavit and any notice of the motion herein provided.

(2) Forthwith upon receiving the affidavit of exemption the levying officer shall serve upon the plaintiff or the person in whose favor the writ runs (herein referred to as "the creditor"), either personally or by mail, a copy of the affidavit of exemption, together with a writing, signed by the levying officer, stating that the claim to exemption has been received and that the officer will release the property unless he receives from the creditor a counter-affidavit within five days after service of the writing.

(3) If the creditor desires to contest the claim to exemption, he shall within the period of five days file with the levying officer a counter-affidavit alleging that the property is not exempt within the meaning of the paragraphs relied upon, or if the claim to exemption is based on paragraph (1), (2), or (4) of section 548 of this title, alleging that the value of the property claimed to be exempt is in excess of the value stated in the applicable paragraphs, together with proof of service of a copy of the counter-affidavit upon the judgment debtor.

(4) If a counter-affidavit, with proof of service, is not so filed with the levying officer within the time allowed, the officer shall forthwith release the property.

(5) If a counter-affidavit, with proof of service, is so filed, either the creditor or the judgment debtor is entitled to a hearing in the court in which the action is pending or from which the writ issued for the purpose of determining the claim to exemption, or the value of the property claimed to be exempt. The hearing shall be granted by the court upon motion of either party made within five days after the counter-affidavit is filed with the levying officer, and the hearing shall be had within 15 days from date of the making of the motion unless continued by the court for good cause. The party making the motion for hearing shall give not less than five days' notice in writing of the hearing to the levying officer and to the other party and specify therein that the hearing is for the purpose of determining the claim to exemption. The notice may be of motion or of hearing and upon the filing of the notice with the clerk of court, the motion is deemed made.

(6) If neither party makes such a motion within the time allowed, or if the levying officer is not served with a copy of the notice of hearing within 10 days after the filing of the counter-affidavit, the levying officer shall forthwith release the property to the judgment debtor.

(7) At any time while the proceedings are pending, upon motion of either party or upon its own motion, the court may make such orders as may be proper under the particular circumstances of the case. Any orders so made may be modified or vacated by the court or judge granting the same, or by the court in which the proceedings are pending, at any time during the pendency of the proceedings, upon such terms as may be just.

(8) The levying officer in all cases shall retain physical possession of the property levied upon if it is capable of physical possession, or in the case of property not capable of physical possession, the levy shall remain in full force and effect, pending the final determination of the claim to exemption. A sale under execution may not be had prior to the final determination unless an order of the court hearing the claim for exemption so provides.

(9) At the hearing, the party claiming the exemption has the burden of proof. The affidavits and counter-affidavits shall be filed by the levying officer with the court and shall constitute the

pleadings, subject to the power of the court to permit an amendment in the interests of justice. The affidavit of exemption is deemed controverted by the counter-affidavit and both shall be received in evidence. Findings are not required in a proceeding under this section. When evidence other than the affidavit and counter-affidavit is not offered, the court, if satisfied that sufficient facts are shown thereby, may make its determination thereon; otherwise, it shall order the hearing continued for the production of other evidence, oral or documentary, or the filing of other affidavits and counter-affidavits. At the conclusion of the hearing, the court shall give judgment determining whether the claim to exemption shall be allowed or not, in whole or in part, which judgment is determinative as to the right of the creditor to have the property taken and held by the officer or to subject the property to payment or other satisfaction of his judgment. In the judgment the court shall make all proper orders for the disposition of the property or the proceeds thereof.

(10) A copy of any judgment entered in the trial court shall be forthwith transmitted by the clerk to the levying officer in order to permit the officer to either release the property attached or to continue to hold it or sell it, in accordance with the provisions of the writ previously delivered to him. Unless an appeal from the judgment be waived, or the judgment has otherwise become final, the officer shall continue to hold the property under attachment or execution, continuing the sale of any property held under execution until the judgment becomes final. If a claim to exemption pursuant to paragraph (6) of section 548 of this title is allowed by the judgment, the judgment debtor is entitled to a release of the earnings so exempted at the expiration of three days, unless otherwise ordered by the court or unless the levying officer is served with a copy of a notice of appeal from the judgment.

(11) If any documents required hereunder are served by mail, the provisions of law or rules of court relating to service by mail are applicable thereto.

(12) If the time allowed for an act to be done hereunder is extended by the court, written notice thereof shall be given promptly to the opposing party, unless the notice is waived, and to the levying officer.

(13) An appeal lies from any judgment under this section, to be taken in the manner provided for appeals in the court in which the proceeding is had.

§ 550. Execution of writ generally

The marshal shall execute the writ against the property of the judgment debtor, by levying on a sufficient amount of property, if there be sufficient; collecting or selling the things in action, and selling the other property, and paying to the plaintiff or his attorney so much of the proceeds as will satisfy the judgment.

Any excess in the proceeds over the judgment and accruing costs shall be returned to the judgment debtor, unless otherwise directed by the judgment or order of the court.

If there is more property of the judgment debtor than is sufficient to satisfy the judgment and accruing costs within the view of the marshal, he shall levy only on such part of the property as the judgment debtor may indicate, if the property indicated is amply sufficient to satisfy the judgment and costs.

§ 551. Sale on execution or under power in deed of trust; notice

Before the sale of property on execution or under power contained in any deed of trust, notice thereof shall be given as follows:

(1) In case of perishable property: by posting written notice of the time and place of sale in three public places of the town where

the sale is to take place, for such time as may be reasonable, considering the character and condition of the property.

(2) In case of other personal property: by posting a similar notice in three public places in the town where the sale is to take place, for not less than 5 days nor more than 10 days.

(3) In case of real property: by posting a similar notice particularly describing the property for 20 days, in three public places of the town where the property is to be sold and publishing a copy thereof once a week for the same period, in some newspaper of general circulation in the Canal Zone; and where real property is to be sold under the provision of any deed of trust the copy of the notice shall be posted in a conspicuous place on the property to be sold, at least 20 days before date of sale.

§ 552. Penalty for selling without notice or taking down or defacing notice

An officer selling without the notice prescribed by section 551 of this title shall forfeit $500 to the aggrieved party, in addition to his actual damages; and a person willfully taking down or defacing the notice posted, if done before the sale or the satisfaction of the judgment before sale, shall forfeit $500.

§ 553. Conduct of sale

Sales of property under execution shall be made at auction, to the highest bidder, between the hours of nine in the morning and five in the afternoon. After sufficient property has been sold to satisfy the execution, no more may be sold. Neither the officer holding the execution nor his deputy may become a purchaser or be interested in any purchase at the sale. When the sale is of personal property, capable of manual delivery, it shall be within view of those who attend the sale, and be sold in such parcels as are likely to bring the highest price; and when the sale is of real property, consisting of several known lots or parcels, they shall be sold separately; or when a portion of the real property is claimed by a third person, and he requires it to be sold separately, it shall be thus sold. The judgment debtor, if present at the sale, may also direct the order in which property, real or personal, shall be sold, when the property consists of several known lots or parcels, or of articles which can be sold to advantage separately, and the marshal shall follow those directions.

§ 554. Nonpayment of bid; resale

(a) If a purchaser refuses to pay the amount bid by him for property struck off to him at a sale under execution, the officer may again sell the property at any time to the highest bidder, and if any loss is occasioned thereby, the officer may recover the amount of the loss, with costs, from the bidder so refusing, in any court of competent jurisdiction.

(b) If a purchaser refuses to pay, the officer may reject any subsequent bid by him.

(c) Subsections (a) and (b) of this section do not render the officer liable for any more than the amount bid by the second or subsequent purchaser, and the amount collected from the purchaser refusing to pay.

§ 555. Rights of purchaser; certificate of sale

(a) When the purchaser of personal property capable of manual delivery pays the purchase money, the officer making the sale shall deliver the property to him, and, if desired, execute and deliver to him a certificate of the sale. The certificate conveys to the purchaser all the right which the debtor had in the property on the day the execution or attachment was levied.

(b) When the purchaser of personal property not capable of manual delivery pays the purchase money, the officer making the sale shall execute and deliver to him a certificate of sale. The certificate conveys to the purchaser all the right which the debtor had in the property on the day the execution or attachment was levied.

(c) Upon a sale of real property, the purchaser is substituted to and acquires all the right, title, interest, and claim of the judgment debtor thereto on the date of the levy of the execution thereon. If property, real or personal, has been attached in the action, the purchaser is substituted to and acquires all the right, title, interest, and claim of the judgment debtor on or at any time after the day the attachment was levied upon the property.

§ 556. Sales as absolute or subject to redemption; certificate of sale

Sales of personal property, and of real property, when the estate therein is less than a leasehold of two years' unexpired term, are absolute. In all other cases the property is subject to redemption, as provided in this subchapter.

The officer shall give to the purchaser a certificate of sale, and file a duplicate thereof for record in the office of the registrar of property, which certificate must state the date of the judgment under which the sale was made and the names of the parties thereto, and contain:

(1) a particular description of the real property sold;
(2) the price bid for each distinct lot or parcel;
(3) the whole price paid; and
(4) if the property is subject to redemption, the certificate must so declare.

§ 557. Redemption; persons entitled to; redemptioners defined

Property sold subject to redemption, as provided in section 556 of this title, or any part sold separately, may be redeemed in the manner hereinafter provided, by the following persons, or their successors in interest:

(1) the judgment debtor, or his successor in interest, in the whole or any part of the property; or

(2) a creditor having a lien or mortgage on the property sold, or on a share or part thereof, subsequent to that on which the property was sold.

The persons specified by paragraph (2) of this section are, in this subchapter, termed redemptioners.

§ 558. Redemption; time; amount of payment

The judgment debtor, or a redemptioner, may redeem the property from the purchaser any time within 12 months after the sale on paying the purchaser the amount of his purchase, with 1 percent per month thereon in addition, up to the time of redemption; and if the purchaser is also a creditor, having a prior lien to that of the redemptioner, other than the judgment under which the purchase was made, the amount of the lien with interest.

§ 559. Subsequent redemptions; notice; marshal's deed; certificate

(a) If property is so redeemed by a redemptioner, another redemptioner may, within 60 days after the last redemption, again redeem it from the last redemptioner, on paying the sum paid on the last redemption, with 2 percent thereon in addition, and, in addition, the amount of any liens held by the redemptioner prior to his own, with interest; but the judgment under which the property was sold need not be so paid as a lien.

(b) The property may be again, and as often as a redemptioner is so disposed, redeemed from any previous redemptioner within 60 days after the last redemption, on paying the sum paid on the last previous redemption, with 2 percent thereon in addition, and the amount of any liens, other than the judgment under which the property was sold, held by the last redemptioner previous to his own with interest.

(c) Written notice of redemption shall be given to the marshal and a duplicate filed with the registrar of property, and if the redemptioner has or acquires any lien other than that upon which the redemption was made, notice thereof shall in like manner be given to the marshal and filed with the registrar; and if such a notice is not filed, the property may be redeemed without paying such lien.

(d) If no redemption is made within 12 months after sale, the purchaser, or his assignee, is entitled to a conveyance; or if so redeemed, whenever 60 days have elapsed, and no other redemption has been made, and notice thereof given and the time for redemption has expired, the last redemptioner, or his assignee, is entitled to a marshal's deed; but, in all cases, the judgment debtor shall have the entire period of 12 months from the date of the sale to redeem the property.

(e) If the judgment debtor redeems, he shall make the same payments as are required to effect a redemption by a redemptioner. If the debtor redeems, the effect of the sale is terminated and he is restored to his estate.

(f) Upon a redemption by the debtor, the person to whom the payment is made shall execute and deliver to him a certificate of redemption, acknowledged or proved before an officer authorized to take acknowledgments. The certificate shall be filed and recorded in the office of the registrar of property, and the registrar shall note the record thereof in the margin of the record of the certificate of sale.

§ 560. Redemption; persons to whom payments made; tender

The payments mentioned in sections 558 and 559 of this title may be made to the purchaser or redemptioner, or for him, to the officer who made the sale. A tender of the money is equivalent to payment.

§ 561. Redemption; documents to be produced by redemptioner

A redemptioner shall produce to the officer or person from whom he seeks to redeem and serve with his notice to the marshal making the sale, or his successor in office:

(1) a copy of the docket of the judgment under which he claims the right to redeem, certified by the clerk of the court where the judgment is docketed; or, if he redeems upon a mortgage or other lien, a note of the record thereof, certified by the registrar;

(2) a copy of any assignment necessary to establish his claim, verified by the affidavit of himself, or of a subscribing witness thereto; and

(3) an affidavit by himself or his agent, showing the amount then actually due on the lien.

§ 562. Restraining waste during period for redemption

Until the expiration of the time allowed for redemption, the court may restrain the commission of waste on the property, by order granted with or without notice, on the application of the purchaser or the judgment creditor. But it is not waste for the person in possession of the property at the time of sale, or entitled to possession afterwards, during the period allowed for redemption, to continue to use it in the same manner in which it was previously used; or to use it in the ordinary course of husbandry; or to make the necessary repairs of buildings thereon; or to use wood or timber on the property therefor or for the repair of fences or for fuel for his family, while he occupies the property.

§ 563. Rents and profits

The purchaser from the time of the sale until a redemption, and a redemptioner from the time of his redemption until another redemption, is entitled to receive, from the tenant in possession, the rents of the property sold, or the value of the use and occupation thereof. But when any rents or profits have been received by the judgment creditor or purchaser, or his or their assigns, from the property thus sold preceding the redemption, the amounts of such rents and profits shall be a credit upon the redemption money to be paid; and if the redemptioner or judgment debtor, before the expiration of the time allowed for the redemption, demands in writing of the purchaser or creditor, or his assigns, a written and verified statement of the amounts of the rents and profits thus received, the period for redemption is extended five days after the sworn statement is given by the purchaser or his assigns, to the redemptioner or debtor. If the purchaser or his assigns shall, for a period of one month from and after demand, fail or refuse to give the statement, the redemptioner or debtor may bring an action in any court of competent jurisdiction, to compel an accounting and disclosure of the rents and profits, and until fifteen days from and after the final determination of the action, the right of redemption is extended to the redemptioner or debtor.

§ 564. Eviction of purchaser or failure to obtain possession; revival of judgment

If the purchaser of real property sold on execution, or his successor in interest, is evicted therefrom in consequence of irregularities in the proceedings concerning the sale, or of the reversal or discharge of the judgment, he may recover the price paid, with interest, from the judgment creditor. If the purchaser of property at a marshal's sale, or his successor in interest, fails to recover possession in consequence of irregularity in the proceedings concerning the sale, or because the property sold was not subject to execution and sale, the court having jurisdiction thereof shall, after notice and on motion of the party in interest, or his attorney, revive the original judgment in the name of the petitioner, for the amount paid by the purchaser at the sale, with interest thereon from the time of payment at the same rate that the original judgment bore; and the judgment so revived has the same force and effect as would an original judgment of the date of the revival, and no more.

§ 565. Contribution among judgment debtors; repayment of surety

If 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 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. In such a case the person so paying or contributing is entitled to the benefit of the judgment, to enforce contribution or repayment, if, within 10 days after his payment, he files with the clerk of the court where the judgment was rendered, notice of his payment and claim to contribution or repayment. Upon a filing of the notice, the clerk shall make an entry thereof in the margin of the docket.

§ 566. Claims by third persons; filing of claim; undertaking by plaintiff

(a) If tangible or intangible personal property levied on, whether or not it is in the actual possession of the levying officer, is claimed by a third person as his property by a written claim verified by his oath or that of his agent, setting out the reasonable value thereof, his title and right to the possession thereof, and delivered, together with a copy thereof, to the officer making the levy, the officer shall release the property and the levy unless the plaintiff, or the person in whose favor the writ runs, within five days after written demand by the officer, gives the officer an undertaking executed by at least two good and sufficient sureties, in a sum equal to double the value of the property levied upon.

(b) The undertaking shall be made in favor of and shall indemnify the third person against loss, liability, damages, costs and counsel fees, by reason of the levy or the seizing, taking, collecting, withholding, or sale of the property by the officer. Where the property levied upon is required by law to be registered or recorded in the name of the owner and it appears that at the time of the levy the defendant or judgment debtor was the registered or record owner of the property and the plaintiff, or the person in whose favor the writ runs, caused the levy to be made and maintained in good faith, and in reliance upon the registered or record ownership, there shall be no liability thereunder to the third person by the plaintiff, or the person in whose favor the writ runs, or his sureties, or the levying officer.

(c) Exceptions to the sufficiency of the sureties and their justification may be had and taken in the same manner as upon an undertaking on attachment. If they, or others in their place, fail to justify at the time and place appointed, the officer shall release the property and the levy. If exception is not taken within five days after notice of receipt of the undertaking, the third person is deemed to have waived objections to the sufficiency of the sureties.

(d) If objection is made to the undertaking, by the third person, on the ground that the amount thereof is not sufficient, or if for any reason it becomes necessary to ascertain the value of the property involved, the property involved may be appraised by one or more disinterested persons, appointed for that purpose by the court in which the action is pending or from which the writ issued, or by a judge thereof, or the court or judge may direct a hearing to determine the value of the property.

If, upon the appraisal or hearing, the court or judge finds that the undertaking given is not sufficient, an order shall be made fixing the amount of the undertaking, and within five days thereafter an undertaking in the amount so fixed may be given in the same form and manner and with the same effect as the original.

(e) The officer making the levy may demand and exact the undertaking provided for in this section notwithstanding any defect, informality or insufficiency of the verified claim delivered to him. The officer is not liable for damages to a third person for the levy upon, or the collection, taking, keeping or sale of the property if a claim is not delivered as provided in this section, nor, in any event, is the officer liable for the levy upon, or the holding, release or other disposition of the property in accordance with the provisions of this section and section 567 of this title.

(f) If the undertaking is given, the levy shall continue and the officer shall retain any property in his possession for the purposes of the levy under the writ; except that if an undertaking is given under section 568 of this title, the property and the levy shall be released.

§ 567. Same; hearing to determine title to property

(a) If a verified third party claim is delivered to the officer as provided by section 566 of this title upon levy of execution or attachment, whether an undertaking mentioned in that section is given or not, the plaintiff, or the person in whose favor the writ runs, the third party claimant, or any one or more joint third party claimants, is entitled to a hearing in the court in which the action is pending or from which the writ issued for the purpose of determining title to the property in question.

(b) The hearing shall be granted by the court upon petition therefor filed within 10 days after the delivery of the third party claim to the officer. The hearing shall be had within 20 days from the filing of the petition, unless continued as herein provided. Ten days' notice of the hearing shall be given to the officer, to the plaintiff or the person in whose favor the writ runs, and to the third party claimant, or their attorneys, specifying that the hearing is for the purpose of determining title to the property in question; but notice need not be given to the party filing the petition. The court may continue the hearing beyond the 20-day period, but good cause must be shown for any such continuance.

(c) The court may order the sale of perishable property held by the officer and direct the disposition of the proceeds of the sale. The court may, by order, stay execution sale, or forbid a transfer or other disposition of the property involved, until the proceedings for the determination of the title may be commenced and prosecuted to termination, and may require, as a condition of the order, such bond as the court may deem necessary. The orders may be modified or vacated by the judge granting them, or by the court in which the proceeding is pending, at any time prior to the termination of the proceedings, upon such terms as may be just.

(d) At the hearing had for the purpose of determining title, the third party claimant has the burden of proof. The third party claim delivered to the officer shall be filed by him with the court and shall constitute the pleading of the third party claimant, subject to the power of the court to permit an amendment in the interest of justice, and it is deemed controverted by the plaintiff or other person in whose favor the writ runs. This section does not deprive anybody of the right to a jury trial in any case where that right is given by law, but a jury trial may be waived in any such case in like manner as in the trial of an action. Findings are not required in any proceedings under this section.

(e) At the conclusion of the hearing the court shall give judgment determining the title to the property in question, which is conclusive as to the right of the plaintiff, or other person in whose favor the writ runs, to have the property levied upon, taken, or held, by the officer and to subject the property to payment or other satisfaction of his judgment. In the judgment the court may make all proper orders for the disposition of the property or the proceeds thereof. If the property or levy has been released by the officer for want of an undertaking, and final judgment is for the plaintiff or other person in whose favor the writ runs, the officer shall retake or levy upon the property on the writ if the writ is still in his hands, or if the writ has been returned, another writ may be issued on which the officer may take or otherwise levy upon the property.

(f) An appeal lies from any judgment determining title under this section, to be taken in the manner provided for appeals from the court in which such proceeding is had.

§ 568. Same; undertaking by claimant

(a) Where property levied upon under execution to satisfy a judgment for the payment of money is claimed, in whole or in part, by a third person, other than the judgment debtor, and an undertaking has been given by the judgment creditor as provided in section 566 of this title, the claimant may give an undertaking as provided in this section, which shall release the property described in the undertaking from the lien and levy of the execution.

(b) The undertaking, with two sureties, shall be executed by the third person claiming in whole or in part the property upon which execution is levied in double the estimated value of the property claimed by the third person; except that in no case need the undertaking be for a greater sum than double the amount for which the execution is levied. Where the estimated value of the property claimed by the third person is less than the sum for which the execution is levied, the estimated value shall be stated in the undertaking, and the undertaking shall be conditioned that if the property claimed by the third person is finally adjudged to be the property of the judgment debtor, the third person will pay of the judgment upon which execution has issued a sum equal to the value, as estimated in the undertaking, of the property claimed by the third person, and the property claimed shall be described in the undertaking.

(c) The undertaking shall be filed in the action in which the execution issued and a copy thereof served upon the judgment creditor or his attorney in the action.

(d) Within 10 days after the service of the copy of the undertaking, the judgment creditor may object to the undertaking on the ground of inability of the sureties, or either of them, to pay the sum for which they become bound in the undertaking, and upon the ground that the estimated value of property therein is less than the market value of the property claimed. The objection to the undertaking shall be made in writing, specifying the ground or grounds of objection, and if the objection is made to the undertaking that the estimated value therein is less than the market value of the property claimed, the objection shall specify the judgment creditor's estimate of the market value of the property claimed. The written objection shall be served upon the third person giving the undertaking and claiming the property therein described.

(e) Exceptions to the sufficiency of the sureties and their justification may be had or taken in the same manner as upon an undertaking on attachment. If they, or others in their place, fail to justify at the time and place appointed, the officer shall not release the property. If objection is not taken as provided in this section, the judgment creditor is deemed to have waived objections to the sufficiency of the sureties.

(f) When objection is made to the undertaking upon the ground that the estimated value of the property claimed, as stated in the undertaking, is less than the market value of the property claimed, the third person may accept the estimated value stated by the judgment creditor in the objection, and a new undertaking may be at once filed with the judgment creditor's estimate stated therein as the estimated value, and objection may not thereafter be made upon that ground. If the judgment creditor's estimate of the market value is not accepted, the value of the property shall be determined as provided in section 566 of this title.

(g) The sureties shall justify upon the undertaking as required by section 431 of Title 3.

(h) The undertaking shall become effective for the purpose herein specified 10 days after service of a copy thereof on the judgment

creditor, unless objection to the undertaking is made as herein provided, and if objection is made to the undertaking filed and served, then the undertaking shall become effective for such purposes when an undertaking is given as herein provided.

§ 569. Attachments and executions on mortgaged personal property

(a) Except as provided in subsection (b) of this section, before mortgaged personal property is taken under attachment or execution issued at the suit of a creditor of the mortgagor, the officer shall pay or tender to the mortgagee the amount of the mortgage debt and interest or deposit the amount thereof with the registrar of property, payable to the order of the mortgagee.

(b) When an attachment or execution creditor presents to the officer a verified statement that the mortgage is void or invalid for reasons therein specified and delivers to the officer a good and sufficient indemnity bond in double the amount of the mortgage debt or double the value of the mortgaged property, as the officer may determine and require, the officer shall take the property, and, in the case of an execution, sell it in the manner provided by law.

The bond shall be made to both the officer and the mortgagee and shall indemnify them and each of them for the taking of the property against loss, liability, damages, costs, and counsel fees.

(c) When the property is taken after payment or tender of deposit as provided for in subsection (a) of this section and is sold under process the officer shall apply the proceeds of the sale as follows:

(1) to the repayment of the sum paid to the mortgagee, with interest from the date of the payment; and

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

(d) When the property is taken after presentation to the officer of the verified statement and bond mentioned in subsection (b) of this section and is sold under process the officer shall apply the proceeds of the sale as follows:

(1) to the satisfaction of the amount specified in the process including interest and costs; and

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

Subchapter III—Proceedings Supplemental to Execution

§ 601. Examination of judgment debtor

When an execution against property of the judgment debtor, or of any one of several debtors in the same judgment, issued to the marshal, is returned unsatisfied in whole or in part, the judgment creditor, at any time after the return is made, is entitled to an order from the judge of the court, requiring the judgment debtor to appear and answer concerning his property before the judge, or a referee appointed by him, at a time and place specified in the order.

§ 602. Order for judgment debtor to appear; arrest; bail

(a) After the issuing of an execution against property, and upon proof, by affidavit of a party or otherwise, to the satisfaction of the judge of the court that a judgment debtor has property which he unjustly refuses to apply toward the satisfaction of the judgment, the judge may, by an order, require the judgment debtor to appear at a specified time and place before the 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 are provided upon the return of an execution.

(b) Instead of the order requiring the attendance of the judgment debtor, the judge may, upon affidavit of the judgment creditor, his agent or attorney, if it appears to him that there is danger of the debtor's absconding, order the marshal to arrest the debtor and bring him before the judge. Upon being brought before the judge, the judgment debtor 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 proceedings and until the 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 the undertaking he may be committed to jail.

§ 603. Payment by debtor of judgment debtor

After the issuing of an execution against property, and before its return, any person indebted to the judgment debtor may pay to the marshal the amount of his debt, or so much thereof as may be necessary to satisfy the execution; and the marshal's receipt is a sufficient discharge for the amount so paid.

§ 604. Examination of debtor of judgment debtor

After the issuing or return of an execution against property of the judgment debtor, or of any one of several debtors in the same judgment, and upon proof by affidavit or otherwise, to the satisfaction of the judge, that any person or corporation has property of the judgment debtor, or is indebted to him in an amount exceeding $50, the judge may, by an order, require the person or corporation, or any officer or member thereof, to appear at a specified time and place before him, or a referee appointed by him, and answer concerning the same.

§ 605. Witnesses

Witnesses may be required to appear and testify before the judge or referee, upon any proceeding under this subchapter, in the same manner as upon the trial of an issue.

§ 606. Order applying property toward satisfaction of judgment

The judge or referee may order any property of the judgment debtor, not exempt from execution, in the hands of the debtor, or any other person, or due to the judgment debtor, to be applied toward the satisfaction of the judgment; but an order may not be made as to money or property in the hands of any other person or claimed to be due from him to the judgment debtor, if the person claims an interest in the property adverse to the judgment debtor or denies the debt.

§ 607. Third person claiming interest or denying debt; action by judgment creditor

If it appears that a person, 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 judgment creditor may maintain an action against that person for the recovery of the interest or debt; and the judge or referee may, by order, forbid a transfer or other disposition of the interest or debt, until an action can be commenced and prosecuted to judgment. The order may be modified or vacated by the judge or referee granting it, or the court in which the action is brought, at any time, upon such terms as may be just.

§ 608. Contempt

If any person, party, or witness disobeys an order of the referee, properly made, in the proceedings before him under this subchapter, he may be punished by the court or judge ordering the reference, for a contempt.

Subchapter IV—Judgments Against Joint Debtors

§ 631. Summoning unserved joint debtors to show cause why they should not be bound by judgment

When a judgment is recovered against one or more of several persons, jointly indebted upon an obligation, by proceeding as provided in section 169 of this title, those who were not originally served with the summons, and did not appear in the action, may be summoned to show cause why they should not be bound by the judgment, in the same manner as though they had been originally served with the summons.

§ 632. Form and service of summons

The summons specified in section 631 of this title shall describe the judgment, and require the person summoned to show cause why he should not be bound by it, and shall be served in the same manner, and be returnable within the same time, as the original summons. It is not necessary to file a new complaint.

§ 633. Affidavit to accompany summons

The summons shall be accompanied by an affidavit of the plaintiff, his agent, representative, or attorney, that the judgment, or some part thereof, remains unsatisfied, and shall specify the amount due thereon.

§ 634. Answer

Upon such a summons, the defendant may answer within the time specified therein, denying the judgment, or setting up any defense which may have arisen subsequently; or he may deny his liability on the obligation upon which the judgment was recovered, by reason of any defense existing at the commencement of the action.

§ 635. Pleadings

If the defendant, in his answer, denies the judgment, or sets up any defense which may have arisen subsequently, the summons, with the affidavit annexed, and the answer, constitute the written allegations in the case; if he denies his liability on the obligation upon which the judgment was recovered, a copy of the original complaint and judgment, the summons, with the affidavit annexed, and the answer, constitute the written allegations, subject to the right of the parties to amend their pleadings as in other cases.

§ 636. Trial; amount of verdict or decision

The issues formed may be tried as in other cases; but when the defendant denies, in his answer, any liability on the obligation upon which the judgment was rendered, if a verdict is found or a decision rendered against him, it may not be for an amount exceeding the amount remaining unsatisfied on the original judgment, with interest thereon.

Subchapter V—Discharge of Persons Imprisoned on Civil Process

§ 661. Persons confined on execution issued on judgment; conditions for discharge

Any person confined in jail, on an execution issued on a judgment rendered in a civil action, shall be discharged therefrom upon the conditions specified in this subchapter.

§ 662. Notice of application for discharge

Such person must cause a notice in writing to be given to the plaintiff, his agent, or attorney, that at a certain time and place he will apply to the judge of the court from which the execution issued for the purpose of obtaining a discharge from his imprisonment.

§ 663. Service of notice

The notice must be served upon the plaintiff, his agent, or attorney, one day at least before the hearing of the application.

§ 664. Examination before judge

At the time and place specified in the notice, the person shall be taken before the judge, who shall examine him under oath concerning his estate and property and effects, and the disposal thereof, and his ability to pay the judgment for which he is committed; and the judge may also hear any other legal and pertinent evidence that may be produced by the debtor or the creditor.

§ 665. Written interrogatories to prisoner

The plaintiff in the action may, upon the examination, propose to the prisoner any interrogatories pertinent to the inquiry, and they shall, if required by him, be proposed and answered in writing, and the answer shall be signed and sworn to by the prisoner.

§ 666. Oath of prisoner

If, upon the examination, the judge is satisfied that the prisoner is entitled to his discharge, he shall administer to him the following oath, to wit:

"I, ——— ———, do solemnly swear that I have not any estate, real or personal, to the amount of $50, except such as is by law exempted from being taken in execution; and that I have not any other estate now conveyed or concealed, or in any way disposed of, with design to secure the same to my use, or to hinder, delay, or defraud my creditors, so help me God."

§ 667. Order for discharge

After administering the oath, the judge shall issue an order that the prisoner be discharged from custody, and the officer, upon the service of the order, shall discharge the prisoner forthwith, if he is imprisoned for no other cause.

§ 668. Frequency of applications for discharge

If the judge does not discharge the prisoner, he may apply for his discharge at the end of every succeeding 10 days, in the same manner as above provided, and the same proceedings shall thereupon be had.

§ 669. Finality of discharge

The prisoner, after being so discharged, is forever exempted from arrest or imprisonment for the same debt, unless he is convicted of having willfully sworn falsely upon his examination before the judge, or in taking the oath prescribed in section 666 of this title.

§ 670. Judgment remains in force

The judgment against any prisoner who is discharged remains in full force against any estate which may then or at any time afterward belong to him, and the plaintiff may take out a new execution against the goods and estate of the prisoner, in like manner as if he had never been committed.

§ 671. Discharge on order of plaintiff

The plaintiff in the action may at any time order the prisoner to be discharged, and he is not thereafter liable to imprisonment for the same cause of action.

§ 672. Discharge on failure of plaintiff to pay for support of prisoner

If a person is committed to jail on an execution issued on a judgment recovered in a civil action, the creditor, his agent, or attorney shall advance to the jailer, on the commitment, sufficient money for

the support of the prisoner for one week, and shall make the like advance for every successive week of his imprisonment; and in case of failure to do so, the jailer shall forthwith discharge the prisoner from custody, and the discharge has the same effect as if made by order of the creditor.

CHAPTER 17—PROCEDURE IN MAGISTRATES' COURTS

SUBCHAPTER I—GENERAL PROVISIONS

SUBCHAPTER II—COMMENCEMENT OF ACTIONS; SERVICE OF PROCESS

SUBCHAPTER III—PLEADINGS

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Article A—Civil Arrest and Bail

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SUBCHAPTER V—TRIAL

SUBCHAPTER VI—JUDGMENT

SUBCHAPTER VII—EXECUTION

SUBCHAPTER VIII—APPEALS TO DISTRICT COURT

Subchapter I—General Provisions

§ 711. Provisions applicable to magistrates' courts

(a) Magistrates' courts being courts of limited jurisdiction, this title, other than this chapter, applies to magistrates' courts and the proceedings therein only to the extent to which it is specifically made applicable by this chapter.

(b) The Federal Rules of Civil Procedure do not apply to magistrates' courts unless:

(1) they are incorporated by reference in a section of this title and the section is applicable to the magistrates' courts under this chapter; or

(2) they are specifically made applicable by this chapter.

(c) When a provision of law or of the Federal Rules of Civil Procedure governing the district court is applicable to the magistrates' courts, references therein to the court or judge shall be deemed to refer to the magistrate; references to the marshal shall be deemed to refer to the constable; and references to the clerk of the district court shall be deemed to refer to the magistrate. With respect to the Federal Rules of Civil Procedure, the provisions of subsection (b) of section 1 of this title apply.

§ 712. Rules of procedure in magistrates' courts

(a) The district court may from time to time make and amend rules governing civil procedure in the magistrates' courts not inconsistent with law.

(b) Each magistrate may from time to time make and amend rules governing civil procedure in his court not inconsistent with law or with the rules adopted by the district court under subsection (a) of this section. Copies of rules and amendments so made by a magistrate shall be filed promptly with the district court.

§ 713. Territorial limits of process

All process of magistrates' courts may be served anywhere within the territorial limits of the Canal Zone and, when a statute so provides, beyond the territorial limits of the Canal Zone.

§ 714. Filling blanks in summons and other papers

The summons, execution, and every other paper made or issued by a magistrate's court, except a subpoena, shall be issued without a blank left to be filled by another, otherwise it is void.

§ 715. Receipt and disposition of money

Magistrates shall receive from the constables all money collected on any process or order issued from their courts, and shall pay it, and all money paid to them in their official capacity, over to the parties entitled or authorized to receive it, without delay.

§ 716. Surety bonds and undertakings

Chapter 11 of Title 3, relating to surety bonds and undertakings, applies in civil actions in the magistrates' courts.

§ 717. Dockets

(a) Each magistrate shall keep a book, denominated a "docket," in which he shall enter:

(1) the title of every action or proceeding;

(2) the object of the action or proceeding; and if a sum of money is claimed, the amount thereof;

(3) the date of the summons, and the time of its return; and if an order to arrest the defendant is made, or a writ of attachment is issued, a statement of the fact;

(4) the time when the parties, or either of them, appear, or their nonappearance, if default is made; a minute of the pleadings and motions; if in writing, referring to them; if not in writing, a concise statement of the material parts of the pleadings;

(5) every adjournment, stating on whose application and to what time;

(6) the judgment of the court, specifying the costs included and the time when rendered;

(7) the issuing of the execution, when issued and to whom; the renewals thereof, if any, and when made, and a statement of any money paid to the magistrate, when and by whom; and

(8) the receipt of a notice of appeal, if any is given, and of the appeal bond.

(b) The several particulars specified in subsection (a) of this section shall be entered under the title of the action to which they relate, and, unless otherwise provided, at the time when they occur. The entries in a magistrate's docket, or a transcript thereof, certified by the magistrate, or his successor in office, are prima facie evidence of the facts so stated.

(c) A magistrate shall keep an alphabetical index to his docket, in which shall be entered the names of the parties to each judgment, with a reference to the page of entry. The names of the plaintiffs shall be entered in the index, in the alphabetical order of the first letter of the family name.

§ 718. Computation of time

Rule 6(a) of the Federal Rules of Civil Procedure applies to the computation of time in civil actions in the magistrates' courts.

§ 719. Service and filing of pleadings and other papers; motions; notice of orders or judgments

The following provisions of the Federal Rules of Civil Procedure apply to the magistrates' courts:

(1) Rule 5, relating to the service and filing of pleadings and other papers;

(2) Rule 6(d), relating to the time for service of motions and affidavits;

(3) Rule 6(e), relating to additional time after service by mail;

(4) Rule 7(b)(1), relating to motions; and

(5) Rule 77(d), relating to notice of orders or judgments.

§ 720. Limitation of actions

Sections 41–45 and 71–82 of this title apply to the magistrates' courts to the extent to which they refer to the limitation of actions which are within the jurisdiction of the magistrates' courts.

§ 721. Parties; appearance in person or by attorney; other provisions

(a) Parties in magistrates' courts may appear and act in person or by attorney. A corporation may appear and act only by an attorney at law.

(b) Sections 121–130 of this title and Rules 17–25 of the Federal Rules of Civil Procedure apply to the magistrates' courts.

§ 722. Particular actions; miscellaneous provisions

(a) Part 2 of this title, relating to particular proceedings, applies to magistrates' courts only as specifically provided therein.

(b) Sections 3–9 of this title apply to the magistrates' courts.

Subchapter II—Commencement of Actions; Service of Process

§ 741. Commencement of action

An action in a magistrate's court is commenced by filing a complaint.

§ 742. Time for issuance of summons

The court shall indorse on the complaint the date upon which it was filed, and at any time within one year thereafter the plaintiff may have summons issued.

§ 743. Waiver of summons

At any time after the complaint is filed, the defendant may, in writing, or by appearing and pleading, waive the issuing of summons.

§ 744. Form of summons

The summons shall be directed to the defendant, signed by the magistrate, and shall contain:

(1) the title of the court, name of the subdivision in which the action is brought, and the names of the parties thereto;

(2) a direction that the defendant appear and answer before the magistrate, as specified in section 745 of this title;

(3) a notice that unless the defendant so appears and answers, the plaintiff will take judgment for any money or damages demanded in the complaint, as arising upon contract, or will apply to the court for the relief demanded in the complaint; and

(4) the name of plaintiff's attorney, if he appears by attorney.

§ 745. Time for appearance of defendant

The time specified in the summons for the appearance of the defendant shall be as follows:

(1) if an order of arrest is indorsed upon the summons, forthwith;

(2) in all other cases, within 5 days, if the summons is served in the subdivision in which the action is brought; within 10 days, if served in another subdivision.

§ 746. Alias summons

(a) If the summons is returned without being served upon any or all of the defendants, or if it has been lost, the magistrate, upon the demand of the plaintiff, may issue an alias summons, in the same form as the original, except that he may fix the time for the appearance of the defendant at a period not to exceed 90 days from its date.

(b) The magistrate may, within a year from the date of the filing of the complaint, issue as many alias summonses as may be demanded by the plaintiff.

§ 747. Service of summons

(a) The summons may be served by the constable of any magistrate's court or by any other person of the age of 18 years or over not a party to the action.

(b) Sections 161–170 and 713 of this title and subdivisions (d), (e), (g), and (h) of Rule 4 of the Federal Rules of Civil Procedure apply to the service and return of summons of the magistrates' courts.

Subchapter III—Pleadings

§ 771. Form of pleadings

Pleadings in magistrates' courts:

(1) are not required to be in any particular form, but shall be such as to enable a person of common understanding to know what is intended;

(2) may, except the complaint, be oral or in writing;

(3) need not be verified, unless otherwise provided in this chapter;

(4) if in writing, shall be filed with the magistrate; and

(5) if oral, shall be entered in substance in the docket.

§ 772. Pleadings allowed; motions

(a) The pleadings are:

(1) the complaint by the plaintiff; and

(2) the answer by the defendant.

(b) Demurrers to the complaint or to the answer may not be used. In lieu thereof, the defendant may make a motion to dismiss the complaint or the plaintiff may make a motion to strike the answer.

§ 773. Complaint

The complaint in magistrates' courts is a concise statement, in writing, of the facts constituting the plaintiff's cause of action; or a copy of the account, note, bill, bond, or instrument upon which the action is based.

§ 774. Motion to dismiss complaint

(a) At any time before answering, the defendant may make a motion to dismiss the complaint, asserting any of the following defenses or objections which appear upon the face of the complaint:

(1) lack of jurisdiction over the subject matter;

(2) lack of jurisdiction over the person;

(3) improper venue;

(4) insufficiency of process;

(5) insufficiency of service of process;
(6) failure to state a claim upon which relief can be granted;
(7) failure to join an indispensable party; or
(8) that the complaint is so vague or ambiguous that the defendant cannot reasonably be required to frame an answer.

(b) The motion to dismiss shall distinctly specify the grounds upon which any of the defenses or objections to the complaint are taken. The defenses or objections may be taken to the whole complaint or to any claim for relief stated therein.

(c) Any defense or objection to the complaint which may be made by motion to dismiss, other than that it is so vague and ambiguous that the defendant cannot reasonably be required to frame an answer, may be made either by motion to dismiss or in the answer, at the option of the defendant.

§ 775. Answer; counterclaims

(a) The answer may contain a denial of any or all of the material facts stated in the complaint, which the defendant believes to be untrue, and also a statement, in a plain and direct manner, of any other facts constituting a defense or a counterclaim upon which an action might be brought by the defendant against the plaintiff, or his assignor, in a magistrate's court.

(b) Section 202 of this title, relating to counterclaims in case of death or assignment, applies to the magistrates' courts.

§ 776. Failure to set up counterclaim

If the defendant omits to set up, as a counterclaim, a claim which arises out of the transaction or occurrence that is the subject matter of the plaintiff's claim, and does not require for its adjudication the presence of third parties of whom the court can not acquire jurisdiction, and upon which an action might have been brought in the magistrate's court by the defendant against the plaintiff or his assignor, neither the defendant nor his assignee may afterwards maintain an action against the plaintiff therefor.

§ 777. Motion to strike answer; objections and defenses to answer

(a) When the answer contains new matter in avoidance, or constituting a defense or a counterclaim, the plaintiff may, at any time before the trial, make a motion to strike the answer for insufficiency, stating therein the grounds of the motion.

(b) Whether or not the plaintiff makes a motion to strike the answer, the averments in the answer shall be taken as denied or avoided, and the plaintiff may assert at the trial any objection or defense in law or in fact to the answer.

§ 778. Proceedings on motions

The proceedings on motions are as follows:

(1) if the motion to dismiss the complaint is granted, the plaintiff may amend his complaint within such time, not exceeding two days, as the court allows;

(2) if the motion to dismiss the complaint is denied, the defendant may answer forthwith;

(3) if the motion to strike the answer is granted, the defendant may amend his answer within such time, not exceeding two days, as the court allows; and

(4) if the motion to strike the answer is denied, the action shall proceed as if no motion had been interposed.

§ 779. Amendment of pleadings

(a) At any time before the conclusion of the trial, either party may amend any pleading. If the amendment is made after the issue, and it appears to the satisfaction of the court, by oath, that an adjournment is necessary to the adverse party in consequence of the amendment, the adjournment shall be granted. When an adjournment is granted, the court may also require the payment of costs to the adverse party as a condition to the allowance of the amendment made after issue is joined.

(b) When a pleading is amended, the adverse party may answer or make a motion with respect to it within such time as the court allows, not exceeding five days after notice of the amendment.

§ 780. Admission of genuineness of documents contained in pleadings

If the complaint or answer contains a copy or consists of the original of the written obligation upon which the action is brought or the defense founded, the genuineness and due execution of the instrument are deemed admitted, unless the answer denying the same is verified, or unless the plaintiff, within two days after the service on him of the answer, files with the magistrate an affidavit denying the same, and serves a copy thereof on the defendant.

§ 781. Order for inspection of account or document

When the cause of action or counterclaim arises upon an account or instrument for the payment of money only, the court, at any time before the trial, may order the original to be exhibited to the inspection of, and a copy to be furnished to, the adverse party, at such time as may be fixed in the order. If the order is not obeyed, the account or instrument may not be given in evidence.

§ 782. Signing and verification of pleadings

Rule 11 of the Federal Rules of Civil Procedure applies to the signing and verification of written pleadings in the magistrates' courts.

Subchapter IV—Provisional Remedies

Article A—Civil Arrest and Bail

§ 801. Order of arrest; grounds for arrest

(a) A person may not be arrested in a civil action in a magistrate's court, except as prescribed in this Code.

(b) An order to arrest the defendant may be indorsed by the magistrate on a summons and the defendant may be arrested thereon by the constable at the time of serving the summons, and brought before the magistrate, and there detained until duly discharged:

(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 Canal Zone with intent to defraud his creditors;

(2) in an action for a fine or penalty, or for money or property embezzled, or fraudulently misapplied, or converted to his own use, by one who received it in a fiduciary capacity;

(3) when the defendant has been guilty of a fraud in contracting the debt or incurring the obligation for which the action is brought; or

(4) when the defendant has removed, concealed, or disposed of his property, or is about to do so, with intent to defraud his creditors.

§ 802. Affidavit and undertaking for order of arrest

(a) Before an order for an arrest is made, the party applying shall prove to the satisfaction of the magistrate by the affidavit of himself, or another person, the facts upon which the application is founded.

(b) The plaintiff shall also execute and deliver to the magistrate a written undertaking in the sum of $300, with sufficient sureties, to the effect that the plaintiff will pay all costs that may be adjudged to the defendant, and all damages which he may sustain by reason of the arrest, if the arrest is wrongful, or without sufficient cause, not exceeding the sum specified in the undertaking.

§ 803. Arrested defendant taken before magistrate; bail

(a) The defendant, immediately upon being arrested, shall be taken before the magistrate who made the order. If the magistrate is absent or unable to try the action or disqualified, the officer shall immediately take the defendant before the magistrate of another subdivision, who shall take jurisdiction of the action and proceed thereon, as if the summons had been issued and the order of arrest made by him.

(b) The defendant shall be discharged from arrest upon giving bail in, or upon depositing, an amount fixed by the magistrate, and sections 248–265 of this title apply.

§ 804. Notice of arrest to plaintiff

The officer making the arrest shall immediately give notice thereof to the plaintiff, or his attorney or agent, and indorse on the summons, and subscribe a certificate, stating the time of serving the same, the time of the arrest, and of his giving notice to the plaintiff.

§ 805. Custody of defendant

The officer making the arrest shall keep the defendant in custody until he is discharged by law.

Article B—Claim and Delivery of Personal Property

§ 821. Procedure for claim and delivery

In an action to recover possession of personal property, the plaintiff may, at the time of issuing summons or at any time thereafter before answer, claim the delivery of the property to him. Sections 292–304 of this title apply to the claim when made in magistrates' courts.

Article C—Attachment

§ 831. Actions in which attachment authorized; affidavit

A writ to attach the property of the defendant shall be issued by the magistrate at the time of or after issuing summons in actions in which the sum claimed exclusive of interest exceeds $25, on receiving an affidavit by or on behalf of the plaintiff, showing the same facts as are required to be shown by the affidavit specified in section 342 of this title.

§ 832. Undertaking on attachment; exceptions to sureties

Before issuing the writ, the magistrate shall require a written undertaking on the part of the plaintiff, with two or more sufficient sureties, in a sum not less than $50 nor more than $300, to the effect that if the defendant recovers judgment, the plaintiff will pay all costs that may be awarded to the defendant and all damages which he may sustain by reason of the attachment, not exceeding the sum specified in the undertaking.

At any time after the issuing of the attachment, but not later than five days after the notice of its levy, the defendant may except to the

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sufficiency of the sureties. If he fails to do so, he is deemed to have waived all objections to them. When excepted to they shall justify in the manner and within the time provided in section 343 of this title, otherwise the magistrate shall order the writ of attachment vacated.

§ 833. Direction and command of writ; more than one defendant; service outside subdivision

(a) The writ shall be directed to the constable and require him to attach and safely keep all the property of the defendant not exempt from execution, or so much thereof as may be sufficient to satisfy the plaintiff's demand against the defendant, the amount of which shall be stated in conformity with the complaint, unless the defendant, whose property has been or is about to be attached, gives him security by the undertaking of two sufficient sureties in an amount sufficient to satisfy the demand against the defendant besides costs; in which case to take such undertaking.

(b) If the action is against more than one defendant, any defendant whose property has been or is about to be attached may give the constable the undertaking, and the constable shall take the same, and the undertaking shall not subject the defendant to or be answerable for any demand against any other defendant, nor shall the constable thereby be prevented from attaching or be obliged to release from attachment, any property of any other defendant. The defendant, at the time of giving the undertaking to the constable, shall file with the constable a statement duly verified under oath, wherein he shall aver and declare that the other defendant or defendants in the action in which the undertaking was given has or have not any interest or claim of any nature whatsoever in or to the property. The statement shall further contain the character of the defendant's title and the manner in which he acquired title to the attached property.

§ 834. Application of other provisions

Sections 345–364 of this title apply to attachments issued in magistrates' courts. For this purpose, the reference in section 346 to the undertaking provided for by section 344 of this title shall be deemed to refer to the undertaking provided for by section 833 of this title.

Subchapter V—Trial

§ 861. Notice of trial or hearing

(a) When all parties served with process have appeared, or some of them have appeared and the remaining defendants have made default, the magistrate shall fix the day for the trial of the cause or hearing on a motion, and give notice thereof to the parties who have appeared.

(b) The notice shall be in writing, signed by the magistrate, and in substantially the following form:

In the Magistrate's Court, Subdivision of ———, Canal Zone.
——— plaintiff, *v.* ——— defendant

To ——— plaintiff, or ——— attorney for plaintiff, and to ——— defendant, or ——— attorney for defendant:

You and each of you will please take notice that the undersigned magistrate before whom the above-entitled cause is pending, has set for hearing the motion of ———, filed in said cause (or has set the said cause for trial, as the case may be), before me at ———, at ——— o'clock —m., on the —— day of ———, 19—.

Dated this ——— day of ———, 19—.

(Signed) ——— ———,
Magistrate.

(c) The notice shall be served upon all parties who have appeared in the manner provided by section 719 of this title. It shall be served at least 10 days before the trial or hearing if served by mail, and at least 5 days before the trial or hearing if personally served.

(d) The magistrate shall enter on his docket the date of trial or hearing. When the notice is served by mail the magistrate shall enter on his docket the date of mailing, and the entry shall be prima facie evidence of the fact of service.

§ 862. Time for commencement of trial

(a) Unless postponed, as provided in this subchapter, or unless transferred to another subdivision, the trial of the action shall commence at the expiration of one hour from the time specified in the notice provided for by section 861 of this title, and be continued, without adjournment for more than 24 hours at any one time, until all the issues therein are disposed of.

(b) The parties are entitled to one hour in which to appear after the time fixed in the notice mentioned in section 861 of this title, but are not bound to remain longer than that time unless both parties have appeared and the magistrate being present is engaged in the trial of another cause.

(c) If either party fails to appear at the time fixed for trial, the trial may proceed at the request of the adverse party.

§ 863. Postponement by court

The court may, of its own motion, postpone the trial:

(1) for not more than one day, if, at the time fixed by law or by an order of the court for the trial, the court is engaged in the trial of another action; or

(2) for not more than two days, if, by an amendment of the pleadings, or the allowance of time to make an amendment or to plead, a postponement is rendered necessary.

§ 864. Postponement by consent

By consent of the parties given in writing or in open court, the court may postpone the trial to a time agreed upon by the parties.

§ 865. Postponement on application of party

The trial may be postponed upon the application of either party, for a period not more than four months, under the following conditions:

(1) The party making the application shall prove, by his own oath or otherwise, that he cannot, for want of material testimony which he expects to procure, safely proceed to trial, and shall show in what respect the testimony expected is material, and that he has used due diligence to procure it and has been unable to do so.

(2) If the application is on the part of the plaintiff, and the defendant is under arrest, a postponement for more than three hours discharges the defendant from custody, but the action may proceed notwithstanding, and the defendant is subject to arrest on execution in the same manner as if he had not been discharged.

(3) If the application is on the part of a defendant under arrest, before it can be granted he shall execute an undertaking, with two or more sufficient sureties, to be approved by, and in a sum to be fixed by, the magistrate, to the effect that he will 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 the sureties will pay to the plaintiff the amount of any judgment which he may recover in the action, not exceeding the amount specified in the undertaking. When the undertaking is filed, the magistrate shall order the defendant to be discharged from custody.

(4) The party making the application shall, if required by the adverse party, consent that the testimony of any witness of the adverse party, who is in attendance, may be then taken by deposition before the magistrate, and that the testimony so taken may be read on the trial, with the same effect, and subject to the same objection, as if the witness was produced.

(5) The court may require the party making the application to state, upon affidavit, the evidence which he expects to obtain; and if the adverse party thereupon admits that such evidence would be given, and that it be considered as actually given on the trial, or offered and overruled as improper, the trial may not be postponed.

§ 866. Adjournment; undertaking

Unless by consent, an adjournment may not be granted for a period longer than 10 days, upon the application of either party, except upon condition that that party file an undertaking, in an amount fixed by the magistrate, with two sureties to be approved by the magistrate, to the effect that he will pay to the opposite party the amount of any judgment which may be recovered against the party applying, not exceeding the sum specified in the undertaking.

§ 867. Mode of trial of issues

Issues of law and issues of fact shall both be tried by the court.

§ 868. Evidence

Part 3 of this title, relating to evidence, applies to the magistrates' courts unless otherwise specifically provided therein.

Subchapter VI—Judgment

§ 891. Default judgment

(a) If the defendant fails to appear and to answer or move to dismiss the complaint within the time specified in the summons, then, upon proof of service of summons:

(1) if the action is based upon a contract, and is for the recovery of money or damages only, the court shall render judgment in favor of plaintiff for the sum specified in the summons; or

(2) in all other actions the court shall hear the evidence offered by the plaintiff, and render judgment in his favor for such sum not exceeding the amount stated in the summons, as appears by the evidence to be just.

(b) In the following cases the same proceedings shall be had and judgment rendered in like manner as if the defendant had failed to appear and answer or move to dismiss the complaint:

(1) if the complaint has been amended, and the defendant fails to answer it, as amended, within the time allowed by the court;

(2) if the motion to dismiss the complaint is denied, and the defendant fails to answer within the time allowed by the court, not to exceed five days; or

(3) if the motion to strike the answer is granted, and the defendant fails to amend the answer within the time allowed by the court.

§ 892. Judgment of dismissal without prejudice

(a) Judgment that the action be dismissed, without prejudice to a new action, may be entered with costs, in the following cases:

(1) when the plaintiff voluntarily dismisses the action before it is finally submitted; or fails to prosecute the action to judgment with reasonable diligence;

(2) when the plaintiff fails to appear at the time fixed for trial or hearing, or at the time to which the action has been postponed, or within one hour thereafter; or

(3) when, after a motion to dismiss the complaint has been granted, the plaintiff fails to amend it within the time allowed by the court.

(b) If a counterclaim has been pleaded or affirmative relief sought by the defendant in his answer, the action shall not be dismissed against the defendant's objection unless the counterclaim or request for affirmative relief can remain pending for independent adjudication by the court.

(c) If a provisional remedy has been allowed and the action is dismissed under this section, the undertaking shall thereupon be delivered by the magistrate to the defendant who may have his action thereon.

§ 893. Judgment of dismissal for failure to bring to trial

Judgment of dismissal shall be entered if the plaintiff fails to bring the action to trial within two years after the case is brought to an issue of law or fact, except where the parties have stipulated in writing that the time may be extended.

§ 894. Affirmative judgment for defendant on counterclaim

Affirmative judgment may be rendered for the defendant on his counterclaim if the defendant proves that he is entitled to more than the plaintiff has proven or if the plaintiff fails to prove that he is entitled to any judgment.

§ 895. Remission of amount exceeding jurisdiction

When the amount found due to either party exceeds the sum for which the magistrate is authorized to enter judgment, that party may remit the excess, and judgment may be rendered for the residue.

§ 896. Time for entry of judgment

Judgment shall be entered within 30 days after the submission of the case to the court.

§ 897. Form and entry of judgment; arrest; notice of judgment

The judgment of a magistrate shall be entered substantially in the form required by section 1703 of this title in an action to recover the possession of personal property. Where the defendant is subject to arrest and imprisonment thereon the fact shall be stated in the judgment. A judgment has no effect for any purpose until so entered.

Notice of the rendition of judgment shall be given to the parties to the action in writing signed by the magistrate. The notice shall be substantially in the form of the abstract of judgment required in section 898 of this title. The notice shall be served upon the parties in the manner provided by section 719 of this title within five days after rendition of the judgment.

§ 898. Abstract of judgment

The magistrate, on the demand of a party in whose favor judgment is rendered, shall give him an abstract of the judgment in substantially the following form (filling blanks according to the facts):

Canal Zone, Magistrate's Court, Subdivision of ———, ———, plaintiff, v. ———, defendant. Judgment entered for plaintiff (or defendant) for $———, on the ——— day of ———.

I certify that the foregoing is a correct abstract of a judgment rendered in said action in this court.

——— ———, Magistrate.

Date of abstract ———.

§ 899. Relief from judgment or order; clerical mistakes; harmless error

(a) On such terms as may be just, and on payment of costs, the court may relieve a party from a judgment by default taken against him by his mistake, inadvertence, surprise, or excusable neglect, but the application for relief shall be made within 10 days after notice of the entry of the judgment and upon an affidavit showing good cause therefor.

(b) Upon motion of the injured party and notice to the adverse party the magistrate may correct clerical mistakes in his judgment as entered, so as to conform to the judgment ordered. The magistrate may set aside a void judgment upon motion of either party to the action after notice to the adverse party, and thereupon the action shall be treated as if judgment had not been entered.

(c) Rule 61 of the Federal Rules of Civil Procedure, relating to harmless error, applies to the magistrates' courts.

§ 900. Confession of judgment or submission of controversy without action

(a) Judgments upon confession may be entered as provided by section 515 of this title in either magistrate's court specified in the confession.

(b) Section 516 of this title, relating to submission of a controversy without action, applies to the magistrates' courts.

§ 901. Offer of judgment before trial

If the defendant, at any time before the trial, offers in writing to allow judgment to be taken against him for a specified sum, the plaintiff may immediately have judgment therefor, with the costs then accrued. If the plaintiff does not accept the offer before the trial, and fails to recover in the action a sum in excess of the offer, he may not recover costs incurred after the offer, but costs shall be adjudged against him, and, if he recovers, be deducted from his recovery. The offer and failure to accept it may not be given in evidence nor affect the recovery, otherwise than as to costs.

§ 902. Other provisions governing judgments

Sections 511–514 and 631–636 of this title apply to judgments of the magistrates' courts.

Subchapter VII—Execution

§ 921. Time for issuance of execution

Execution for the enforcement of a judgment of a magistrate's court may be issued by the magistrate who entered the judgment, or his successor in office, on the application of the party entitled thereto, at any time within five years from the entry of judgment.

§ 922. Stay of execution

The court, or the magistrate thereof, may stay the execution of any judgment, including any judgment in a case of forcible entry or unlawful detainer, for a period not exceeding 10 days.

§ 923. Contents of execution

The execution shall be directed to the constable, and be subscribed by the magistrate and bear date the day of its delivery to the officer. It shall intelligibly refer to the judgment, by stating the names of the parties, and the name of the magistrate before whom, and of the subdivision where, and the time when it was rendered; the amount of judgment, if it is for money; and, if less than the whole is due, the true amount due thereon. It shall contain, in like cases, simi-

lar directions to the constable, as are required by the provisions of chapter 15 of this title, in an execution to the marshal.

§ 924. Renewal of execution

An execution may, at the request of the judgment creditor, be renewed before the expiration of the time fixed for its return, by the word "renewed" written thereon, with the date thereof, and subscribed by the magistrate. The renewal has the effect of an original issue, and may be repeated as often as necessary. If an execution is returned unsatisfied, another may be afterwards issued.

§ 925. Duty of constable; execution of writ

The constable to whom the execution is directed shall execute it in the same manner as the marshal is required by the provisions of chapter 15 of this title to proceed upon execution directed to him; and the constable, when the execution is directed to him, is vested for that purpose with the same powers as those of the marshal.

§ 926. Proceedings supplemental to execution

Sections 601–608 of this title, relating to proceedings supplemental to execution, apply to the magistrates' courts.

§ 927. Discharge of persons imprisoned on civil process

Sections 661–672 of this title, relating to the discharge of persons imprisoned on civil process, apply to the magistrates' courts.

Subchapter VIII—Appeals to District Court

§ 951. Time for appeal; notice of appeal

Any party dissatisfied with the judgment rendered in a civil action in a magistrate's court may appeal therefrom to the district court, at any time within 30 days after notice of the rendition of the judgment.

The appeal is taken by filing a notice of appeal with the magistrate, and serving a copy on the adverse party. The notice shall state whether the appeal is taken from the whole or a part of the judgment, and if from a part, what part, and whether the appeal is taken on questions of law or fact or both.

§ 952. Appeal on question of law

When a party appeals to the district court on a question of law alone, he shall, within 10 days after notice of the rendition of judgment, prepare a statement of the case and file it with the magistrate. The statement shall contain the grounds upon which the party intends to rely upon the appeal, and so much of the evidence as may be necessary to explain the grounds, and no more. Within 10 days after receiving notice that the statement is filed, the adverse party, if dissatisfied with it, may file amendments. The proposed statement and amendments shall be settled by the magistrate, and if an amendment is not filed the original statements stand as adopted. The statement thus adopted or as settled by the magistrate, with a copy of the docket of the magistrate, and all motions filed with him by the parties during the trial, and the notice of appeal, may be used on the hearing of the appeal before the district court.

§ 953. Appeal on questions of fact, or law and fact; trial de novo

When a party appeals to the district court on questions of fact, or on questions of both law and fact, a statement need not be made, but the action shall be tried de novo in the district court.

§ 954. Filing of papers on appeal; benefit of legal objections

(a) Upon receiving the notice of appeal, and on payment of the fees payable on appeal under sections 348 and 349 of Title 3 and not

included in the judgment, and filing an undertaking as required in section 955 of this title, and after settlement or adoption of the statement, if any, the magistrate shall, within five days, transmit to the clerk of the district court:

(1) if the appeal is on questions of law alone, a certified copy of his docket, the statement as admitted or as settled, the notice of appeal, and the undertaking filed; or

(2) if the appeal is on questions of fact, or both law and fact, a certified copy of his docket, the pleadings, all notices, motions, and all other papers filed in the cause, the notice of appeal, and the undertaking filed.

(b) The magistrate may be compelled by the district court, by an order entered upon motion, to transmit the papers, and may be fined for neglect or refusal to transmit them. A certified copy of the order may be served on the magistrate by the party or his attorney.

(c) In the district court, either party may have the benefit of all legal objections made in the magistrate's court.

§ 955. Undertaking on appeal

(a) An appeal from a magistrate's court is not effectual for any purpose, unless an undertaking is filed with two or more sureties in the sum of $25 for the payment of the costs on the appeal, or, if a stay of proceedings is claimed, in the sum of $25 plus a sum equal to the amount of the judgment, including costs, when the judgment is for the payment of money; or plus twice the value of the property including costs, when the judgment is for the recovery of specific personal property. The undertaking shall be conditioned, when the action is for the recovery of money, that the appellant will pay the amount of the judgment appealed from, and all costs, if the appeal is withdrawn or dismissed, or the amount of any judgment and all costs that may be recovered against him in the action in the district court.

(b) When the action is for the recovery of or to enforce or foreclose a lien on specific personal property, the undertaking shall be conditioned that the appellant will pay the judgment and costs appealed from, and obey the order of the court made therein, if the appeal is withdrawn or dismissed, or any judgment and costs that may be recovered against him in the action in the district court, and will obey any order made by the court therein.

(c) When the judgment appealed from directs the delivery of possession of real property, the execution of the same may not be stayed unless a written undertaking is executed on the part of the appellant, with two or more sureties, to the effect that, during the possession of the property by the appellant, he will not commit, or suffer to be committed any waste thereon, and that if the appeal is dismissed or withdrawn, or the judgment affirmed, or judgment is recovered against him in the action in the district court, he will pay the value of the use and occupation of the property from the time of the appeal until the delivery of possession thereof; or that he will pay any judgment and costs that may be recovered against him in the action in the district court, not exceeding a sum to be fixed by the magistrate of the court from which the appeal is taken and specified in the undertaking.

(d) A deposit with the magistrate of the sum of $50 plus the amount of the judgment, including all costs appealed from, or plus the value of the property, including all costs, in actions for the recovery of specific personal property, is equivalent to the filing of the undertaking, and in such cases the magistrate shall transmit the money to the clerk of the district court to be paid out by him on the order of the court.

§ 956. Filing of undertaking; exception to and justification of sureties

The undertaking on appeal shall be filed within five days after the filing of the notice of appeal, and notice of the filing of the undertaking shall be given to the respondent. The adverse party may except to the sufficiency of the sureties within five days after the filing of the undertaking, and unless they or other sureties justify before the magistrate within five days thereafter, upon notice to the adverse party, to the amounts stated in their affidavits, the appeal shall be regarded as if no such undertaking had been given.

§ 957. Stay of proceedings on filing undertaking

If an execution is issued, on the filing of the undertaking staying proceedings, the magistrate shall, by order, direct the officer to stay all proceedings on it. The officer shall, upon payment of his fees for services rendered on the execution, thereupon relinquish all property levied upon and deliver it to the judgment debtor, together with all moneys collected from sales or otherwise. If his fees are not paid, the officer may retain so much of the property or proceeds thereof as may be necessary to pay the fees.

§ 958. Powers of district court on appeal

(a) Upon an appeal heard upon a statement of the case, the district court may review all orders affecting the judgment appealed from, and may set aside, or confirm, or modify any or all of the proceedings, subsequent to and dependent upon the judgment, and may, if necessary or proper, order a new trial.

(b) When the action is tried de novo on appeal, the trial shall be conducted in all respects as other trials in the district court. The provisions of this title as to changing the place of trial, and all the provisions as to trials in the district court, are applicable to trials on appeal in the district court.

(c) For a failure to prosecute an appeal, or unnecessary delay in bringing it to a hearing, the district court, after notice, may order the appeal to be dismissed, with costs; and if it appears to the court that the appeal was made solely for delay, it may add to the costs such damages as may be just, not exceeding 25 percent of the judgment appealed from.

(d) Judgments rendered in the district court on appeal have the same force and effect and may be enforced in the same manner as judgments in actions commenced in the district court.

§ 959. Dismissal of appeal for failure to bring to trial

An action appealed from the magistrate's court to the district court may not be further prosecuted, and further proceedings may not be had therein, and all appealed actions shall be dismissed by the district court, on its own motion, or on the motion of any party interested therein whether named in the complaint as a party or not, where the appealing party fails to bring the appeal to trial within one year from the date of filing the appeal in the district court, unless the time is otherwise extended by a written stipulation by the parties to the action filed with the clerk of the district court.

§ 960. Dismissal of appeal; return of papers; jurisdiction of magistrate

Upon dismissal of the appeal the clerk of the district court shall return all the papers to the court from which the appeal was taken, and the magistrate shall have jurisdiction the same as if an appeal had not been taken.

PART 2—PARTICULAR PROCEEDINGS

CHAPTER 51—DECLARATORY JUDGMENTS

§ 1501. Declaratory judgments generally

Sections 2201 and 2202 of Title 28, United States Code, apply to declaratory judgments in the district court. The district court has jurisdiction of an action for a declaratory judgment regardless of the amount of the principal sum in controversy.

CHAPTER 53—FRAUDULENT CONVEYANCES

§ 1531. Action to set aside fraudulent conveyance; undertaking

Where an action is commenced to set aside a transfer or conveyance of property on the grounds that the transfer or conveyance was made to hinder, delay, or defraud a creditor or creditors, the transferee or grantee to whom it is alleged the property was so transferred or conveyed, or the successors or assigns of the transferee or grantee, may give an undertaking as provided in this chapter, and when the undertaking is given, the transferee or grantee to whom it is alleged the property was so transferred or conveyed, or the successors or assigns of the transferee or grantee, may sell, encumber, transfer, convey, mortgage, pledge, or otherwise dispose of the property, or any part thereof, which is alleged to have been so transferred or conveyed, so that the purchaser, encumbrancer, transferee, mortgagee, grantee, or pledgee of the property, will take, own, hold, and possess the property unaffected by the action or the judgment which may be rendered therein.

§ 1532. Conditions of undertaking

The undertaking, with two sureties, shall be executed by the transferee or grantee to whom it is alleged the property was transferred or conveyed to hinder, delay, or defraud creditors, or the successor or assign of the transferee or grantee, in double the estimated value of the property so alleged to have been transferred or conveyed; except that in no case need the undertaking be for a greater sum than double the amount of the debt or liability alleged to be due and owing to the plaintiff in the action commenced to set aside the transfer and conveyance. The estimated value of the property shall be stated in the undertaking. The undertaking shall be conditioned that, if it is adjudged in the action that the transfer or conveyance was made to hinder, delay or defraud a creditor or creditors, then that the transferee or grantee or the succcessor or assigns of the transferee or grantee giving the undertaking will pay to the plaintiff in the action a sum equal to the value, as estimated in the undertaking, of the prop-

erty alleged to have been transferred or conveyed to hinder, delay, or defraud creditors, or the sum adjudged to be due and owing by the transferor of the property to the plaintiff, whichever is the lesser sum.

§ 1533. Filing and serving undertaking

The undertaking shall be filed in the action and a copy thereof served upon the plaintiff or his attorney in the action.

§ 1534. Objections to sureties and estimated value

Within 10 days after service of the copy of the undertaking, the plaintiff may object to the undertaking on the ground of inability of the sureties, or either of them, to pay the sum for which they become bound in the undertaking, and upon the ground that the estimated value of the property therein is less than the market value of the property. The objection to the undertaking shall be made in writing, specifying the ground or grounds of objection, and if the objection is made to the undertaking that the estimated value therein is less than the market value of the property, the objection shall specify the plaintiff's estimate of the market value of the property. The written objection shall be served upon the transferee or grantee, or the successor or assigns of the transferee or grantee giving the undertaking.

§ 1535. Justification of sureties; determination of sufficiency

Exceptions to the sufficiency of the sureties and their justification may be had or taken in the same manner as upon an undertaking on attachment. If they, or others in their place, fail to justify at the time and place appointed, the undertaking shall not become effective. If objection is not taken as provided in this section and section 1534 of this title, the plaintiff is deemed to have waived objections to the sufficiency of the sureties.

§ 1536. Determination of estimated value of property

When objection is made to the undertaking upon the ground that the estimated value of the property, as stated in the undertaking, is less than the market value of the property, the transferee or grantee, or the successor or assign of the transferee or grantee giving the undertaking may accept the estimated value stated by the plaintiff in the objection, and a new undertaking may be at once filed with the plaintiff's estimate stated therein as the estimated value, and objection may not thereafter be made upon that ground. If the plaintiff's estimate of the market value is not accepted, the value of the property shall be determined as provided in section 566 of this title.

§ 1537. Justification of sureties

The sureties shall justify upon the undertaking as required by section 431 of Title 3.

§ 1538. Effectiveness of undertaking

The undertaking shall become effective for the purpose stated in section 1531 of this title, 10 days after service of a copy thereof on the plaintiff, unless objection to the undertaking is made as provided by section 1534 or 1536 of this title, and in case objection is so made to the undertaking filed and served, it shall become effective for that purpose when an order is made by the court approving the sureties, when the surety or sureties are objected to, or affirming the estimate of the value of property when objection is made thereto, or if any objection to the undertaking is sustained by the court when a new undertaking is filed and served as required by section 1535 or 1536, to which no objection is made, or if made is not sustained by the court.

§ 1539. Judgment against sureties

If judgment is rendered in the action that the alleged transfer or conveyance was made to hinder, delay, or defraud creditors, then judgment shall be rendered in the action without further proceeding in favor of the plaintiff and against the principal and sureties on the undertaking for the sum for which the undertaking was executed according to the conditions thereof.

CHAPTER 55—HABEAS CORPUS

§ 1571. Right to writ of habeas corpus

A person unlawfully imprisoned or restrained of his liberty, under any pretense whatever, may prosecute a writ of habeas corpus, to inquire into the cause of the imprisonment or restraint.

§ 1572. Application for writ

Application for the writ of habeas corpus shall be made by petition signed either by the person for whose relief it is intended or by another person in his behalf, and verified by the oath of the person making the application. The petition shall specify:

(1) that the person in whose behalf the writ is applied for is imprisoned or restrained of his liberty;

(2) the officer or person by whom he is so confined or restrained, naming all the parties if they are known or describing them if they are not known;

(3) the place where the person is so confined or restrained; and

(4) in what the alleged illegality consists, if the imprisonment is alleged to be illegal.

§ 1573. Grant of writ by district court

The writ of habeas corpus may be granted by the district court or the judge thereof, upon petition by or on behalf of a person restrained of his liberty. When a petition is presented the court or judge shall grant it without delay if it appears that it ought to issue.

§ 1574. Grant of writ by magistrate's court

During the absence of the district judge, the powers conferred upon him and the jurisdiction conferred upon the district court by this chapter may be exercised by a magistrate or a magistrate's court; but the magistrate herein referred to must be other than the one who committed the person to jail. In the event the magistrate or magistrate's court denies the writ, the proceedings may be begun and proceeded with de novo before the district court or judge upon his return.

§ 1575. Form of writ

The writ shall be directed to the person having custody of or restraining the person on whose behalf the application is made, and shall command him to have the body of that person before the court or judge before whom the writ is returnable at a time and place therein specified.

§ 1576. Service of writ

If the writ is directed to a ministerial officer of the court out of which it issues, it shall be delivered by the clerk to the officer without delay, as other writs are delivered for service. If it is directed to any other person, it shall be delivered to the officer of the court and be by him served upon the person by delivering it to him without delay. If the person to whom the writ is directed can not be found, or refuses admittance to the officer or person serving or delivering the writ, it may be served or delivered by leaving it at the residence of the person to whom it is directed, or by affixing it to a conspicuous place on the outside, either of his dwelling house or of the place where the person is confined or under restraint.

§ 1577. Defect of form; disobedience forbidden

A writ of habeas corpus may not be disobeyed for defect of form, if it sufficiently appears therefrom in whose custody or under whose restraint the party imprisoned or restrained is, the officer or person detaining him, and the court or judge before whom he is to be brought.

§ 1578. Proceedings upon disobedience to writ

If the person to whom the writ is directed refuses, after service, to obey it, the court or judge, upon affidavit, shall issue an attachment against him, directed to any officer, commanding him forthwith to apprehend that person and bring him immediately before the court or judge; and upon being so brought, he shall be committed to jail until he makes due return to the writ, or is otherwise legally discharged.

§ 1579. Damages for failure to obey writ

If the officer or person to whom the writ is directed refuses obedience to the command thereof, he shall forfeit and pay to the person aggrieved a sum not exceeding $1,000, to be recovered by action in any court of competent jurisdiction.

§ 1580. Contents of return

(a) The person upon whom the writ is served shall state in his return plainly and unequivocally:

(1) whether he has or has not the person in his custody, or under his power or restraint; and

(2) if he has the person in his custody or power, or under his restraint, he shall state the authority and cause of the imprisonment or restraint.

(b) If the person is detained by virtue of a writ, warrant or other written authority, a copy thereof shall be annexed to the return, and the original produced and exhibited to the court or judge on the hearing of the return.

(c) If the person upon whom the writ is served had the person in his power or custody, or under his restraint, at any time prior or subsequent to the date of the writ of habeas corpus, but has transferred the custody or restraint to another, the return shall state particularly to whom, at what time and place, for what cause, and by what authority, the transfer took place.

(d) The return shall be signed by the person making it, and, except when the person is a sworn public officer and makes the return in his official capacity, it shall be verified by his oath.

§ 1581. Production of body

The person to whom the writ is directed, if it is served, shall bring the body of the person in his custody or under his restraint, according to the command of the writ, except in the cases specified in section 1582 of this title.

§ 1582. Illness of person in custody

When, from sickness or infirmity of the person directed to be produced, he can not, without danger, be brought before the court or judge, the person in whose custody or power he is may state that fact in his return to the writ, verifying it by affidavit. If the court or judge is satisfied of the truth of the return, and the return to the writ is otherwise sufficient, the court or judge may proceed to decide on the return and to dispose of the matter as if the person had been produced on the writ, or the hearing thereof may be adjourned until he can be produced.

§ 1583. Hearing on return

Immediately after the return, the court or judge before whom the writ is returned shall proceed to hear and examine the return, and such other matters as may be properly submitted to the hearing and consideration of the court or judge.

§ 1584. Procedure for hearing

The person brought before the court or judge, on the return of the writ, may deny or controvert any of the material facts or matters set forth in the return, or except to the sufficiency thereof, or allege any fact to show either that his imprisonment or detention is unlawful or that he is entitled to his discharge.

The court or judge shall thereupon proceed in a summary way to hear such proof as may be produced against the imprisonment or detention, or in favor of it, and to dispose of the person as the justice of the case may require. The court or judge may require and compel the attendance of witnesses, by process of subpoena and attachment, and do and perform all other acts and things necessary to a full and fair hearing and determination of the case.

§ 1585. Custody pending judgment

Until judgment is given on the return, the court or judge before whom a person may be brought on the writ may commit him to the custody or restraint from which he was taken, or place him in such care or under such custody as his age or circumstances may require.

§ 1586. Discharge from custody or restraint

If legal cause is not shown for the imprisonment or restraint, or for the continuation thereof, the court or judge shall discharge the person from the custody or restraint under which he is held.

§ 1587. Remand of person detained by virtue of process

If the time during which the person may be legally detained in custody has not expired, the court or judge shall remand him if it appears that he is detained in custody:

(1) by virtue of lawful process issued by a court or judge in a case where the court or judge has jurisdiction; or

(2) by virtue of a warrant or final judgment or decree of a competent court of criminal jurisdiction, or of process issued upon such a warrant, judgment or decree.

§ 1588. Discharge of person detained by virtue of process

If it appears on the return of the writ that the prisoner is in custody by virtue of process from a court of the Canal Zone, or judge or officer thereof, the prisoner may be discharged in any of the following cases, notwithstanding the provisions of section 1587 of this title:

(1) when the jurisdiction of the court or officer has been exceeded;

(2) when the imprisonment was at first lawful, yet by some act, omission, or event which has taken place afterwards, the party has become entitled to a discharge;

(3) when the process is defective in a matter of substance required by law, rendering the process void;

(4) when the process, though proper in form, has been issued in a case not allowed by law;

(5) when the person having custody of the prisoner is not the person allowed by law to detain him;

(6) where the process is not authorized by an order, judgment or decree of a court, nor by a provision of law; or

(7) where a person has been committed on a criminal charge without reasonable or probable cause.

§ 1589. Defect of form in warrant of commitment

If a person is committed to prison, or is in custody of an officer on a criminal charge, by virtue of a warrant of commitment of a court, the person may not be discharged on the ground of a mere defect of form in the warrant of commitment.

§ 1590. Writ for person committed on criminal charge

A person who has been committed on a criminal charge may be brought before the district judge on a writ of habeas corpus.

§ 1591. Hearing and disposition where charge or process defective

If it appears to the court or judge by affidavit or otherwise or upon the inspection of the process or warrant of commitment and such other papers in the proceedings as may be shown to the court or judge, that the person is guilty of a criminal offense or ought not to be discharged, although the charge is defective or not substantially set forth in the process or warrant of commitment, the court or judge shall cause the complainant or other necessary witnesses to be subpoenaed to attend at such time as ordered, to testify before the court or judge; and upon the examination he may discharge the prisoner, admit him to bail if the offense is bailable, or recommit him to custody, as may be just and legal.

§ 1592. Remand to custody

If a person brought before the court or judge on the return of the writ is not entitled to his discharge, and is not bailed, where bail is allowable, the court or judge shall remand him to custody or place him under the restraint from which he was taken, if the person under whose custody or restraint he was is legally entitled thereto.

§ 1593. Recommitment to proper custody

If a person is held under illegal restraint or custody, or another person is entitled to the restraint or custody of the person, the judge or court may order the person to be committed to the restraint or custody of the person who is by law entitled thereto.

§ 1594. Imprisonment after discharge

A person who has been discharged by order of the court or judge upon habeas corpus may not be again imprisoned or restrained, or kept in custody, for the same cause, except in the following cases:

(1) if he has been discharged from custody on a criminal charge, and is afterwards committed for the same offense, by legal order or process; or

(2) if, after a discharge for defect of proof, or for defect of the process, warrant or commitment in a criminal case, the prisoner is again arrested on sufficient proof and committed by legal process for the preceding offense.

§ 1595. Warrant in lieu of writ of habeas corpus

(a) When it appears to the district court or judge that anyone is illegally held in custody, confinement or restraint, and that there is reason to believe that he will be carried out of the jurisdiction of the court or judge before whom the application is made, or will suffer an irreparable injury before compliance with the writ of habeas corpus can be enforced, the court or judge may cause a warrant to be issued, reciting the facts, and directed to any court officer, commanding the officer to take the person thus held in custody, confinement or restraint, and forthwith bring him before the court or judge, to be dealt with according to law.

(b) The court or judge may also insert in the warrant a command for the apprehension of the person charged with the illegal detention and restraint.

(c) The officer to whom the warrant is delivered shall execute it by bringing the person or persons therein named before the court or judge who directed the issuing of the warrant.

(d) The person alleged to have the person under illegal confinement or restraint may make return to the warrant as in case of a writ of habeas corpus, and it may be denied, and like allegations, proofs and trial may thereupon be had as upon a return to a writ of habeas corpus.

(e) If the person is held under illegal restraint or custody, he shall be discharged; and if not, he shall be restored to the care or custody of the person entitled thereto.

§ 1596. Time of issuance and service of writs and process

All writs and process authorized by this chapter may be issued and served on any day and at any time.

§ 1597. Issuance and return of writs and process

(a) All writs, warrants, process and subpoenas authorized by this chapter shall be issued by the clerk of the court, and, except subpoenas, be sealed with the seal of the court and served and returned forthwith, unless the court or judge specifies a particular time for the return.

(b) All such writs and process, when made returnable before a judge, shall be returned before him at the place of holding court, and there heard and determined.

§ 1598. Motion to vacate or correct sentence

Section 2255 of Title 28, United States Code, applies to prisoners in custody under sentences of the district court, but it does not apply to prisoners in custody under sentences of the magistrates' courts.

CHAPTER 57—HOSPITALIZATION OF MENTALLY ILL

§ 1631. Definitions

As used in this chapter:

"designated examiner" means a licensed physician registered by the Health Bureau as specially qualified, under standards established by it, in the diagnosis of mental or related illness;

"Health Bureau" means the Health Bureau of the Canal Zone Government, under the supervision of the health director;

"health director" means the director of the Health Bureau of the Canal Zone Government;

"hospital" means a Canal Zone Government hospital or institution, or part thereof, equipped to provide in-patient care and treatment for the mentally ill;

"interested party" means an interested responsible adult including but not limited to the legal guardian, spouse, parent, adult child, or next of kin of an allegedly mentally ill individual or patient;

"licensed physician" means an individual licensed under the laws of the Canal Zone to practice medicine and a medical officer of the Government of the United States while in the Canal Zone in the performance of his official duties;

"mentally ill individual" means an individual having a psychiatric or other disease which substantially impairs his mental health; and

"patient" means an individual under observation, care and treatment in a hospital pursuant to this chapter.

§ 1632. Authority to receive patients

The head of a hospital may receive therein for observation, diagnosis, care, and treatment any individual eligible for treatment at Canal Zone medical facilities whose admission is applied for by one of the following means:

(1) Any individual, including a minor with consent of parent or guardian, may be admitted upon application by the individual.

(2) Any individual may be admitted upon written application by an interested party, by the health director, or by the head of any

institution in which the individual may be, if the application is accompanied by a certificate of a licensed physician stating that on a basis of an examination held not more than 15 days prior to the individual's admission, the individual is in his opinion mentally ill, or has symptoms of mental illness, and because of his illness either:

(A) is likely to injure himself or others if allowed to remain at liberty, or

(B) is in need of care or treatment in a hospital.

§ 1633. Emergency hospitalization

(a) If the certificate by a licensed physician under section 1632(2) of this title states a belief that the individual (A) is likely to injure himself or others if allowed to remain at liberty, or (B) is in need of immediate hospitalization, any interested party or peace officer may, upon indorsement of the certificate for that purpose by the health director or by the judge of the district court or a magistrate in the Canal Zone, take the individual into custody, apply to a hospital for his admission, and transport him thereto.

(b) Any interested party or peace officer who has good and valid reason to believe that an individual is mentally ill, and because of his illness is likely to injure himself or others if not immediately restrained, pending examination or certification by a licensed physician or pending indorsement of the certification as provided in subsection (a) of this section, may take the individual into custody, apply to a hospital for his admission, and transport him thereto. The application for admission shall state the circumstances under which the individual was taken into custody and the reason for the applicant's belief concerning the individual's mental condition.

§ 1634. Newly-admitted patients

(a) The head of the hospital shall cause to be held a preliminary examination by a designated examiner, within a period not to exceed 48 hours after the close of the day of admission of every patient, to determine if there is a reasonable necessity existing for his continued hospitalization and immediate medical care.

(b) At the end of the 48-hour period, a patient so admitted pursuant to section 1632(2) or 1633 of this title shall, without need of application therefor, be discharged if a preliminary examination has not been held or if, upon examination, the designated examiner refuses or fails to certify to the head of the hospital that in his opinion the patient is mentally ill and either is likely to injure himself or others if allowed at liberty, or is in need of care or treatment in a hospital and because of his illness lacks sufficient insight or capacity to make a responsible decision concerning his hospitalization. In the case of such a discharge, notice thereof shall be given to the person who applied for the patient's admission and, if the indorsement procedures of section 1633 of this title were utilized, to the appropriate indorsing official or court.

(c) A patient admitted pursuant to section 1632(2) or 1633 of this title may remain for treatment on a voluntary basis under the same conditions prescribed for patients admitted pursuant to section 1632(1) of this title, with the provisions of section 1635 of this title applying with respect to discharge. If a patient admitted pursuant to section 1632(2) or 1633 of this title elects to remain for treatment on a voluntary basis, the head of the hospital shall certify that the patient has at the time sufficient insight or capacity to make responsible application for his own hospitalization. In these instances, notice shall be given of the patient's decision to remain on a voluntary basis to the health director and to the person who applied for the patient's admission and, where the indorsement procedures of section 1633 of this title were utilized, to the appropriate indorsing official or court.

§ 1635. Right to discharge on application; emergency detention

(a) An individual after 30 days following admission to a hospital pursuant to section 1632(1) of this title, or an individual admitted to a hospital pursuant to section 1632(2) or 1633 of this title, shall be forthwith discharged therefrom upon his request or upon the request in writing of an interested party or peace officer, and notice of discharge shall be given as prescribed in section 1649 of this title, except that:

(1) if admitted pursuant to section 1632(1) of this title, his discharge may be conditioned upon his agreement;

(2) if under 21 years of age and admitted pursuant to section 1632(1) of this title, his discharge prior to becoming 21 years of age may be conditioned upon the consent of his parent or guardian;

(3) if the head of the hospital, within 48 hours from the receipt of the request, files with a judge of the district court a certification that in his opinion the discharge of the patient would be unsafe to the patient or others, the discharge may be postponed for a period not to exceed 5 days for the commencement of commitment proceedings pursuant to section 1637 of this title; and if the judge of the district court finds that, because of existing circumstances, proceedings for judicial hospitalization cannot reasonably be instituted in such time, the discharge may be postponed for a period not to exceed 15 days.

(b) The head of the hospital shall provide reasonable means and arrangements for informing patients of their right to discharge, as provided by this section and other sections of this chapter, and for assisting them in making and presenting requests for discharge.

§ 1636. Petition for judicial determination

A patient hospitalized pursuant to section 1632, 1633, or 1637 of this title may have the need for his continued hospitalization determined or redetermined on his own petition or that of an interested party to the judge of the district court. Upon receipt of the petition, the court shall conduct proceedings in accordance with section 1637 of this title, except that the proceedings need not be conducted if the petition is filed sooner than:

(1) 6 months after the issuance of an order of hospitalization pursuant to section 1637 of this title; or

(2) 1 year after the filing of a previous petition under this section; or

(3) 30 days after the voluntary application and admission of a patient.

§ 1637. Hospitalization upon court order; judicial procedure; not adjudication of legal incompetency

(a) An interested party, a licensed physician, a peace officer, the head of an institution in which the individual may be hospitalized, or the health director may, by filing an application with a judge of the district court, commence proceedings for the hospitalization of an individual by judicial commitment.

(b) Upon receipt of an application, the judge of the district court shall give notice thereof to the proposed patient, to his legal guardian, if any, and to one or more of the other interested parties, if any.

(c) As soon as practicable after notice of the commencement of proceedings is given, the court shall appoint two designated examiners to examine the proposed patient and to report to the court their findings as to the mental condition of the patient and his need for care or treatment in a hospital. The court may consider the choice of the patient in appointing the examiners. If the designated examiners report that the

proposed patient refuses to submit to an examination, the court shall give notice to the proposed patient and order him to submit to the examination. The order may direct that the proposed patient be taken into custody and detained pending a hearing.

(d) The examination shall be held at a hospital or other medical facility, at the home of the proposed patient, or at another suitable place not likely to have a harmful effect on his health.

(e) If the report of the designated examiners states that the proposed patient is not mentally ill, the court shall, without taking any further action, terminate the proceedings and dismiss the application. Otherwise, the court shall forthwith fix a date for, and give notice of, a hearing to be held not more than 15 days from receipt of the report of the designated examiners.

(f) The proposed patient, the applicant, the legal guardian and other interested parties, as determined by the court, shall be given notice and afforded an opportunity to appear at the hearing to testify, and to present and cross-examine witnesses, and the court may, in its discretion, receive the testimony of any other person. The proposed patient need not be present, and the court may exclude all persons not necessary for the conduct of the proceedings. The hearings shall be conducted as informally as may be consistent with orderly procedure and in a physical setting not likely to have a harmful effect on the mental health of the proposed patient. The entire proceeding may be recorded stenographically or with the use of mechanical recording devices as the court may approve. The court shall, in any event, prepare and maintain a summary record of all relevant and material evidence which may be offered concerning the mental condition of the proposed patient and may relax the rules of evidence to the extent of receiving affidavits, certificates of licensed physicians and other writings of similar apparent authenticity and reliability. An opportunity to be represented by counsel shall be afforded to every proposed patient, and if neither he nor others provide counsel the court shall appoint counsel.

(g) If, upon completion of the hearing and consideration of the record, the court finds the patient is:

(1) mentally ill; and

(2) (A) because of his illness is likely to injure himself or others if allowed to remain at liberty; or (B) is in need of immediate care or treatment in a hospital, and because of his illness, lacks sufficient insight or capacity to make a responsible decision concerning his hospitalization,

the court shall order his hospitalization for an indeterminate period; otherwise, the court shall terminate the proceedings and dismiss the application. If the court orders the hospitalization of the proposed patient, a copy of the summary of proceedings shall accompany the patient to the hospital.

(h) The order of hospitalization shall be directed to the Health Bureau and it is the responsibility of the health director to assure the carrying out of the order.

(i) Notwithstanding any other provision of this chapter, commitment proceedings under this section may not be commenced with respect to a patient admitted pursuant to section 1632(1) of this title unless release of the patient has been requested pursuant to section 1635 of this title.

(j) An order for hospitalization pursuant to this section does not constitute a judicial determination of legal incompetency. Proceedings for a determination of legal competency of, and the appointment of a guardian for, a patient who has been ordered hospitalized may be instituted prior to, concurrently with, or following the completion of proceedings under this section.

§ 1638. Detention under special circumstances

(a) Pending his removal to a hospital, a patient taken into custody pursuant to section 1633 or 1637 of this title, or ordered to be hospitalized pursuant to section 1637 of this title, may be detained in a medical facility, his home, or any other suitable facility under such reasonable conditions as the health director may fix, but he may not, except because of and during an extreme emergency, be detained in a nonmedical facility used for the detention of individuals charged with or convicted of penal offenses. The health director shall take such reasonable measures, including provision for medical care, as may be necessary to assure proper care of an individual temporarily detained pursuant to this section.

(b) Notwithstanding any other provision of this chapter, a patient may not be released or discharged from custody during the pendency of proceedings for judicial hospitalization if, in the opinion of the head of the hospital, it would be unsafe to the patient or others, unless the court, upon the application of the patient or of an interested party, determines justifiable reason exists for release or discharge.

§ 1639. Habeas corpus

An individual detained pursuant to this chapter is entitled to the writ of habeas corpus upon proper petition by himself or an interested party to any court in the Canal Zone generally empowered to issue the writ of habeas corpus.

§ 1640. Transportation

When an individual is about to be hospitalized under the provisions of this chapter, the Health Bureau shall, upon the request of a person having a proper interest in the individual's hospitalization, arrange for the individual's transportation to the hospital with suitable medical or nursing attendants and by such means as may be suitable for his medical condition. When practicable, the individual to be hospitalized shall be permitted to be accompanied by one or more of his friends or relatives.

§ 1641. Notice of hospitalization or discharge

(a) When a patient has been admitted to a hospital pursuant to this chapter other than upon his own application, the head of the hospital shall notify immediately the patient's legal guardian, parent or parents, spouse, or next of kin, if known.

(b) The head of the hospital admitting an individual under any provision of this chapter, or discharging an individual so admitted, shall forthwith make a report thereof to the health director, and, if the patient was hospitalized under section 1637 of this title, to the district court.

§ 1642. Right to humane care and treatment

The Health Bureau shall be guided by the principles of humane care and treatment, and, to the extent that facilities, equipment and personnel are available, shall provide medical care or treatment in accordance with the highest standards of accepted medical practice.

§ 1643. Mechanical restraints

Mechanical restraints may not be applied to a patient unless determined by the head of the hospital to be required by the medical needs of the patient. Every use of a mechanical restraint and reasons therefor shall be made a part of the clinical record of the patient over the signature of the head of the hospital.

§ 1644. Right to communicate and receive visitors; exercise of civil rights

(a) Subject to the general rules and regulations of the hospital and, with respect to paragraphs (1) and (2) of this subsection, except to the extent that the head of the hospital determines that it is necessary for the medical welfare of the patient to impose restrictions, every patient may:

(1) communicate by sealed mail or otherwise with persons, including official agencies, inside or outside the hospital;

(2) receive visitors; and

(3) exercise all civil rights including, but not limited to, the right to dispose of property, execute instruments, make purchases, enter contractual relationships, and vote, unless he has been adjudicated incompetent and has not been restored to legal capacity.

(b) Notwithstanding any limitations authorized by this section on the right of communication, every patient may communicate by sealed mail with the health director, the Governor of the Canal Zone, and, if admitted pursuant to section 1637 of this title, with the judge of the district court who ordered his hospitalization.

(c) Any limitations imposed by the head of a hospital on the exercise of these rights by a patient and the reasons for the limitations shall be made a part of the clinical record of the patient.

§ 1645. Transfer of patients generally

The health director may transfer a patient from one hospital to another if the health director determines that it would be consistent with the medical needs of the patient to do so. When a patient is transferred, written notice thereof shall be given to any one of the following persons: the patient's legal guardian, parent or parents, spouse, or next of kin, or, if none is known, to any other interested party, and, if the patient was hospitalized pursuant to section 1637 of this title, to the judge of the district court.

§ 1646. Release on convalescent status

The head of a hospital may release a patient on convalescent status when he believes that that status is in the best interest of the patient. Convalescent status shall, as far as practicable, include provisions for continuing responsibility to and by the hospital, and for a plan of treatment on an outpatient basis or under the direction of a licensed physician. Periodically, at intervals consistent with good medical practice and with then-existing circumstances, the head of the hospital shall re-examine the facts relating to the condition of the patient on a convalescent status and, if he determines that hospitalization is no longer necessary, he shall discharge the patient.

§ 1647. Readmission

Prior to discharge, the head of the hospital from which a patient is given convalescent status may at any time readmit the patient. If there is reason to believe that it is in the best interests of the patient to be rehospitalized, the health director or the head of the hospital may issue an order for the immediate rehospitalization of the patient. Such an order, if not voluntarily complied with, shall, upon the indorsement by the judge of the district court or by a magistrate in the Canal Zone, authorize any peace officer to take the patient into custody and transport him to the hospital.

§ 1648. Disclosure of information; penalties

(a) All certificates, applications, records and reports, other than an order of the court, made for the purposes of this chapter, and directly or indirectly identifying a patient or former patient or an

individual whose hospitalization has been sought under this chapter together with clinical information relating to such patients, shall be kept confidential and shall not be disclosed by any person except insofar as:

(1) the individual identified, or his legal guardian, if any (or if he is a minor, his parent or legal guardian), consents; or

(2) disclosure may be necessary to carry out any of the provisions of this chapter; or

(3) a court may direct, upon its determination that disclosure is necessary for the conduct of proceedings before it and that failure to make disclosure would be contrary to the public interest.

(b) Nothing in this section precludes disclosure, upon proper inquiry, of information concerning current medical condition to the members of the immediate family of a patient.

(c) Whoever violates any provision of this section shall be fined not more than $500 or imprisoned in jail not more than one year, or both.

§ 1649. Discharge upon medical review

(a) The head of a hospital shall cause the condition of every patient to be reviewed as frequently as is consistent with good medical practice, and whenever the head of a hospital determines that the conditions justifying hospitalization no longer exist, the patient shall be discharged even if he was admitted on his own application and regardless of section 1635(a)(1) of this title, and the Health Bureau so notified.

(b) If the patient was admitted on other than his own application, notice of the discharge shall also be given to any one of the following persons: the patient's legal guardian, parent or parents, spouse, or next of kin, or, if none is known, to any other interested party, and, if the patient was hospitalized pursuant to section 1637 of this title, to the judge of the district court.

§ 1650. Discharge other than upon medical review

(a) A patient may be discharged by the head of a hospital without regard to the patient's condition in any case in which:

(1) the patient has been ordered excluded or deported from the Canal Zone;

(2) arrangments have been made, in the case of persons having a transient status in the Canal Zone, for the patient's departure from the Canal Zone; or

(3) arrangements have been made for the patient's transfer to another jurisdiction for treatment.

(b) Notice of discharge under this section shall be given as prescribed by section 1649 of this title.

§ 1651. Discharge of prisoners

Notwithstanding any other provision of this chapter, whenever a patient:

(1) is under the unexpired sentence of a court; or

(2) was committed to a hospital pursuant to section 4864 of Title 6 and the criminal proceedings against him are still pending; or

(3) was committed to a hospital pursuant to sections 4456 and 4457 of Title 6—

the head of the hospital shall only discharge the patient into the custody of the warden of the institution from which he was taken, or in the case of commitments pursuant to section 4864 of Title 6, to the warden of the jail.

§ 1652. Payment of charges

Payment of charges by or on behalf of patients hospitalized or transported pursuant to this chapter shall be in accordance with the rates prescribed by applicable law.

§ 1653. Receiving members of Armed Forces and Public Health Service beneficiaries

The head of a hospital may receive and detain as patients mentally ill members of the United States Army, Navy, Air Force, and Marine Corps, and beneficiaries of the United States Public Health Service, for observation and care pending their transfer to the United States, upon the order of the official in charge of the respective service in the Canal Zone.

§ 1654. Additional powers of health director

In addition to the specific authority granted by other provisions of this chapter, the health director may prescribe the form of application, records, reports, and medical certificates provided for under this chapter and the information required to be contained therein, and adopt such rules and regulations not inconsistent with the provisions of this chapter as he finds to be reasonably necessary for proper and efficient hospitalization of the mentally ill.

§ 1655. Powers of magistrates in absence of district judge

During the absence of the district judge, the powers conferred upon him and the jurisdiction conferred upon the district court by this chapter may be exercised by a magistrate or a magistrate's court.

§ 1656. Unwarranted commitments; penalties

Whoever causes, or attempts to cause, or conspires with another person to cause an individual to be committed under section 1637 of this title, knowing or having reasonable grounds for believing that the individual is not mentally ill, and in need of hospitalization, shall be fined not more than $10,000 or imprisoned in the penitentiary not more than 10 years, or both.

CHAPTER 59—PROPERTY ACTIONS

SUBCHAPTER I—PROPERTY ACTIONS GENERALLY; CONFLICTING CLAIMS

SUBCHAPTER II—MORTGAGE FORECLOSURE

SUBCHAPTER III—NUISANCE AND WASTE

SUBCHAPTER IV—FORCIBLE ENTRY AND DETAINER

Subchapter I—Property Actions Generally; Conflicting Claims

§ 1691. Action to quiet title to real and personal property

(a) An action may be brought by any person against another who claims an estate or interest in real or personal property adverse to him, for the purpose of determining the adverse claim.

(b) In an action to quiet title to, or to determine adverse claims to, real or personal property, when the validity or interpretation of a gift, devise, bequest, or trust, under any will or instrument purporting to be a will, whether admitted to probate or not, is involved, the will, or instrument purporting to be a will, is admissible in evidence; and all questions concerning the validity of any gift, devise, bequest, or trust therein contained, save such as belong exclusively to the probate jurisdiction, shall be determined in the action. If the will has been admitted to probate and interpreted by a decree of the district court, which decree has become final, the interpretation shall be conclusive as to the proper construction of the will, or any part thereof, so construed, in an action under this section.

§ 1692. Costs

If the defendant in an action under section 1691 of this title disclaims in his answer any interest or estate in the property, or suffers judgment to be taken against him without answer, the plaintiff cannot recover costs.

§ 1693. Recovery of property; termination of plaintiff's right pending action

In an action for the recovery of property, if the plaintiff shows a right to recover at the time the action was commenced, but it appears that his right has terminated during the pendency of the action, the verdict and judgment shall be according to the fact, and the plaintiff may recover damages for withholding the property.

§ 1694. Value of improvements as set-off

When damages are claimed for withholding the property recovered, upon which permanent improvements have been made by a defendant, or those under whom he claims, holding under color of title adversely to the claim of the plaintiff, in good faith, the value of the improvements shall be allowed as a setoff against the damages.

§ 1695. Mortgage not a conveyance

A mortgage of real property is not deemed a conveyance, whatever its terms, so as to enable the owner of the mortgage to recover possession of the real property without foreclosure and sale.

§ 1696. Injunction against injury during foreclosure or after execution sale

The court may, by injunction, on good cause shown, restrain the party in possession from doing any act to the injury of real property during the foreclosure of a mortgage thereon; or, after a sale on execution, before a conveyance.

§ 1697. Damages for injury after execution sale

When real property has been sold on execution, the purchaser thereof, or any person who may have succeeded to his interest, may, after his estate becomes absolute, recover damages for injury to the property by the tenant in possession after sale, and before possession is delivered under the conveyance.

§ 1698. Alienation of real property pending action

An action for the recovery of real property against a person in possession is not prejudiced by any alienation made by that person, either before or after the commencement of the action.

§ 1699. Joinder of defendants; writ of possession

In an action brought by a person out of possession of real property, to determine an adverse claim of an interest or estate therein, the person making the adverse claim and persons in possession may be joined as defendants, and if the judgment is for the plaintiff, he may have a writ for the possession of the premises, as against the defendants in the action, against whom the judgment has passed.

§ 1700. Tenants in common, etc., as parties

All persons holding as tenants in common, joint tenants, or copartners, or any number less than all, may jointly or severally commence or defend any civil action or proceeding for the enforcement or protection of the rights of such party.

§ 1701. Description of real property in pleadings

In an action for the recovery of real property, it must be described in the complaint with such certainty as to enable an officer, upon execution, to identify it.

§ 1702. Verdict in action to recover personal property

In an action for the recovery of specific personal property, if the property has not been delivered to the plaintiff, or the defendant by his answer claims a return thereof, the jury, if their verdict is in favor of the plaintiff, or if in favor of defendant and they also find that he is entitled to a return thereof, shall find the value of the property, and, if so instructed, the value of specific portions thereof, and may at the same time assess the damages, if any are claimed in the complaint or answer, which the prevailing party has sustained by reason of the taking or detention of the property.

§ 1703. Judgment in action to recover personal property

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 cannot be had, and damages for the detention. If the property has been delivered to the plaintiff, and the defendant claims a return thereof, judgment for the defendant may be for a return of the property or the value thereof, in case a return cannot be had, and damages for taking and withholding the property.

§ 1704. Application of chapter to magistrates' courts

Sections 1691–1701, 1703, 1731–1734, and 1762 of this title apply to the magistrates' courts insofar as they relate to actions within the jurisdiction of the magistrates' courts. Sections 1801–1819 of this title apply to the magistrates' courts as provided by section 1819 of this title.

Subchapter II—Mortgage Foreclosure

§ 1731. Foreclosure of mortgages on real and personal property

(a) There may be but one action for the recovery of a debt, or the enforcement of a right, secured by mortgage upon real or personal property, which action shall be in accordance with the provisions of this subchapter. In the action the court may, by its judgment, direct the sale of the encumbered property (or as much thereof as may be necessary), and the application of the proceeds of the sale to the payment of the costs of court, and the expenses of the sale, and the amount due plaintiff, including, where the mortgage provides for the payment of attorney's fees, such sum for the fees as the court finds reasonable, not exceeding the amount named in the mortgage.

(b) The court may, by its judgment, or at any time after judgment, appoint a commissioner to sell the encumbered property. It shall require of him an undertaking in an amount fixed by the court, with sufficient sureties, to be approved by the court, to the effect that the commissioner will faithfully perform the duties of his office according to law. Before entering upon the discharge of his duties he shall file the undertaking, so approved, together with his oath that he will faithfully perform the duties of his office.

(c) If it appears from the marshal's return, or from the commissioner's report, that the proceeds are insufficient, and a balance still remains due, the clerk shall enter judgment for the balance against the defendant or defendants personally liable for the debt.

(d) A person holding a conveyance from or under the mortgagor of the property mortgaged, or having a lien thereon, which conveyance or lien does not appear of record in the office of the registrar of property at the time of the commencement of the action, need not be made a party to the action, and the judgment therein rendered, and the proceedings therein had, are as conclusive against the party holding the unrecorded conveyance or lien as if he had been a party to the action.

(e) If the court appoints a commissioner for the sale of the property, the commissioner shall sell it in the manner provided by law for the sale of like property by the marshal upon execution; and sections 541–569 of this title apply to sales made by a commissioner, and the powers therein given and the duties therein imposed on the marshal are extended to the commissioner.

§ 1732. Disposition of surplus

If there is surplus money remaining, after payment of the amount due on the mortgage, lien, or encumbrance, with costs, the court may cause it to be paid to the person entitled to it, and in the meantime may direct it to be deposited in court.

§ 1733. Debt becoming due at different times

If the debt for which the mortgage, lien, or encumbrance is held is not all due, the sale shall cease as soon as sufficient of the property has been sold to pay the amount due, with costs; and afterwards, as often as more becomes due, for principal or interest, the court may, on motion, order more to be sold. If the property cannot be sold in portions, without injury to the parties, the whole may be ordered to be sold in the first instance, and the entire debt and costs paid, with a rebate of interest where a rebate is proper.

§ 1734. Commissioner's oath, bond, report, and compensation

Before entering upon his duties, the commissioner shall take an oath to perform them faithfully, and the court shall require of him an undertaking, with sufficient sureties, to be approved by the court, in an amount to be fixed by the court, to the effect that he will faithfully perform the duties of commissioner according to law.

Within 30 days after the sale, the commissioner shall file with the clerk of the court in which the action is pending, a verified report and account of the sale, together with the proper affidavits showing that the regular and required notice of the time and place of the sale was given, and the report and account shall have the same force and effect as the marshal's return in sales under execution.

In all cases of sale made by a commisisoner, the court in which the proceedings are pending shall fix a reasonable compensation for the commissioner's service, which shall not be less than $10.

Subchapter III—Nuisance and Waste

§ 1761. Abatement of nuisance; damages

An action may be brought in the district court by a person whose property is injuriously affected, or whose personal enjoyment is lessened by a nuisance, as defined in section 5031 of Title 4, and by the judgment in the action the nuisance may be enjoined or abated as well as damages recovered therefor.

A civil action may be brought in the district court by the United States attorney in the name of the Government of the Canal Zone to abate a public nuisance, as defined by section 5032 of Title 4.

§ 1762. Actions for waste; treble damages

If a guardian, tenant for life or years, joint tenant, or tenant in common of real property, commits waste thereon, a person aggrieved by the waste may bring an action against him therefor, in which action there may be judgment for treble damages.

Subchapter IV—Forcible Entry and Detainer

§ 1801. Forcible entry defined

Every person is guilty of a forcible entry who either:

(1) by breaking open doors, windows, or other parts of a house, or by any kind of violence or circumstance of terror enters upon or into any real property; or

(2) after entering peaceably upon real property, turns out by force, threats, or menacing conduct, the party in possession.

§ 1802. Forcible detainer defined

Every person is guilty of a forcible detainer who either:

(1) by force, or by menaces and threats of violence, unlawfully holds and keeps the possession of any real property, whether it was acquired peaceably or otherwise; or

(2) in the nighttime, or during the absence of the occupant of any lands, unlawfully enters upon real property, and who, after demand made for the surrender thereof, for the period of five days, refuses to surrender them to the former occupant.

The occupant of real property, within the meaning of this subchapter, is one who, within five days preceding the unlawful entry, was in the peaceable and undisturbed possession of the lands.

§ 1803. Unlawful detainer defined

A tenant of real property, for a term less than life, is guilty of unlawful detainer:

(1) When he continues in possession, in person or by subtenant, of the property, or any part thereof, after the expiration of the term for which it is let to him, without the permission of his landlord, or the successor in estate of his landlord, if any. In the case of a tenancy at will, however created, the tenancy is terminated by the landlord's giving notice in writing to the tenant, in the manner prescribed by section 1804 of this title, to remove from the premises within a period

of not less than 30 days to be specified in the notice, and a tenant continuing in possession after the expiration of the notice period is guilty of unlawful detainer.

(2) When he continues in possession, in person or by subtenant, without the permission of his landlord, or the successor in estate of his landlord, if any, after default in the payment of rent, pursuant to the lease or agreement under which the property is held, and three days' written notice, requiring its payment, stating the amount which is due, or possession of the property, has been served upon him and if there is a subtenant in actual occupation of the premises, also upon the subtenant. The notice may be served at any time within one year after the rent becomes due.

(3) When he continues in possession, in person or by subtenant, after a neglect or failure to perform other conditions or covenants of the lease or agreement under which the property is held, including any covenant not to assign or sublet, than the one for the payment of rent, and three days' written notice, requiring the performance of the conditions or covenants, or the possession of the property, has been served upon him, and if there is a subtenant in actual occupation of the premises, also, upon the subtenant. Within three days after the service of the notice, the tenant, or any subtenant in actual occupation of the premises, or any mortgagee of the term, or other person interested in its continuance, may perform the conditions or covenants of the lease or pay the stipulated rent, as the case may be, and thereby save the lease from forfeiture. If the conditions and covenants of the lease, violated by the lessee, cannot afterward be performed, then no notice, as last prescribed herein, need be given to the lessee or his subtenant, demanding the performance of the violated conditions or covenants of the lease.

A tenant may take proceedings, similar to those prescribed in this subchapter, to obtain possession of the premises let to a subtenant, in case of his unlawful detention of the premises underlet to him.

(4) A tenant or subtenant assigning or subletting or committing waste upon the demised premises, contrary to the conditions or covenants of his lease, thereby terminates the lease, and the landlord, or his successor in estate, upon service of three days' notice to quit upon the person or persons in possession, is entitled to restitution of possession of the demised premises under the provisions of this subchapter.

§ 1804. Service of notice:

The notices required by section 1803 of this title may be served, either:

(1) by delivering a copy to the tenant personally; or

(2) if he is absent from his place of residence, and from his usual place of business, by leaving a copy with some person of suitable age and discretion at either place, and sending a copy through the mail addressed to the tenant at his place of residence; or

(3) if the place of residence and business can not be ascertained, or a person of suitable age or discretion can not be found there, then by affixing a copy in a conspicuous place on the property, and also delivering a copy to a person there residing, if such a person can be found; and also sending a copy through the mail addressed to the tenant at the place where the property is situated.

Service upon a subtenant may be made in the same manner.

§ 1805. Parties defendant

(a) A person other than the tenant of the premises and subtenant, if there is one, in the actual occupation of the premises when the complaint is filed, need not be made a party defendant in the proceeding, and a proceeding shall not be dismissed for the nonjoinder of any person who might have been made a party defendant, but when it appears that any party served with process, or appearing in the proceeding, is guilty of the offense charged, judgment shall be rendered against him. If a defendant has become a subtenant of the premises in controversy after the service of the notice provided for by paragraph (2) of section 1803 of this title upon the tenant of the premises, the fact that the notice was not served on each subtenant does not constitute a defense to the action.

(b) If a married woman is a tenant or subtenant, her coverture does not constitute a defense; but if her husband is not joined, or unless she is doing business as a sole trader, an execution issued upon a personal judgment against her may only be enforced against property on the premises at the commencement of the action.

(c) All persons who enter the premises under the tenant, after the commencement of the suit, are bound by the judgment, as if they had been made parties to the action.

§ 1806. Parties generally

Except as provided in section 1805 of this title, the provisions of section 721 of this title, relating to parties to civil actions in the magistrates' courts, apply to proceedings under this subchapter.

§ 1807. Complaint; issuance of summons

The plaintiff in his complaint, which shall be verified, shall set forth the facts on which he seeks to recover, and describe the premises with reasonable certainty, and may set forth therein any circumstances of fraud, force, or violence, which may have accompanied the alleged forcible entry or forcible or unlawful detainer, and claim damages therefor. If the unlawful detainer charged is after default in the payment of rent, the complaint shall state the amount of the rent.

Upon the filing of the complaint, a summons shall be issued thereon.

§ 1808. Form and service of summons

The summons shall require the defendant to appear and answer within three days after the service of the summons upon him, and shall notify him that if he fails to so appear and answer, the plaintiff will apply to the court for the relief demanded in the complaint. In all other respects the summons, or any alias summons in the proceedings, shall be issued and served and returned in the same manner as summons in a civil action.

§ 1809. Arrest of defendant

If the complaint presented establishes, to the satisfaction of the magistrate, fraud, force, or violence, in the entry or detainer, and that the possession held is unlawful, he may make an order for the arrest of the defendant.

§ 1810. Default judgment

If, at the time appointed, the defendant does not appear and defend, the court shall enter his default and render judgment in favor of the plaintiff as prayed for in the complaint.

§ 1811. Appearance and answer of defendant

On or before the day fixed for his appearance, the defendant may appear and answer or move to dismiss the complaint.

§ 1812. Trial; showing required

(a) On the trial of a proceeding for a forcible entry or forcible detainer, the plaintiff shall be required to show, in addition to the forcible entry or forcible detainer complained of, only that he was peaceably in the actual possession at the time of the forcible entry, or was entitled to the possession at the time of the forcible detainer.

(b) The defendant may show in his defense that he or his ancestors, or those whose interest in the premises he claims, have been in the quiet possession thereof for the space of one whole year together next before the commencement of the proceedings, and that his interest therein is not then ended or determined; and such a showing is a bar to the proceedings.

§ 1813. Amendment to conform to evidence; continuance

When, upon the trial of a proceeding under this subchapter, it appears from the evidence that the defendant has been guilty of either a forcible entry or a forcible or unlawful detainer, and other than the offense charged in the complaint, the magistrate shall order that the complaint be forthwith amended to conform to the proofs; and the amendment shall be made without any imposition of terms. A continuance may not be permitted upon account of the amendment unless the defendant, by affidavit filed, shows to the satisfaction of the court good cause therefor.

§ 1814. Judgment

If upon the trial the finding of the court is in favor of the plaintiff and against the defendant, judgment shall be entered for the restitution of the premises; and if the proceedings are for an unlawful detainer after neglect or failure to perform the conditions or covenants of the lease or agreement under which the property is held, or after default in the payment of rent, the judgment shall also declare the forfeiture of the lease or agreement.

(b) The court shall also assess the damages occasioned to the plaintiff by any forcible entry, or by any forcible or unlawful detainer, alleged in the complaint and proved on the trial, and find the amount of any rent due, if the alleged unlawful detainer is after default in the payment of rent. Judgment against the defendant guilty of the forcible entry, or forcible or unlawful detainer, may be entered in the discretion of the court either for the amount of the damages and rent found due, or for three times the amount so found.

(c) When the proceeding is for an unlawful detainer after default in the payment of rent, and the lease or agreement under which the rent is payable has not by its terms expired, execution upon the judgment may not be issued until the expiration of five days after the entry of the judgment, within which time the tenant, or a subtenant, or a mortgagee of the term, or another party interested in its continuance, may pay into court, for the landlord, the amount found due as rent, with interest thereon, and the amount of the damages found by the court for the unlawful detainer, and the costs of the proceedings, and thereupon the judgment shall be satisfied and the tenant be restored to his estate.

(d) If payment as provided in this section is not made within five days, the judgment may be enforced for its full amount, and for the possession of the premises. In all other cases the judgment may be enforced immediately.

§ 1815. Relief against forfeiture of lease

The court may relieve a tenant against a forfeiture of a lease, and restore him to his former estate, in case of hardship, where application for such relief is made within 30 days after the forfeiture is declared by the judgment of the court, as provided in section 1814 of this

title. The application may be made by a tenant or subtenant, or a mortgagee of the term, or any person interested in the continuance of the term. It shall be made upon petition, setting forth the facts upon which the relief is sought, and be verified by the applicant. Notice of the application, with a copy of the petition, shall be served on the plaintiff in the judgment, who may appear and contest the application. The application may not be granted except on condition that full payment of rent due, or full performance of conditions or covenants stipulated, as far as the same is practicable, be made.

§ 1816. Appeals

The provisions of Sections 951–960 of this title, relating to appeals, except insofar as they are inconsistent with the provisions of this subchapter, apply to the proceedings specified by this subchapter.

§ 1817. Stay pending appeal

An appeal taken by the defendant does not stay proceedings upon the judgment unless the magistrate before whom the same was rendered so directs.

§ 1818. Rules of practice

Except as otherwise provided by this subchapter, the provisions governing civil actions in the magistrates' courts are applicable to, and constitute the rules of practice in, the proceedings mentioned in this subchapter.

§ 1819. Jurisdiction of magistrates' courts

Jurisdiction of proceedings under this subchapter is in the magistrates' courts, as provided by section 171 of Title 3.

CHAPTER 61—WRITS

Subchapter I—Extraordinary Writs Generally

§ 1851. Application of other provisions

Except as otherwise provided by this chapter, the provisions governing civil actions in the district court apply to and constitute the rules of practice in the proceedings mentioned in this chapter.

§ 1852. Issuance, return, and hearing

Writs of review and prohibition issued by the district court, may, in the discretion of the court, be made returnable, and a hearing thereon be had, at any time.

Subchapter II—Writ of Review

§ 1871. Writ of review defined

The writ of certiorari may be denominated the writ of review.

§ 1872. Grant by district court; grounds

A writ of review may be granted by the district court when an inferior tribunal, board, or officer, exercising judicial functions, has exceeded the jurisdiction of the tribunal, board, or officer, and there is no appeal, nor, in the judgment of the court, any plain, speedy, and adequate remedy.

§ 1873. Application; notice

The application shall be made on the verified petition of the party beneficially interested. The court may require a notice of the application to be given to the adverse party, or may grant the writ without notice.

§ 1874. Direction of writ

The writ may be directed to the inferior tribunal, board, or officer, or to any other person having the custody of the record or proceedings to be certified.

§ 1875. Contents of writ

The writ of review shall command the party to whom it is directed to certify fully to the district court, at a specified time and place, a transcript of the record and proceedings (describing or referring to them with sufficient certainty), that they may be reviewed by the court; and requiring the party, in the meantime, to desist from further proceedings in the matter to be reviewed.

§ 1876. Stay of proceedings

If a stay of proceedings is not intended, the words requiring the stay shall be omitted from the writ. These words may be inserted or omitted, in the discretion of the court, but if they are omitted, the power of the inferior court or officer is not suspended or the proceedings stayed.

§ 1877. Service of writ

The writ shall be served in the same manner as a summons in a civil action, except when otherwise expressly directed by the court.

§ 1878. Scope of review

The review upon this writ may not be extended further than to determine whether the inferior tribunal, board, or officer has regularly pursued the authority of the tribunal, board, or officer.

§ 1879. Return; hearing; judgment

If the return of the writ is defective, the court may order a further return to be made.

When a full return has been made, the court shall hear the parties, or such of them as may attend for that purpose, and may thereupon give judgment, either affirming or annulling, or modifying the proceedings below.

§ 1880. Transmittal of copy of judgment

A copy of the 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.

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Subchapter III—Remedies Formerly Available by Writ of Mandate

§ 1901. Order to compel performance of duty or admission to office

(a) In an appropriate action, or upon an appropriate motion in an action, under the practice prescribed in the Federal Rules of Civil Procedure and in this title, the district court may issue a mandatory order to any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station; or to compel the admission of a party to the use and enjoyment of a right or office to which he is entitled, and from which he is unlawfully precluded by the inferior tribunal, corporation, board, or person.

(b) The order shall be issued in all cases where there is not a plain, speedy, and adequate remedy, in the ordinary course of law.

§ 1902. Penalty for disobedience of order

When an order has been issued under section 1901 of this title and directed to any inferior tribunal, corporation, board, or person, if it appears to the court that a member of the tribunal, corporation, or board, or the person upon whom the writ has been personally served, has, without just excuse, refused or neglected to obey the order, the court may, upon motion, impose a fine of not more than $1,000. 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 order.

Subchapter IV—Writ of Prohibition

§ 1921. Writ of prohibition defined

The writ of prohibition arrests the proceedings of any tribunal, corporation, board, or person exercising judicial functions, when the proceedings are without or in excess of the jurisdiction of the tribunal, corporation, board, or person.

§ 1922. Issuance by district court; petition

A writ of prohibition may be issued by the district court to an inferior tribunal or to a corporation, board, or person, in all cases where there is not a plain, speedy, and adequate remedy in the ordinary course of law. It is issued upon the verified petition of the person beneficially interested.

§ 1923. Alternative or peremptory writ

The writ of prohibition is either alternative or peremptory. The alternative writ shall command the party to whom it is directed to desist or refrain from further proceedings in the action or matter specified therein, until the further order of the district court, and to show cause before the court, at a specified time and place, why the party should not be absolutely restrained from any further proceedings in the action or matter. The peremptory writ shall be in a similar form, except that the words requiring the party to show cause why he should not be absolutely restrained, and so forth, shall be omitted, and a return day inserted.

§ 1924. Procedure generally; penalties

(a) The provisions governing procedure in civil actions in the district court apply to proceedings on a writ of prohibition.

(b) Section 1902 of this title applies to the disobedience of a writ of prohibition.

PART 3—EVIDENCE

CHAPTER 101—GENERAL PROVISIONS

§ 2501. Application of provisions

(a) Except as otherwise provided, this Part applies to the district court and to the magistrates' courts.

(b) Except as otherwise provided, and subject to the provisions of Title 6, this Part applies to civil actions and to criminal actions.

(c) As used in this Part, "civil action" includes special proceedings of a civil nature.

§ 2502. Persons authorized to administer oaths

Every court, every judge, or clerk of any court, every magistrate, and every notary public, and every officer or person authorized to take testimony in any action or proceeding, or to decide upon evidence, may administer oaths or affirmations.

§ 2503. Form of oath

An oath, or affirmation, in an action or proceeding, may be administered as follows, the person who swears, or affirms, expressing his assent when addressed in the following form: "You do solemnly swear (or affirm, as the case may be), that the evidence you shall give in this issue (or matter), pending between ——— and ———, shall be the truth, the whole truth, and nothing but the truth, so help you God."

§ 2504. Variation according to belief of witness

(a) Whenever the court before which a person is offered as a witness is satisfied that he has a peculiar mode of swearing, connected with or in addition to the usual form of administration, which, in his opinion, is more solemn or obligatory, the court may adopt that mode.

(b) When a person is sworn who believes in any other than the Christian religion, he may be sworn according to the peculiar ceremonies of his religion, if any.

§ 2505. Form of affirmation or declaration

Any person who desires it may, at his option, instead of taking an oath, make his solemn affirmation or declaration, by assenting, when addressed, in the following form: "You do solemnly affirm (or declare) that" and so forth, as provided by section 2503 of this title.

CHAPTER 103—SUBPOENAS; RIGHTS AND DUTIES OF WITNESSES

Sec.

§ 2551. Subpoenas generally

A subpoena in a civil action issued by the district court or by a magistrate's court is governed by Rule 45 of the Federal Rules of Civil Procedure, except that a subpoena issued by either court for a trial or hearing or for the taking of a deposition may be served, and attendance of the witness may be required, anywhere within the Canal Zone.

§ 2552. Duty of witness to attend

A witness served with a subpoena shall attend at the time appointed, with any papers under his control lawfully required by the subpoena, and answer all pertinent and legal questions; and, unless sooner discharged, shall remain until the testimony is closed.

§ 2553. Period of attendance

A witness has a right to be detained only as long as the interests of justice require it.

§ 2554. Forfeiture for disobedience

Except in a criminal action, and in addition to any other penalty, a witness disobeying a subpoena shall forfeit to the party aggrieved the sum of $100, and all damages which he may sustain by the failure of the witness to attend, which forfeiture and damages may be recovered in a civil action.

§ 2555. Warrant for arrest of witness

In case of failure of a witness to attend, the court issuing the subpoena, upon proof of the service thereof, and of the failure of the witness to attend, may issue a warrant to the marshal or constable to arrest the witness and bring him before the court, officer, or board where his attendance was required.

§ 2556. Warrant of commitment

A warrant of commitment, issued by a court pursuant to this chapter, shall specify therein, particularly, the cause of the commitment, and if it is for refusing to answer a question, the question shall be stated in the warrant.

§ 2557. Immunity of witness from civil arrest

(a) A person who has been, in good faith, served with a subpoena to attend as a witness in a case where the disobedience of the witness may be punished as a contempt, is exonerated from arrest in a civil action while going to the place of attendance, necessarily remaining there, and returning therefrom.

(b) The arrest of a witness contrary to subsection (a) of this section is void, and, when willfully made, is a contempt of the court. The person making the arrest is responsible to the witness arrested for double the amount of the damages which may be assessed against him,

and is also liable to an action by the party serving the witness with the subpoena, for the damages sustained by him in consequence of the arrest.

(c) An officer is not liable for making the arrest in ignorance of the facts creating the exoneration, but is liable for any subsequent detention of the witness, if the witness party claims the exemption, and makes an affidavit stating that:

(1) he has been served with a subpoena to attend as a witness before a court, officer, or other person, specifying the same, the place of attendance, and the action or proceeding in which the subpoena was issued;

(2) he has not thus been served by his own procurement, with the intention of avoiding an arrest; and

(3) he is at the time going to the place of attendance, or returning therefrom, or remaining there in obedience to the subpoena.

The affidavit may be taken by the officer, and exonerates him from liability for discharging the witness when arrested.

(d) The court or officer before whom the attendance is required may discharge the witness from an arrest made in violation of subsection (a) of this section.

§ 2558. Persons present

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

§ 2559. Prisoner as witness

(a) Except in a criminal action, if the witness is confined in a jail or prison within the Canal Zone, an order may be made by the district court for his examination in the prison upon deposition, or for his temporary removal and production before the district court, a magistrate's court, or an officer.

(b) The order may be made only on the motion of a party, upon affidavit showing the nature of the action or proceeding, the testimony expected from the witness, and its materiality.

§ 2560. Concealed witness

If a witness is concealed in a building or vessel, so as to prevent the service of a subpoena upon him, the district court or magistrate's court issuing the subpoena may, upon proof by affidavit of the concealment, and of the materiality of the witness, make an order that the marshal or constable serve the subpoena; and the marshal or constable shall serve it accordingly, and for that purpose may break into the building or vessel where the witness is concealed.

§ 2561. Interpreters

(a) If a witness does not understand and speak the English language, an interpreter shall be sworn to interpret for him.

(b) Any person, a resident of the proper division or subdivision, may be summoned by a court or judge to appear before the court or judge to act as interpreter in any action or proceeding. The summons shall be served and returned in like manner as a subpoena. A person so summoned who fails to attend at the time and place named in the summons is guilty of a contempt.

§ 2562. Witness fees

(a) Witnesses in the district court, either in actions or special proceedings, are entitled to $4 per day and 10 cents for each mile going to the place of trial from their homes by the nearest route of usual travel. Mileage may be charged but once in the action unless the

witness is compelled to attend more than one term of court, and an allowance may not be made for mileage except that traveled within the Canal Zone.

(b) Witnesses in magistrates' courts are entitled to $2 per day and the travel fees provided by subsection (a) of this section.

(c) Fees to which a 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 and the amount of mileage to which he is entitled, to be taken and preserved by the clerk of the court, magistrate, or other officer before whom the witness was called to testify, and a certificate of the allowance shall be given to the witness. 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.

(d) A witness is not entitled to 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 is not entitled to compensation as a witness.

CHAPTER 105—PRODUCTION OF EVIDENCE

SUBCHAPTER I—GENERAL PROVISIONS

SUBCHAPTER II—AFFIDAVITS

SUBCHAPTER III—DEPOSITIONS AND DISCOVERY

Subchapter I—General Provisions

§ 2591. Mode of taking testimony

The testimony of witnesses may be taken in three modes:

(1) by affidavit;
(2) by deposition; and
(3) by oral examination.

§ 2592. Oral examination defined

An oral examination is an examination in presence of the jury or tribunal which is to decide the fact or act upon it, the testimony being heard by the jury or tribunal from the lips of the witness.

Subchapter II—Affidavits

§ 2611. Affidavit defined

An affidavit is a written declaration under oath, made without notice to the adverse party.

§ 2612. Use of affidavits

An affidavit may be used to verify a pleading or a 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,

the examination of a witness, or a stay of proceedings, or upon a motion, and in any other case expressly permitted by another provision of this Code.

§ 2613. Proof of publication

(a) 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.

(b) If the affidavit is made in an action or special proceeding pending in a court, it may be filed with the court or the clerk thereof. The original affidavit, or a copy thereof, certified by the judge of the court or clerk having it in custody, is prima facie evidence of the facts stated therein.

§ 2614. Persons before whom affidavits taken

(a) An affidavit to be used before a court, judge, or officer of the Canal Zone may be taken before any officer authorized to administer oaths.

(b) An affidavit taken in a State of the United States, to be used in the Canal Zone, may be taken before a commissioner appointed by the Governor of the Canal Zone to take affidavits in the State, or before any notary public in a State, or before any judge or clerk of a court of record having a seal.

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

(d) When an affidavit is taken before a judge of a court in a State, or in a foreign country, the genuineness of the signature of the judge, the existence of the court, and the fact that the judge is a member thereof, shall be certified by the clerk of the court, under the seal thereof.

(e) An affidavit may be taken before an officer of the armed forces as provided by section 725 of Title 4.

Subchapter III—Depositions and Discovery

§ 2641. Depositions and discovery generally

(a) Except as provided in this section, Rules 26–37 of the Federal Rules of Civil Procedure apply both to the district court and to the magistrates' courts in civil actions.

(b) For the purpose of taking depositions in the Canal Zone for use outside the Canal Zone, proceedings in aid thereof shall be had in the district court.

(c) In an action in a magistrate's court, a deposition may be taken outside the Canal Zone only upon an order of the magistrate's court, upon notice to the parties, granting leave to take the deposition. In proceedings under this subsection, references in Rules 26–37 and 45 of the Federal Rules of Civil Procedure to a notice to take a deposition shall be deemed to refer to an order of a magistrate's court granting leave to take a deposition.

An order of a magistrate's court under this subsection, or a commission or letters rogatory issued by a magistrate's court under Rule 28(b) of the Federal Rules of Civil Procedure, shall have attached thereto a certificate of the clerk of the district court, under the seal of the district court, to the effect that the person issuing the order, commission, or letters rogatory was an acting magistrate at the date of the order.

(d) Proceedings before action, pursuant to Rule 27(a) of the Federal Rules of Civil Procedure, to perpetuate testimony regarding a matter which may be cognizable in either the district court or a magistrate's court may be brought only in the district court. A deposition so taken may be used as provided in Rule 27(a)(4) in an action subsequently brought in either the district court or a magistrate's court.

§ 2642. Depositions for use outside Canal Zone; Uniform Foreign Depositions Act

(a) Whenever any mandate, writ, or commission is issued out of any court of record in any State of the United States or foreign jurisdiction, or whenever upon notice or agreement it is required to take the testimony of a witness or witnesses in the Canal Zone, witnesses may be compelled to appear and testify in the same manner and by the same process and proceeding as may be employed for the purpose of taking testimony in proceedings pending in the district court in the Canal Zone.

(b) This section shall be so interpreted and construed as to effectuate its general purposes to make uniform the law of those States which enact it.

(c) This section may be cited as the Uniform Foreign Depositions Act.

§ 2643. Depositions in foreign countries

Sections 1781 and 1785 of Title 28, United States Code, apply to commissions and letters rogatory issued by the district court and the magistrates' courts.

§ 2644. Subpoena of witness in foreign country; contempt

Sections 1783 and 1784 of Title 28, United States Code, apply to civil and criminal actions in the district court but not in the magistrates' courts.

CHAPTER 107—PRESENTATION OF EVIDENCE

Sec.

§ 2681. Control of judge over presentation of evidence

In civil actions, and in criminal actions except as otherwise provided by Title 6 of this Code or an applicable provision of Title 18 of the United States Code, the judge controls the conduct of the trial to the end that the evidence shall be presented honestly, expeditiously and in such form as to be readily understood, and in his discretion determines, among other things:

(1) in what order evidence shall be offered and witnesses shall be called and examined;

(2) how many counsel for a party may examine or cross-examine a witness;

(3) how many witnesses a party may reasonably call to testify to a material matter;

(4) whether to call witnesses of his own motion, and whether and to what extent to interrogate a witness by whomever called;

(5) whether to exclude, of his own motion, evidence which would violate a privilege of a person who is neither a party nor the witness from whom the evidence is sought if the privilege has not been waived or otherwise terminated, or which would be excluded on appropriate objection by an adverse party;

(6) what reasonable restraints shall be imposed upon the examiner of a witness in order that the witness be not misled, intimidated, harassed or unduly disconcerted;

(7) to what extent and in what circumstances a party calling a witness shall be permitted, and a party not calling him shall be forbidden, to put to the witness questions suggesting the desired answers;

(8) to what extent and in what circumstances a party cross-examining a witness may be forbidden to examine him concerning material matter not inquired about on a previous examination by the judge or by an adverse party;

(9) whether or upon what condition a party may put questions or use any writing, object or other means for the purpose of reviving the memory of a witness;

(10) whether a witness in communicating admissible evidence may use as a substitute for oral testimony or in addition to it a writing, model, device or any other understandable means of communication, and whether a means so used may be admitted in evidence;

(11) whether counsel may use a writing, model or other device as a means of conveying a reasonably accurate understanding of his interpretation of admitted evidence;

(12) whether or upon what condition an adverse party shall upon demand made at the trial submit for inspection to the demanding party a writing or object found by the judge to be in the control of the adverse party and readily accessible and to constitute or contain evidence admissible against the adverse party; and

(13) whether or not an exhibit which has been received in evidence shall be available to the jury after its retirement to deliberate upon the verdict.

§ 2682. Presence of parties

Upon a trial, a witness may be heard only in the presence and subject to the examination of all the parties, if they choose to attend and examine.

§ 2683. Exclusion of witnesses

(a) In his discretion, on his own motion or on the request of a party, the judge may exclude from the courtroom any witness not at the time under examination, so that he may not hear the testimony of other witnesses. A party to the action or proceeding may not be so excluded; and if a corporation is a party, it is entitled to the presence of one of its officers, to be designated by its attorney.

(b) In a criminal action, the judge may also cause the witnesses to be kept separate and to be prevented from conversing with each other until they are examined.

§ 2684. Postponement for absence of evidence

A motion to postpone a trial on the ground of the absence of evidence may be made only upon affidavit showing the materiality of the evidence expected to be obtained, and that due diligence has been used to procure it.

The court may require the moving party, where application is made on account of the absence of a material witness, to state upon affidavit the evidence which he expects to obtain. If the adverse party thereupon admits that the evidence would be given, and that it be considered as actually given on the trial, or offered and overruled as improper, the trial may not be postponed.

CHAPTER 109—ADMISSIBILITY OF EVIDENCE; UNIFORM RULES OF EVIDENCE

SUBCHAPTER I—GENERAL PROVISIONS

SUBCHAPTER II—JUDICIAL NOTICE

SUBCHAPTER III—PRESUMPTIONS

SUBCHAPTER IV—WITNESSES

SUBCHAPTER V—PRIVILEGES

SUBCHAPTER VI—EXTRINSIC POLICIES AFFECTING ADMISSIBILITY

SUBCHAPTER VII—EXPERT AND OTHER OPINION TESTIMONY

SUBCHAPTER VIII—HEARSAY EVIDENCE

SUBCHAPTER IX—AUTHENTICATION AND CONTENT OF WRITINGS

Subchapter I—General Provisions

§ 2731. Definitions

"Evidence" means the means from which inferences may be drawn as a basis of proof in duly constituted judicial or fact-finding tribunals, and includes testimony in the form of opinion, and hearsay.

"Relevant evidence" means evidence having any tendency in reason to prove any material fact.

"Proof" means all of the evidence before the trier of the fact relevant to a fact in issue which tends to prove the existence or non-existence of such fact.

"Burden of proof" means the obligation of a party to meet the requirements of a rule of law that the fact be proved either by a preponderance of the evidence or by clear and convincing evidence or beyond a reasonable doubt, as the case may be. Burden of proof is synonymous with "burden of persuasion."

"Burden of producing evidence" means the obligation of a party to introduce evidence when necessary to avoid the risk of a directed verdict or peremptory finding against him on a material issue of fact.

"Conduct" includes all active and passive behavior, both verbal and non-verbal.

"The hearing", unless some other is indicated by the context of the section where the term is used, means the hearing at which the question under a section is raised, and not some earlier or later hearing.

"Finding of fact" means the determination from proof or judicial notice of the existence of a fact. A ruling implies a supporting finding of fact; separate or formal finding is not required unless required by a statute or rule applicable in the Canal Zone.

"Guardian" means the person, committee, or other representative authorized by law to protect the person or estate or both of an incompetent (or of a *sui juris* person having a guardian) and to act for him in matters affecting his person or property or both. An incompetent is a person under disability imposed by law.

"Judge" means member or members or representative or representatives of a court conducting a trial or hearing at which evidence is introduced.

"Trier of fact" includes a jury and a judge when he is trying an issue of fact other than one relating to the admissibility of evidence.

"Verbal" includes both oral and written words.

"Writing" means handwriting, typewriting, printing, photostating, photographing and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof.

§ 2732. Scope of chapter

Except to the extent to which it may be relaxed by other procedural rule or statute applicable to the specific situation, this chapter applies in every proceeding, both criminal and civil, conducted by or under the supervision of a court, in which evidence is produced.

§ 2733. Undisputed matter; pre-trial conferences and admissions

If there is no bona fide dispute between the parties as to a material fact in a civil action, the issues for trial may be limited in a pre-trial conference or a party may obtain an admission of facts or of genuineness of documents as provided by Rules 16 and 36 of the Federal Rules of Civil Procedure.

§ 2734. Effect of erroneous admission of evidence

Errors in the admission of evidence are governed by Rules 46 and 61 of the Federal Rules of Civil Procedure in civil actions, and by Rules 51 and 52 of the Federal Rules of Criminal Procedure in criminal actions.

§ 2735. Effect of erroneous exclusion of evidence

A verdict or finding shall not be set aside, nor shall the judgment or decision based thereon be reversed, by reason of the erroneous exclusion of evidence unless (1) it appears of record that the proponent of the evidence either made known the substance of the evidence in a form and by a method approved by the judge, or indicated the substance of the expected evidence by questions indicating the desired answers, and (2) the court which passes upon the effect of the error or errors is of opinion that the excluded evidence would probably have had a substantial influence in bringing about a different verdict or finding.

§ 2736. Limited admissibility

When relevant evidence is admissible as to one party or for one purpose and is inadmissible as to other parties or for another purpose, the judge upon request shall restrict the evidence to its proper scope and instruct the jury accordingly.

§ 2737. General abolition of disqualifications and privileges of witnesses, and of exclusionary rules

Except as otherwise provided in this chapter, (1) every person is qualified to be a witness, and (2) no person has a privilege to refuse to be a witness, and (3) no person is disqualified to testify to any matter, and (4) no person has a privilege to refuse to disclose any matter or to produce any object or writing, and (5) no person has a privilege that another shall not be a witness or shall not disclose any matter or shall not produce any object or writing, and (6) all relevant evidence is admissible.

§ 2738. Preliminary inquiry by judge

When the qualification of a person to be a witness, or the admissibility of evidence, or the existence of a privilege is stated in this chapter to be subject to a condition, and the fulfillment of the condition is in issue, the issue is to be determined by the judge, and he shall indicate to the parties which one has the burden of producing evidence and the burden of proof on such issue as implied by the section under which the question arises. The judge may hear and determine such matters out

of the presence or hearing of the jury, except that on the admissibility of a confession the judge, if requested, shall hear and determine the question out of the presence and hearing of the jury. But this section shall not be construed to limit the right of a party to introduce before the jury evidence relevant to weight or credibility.

Subchapter II—Judicial Notice

§ 2761. Facts which must or may be judicially noticed

(a) Judicial notice shall be taken without request by a party, of the common law, constitutions and public statutes in force in every state, territory and jurisdiction of the United States, and of such specific facts and propositions of generalized knowledge as are so universally known that they cannot reasonably be the subject of dispute.

(b) Judicial notice may be taken without request by a party, of (1) private acts and resolutions of the Congress of the United States, and duly enacted ordinances and duly published regulations of any agency of the United States, and (2) the laws of foreign countries, and (3) such facts as are so generally known or of such common notoriety within the territorial jurisdiction of the court that they cannot reasonably be the subject of dispute, and (4) specific facts and propositions of generalized knowledge which are capable of immediate and accurate determination by resort to easily accessible sources of indisputable accuracy.

(c) Judicial notice shall be taken of each matter specified in paragraph (b) of this section if a party requests it and (1) furnishes the judge sufficient information to enable him properly to comply with the request and (2) has given each adverse party such notice as the judge may require to enable the adverse party to prepare to meet the request.

§ 2762. Determination as to propriety of judicial notice and tenor of matter noticed

(a) The judge shall afford each party reasonable opportunity to present to him information relevant to the propriety of taking judicial notice of a matter or to the tenor of the matter to be noticed.

(b) In determining the propriety of taking judicial notice of a matter or the tenor thereof, (1) the judge may consult and use any source of pertinent information, whether or not furnished by a party, and (2) no exclusionary rule except a valid claim of privilege shall apply.

(c) If the information possessed by or readily available to the judge, whether or not furnished by the parties, fails to convince him that a matter falls clearly within section 2761 of this title, or if it is insufficient to enable him to notice the matter judicially, he shall decline to take judicial notice thereof.

(d) In any event the determination either by judicial notice or from evidence of the applicability and the tenor of any matter of common law, constitutional law, or of any statute, private act, resolution, ordinance or regulation falling within section 2761 of this title, is a matter for the judge and not for the jury.

§ 2763. Instructing the trier of fact as to matter judicially noticed

If a matter judicially noticed is other than the common law or constitution or public statutes of the United States, the judge shall indicate for the record the matter which is judicially noticed and if the matter would otherwise have been for determination by a trier of fact other than the judge, he shall instruct the trier of the fact to accept as a fact the matter so noticed.

§ 2764. Judicial notice in proceedings subsequent to trial

(a) The failure or refusal of the judge to take judicial notice of a matter, or to instruct the trier of fact with respect to the matter, shall not preclude the judge from taking judicial notice of the matter in subsequent proceedings in the action.

(b) The rulings of the judge pursuant to sections 2761, 2762, and 2763 of this title are subject to review.

(c) The reviewing court in its discretion may take judicial notice of any matter specified by section 2761 of this title whether or not judicially noticed by the judge.

(d) A judge or a reviewing court taking judicial notice under paragraph (a) or (c) of this section of matter not theretofore so noticed in the action shall afford the parties reasonable opportunity to present information relevant to the propriety of taking such judicial notice and to the tenor of the matter to be noticed.

Subchapter III—Presumptions

§ 2791. Definition

A presumption is an assumption of fact resulting from a rule of law which requires such fact to be assumed from another fact or group of facts found or otherwise established in the action.

§ 2792. Effect of presumptions

Subject to section 2794 of this title, and except for presumptions which are conclusive or irrefutable under the rules of law from which they arise, (1) if the facts from which the presumption is derived have any probative value as evidence of the existence of the presumed fact, the presumption continues to exist and the burden of establishing the non-existence of the presumed fact is upon the party against whom the presumption operates, (2) if the facts from which the presumption arises have no probative value as evidence of the presumed fact, the presumption does not exist when evidence is introduced which would support a finding of the non-existence of the presumed fact, and the fact which would otherwise be presumed shall be determined from the evidence exactly as if no presumption was or had ever been involved.

§ 2793. Inconsistent presumptions

If two presumptions arise which are conflicting with each other the judge shall apply the presumption which is founded on the weightier considerations of policy and logic. If there is no such preponderance both presumptions shall be disregarded.

§ 2794. Burden of proof not relaxed as to some presumptions

A presumption, which by a rule of law may be overcome only by proof beyond a reasonable doubt, or by clear and convincing evidence, shall not be affected by section 2792 or 2793 of this title and the burden of proof to overcome it continues on the party against whom the presumption operates.

Subchapter IV—Witnesses

§ 2821. Disqualification of witness; interpreters

A person is disqualified to be a witness if the judge finds that (1) the proposed witness is incapable of expressing himself concerning the matter so as to be understood by the judge and jury either directly or through interpretation by one who can understand him, or (2) the proposed witness is incapable of understanding the duty of a witness to tell the truth. An interpreter is subject to all the provisions of this chapter relating to witnesses.

§ 2822. Oath

Every witness before testifying shall be required to express his purpose to testify by the oath or affirmation required by law.

§ 2823. Prerequisites of knowledge and experience

As a prerequisite for the testimony of a witness on a relevant or material matter, there must be evidence that he has personal knowledge thereof, or experience, training or education if such be required. Such evidence may be by the testimony of the witness himself. The judge may reject the testimony of a witness that he perceived a matter if he finds that no trier of fact could reasonably believe that the witness did perceive the matter. The judge may receive conditionally the testimony of the witness as to a relevant or material matter, subject to the evidence of knowledge, experience, training or education being later supplied in the course of the trial.

§ 2824. Evidence generally affecting credibility

Subject to sections 2825 and 2826 of this title, for the purpose of impairing or supporting the credibility of a witness, any party including the party calling him may examine him and introduce extrinsic evidence concerning any conduct by him and any other matter relevant upon the issues of credibility.

§ 2825. Limitations on evidence of conviction of crime as affecting credibility

A witness, including an accused who appears as a witness in a criminal proceeding, may not be impeached by evidence of his conviction of a crime, 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 felony.

§ 2826. Further limitations on admissibility of evidence affecting credibility

As affecting the credibility of a witness (1) in examining the witness as to a statement made by him in writing inconsistent with any part of his testimony it shall not be necessary to show or read to him any part of the writing provided that if the judge deems it feasible the time and place of the writing and the name of the person addressed, if any, shall be indicated to the witness; (2) extrinsic evidence of prior contradictory statements, whether oral or written, made by the witness, may in the discretion of the judge be excluded unless the witness was so examined while testifying as to give him an opportunity to identify, explain or deny the statement; (3) evidence of traits of his character other than honesty or veracity or their opposites, shall be inadmissible; (4) evidence of specific instances of his conduct relevant only as tending to prove a trait of his character, shall be inadmissible.

Subchapter V—Privileges

§ 2851. Privilege of accused

(a) Every person has in any criminal action in which he is an accused a privilege not to be called as a witness and not to testify.

(b) An accused in a criminal action has a privilege to prevent his spouse from testifying in such action with respect to any confidential communication had or made between them while they were husband and wife, excepting only (1) in an action in which the accused is charged with (A) a crime involving the marriage relation, or (B) a crime against the person or property of the other spouse or the child of either spouse, or (C) a desertion of the other spouse or a child of either spouse, or (2) as to the communication, in an action in which the accused offers evidence of a communication between himself and his spouse.

(c) An accused in a criminal action has no privilege to refuse, when ordered by the judge, to submit his body to examination or to do any act in the presence of the judge or the trier of the fact, except to refuse to testify.

§ 2852. Definition of incrimination

A matter will incriminate a person within the meaning of this chapter if it constitutes, or forms an essential part of, or, taken in connection with other matters disclosed, is a basis for a reasonable inference of such a violation of the laws applicable in the Canal Zone or of any law of the United States as to subject him to liability to punishment therefor, unless he has become for any reason permanently immune from punishment for such violation.

§ 2853. Self-incrimination; exceptions

Subject to sections 2851 and 2864 of this title, every natural person has a privilege, which he may claim, to refuse to disclose in an action or to a public official of the Government of the Canal Zone or to any agency of the United States or any officer thereof any matter that will incriminate him, except that under this section:

(1) if the privilege is claimed in an action the matter shall be disclosed if the judge finds that the matter will not incriminate the witness; and

(2) no person has the privilege to refuse to submit to examination for the purpose of discovering or recording his corporal features and other identifying characteristics, or his physical or mental condition; and

(3) no person has the privilege to refuse to furnish or permit the taking of samples of body fluids or substances for analysis; and

(4) no person has the privilege to refuse to obey an order made by a court to produce for use as evidence or otherwise a document, chattel or other thing under his control constituting, containing or disclosing matter incriminating him if the judge finds that, by the applicable rules of the substantive law, some other person or a corporation, or other association has a superior right to the possession of the thing ordered to be produced; and

(5) a public official or any person who engages in any activity, occupation, profession or calling does not have the privilege to refuse to disclose any matter which the statutes or regulations governing the office, activity, occupation, profession or calling require him to record or report or disclose concerning it; and

(6) a person who is an officer, agent or employee of a corporation or other association, does not have the privilege to refuse to disclose any matter which the statutes or regulations governing the corporation or association or the conduct of its business require him to record or report or disclose; and

(7) subject to section 2825 of this title, a defendant in a criminal action who voluntarily testifies in the action upon the merits before the trier of fact does not have the privilege to refuse to disclose any matter relevant to any issue in the action.

§ 2854. Lawyer-client privilege

(a) General Rule. - Subject to section 2864 of this title, and except as otherwise provided by paragraph (b) of this section communications found by the judge to have been between lawyer and his client in the course of that relationship and in professional confidence, are privileged, and a client has a privilege (1) if he is the witness to refuse to disclose any such communication, and (2) to prevent his lawyer from disclosing it, and (3) to prevent any other witness from disclosing such communication if it came to the knowledge of such witness (A) in the course of its transmittal between the client and the

lawyer, or (B) in a manner not reasonably to be anticipated by the client, or (C) as a result of a breach of the lawyer-client relationship. The privilege may be claimed by the client in person or by his lawyer, or if incompetent, by his guardian, or if deceased, by his personal representative. The privilege available to a corporation or association terminates upon dissolution.

(b) Exceptions. The privileges do not extend (1) to a communication if the judge finds that sufficient evidence, aside from the communication, has been introduced to warrant a finding that the legal service was sought or obtained in order to enable or aid the client to commit or plan to commit a crime or a tort, or (2) to a communication relevant to an issue between parties all of whom claim through the client, regardless of whether the respective claims are by testate or intestate succession or by *inter vivos* transaction, or (3) to a communication relevant to an issue of breach of duty by the lawyer to his client, or by the client to his lawyer, or (4) to a communication relevant to an issue concerning an attested document of which the lawyer is an attesting witness, or (5) to a communication relevant to a matter of common interest between two or more clients if made by any of them to a lawyer whom they have retained in common when offered in an action between any of such clients.

(c) Definitions. As used in this section (1) "client" means a person or corporation or other association that, directly or through an authorized representative, consults a lawyer or the lawyer's representative for the purpose of retaining the lawyer or securing legal service or advice from him in his professional capacity; and includes an incompetent whose guardian so consults the lawyer or the lawyer's representative in behalf of the incompetent, (2) "communication" includes advice given by the lawyer in the course of representing the client and includes disclosures of the client to a representative, associate or employee of the lawyer incidental to the professional relationship, (3) "lawyer" means a person authorized, or reasonably believed by the client to be authorized to practice law in any state or nation the law of which recognizes a privilege against disclosure of confidential communications between client and lawyer.

§ 2855. Physician-patient privilege

(a) As used in this section, (1) "patient" means a person who, for the sole purpose of securing preventive, palliative, or curative treatment, or a diagnosis preliminary to such treatment, of his physical or mental condition, consults a physician, or submits to an examination by a physician; (2) "physician" means a person authorized or reasonably believed by the patient to be authorized, to practice medicine in the state or jurisdiction in which the consultation or examination takes place; (3) "holder of the privilege" means the patient while alive and not under guardianship or the guardian of the person of an incompetent patient, or the personal representative of a deceased patient; (4) "confidential communication between physician and patient" means such information transmitted between physician and patient, including information obtained by an examination of the patient, as is transmitted in confidence and by a means which, so far as the patient is aware, discloses the information to no third persons other than those reasonably necessary for the transmission of the information or the accomplishment of the purpose for which it is transmitted.

(b) Except as provided by paragraphs (c), (d), (e) and (f) of this section, a person, whether or not a party, has a privilege in a civil action or in a prosecution for a misdemeanor to refuse to disclose, and to prevent a witness from disclosing, a communication, if he claims the privilege and the judge finds that (1) the communication was a

confidential communication between patient and physician, and (2) the patient or the physician reasonably believed the communication to be necessary or helpful to enable the physician to make a diagnosis of the condition of the patient or to prescribe or render treatment therefor, and (3) the witness (A) is the holder of the privilege or (B) at the time of the communication was the physician or a person to whom disclosure was made because reasonably necessary for the transmission of the communication or for the accomplishment of the purpose for which it was transmitted or (C) is any other person who obtained knowledge or possession of the communication as the result of an intentional breach of the physician's duty of nondisclosure by the physician or his agent or servant and (4) the claimant is the holder of the privilege or a person authorized to claim the privilege for him.

(c) There is no privilege under this section as to any relevant communication between the patient and his physician (1) upon an issue of the patient's condition in an action to commit him or otherwise place him under the control of another or others because of alleged mental illness or incompetence, or in an action in which the patient seeks to establish his competence or in an action to recover damages on account of conduct of the patient which constitutes a criminal offense other than a misdemeanor, or (2) upon an issue as to the validity of a document as a will of the patient, or (3) upon an issue between parties claiming by testate or intestate succession from a deceased patient.

(d) There is no privilege under this section in an action in which the condition of the patient is an element or factor of the claim or defense of the patient or of any party claiming through or under the patient or claiming as a beneficiary of the patient through a contract to which the patient is or was a party.

(e) There is no privilege under this section as to information which the physician or the patient is required to report to a public official or as to information required to be recorded in a public office, unless the statute requiring the report or record specifically provides that the information shall not be disclosed.

(f) A person does not have a privilege under this section if the judge finds that sufficient evidence, aside from the communication has been introduced to warrant a finding that the services of the physician were sought or obtained to enable or aid anyone to commit or to plan to commit a crime or a tort, or to escape detection or apprehension after the commission of a crime or a tort.

(g) A privilege under this section as to a communication is terminated if the judge finds that any person while a holder of the privilege has caused the physician or any agent or servant of the physician to testify in any action to any matter of which the physician or his agent or servant gained knowledge through the communication.

§ 2856. Marital privilege; confidential communications

(a) General Rule. Subject to section 2864 of this title and except as otherwise provided in paragraphs (b) and (c) of this section, a spouse who transmitted to the other the information which constitutes the communication, has a privilege during the marital relationship which he may claim whether or not he is a party to the action, to refuse to disclose and to prevent the other from disclosing communications found by the judge to have been had or made in confidence between them while husband and wife. The other spouse or the guardian of an incompetent spouse may claim the privilege on behalf of the spouse having the privilege.

(b) Exceptions. Neither spouse may claim the privilege (1) in an action by one spouse against the other spouse, or (2) in a criminal action in which one of them is charged with a crime against the person or property of the other or of a child of either, or a crime against the

person or property of a third person committed in the course of committing a crime against the other, or bigamy or adultery, or desertion of the other or of a child of either, or (3) in a criminal action in which the accused offers evidence of a communication between him and his spouse, or (4) if the judge finds that sufficient evidence, aside from the communication, has been introduced to warrant a finding that the communication was made, in whole or in part, to enable or aid anyone to commit or to plan to commit a crime or a tort.

(c) Termination. A spouse who would otherwise have a privilege under this section has no such privilege if the judge finds that he or the other spouse while the holder of the privilege testified or caused another to testify in any action to any communication between the spouses upon the same subject matter.

§ 2857. Priest-penitent privilege; definition; penitential communications

(a) As used in this section (1) "priest" means a priest, clergyman, minister of the gospel or other officer of a church or of a religious denomination or organization, who in the course of its discipline or practice is authorized or accustomed to hear, and has a duty to keep secret, penitential communications made by members of his church, denomination or organization; (2) "penitent" means a member of a church or religious denomination or organization who has made a penitential communication to a priest thereof; (3) "penitential communication" means a confession of culpable conduct made secretly and in confidence by a penitent to a priest in the course of discipline or practice of the church or religious denomination or organization of which the penitent is a member.

(b) A person, whether or not a party, has a privilege to refuse to disclose, and to prevent a witness from disclosing a communication if he claims the privilege and the judge finds that (1) the communication was a penitential communication and (2) the witness is the penitent or the priest, and (3) the claimant is the penitent, or the priest making the claim on behalf of an absent penitent.

§ 2858. Religious belief

A person has a privilege to refuse to disclose his theological opinion or religious belief unless his adherence or non-adherence to such an opinion or belief is material to an issue in the action other than that of his credibility as a witness.

§ 2859. Political vote

Every person has a privilege to refuse to disclose the tenor of his vote at a political election unless the judge finds that the vote was cast illegally.

§ 2860. Trade secret

The owner of a trade secret has a privilege, which may be claimed by him or his agent or employee, to refuse to disclose the secret and to prevent other persons from disclosing it if the judge finds that the allowance of the privilege will not tend to conceal fraud or otherwise work injustice.

§ 2861. Secret of state

(a) As used in this section, "secret of state" means information not open or theretofore officially disclosed to the public involving the public security or concerning the military or naval organization or plans of the United States, or a State, or concerning international relations.

(b) A witness has a privilege to refuse to disclose a matter on the ground that it is a secret of state, and evidence of the matter is inadmissible, unless the judge finds that (1) the matter is not a secret of state, or (2) the chief officer of the department of government administering the subject matter which the secret concerns has consented that it be disclosed in the action.

§ 2862. Official information

(a) As used in this section, "official information" means information not open or theretofore officially disclosed to the public relating to internal affairs of the Government of the Canal Zone or of any agency of the United States acquired by a public official of the Government of the Canal Zone or any agency of the United States in the course of his duty, or transmitted from one such official to another in the course of duty.

(b) A witness has a privilege to refuse to disclose a matter on the ground that it is official information, and evidence of the matter is inadmissible, if the judge finds that the matter is official information, and (1) disclosure is forbidden by an Act of the Congress of the United States, or (2) disclosure of the information in the action will be harmful to the interests of the government.

§ 2863. Identity of informer

A witness has a privilege to refuse to disclose the identity of a person who has furnished information purporting to disclose a violation of a provision of the laws applicable in the Canal Zone or of any law of the United States to a representative of the Government of the Canal Zone or the United States or a governmental division thereof, charged with the duty of enforcing that provision, and evidence thereof is inadmissible, unless the judge finds that (1) the identity of the person furnishing the information has already been otherwise disclosed or (2) disclosure of his identity is essential to assure a fair determination of the issues.

§ 2864. Waiver of privilege by contract or previous disclosure

A person who would otherwise have a privilege to refuse to disclose or to prevent another from disclosing a specified matter has no such privilege with respect to that matter if the judge finds that he or any other person while the holder of the privilege has (1) contracted with anyone not to claim the privilege or, (2) without coercion and with knowledge of his privilege, made disclosure of any part of the matter or consented to such a disclosure made by anyone.

§ 2865. Admissibility of disclosure wrongfully compelled

Evidence of a statement or other disclosure is inadmissible against the holder of the privilege if the judge finds that he had and claimed a privilege to refuse to make the disclosure but was nevertheless required to make it.

§ 2866. Reference to exercise of privileges

If a privilege is exercised not to testify or to prevent another from testifying, either in the action or with respect to particular matters, or to refuse to disclose or to prevent another from disclosing any matter, the judge and counsel may not comment thereon, no presumption shall arise with respect to the exercise of the privilege, and the trier of fact may not draw any adverse inference therefrom. In those jury cases wherein the right to exercise a privilege, as herein provided, may be misunderstood and unfavorable inferences drawn by the trier of the fact, or be impaired in the particular case, the court, at the request of the party exercising the privilege, may instruct the jury in support of such privilege.

§ 2867. Effect of error in overruling claim of privilege

A party may predicate error on a ruling disallowing a claim of privilege only if he is the holder of the privilege.

Subchapter VI—Extrinsic Policies Affecting Admissibility

§ 2891. Evidence to test a verdict

Upon an inquiry as to the validity of a verdict no evidence shall be received to show the effect of any statement, conduct, event or condition upon the mind of a juror as influencing him to assent to or dissent from the verdict or concerning the mental processes by which it was determined.

§ 2892. Testimony by the judge

Against the objection of a party, the judge presiding at the trial may not testify in that trial as a witness.

§ 2893. Testimony by a juror

A member of a jury sworn and empanelled in the trial of an action, may not testify in that trial as a witness.

§ 2894. Testimony of jurors not limited except by this chapter

This chapter does not exempt a juror from testifying as a witness, if the law of the Canal Zone permits, to conditions or occurrences either within or outside of the jury room having a material bearing on the validity of the verdict, except as expressly limited by section 2891 of this title.

§ 2895. Discretion of judge to exclude admissible evidence

Except as in this chapter otherwise provided, the judge may in his discretion exclude evidence if he finds that its probative value is substantially outweighed by the risk that its admission will (1) necessitate undue consumption of time, or (2) create substantial danger of undue prejudice or of confusing the issues or of misleading the jury, or (3) unfairly and harmfully surprise a party who has not had reasonable opportunity to anticipate that such evidence would be offered.

§ 2896. Character; manner of proof

When a person's character or a trait of his character is in issue, it may be proved by testimony in the form of opinion, evidence of reputation, or evidence of specific instances of the person's conduct, subject, however, to the limitations of sections 2897 and 2898 of this title.

§ 2897. Character trait as proof of conduct

Subject to section 2898 of this title, when a trait of a person's character is relevant as tending to prove his conduct on a specified occasion, such trait may be proved in the same manner as provided by section 2896 of this title, except that (1) evidence of specific instances of conduct other than evidence of conviction of a crime which tends to prove the trait to be bad shall be inadmissible, and (1) in a criminal action evidence of a trait of an accused's character as tending to prove his guilt or innocence of the offense charged, (A) may not be excluded by the judge under section 2895 of this title if offered by the accused to prove his innocence, and (B) if offered by the prosecution to prove his guilt, may be admitted only after the accused has introduced evidence of his good character.

§ 2898. Character trait for care or skill; inadmissible to prove quality of conduct

Evidence of a trait of a person's character with respect to care or skill is inadmissible as tending to prove the quality of his conduct on a specified occasion.

§ 2899. Habit or custom to prove specific behavior

Evidence of habit or custom is relevant to an issue of behavior on a specified occasion, but is admissible on that issue only as tending to prove that the behavior on such occasion conformed to the habit or custom.

§ 2900. Opinion and specific instances of behavior to prove habit or custom

Testimony in the form of opinion is admissible on the issue of habit or custom. Evidence of specific instances of behavior is admissible to prove habit or custom if the evidence is of a sufficient number of such instances to warrant a finding of such habit or custom.

§ 2901. Subsequent remedial conduct

When after the occurrence of an event remedial or precautionary measures are taken, which, if taken previously would have tended to make the event less likely to occur, evidence of such subsequent measures is not admissible to prove negligence or culpable conduct in connection with the event.

§ 2902. Offer to compromise and the like, not evidence of liability

Evidence that a person has, in compromise or from humanitarian motives furnished or offered or promised to furnish money, or any other thing, act or service to another who has sustained or claims to have sustained loss or damage, is inadmissible to prove his liability for the loss or damage or any part of it. This section shall not affect the admissibility of evidence (1) of partial satisfaction of an asserted claim on demand without questioning its validity, as tending to prove the validity of the claim, or (2) of a debtor's payment or promise to pay all or a part of his pre-existing debt as tending to prove the creation of a new duty on his part, or a revival of his pre-existing duty.

§ 2903. Offer to discount claim, not evidence of invalidity

Evidence that a person has accepted or offered or promised to accept a sum of money or any other thing, act or service in satisfaction of a claim, is inadmissible to prove the invalidity of the claim or any part of it.

§ 2904. Liability insurance

Evidence that a person was, at the time a harm was suffered by another, insured wholly or partially against loss arising from liability for that harm is inadmissible as tending to prove negligence or other wrongdoing.

§ 2905. Other crimes or civil wrongs

Subject to section 2897 of this title, evidence that a person committed a crime or civil wrong on a specified occasion is inadmissible to prove his disposition to commit crime or civil wrong as the basis for an inference that he committed another crime or civil wrong on another specified occasion but, subject to sections 2895 and 2898 of this title, such evidence is admissible when relevant to prove another material fact including absence of mistake or accident, motive, opportunity, intent, preparation, plan, knowledge or identity.

Subchapter VII—Expert and Other Opinion Testimony

§ 2931. Testimony in form of opinion

(a) If the witness is not testifying as an expert, his testimony in the form of opinions or inferences is limited to such opinions or inferences as the judge finds (1) may be rationally based on the perception of the witness and (2) are helpful to a clear understanding of his testimony or to the determination of the fact in issue.

(b) If the witness is testifying as an expert, testimony of the witness in the form of opinions or inferences is limited to such opinions as the judge finds are (1) based on facts or data perceived by or personally known or made known to the witness at the hearing and (2) within the scope of the special knowledge, skill, experience or training possessed by the witness.

(c) Unless the judge excludes the testimony he shall be deemed to have made the finding requisite to its admission.

(d) Testimony in the form of opinions or inferences otherwise admissible under this chapter is not objectionable because it embraces the ultimate issue or issues to be decided by the trier of the fact.

§ 2932. Preliminary examination

The judge may require that a witness before testifying in terms of opinion or inference be first examined concerning the data upon which the opinion or inference is founded.

§ 2933. Hypothesis for expert opinion not necessary

Questions calling for the opinion of an expert witness need not be hypothetical in form unless the judge in his discretion so requires, but the witness may state his opinion and reasons therefor without first specifying data on which it is based as an hypothesis or otherwise; but upon cross-examination he may be required to specify such data.

§ 2934. Appointment of experts

(a) If the judge determines that the appointment of expert witnesses in an action may be desirable, he shall order the parties to show cause why expert witnesses should not be appointed, and after opportunity for hearing may request nominations and appoint one or more such witnesses. If the parties agree in the selection of an expert or experts, only those agreed upon shall be appointed. Otherwise the judge may make his own selection. An expert witness shall not be appointed unless he consents to act. The judge shall determine the duties of the witness and inform him thereof at a conference in which the parties shall have an opportunity to participate. A witness so appointed shall advise the parties of his findings, if any, and may thereafter be called to testify by the judge or any party. He may be examined and cross-examined by each party. This section does not limit the parties in calling expert witnesses of their own selection and at their own expense.

(b) Rule 28 of the Federal Rules of Criminal Procedure does not apply in the Canal Zone.

§ 2935. Compensation of expert witnesses

Expert witnesses appointed by the judge shall be entitled to reasonable compensation in such sum only as the judge may allow. Except as may be otherwise provided by statute applicable to a specific situation, the compensation shall be paid (1) in a criminal action out of such funds as may be provided by law, and (2) in a civil action by the opposing parties in equal portions to the clerk of the court at such time as the judge shall direct, and charged as costs in the case. The amount of compensation paid to an expert witness not appointed by the judge shall be a proper subject of inquiry as relevant to his credibility and the weight of his testimony.

§ 2936. Credibility of appointed expert witness

The fact of the appointment of an expert witness by the judge may be revealed to the trier of the facts as relevant to the credibility of such witness and the weight of his testimony.

Subchapter VIII—Hearsay Evidence

§ 2961. Definitions

As used in section 2962 of this title and its exceptions and in the following sections of this chapter:

(1) "Statement" means not only an oral or written expression but also non-verbal conduct of a person intended by him as a substitute for words in expressing the matter stated.

(2) "Declarant" is a person who makes a statement.

(3) "Perceive" means acquire knowledge through one's own senses.

(4) "Public official" of a state of the United States includes an official of a political subdivision of such state and of a municipality.

(5) "State" includes the District of Columbia, the several territories and possessions of the United States, and the Commonwealth of Puerto Rico.

(6) "A business" as used in exception (13) of section 2962 of this title includes every kind of business, profession, occupation, calling or operation of institutions, whether carried on for profit or not.

(7) "Unavailable as a witness" includes situations where the witness is (A) exempted on the ground of privilege from testifying concerning the matter to which his statement is relevant, or (B) disqualified from testifying to the matter, or (C) unable to be present or to testify at the hearing because of death or then existing physical or mental illness, or (D) not within the Canal Zone, or (E) absent from the place of hearing because the proponent of his statement does not know and with diligence has been unable to ascertain his whereabouts.

But a witness is not unavailable (A) if the judge finds that his exemption, disqualification, inability or absence is due to procurement or wrongdoing of the proponent of his statement for the purpose of preventing the witness from attending or testifying, or to the culpable neglect of such party, or (B) if unavailability is claimed under clause (D) of the preceding paragraph and the judge finds that the deposition of the declarant could have been taken by the exercise of reasonable diligence and without undue hardship, and that the probable importance of the testimony is such as to justify the expense of taking the deposition.

§ 2962. Hearsay evidence excluded; exceptions

Evidence of a statement which is made other than by a witness while testifying at the hearing offered to prove the truth of the matter stated is heresay evidence and inadmissible except:

(1) Previous Statements of Persons Present and Subject to Cross-Examination. A statement previously made by a person who is present at the hearing and available for cross-examination with respect to the statement and its subject matter, provided the statement would be admissible if made by declarant while testifying as a witness;

(2) Affidavits. Affidavits to the extent admissible by the statutes or rules of court;

(3) Depositions and Prior Testimony. Subject to the same limitations and objections as though the declarant were testifying in person, (A) in civil actions, testimony in the form of a deposition taken in compliance with the law or rules of court, to the extent authorized by the law or rules under which the deposition was taken; or (B) in civil actions, if the judge finds that the declarant is unavailable as a witness at the hearing, testimony given as a witness in another action, or a prior hearing in the same action, when (i) the testimony is offered against a party who offered it in his own behalf on the former occasion, or against the successor in interest of such party, or (ii) the issue is such that the adverse party on the former occa-

sion had the right and opportunity for cross-examination with an interest and motive similar to that which the adverse party has in the action in which the testimony is offered; or (C) in criminal actions, depositions or prior testimony as provided by section 3507 of Title 6;

(4) Contemporaneous Statements and Statements Admissible on Ground of Necessity Generally. A statement (A) which the judge finds was made while the declarant was perceiving the event or condition which the statement narrates, describes or explains, or (B) which the judge finds was made while the declarant was under the stress of a nervous excitement caused by such perception;

(5) Dying Declarations. A statement by a person unavailable as a witness because of his death if the judge finds that it was made voluntarily and in good faith and while the declarant was conscious of his impending death and believed that there was no hope of his recovery;

(6) Confessions. In a criminal proceeding as against the accused, a previous statement by him relative to the offense charged if, and only if, the judge finds that the accused when making the statement was conscious and was capable of understanding what he said and did, and that he was not induced to make the statement (A) under compulsion or by infliction or threats of infliction of suffering upon him or another, or by prolonged interrogation under such circumstances as to render the statement involuntary, or (B) by threats or promises concerning action to be taken by a public official with reference to the crime, likely to cause the accused to make such a statement falsely, and made by a person whom the accused reasonably believed to have the power or authority to execute the same;

(7) Admissions by Parties. As against himself a statement by a person who is a party to the action in his individual or a representative capacity and if the latter, who was acting in such representative capacity in making the statement;

(8) Authorized and Adoptive Admissions. As against a party, a statement (A) by a person authorized by the party to make a statement or statements for him concerning the subject of the statement, or (B) of which the party with knowledge of the content thereof has, by words or other conduct, manifested his adoption or his belief in its truth;

(9) Vicarious Admissions. As against a party, a statement which would be admissible if made by the declarant at the hearing if (A) the statement concerned a matter within the scope of an agency or employment of the declarant for the party and was made before the termination of such relationship, or (B) the party and the declarant were participating in a plan to commit a crime or a civil wrong and the statement was relevant to the plan or its subject matter and was made while the plan was in existence and before its complete execution or other termination, or (C) one of the issues between the party and the proponent of the evidence of the statement is a legal liability of the declarant, and the statement tends to establish that liability;

(10) Declarations Against Interest. Subject to the limitations of exception (6), a statement which the judge finds was at the time of the assertion so far contrary to the declarant's pecuniary or proprietary interest or so far subjected him to civil or criminal liability or so far rendered invalid a claim by him against another or created such risk of making him an object of hatred, ridicule or social disapproval in the community that a reasonable man in his position would not have made the statement unless he believed it to be true;

(11) Voter's Statements. A statement by a voter concerning his qualifications to vote or the fact or content of his vote;

(12) Statements of Physical or Mental Condition of Declarant. Unless the judge finds it was made in bad faith, a statement of the declarant's (A) then existing state of mind, emotion or physical sensation, including statements of intent, plan, motive, design, mental feeling, pain and bodily health, but not including memory or belief to prove the fact remembered or believed, when such a mental or physical condition is in issue or is relevant to prove or explain acts or conduct of the declarant, or (B) previous symptoms, pain or physical sensation, made to a physician consulted for treatment or for diagnosis with a view to treatment, and relevant to an issue of declarant's bodily condition;

(13) Business Entries and the Like. Writings offered as memoranda or records of acts, conditions or events to prove the facts stated therein, if the judge finds that they were made in the regular course of a business at or about the time of the act, condition or event recorded, and that the sources of information from which made and the method and circumstances of their preparation were such as to indicate their trustworthiness;

(14) Absence of Entry in Business Records. Evidence of the absence of a memorandum or record from the memoranda or records of a business of an asserted act, event or condition, to prove the non-occurrence of the act or event, or the non-existence of the condition, if the judge finds that it was the regular course of that business to make such memoranda of all such acts, events or conditions at the time thereof or within a reasonable time thereafter, and to preserve them;

(15) Reports and Findings of Public Officials. Subject to section 2963 of this title, written reports or findings of fact made by a public official of the United States or any agency thereof or of a state of the United States, if the judge finds that the making thereof was within the scope of the duty of such official and that it was his duty (A) to perform the act reported, or (B) to observe the act, condition or event reported, or (C) to investigate the facts concerning the act, condition or event and to make findings or draw conclusions based on such investigation;

(16) Filed Reports, Made by Persons Exclusively Authorized. Subject to section 2963 of this title, writings made as a record, report or finding of fact, if the judge finds that (A) the maker was authorized by statute or regulation to perform, to the exclusion of persons not so authorized, the functions reflected in the writing, and was required by statute or regulation to file in a designated public office a written report of specified matters relating to the performance of such functions, and (B) the writing was made and filed as so required by the statute or regulation;

(17) Content of Official Record. Subject to section 2963 of this title, (A) if meeting the requirements of authentication under section 2992 of this title, to prove the content of the record, a writing purporting to be a copy of an official record or of an entry therein, (B) to prove the absence of a record in a specified office, a writing made by the official custodian of the official records of the office, reciting diligent search and failure to find such record;

(18) Certificate of Marriage. Subject to section 2963 of this title, certificates that the maker thereof performed a marriage ceremony, to prove the truth of the recitals thereof, if the judge finds that (A) the maker of the certificate at the time and place certified as the time and place of the marriage was authorized by law to perform marriage ceremonies, and (B) the certificate was issued at that time or within a reasonable time thereafter;

(19) Records of Documents Affecting an Interest in Property. Subject to section 2963 of this title, the official record of a document purporting to establish or affect an interest in property, to prove the

content of the original recorded document and its execution and delivery by each person by whom it purports to have been executed, if the judge finds that (A) the record is in fact a record of an office of a state or nation or of any governmental subdivision thereof, and (B) an applicable statute authorized such a document to be recorded in that office;

(20) Judgment of Previous Conviction. Evidence of a final judgment adjudging a person guilty of a felony, to prove any fact essential to sustain the judgment;

(21) Judgment Against Persons Entitled to Indemnity. To prove the wrong of the adverse party and the amount of damages sustained by the judgment creditor, evidence of a final judgment if offered by a judgment debtor in an action in which he seeks to recover partial or total indemnity or exoneration for money paid or liability incurred by him because of the judgment, provided the judge finds that the judgment was rendered for damages sustained by the judgment creditor as a result of the wrong of the adverse party to the present action;

(22) Judgment Determining Public Interest in Land. To prove any fact which was essential to the judgment, evidence of a final judgment determining the interest or lack of interest of the public or of a state or nation or governmental division thereof in land, if offered by a party in an action in which any such fact or such interest or lack of interest is a material matter;

(23) Statement Concerning One's Own Family History. A statement of a matter concerning a declarant's own birth, marriage, divorce, legitimacy, relationship by blood or marriage, race-ancestry or other similar fact of his family history, even though the declarant had no means of acquiring personal knowledge of the matter declared, if the judge finds that the declarant is unavailable;

(24) Statement Concerning Family History of Another. A statement concerning the birth, marriage, divorce, death, legitimacy, race-ancestry, relationship by blood or marriage or other similar fact of the family history of a person other than the declarant if the judge (A) finds that the declarant was related to the other by blood or marriage or finds that he was otherwise so intimately associated with the other's family as to be likely to have accurate information concerning the matter declared, and made the statement as upon information received from the other or from a person related by blood or marriage to the other, or as upon repute in the other's family, and (B) finds that the declarant is unavailable as a witness;

(25) Statement Concerning Family History Based on Statement of Another Declarant. A statement of a declarant that a statement admissible under exceptions (23) or (24) of this section was made by another declarant, offered as tending to prove the truth of the matter declared by both declarants, if the judge finds that both declarants are unavailable as witnesses;

(26) Reputation in Family Concerning Family History. Evidence of reputation among members of a family, if the reputation concerns the birth, marriage, divorce, death, legitimacy, race-ancestry or other fact of the family history of a member of the family by blood or marriage;

(27) Reputation—Boundaries, General History, Family History. Evidence of reputation in a community as tending to prove the truth of the matter reputed, if (A) the reputation concerns boundaries of, or customs affecting, land in the community, and the judge finds that the reputation, if any, arose before controversy, or (B) the reputation concerns an event of general history of the community or of the state or nation of which the community is a part, and the judge finds that the event was of importance to the community, or (C) the reputation

concerns the birth, marriage, divorce, death, legitimacy, relationship by blood or marriage, or race-ancestry of a person resident in the community at the time of the reputation, or some other similar fact of his family history or of his personal status or condition which the judge finds likely to have been the subject of a reliable reputation in that community;

(28) Reputation as to Character. If a trait of a person's character at a specified time is material, evidence of his reputation with reference thereto at a relevant time in the community in which he then resided or in a group with which he then habitually associated, to prove the truth of the matter reputed;

(29) Recitals in Documents Affecting Property. Evidence of a statement relevant to a material matter, contained in a deed of conveyance or a will or other document purporting to affect an interest in property, offered as tending to prove the truth of the matter stated, if the judge finds that the matter stated would be relevant upon an issue as to an interest in the property, and that the dealings with the property since the statement was made have not been inconsistent with the truth of the statement;

(30) Commercial Lists and the Like. Evidence of statements of matters of interest to persons engaged in an occupation contained in a list, register, periodical, or other published compilation to prove the truth of any relevant matter so stated if the judge finds that the compilation is published for use by persons engaged in that occupation and is generally used and relied upon by them;

(31) Learned Treatises. A published treatise, periodical or pamphlet on a subject of history, science or art to prove the truth of a matter stated therein if the judge takes judicial notice, or a witness expert in the subject testifies that the treatise, periodical or pamphlet is a reliable authority in the subject.

§ 2963. Discretion of judge under exceptions (15), (16), (17), (18) and (19) to exclude evidence

Any writing admissible pursuant to exceptions (15), (16), (17), (18), and (19) of section 2962 of this title shall be received only if the party offering such writing has delivered a copy of it or so much thereof as may relate to the controversy, to each adverse party a reasonable time before trial unless the judge finds that the adverse party has not been unfairly surprised by the failure to deliver the copy.

§ 2964. Credibility of declarant

Evidence of a statement or other conduct by a declarant inconsistent with a statement received in evidence under an exception to section 2962 of this title is admissible for the purpose of discrediting the declarant, though he had no opportunity to deny or explain such inconsistent statement. Any other evidence tending to impair or support the credibility of the declarant is admissible if it would have been admissible had the declarant been a witness.

§ 2965. Multiple hearsay

A statement within the scope of an exception to section 2962 of this title is not inadmissible on the ground that it includes a statement made by another declarant and is offered to prove the truth of the included statement if the included statement itself meets the requirements of an exception.

Subchapter IX—Authentication and Content of Writings

§ 2991. Authentication required; ancient documents

Authentication of a writing is required before it may be received in evidence. Authentication may be by evidence sufficient to sustain a finding of its authenticity or by any other means provided by law. If the judge finds that a writing (1) is at least thirty years old at the time it is offered, and (2) is in such condition as to create no suspicion concerning its authenticity, and (3) at the time of its discovery was in a place in which such a document, if authentic, would be likely to be found, it is sufficiently authenticated.

§ 2992. Authentication of copies of records

A writing purporting to be a copy of an official record or of an entry therein, meets the requirement of authentication if (1) the judge finds that the writing purports to be published by authority of the nation, state or subdivision thereof, in which the record is kept; or (b) evidence has been introduced sufficient to warrant a finding that the writing is a correct copy of the record or entry; or (3) the office in which the record is kept is within the Canal Zone and the writing is attested as a correct copy of the record or entry by a person purporting to be an officer, or a deputy of an officer, having the legal custody of the record; or (4) if the office is not within the Canal Zone, the writing is attested as required in clause (3) and is accompanied by a certificate that such officer has the custody of the record. If the office in which the record is kept is within the United States, the certificate may be made by a judge of a court of record of the district or political subdivision in which the record is kept, authenticated by the seal of the court, or may be made by any public officer having a seal of office and having official duties in the district or political subdivision in which the record is kept, authenticated by the seal of his office. If the office in which the record is kept is in a foreign state or country, the certificate may be made by a secretary of an embassy or legation, consul general, consul, vice consul, or consular agent or by any officer in the foreign service of the United States stationed in the foreign state or country in which the record is kept, and authenticated by the seal of his office.

§ 2993. Certificate of lack of record

A writing admissible pursuant to exception (17) (B) of section 2962 of this title is authenticated in the same manner as is provided in clause (3) or (4) of section 2992 of this title.

§ 2994. Documentary originals as the best evidence

(a) As tending to prove the content of a writing, no evidence other than the writing itself is admissible, except as otherwise provided in this chapter, unless the judge finds (1) that the writing is lost or has been destroyed without fraudulent intent on the part of the proponent, or (2) that the writing is outside the reach of the court's process and not procurable by the proponent, or (3) that the opponent, at a time when the writing was under his control has been notified, expressly or by implication from the pleadings, that it would be needed at the hearing, and on request at the hearing has failed to produce it, or (4) that the writing is an official record, or is a writing affecting property authorized to be recorded and actually recorded in the public records as described in exception (19) of section 2962 of this title.

(b) If the judge makes one of the findings specified in the preceding paragraph, secondary evidence of the content of the writing is admissible. Evidence offered by the opponent tending to prove (1) that the asserted writing never existed, or (2) that a writing produced at the trial is the asserted writing, or (3) that the secondary evidence does not

correctly reflect the content of the asserted writings, is irrelevant and inadmissible upon the question of admissibility of the secondary evidence but is relevant and admissible upon the issues of the existence and content of the asserted writing to be determined by the trier of fact.

§ 2995. Proof of attested writings

When the execution of an attested writing is in issue, whether or not attestation is a statutory requisite of its effective execution, no attester is a necessary witness even though all attesters are available unless the statute requiring attestation specifically provides otherwise.

§ 2996. Photographic copies to prove content of business and public records

The content of an admissible writing made in the regular course of "a business" as defined by section 2961 of this title, or in the regular course of business or activity of department or agency of government, may be proved by a photostatic, microfilm, microcard, miniature photographic or other photographic copy or reproduction or by an enlargement thereof, when duly authenticated, if it was in the regular course of the business or official activity to make and preserve such copies or reproductions as a part of the records of the business or office. The introduction of the copy, reproduction or enlargement does not preclude admission of the original writing if it is still in existence.

CHAPTER 111—ADMISSIBILITY AND SUFFICIENCY OF EVIDENCE

SUBCHAPTER I—GENERAL PROVISIONS

SUBCHAPTER II—WRITINGS GENERALLY

SUBCHAPTER III—PUBLIC WRITINGS

SUBCHAPTER IV—PRIVATE WRITINGS

SUBCHAPTER V—EFFECT OF JUDGMENTS

SUBCHAPTER VI—PRESUMPTIONS

SUBCHAPTER VII—PARTICULAR CASES; STATUTE OF FRAUDS

Subchapter I—General Provisions

§ 3051. Degree of certainty required to establish facts

The law does not require demonstration; that is, such a degree of proof as, excluding possibility of error, produces absolute certainty; because such proof is rarely possible. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind.

§ 3052. Number of witnesses to prove fact

Except as otherwise provided by law, the direct evidence of one witness who is entitled to full credit is sufficient for the proof of any fact.

§ 3053. Effect of declarations and acts of one person on rights of another

(a) The rights of a party may not be prejudiced by the declaration, act, or omission of another, except by virtue of a particular relation between them; therefore, proceedings against one may not affect another.

(b) Where 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.

(c) Where the declaration, act, or omission forms part of a transaction, which is itself the fact in dispute, or evidence of that fact, the declaration, act, or omission is evidence, as part of the transaction.

(d) Where the question in dispute between the parties is the obligation or duty of a third person, whatever would be the evidence for or against the third person is prima facie evidence between the parties.

(e) The declaration, act, or omission of a member of a family who is a decedent, or out of the jurisdiction, is admissible as evidence of common reputation, in cases where, on questions of pedigree, such reputation is admissible.

(f) The declaration, act, or omission of a decedent, having sufficient knowledge of the subject, against his pecuniary interest, is admissible as evidence to that extent against his successor in interest.

§ 3054. Part of transaction proved; admissibility of whole

When part of an act, declaration, conversation, or writing is given in evidence by one party, the whole on the same subject may be inquired into by the other. When a letter is read, the answer may be given. 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.

§ 3055. Parol evidence rule; agreements reduced to writing

(a) 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 is put in issue by the pleadings; or

(2) where the validity of the agreement is the fact in dispute.

(b) This section does not exclude other evidence of the circumstances under which the agreement was made or to which it relates, as defined by section 3059 of this title, or to explain an extrinsic ambiguity, or to establish illegality or fraud. The term agreement includes deeds and wills, as well as contracts between parties.

§ 3056. Construction of writings; place of execution

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

§ 3057. Construction of statutes or instruments; duty of judge

In the construction of a statute or instrument, the office of the judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted, or to omit what has been inserted. Where there are several provisions or particulars, a construction which will give effect to all shall be adopted, if possible.

§ 3058. Same; intent; general and particular 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, if possible. When a general and a particular provision are inconsistent, the latter is paramount to the former. A particular intent will control a general one that is inconsistent with it.

§ 3059. Construction of instruments; circumstances

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

§ 3060. Terms of writing; general acceptation; local or technical meaning

The terms of a writing are presumed to have been used in their 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 shall be construed accordingly.

§ 3061. Written words on printed form

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

§ 3062. Expert testimony in interpretation of instruments

When the characters in which an instrument is written are difficult to be deciphered, or the language of the instrument is not understood by the court, the evidence of persons skilled in deciphering the characters, or who understand the language, is admissible to declare the characters or the meaning of the language.

§ 3063. Preference between two constructions of agreement

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 most favorable to the party in whose favor the provision was made.

§ 3064. Notice or writing construed according to ordinary acceptation; notice of protest of bill or note

A written notice, as well as every other writing, is to be construed according to the ordinary acceptation of its terms. Thus a notice to the drawers or indorsers of a bill of exchange or promissory note, that it has been protested for want of acceptance or payment, shall be held to import that the same has been duly presented for acceptance or payment and the same refused, and that the holder looks for payment to the person to whom the notice is given.

§ 3065. Construction of statutes or instruments 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.

§ 3066. Usage, evidence as to

Evidence of usage may be given upon the trial to explain the true character of an act, contract, or instrument, where the true character is not otherwise plain; but usage is never admissible except as an instrument of interpretation.

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§ 3067. Burden of proof

The party holding the affirmative of the issue shall produce the evidence to prove it; therefore, the burden of proof lies on the party who would be defeated if no evidence were given on either side.

§ 3068. Proof of affirmative and negative allegations

A party must prove his own affirmative allegations. Evidence need not be given in support of a negative allegation, except when the 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 a case when the allegation is a denial of the existence of a document, the custody of which belongs to the opposite party.

§ 3069. Proof of material allegations; relevant evidence

(a) A material allegation in a pleading is one which is essential to the claim or defense, and which could not be stricken from the pleading without leaving it insufficient.

(b) None but a material allegation need be proved.

(c) Evidence shall correspond with the substance of the material allegations and be relevant to the question in dispute. Collateral questions shall therefore be avoided. It is, however, within the discretion of the court to permit inquiry into collateral fact, when the 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.

§ 3070. Effect of evidence; instructions to jury

Where trial is by jury, the jury, subject to the control of the court, in the cases specified in this title, are the judges of the effect or value of evidence addressed to them, except when it is declared to be conclusive. They are, however, to be instructed by the court on all proper occasions:

(1) that their power of judging of the effect of evidence is not arbitrary, but to be exercised with legal discretion, and in subordination to the rules of evidence;

(2) that they are not bound to decide in conformity with the declarations of any number of witnesses, which do not produce conviction in their minds, against a less number or against a presumption or other evidence satisfying their minds;

(3) that a witness false in one part of his testimony is to be distrusted in others;

(4) that the testimony of an accomplice ought to be viewed with distrust, and the evidence of the oral admissions of a party with caution;

(5) that in civil actions the affirmative of the issue must be proved, and when the evidence is contradictory the decision must be made according to the preponderance of evidence; that in criminal actions guilt must be established beyond reasonable doubt;

(6) that evidence is to be estimated, not only by its own intrinsic weight, but also according to the evidence which it is in the power of one side to produce and of the other to contradict; and, therefore,

(7) that if weaker and less satisfactory evidence is offered, when it appears that stronger and more satisfactory was within the power of the party, the evidence offered should be viewed with distrust; and

(8) that the jury are the exclusive judges of the credibility of a witness and that, in determining whether a witness speaks the truth, they may consider the manner in which he testifies; the character of his testimony; the evidence affecting his character for truth, honesty, or integrity, or his motives; and contradictory evidence.

§ 3071. Questions of fact and law

(a) All questions of fact, other than those mentioned in subsection (b) of this section, are to be decided by the jury, when the trial is by jury, and all evidence thereon is to be addressed to them, except when otherwise provided by this title.

(b) All questions of law, including the admissibility of testimony, the facts preliminary to its admission, and the construction of statutes and other writings, and other rules of evidence, are to be decided by the court, and all discussions of law addressed to it.

(c) The provisions contained in this title respecting the evidence on a trial before a jury, are equally applicable on the trial of a question of fact before a court, referee, or other officer.

Subchapter II—Writings Generally

§ 3101. Kinds of writings

Writings are of two kinds:

(1) public; and
(2) private.

§ 3102. Public writings defined

Public writings are:

(1) the written acts or records of the acts of the sovereign authority, of official bodies and tribunals, and of public officers, legislative, judicial, and executive, whether of the Canal Zone, of the United States, of a State of the United States, or of a foreign country; and

(2) public records, kept in the Canal Zone, of private writings.

§ 3103. Private writings defined

All writings other than those defined by section 3102 of this title are private.

§ 3104. Explanation of altered writings

The party producing a writing as genuine which has been altered, or appears to have been altered, after its execution, in a part material to the question in dispute, shall account for the appearance or alteration. He may show that the alteration was made by another, without his concurrence, or was made with the consent of the 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 does so, he may give the writing in evidence, but not otherwise.

Subchapter III—Public Writings

§ 3121. Classification of public writings

Public writings are divided into four classes:

(1) laws;
(2) judicial records;
(3) other official documents; and
(4) public records, kept in the Canal Zone, of private writings.

§ 3122. Written laws defined

A written law is that which is promulgated in writing, and of which a record is in existence.

§ 3123. Public and private statutes defined

Statutes are public or private. A private statute is one which concerns only certain designated individuals, and affects only their private rights. All other statutes are public, in which are included statutes creating or affecting corporations.

§ 3124. Unwritten law defined

Unwritten law is the law not promulgated and recorded, provided by section 3122 of this title, but which is, nevertheless, observed and administered in the courts of the United States. It has no certain repository, but is collected from the reports of the decisions of the courts, and the treatises of learned men.

§ 3125. Public writing of state or country

A copy of a public writing of a State or country, attested by the certificate of the officer having charge of the original, under the public seal of the State or country is admissible as evidence of the writing.

§ 3126. Recitals in statutes as evidence

The recitals in a public statute are conclusive evidence of the facts recited for the purpose of carrying it into effect, but no further. The recitals in a private statute are conclusive evidence between parties who claim under its provisions, but no further.

§ 3127. Judicial record defined

A judicial record is the record or official entry of the proceedings in a court of justice, or of the official act of a judicial officer, in an action or special proceeding.

§ 3128. Authentication of judicial record

A judicial record of the Canal Zone, or of the United States, may be proved by the production of the original, or by a copy thereof, certified by the clerk or other person having legal custody thereof. That of a State may be proved by the attestation of the clerk and the seal of the court annexed, if there is a clerk and seal, together with a certificate of the chief judge or presiding magistrate, that the attestation is in due form.

§ 3129. Judicial record of foreign country

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 is a clerk and a seal, or of the legal keeper of the record with the seal of his office annexed, if there is 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 the legal keeper of the record, and, in either case, that the signature of the person is genuine, and that the attestation is in due form. The signature of the chief judge or presiding magistrate shall be authenticated by the certificate of the minister or ambassador, or a consul, vice consul, or consular agent of the United States in the foreign country.

§ 3130. Same; compared copy

A copy of the judicial record of a foreign country is also admissible in evidence, upon proof that:

(1) the copy offered has been compared by the witness with the original, and is an exact transcript of the whole of it;

(2) the original was in the custody of the clerk of the court or other legal keeper of the same; and

(3) the copy is duly attested by a seal which is proved to be the seal of the court where the record remains, if it is the record of a court; or if there is no such seal, or if it is not a record of a court, by the signature of the legal keeper of the original.

§ 3131. Proof of official documents

Other official documents may be proved, as follows:

(1) Acts of the executive of the Government of the Canal Zone, by the records of the office; and of the United States, by the records

of the state department of the United States, certified by the heads of those agencies, respectively. They may also be proved by public documents printed by order of the executive or Congress, or either house thereof.

(2) The proceedings of Congress, by the journals of that body, or either house thereof, or by published statutes or resolutions, or by copies certified by the clerk or printed by their order.

(3) The acts of the executive, or the proceedings of the legislature, of a State, in the same manner.

(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 a recognition thereof in a public act of the executive of the United States.

(5) Documents of any other class in the Canal Zone, by the original, or by a copy, certified by the legal keeper thereof.

(6) Documents of any other class in a State, 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 mayor of a city of the State, that the copy is duly certified by the officer having the legal custody of the original.

(7) Documents of any other class in a foreign country, by the original, or by a copy, certified by the legal keeper thereof, with a certificate, under seal, of the country or sovereign, that the document is a valid and subsisting document of the country, and the copy is duly certified by the officer having the legal custody of the original.

(8) Documents in the departments or agencies of the United States Government, by the certificates of the legal custodian thereof.

§ 3132. Public record of private writing

A 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.

§ 3133. Officer's deed as evidence of transfer

A deed of conveyance of real property, purporting to have been executed by a proper officer in pursuance of legal process of the district court, or the record of the deed, or a certified copy of the record is prima facie evidence that the property or interest therein described was thereby conveyed to the grantee named in the deed.

Subchapter IV—Private Writings

§ 3161. Private writings classified; seals

(a) Private writings are either:

(1) sealed; or

(2) unsealed.

(b) A scroll or other sign, made in a State or foreign country, and there recognized as a seal, shall be so regarded in the Canal Zone.

(c) There is no difference in the Canal Zone between sealed and unsealed writings. A writing under seal may therefore be changed or altogether discharged by a writing not under seal.

§ 3162. Execution of instrument defined

The execution of an instrument is the subscribing and delivering it, with or without affixing a seal.

§ 3163. Compromise of debt without seal

An agreement, in writing, without a seal, for the compromise or settlement of a debt, is as obligatory as if a seal were affixed.

§ 3164. Subscribing witness defined

A subscribing witness is one who sees a writing executed or hears it acknowledged, and at the request of the party thereupon signs his name as a witness.

§ 3165. Writings called for and inspected may be withheld

Where a writing is called for by one party and 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.

§ 3166. Proof of private writings

Every private writing, except last wills and testaments, may be acknowledged or proved and certified in the manner provided by chapter 27 of Title 4, and the certificate of acknowledgment or proof is prima facie evidence of the execution of the writing, in the same manner as if it were a conveyance of real property.

Subchapter V—Effect of Judgments

§ 3191. Effect of judgments generally

The effect of a judgment or final order in an action or special proceeding before a court or judge of the Canal Zone, is 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 decedent, 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 to the thing, the will, or administration, or the condition or relation of the person.

(2) In other cases, the judgment or order is, in respect to the matter directly adjudged, conclusive between the parties and their successors in interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing under the same title and in the same capacity, if they have notice, actual or constructive, of the pendency of the action or proceeding.

§ 3192. Effect of other judicial orders

Other judicial orders of a court or judge of the Canal Zone, create a disputable presumption, according to the matter directly determined, between the same parties and their representatives and successors in interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing under the same title and in the same capacity.

§ 3193. Parties; when deemed to be the same

The parties are deemed to be the same when those between whom the evidence is offered were on opposite sides in the former case, and a judgment or other determination could in that case have been made between them alone, though other parties were joined with both or either.

§ 3194. Matters deemed adjudged in judgment

That only is deemed to have been adjudged in a former judgment which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto.

§ 3195. Principal bound when surety bound

Whenever, pursuant to sections 3191–3194 of this title, a party is bound by a record, and the party stands in the relation of a 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.

§ 3196. Judicial record of a State; enforcement; personal representatives

The effect of a judicial record of a State is the same in the Canal Zone as in the State where it was 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 committee, or of an executor or administrator, does not extend beyond the jurisdiction of the government under which he was invested with his authority.

§ 3197. Record of foreign admiralty court

The effect of the 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 United States.

§ 3198. Effect of foreign judgment

A final judgment of any other tribunal of a foreign country having jurisdiction, according to the laws of that country, to pronounce the judgment, has the same effect as in the country where rendered, and also the same effect as final judgments rendered in the Canal Zone.

§ 3199. Impeachment of judicial record

A 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.

§ 3200. Jurisdiction necessary to sustain judgment

The jurisdiction sufficient to sustain a record is jurisdiction over the cause, over the parties, and over the thing, when a specific thing is the subject of the judgment.

Subchapter VI—Presumptions

§ 3221. Conclusive presumptions

The following presumptions, and no others, are deemed conclusive:

(1) a malicious and guilty intent, from the deliberate commission of an unlawful act, for the purpose of injuring another;

(2) the truth of the facts recited, from the recital in a written instrument between the parties thereto, or their successors in interest by a subsequent title; but this rule does not apply to the recital of a consideration;

(3) 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 that belief, he may not, in any litigation arising out of the declaration, act, or omission, be permitted to falsify it;

(4) a tenant is not permitted to deny the title of his landlord at the time of the commencement of the relation;

(5) the issue of a wife cohabiting with her husband, who is not impotent, is indisputably presumed to be legitimate;

(6) the judgment or order of a court, when declared by this title to be conclusive; but the judgment or order must be alleged in the pleadings if there is an opportunity to do so; if there is no such opportunity, the judgment or order may be used as evidence; and

(7) any other presumption which, by statute, is expressly made conclusive.

§ 3222. Disputable presumptions

All presumptions, other than those provided for by section 3221 of this title, are satisfactory, if uncontradicted. They are denominated disputable presumptions, and may be controverted by other evidence. The following are of that kind:

(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 wilfully suppressed would be adverse if produced;

(6) that higher evidence would be adverse from inferior being produced;

(7) that money paid by one to another was due to the latter;

(8) that a thing delivered by one to another belonged to the latter;

(9) that an obligation delivered up to the debtor has been paid;

(10) that former rent or installments have been paid when a receipt for latter is produced;

(11) that things which a person possesses are owned by him;

(12) that a person is the owner of property from exercising acts of ownership over it, or from common reputation of his ownership;

(13) that a person in possession of an order on himself for the payment of money, or the delivery of a thing, has paid the money or delivered the thing accordingly;

(14) that a person acting in a public office was regularly appointed to it;

(15) that official duty has been regularly performed;

(16) that a court or judge, acting as such, whether in the Canal Zone or a State or country, was acting in the lawful exercise of his jurisdiction;

(17) that a judicial record, when not conclusive, does still correctly determine or set forth the rights of the parties;

(18) that all matters within an issue were laid before the jury and passed upon by them;

(19) that private transactions have been fair and regular;

(20) that the ordinary course of business has been followed;

(21) that a promissory note or bill of exchange was given or indorsed for a sufficient consideration;

(22) that an indorsement of a negotiable promissory note or bill of exchange was made at the time and place of making the note or bill;

(23) that a writing is truly dated;

(24) that a letter duly directed and mailed was received in the regular course of the mail;

(25) identity of person from identity of name;

(26) that a person not heard from in seven years is dead;

(27) that acquiescence followed from a belief that the thing acquiesced in was conformable to the right or fact;

(28) that things have happened according to the ordinary course of nature and ordinary habits of life;

(29) that persons acting as copartners have entered into a contract of copartnership;

(30) that a man and woman deporting themselves as husband and wife have entered into a lawful contract of marriage;

(31) that a child born in lawful wedlock is legitimate;

(32) that a thing once proved to exist continues as long as is usual with things of that nature;

(33) that the law has been obeyed;

(34) that a document or writing more than thirty years old is genuine, when the same has been since generally acted upon as genuine, by persons having an interest in the question, and its custody has been satisfactorily explained;

(35) that a printed and published book, purporting to be printed or published by public authority, was so printed or published;

(36) that a printed and published book, purporting to contain reports of cases adjudged in the tribunals of the State or country where the book is published, contains correct reports of those cases;

(37) that a trustee or other person, whose duty it was to convey real property to a particular person, has actually conveyed to him when that presumption is necessary to perfect the title of such person or his successor in interest; and

(38) that there was a good and sufficient consideration for a written contract.

Subchapter VII—Particular Cases; Statute of Frauds

§ 3251. Offer 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 not accepted, equivalent to the actual production and tender of the money, instrument, or property.

§ 3252. Right to receipt for payment or delivery

Whoever pays money, or delivers an instrument or property, is entitled to a receipt therefor from the person to whom the payment or delivery is made, and may demand a proper signature to such receipt as a condition of the payment or delivery.

§ 3253. Objections to tender must be specified

The person to whom a tender is made shall, at the time, specify any objection he may have to the money, instrument, or property, or he is deemed to have waived it. If the objection is to the amount of money, the terms of the instrument, or the amount or kind of property, he shall specify the amount, terms, or kind which he requires, or be precluded from objecting afterwards.

§ 3254. Compromise offer

An offer of compromise is not an admission that anything is due.

§ 3255. Statute of frauds; transfer of real property

An estate or interest in real property, other than for leases for a term not exceeding one year, or a trust or power over or concerning it, or in any manner relating thereto, may not be created, granted, assigned, surrendered, or declared, otherwise than by operation of law, or a conveyance or other instrument in writing, subscribed by the party creating, granting, assigning, surrendering, or declaring the same, or by his lawful agent thereunto authorized by writing.

§ 3256. Same; wills, trusts, and specific performance

Section 3255 of this title does not affect the power of a testator in the disposition of his real property by a last will and testament, nor prevent a trust from arising or being extinguished by implication or operation of law, nor abridge the power of a court to compel the specific performance of an agreement, in case of part performance thereof.

§ 3257. Same; contracts

The following contracts are invalid, unless they, or some note or memorandum thereof, is in writing and subscribed by the party to be charged, or by his agent. Evidence, therefore, of the agreement, may 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, except in the case provided for by section 3714 of Title 4;

(3) an agreement made upon consideration of marriage;

(4) 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 an agreement, if made by an agent of the party sought to be charged, is invalid, unless the authority of the agent is in writing, subscribed by the party sought to be charged;

(5) an agreement authorizing or employing an agent or broker to purchase or sell real estate for compensation or a commission;

(6) an agreement which by its terms is not to be performed during the lifetime of the promisor, or an agreement to devise or bequeath property, or to make provision for a person by will.

§ 3258. Same; representation of credit

Evidence is not admissible to charge a person upon a representation as to the credit of a third person, unless the representation, or a memorandum thereof, is in writing, and either subscribed by or in the handwriting of the party to be charged.