ALBERT BOLLES

PUTNAM'S HANDY LAW BOOK FOR THE LAYMAN

Albert Bolles

Putnam's Handy Law Book for the Layman

http://www.litres.ru/pages/biblio_book/?art=24169188
Putnam's Handy Law Book for the Layman:

Содержание

Albert Sidney Bolles
Putnam's Handy Law Book for the Layman

FOREWORD

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

This little book contains many of the legal principles that are in most frequent use, as readers will learn who carefully read it. Again, if they do not always find an answer to their questions, it is believed that in many cases they will find enough law of a

general nature from which they can safely solve their questions. They are therefore besought to do something more than merely consult this book for the purpose of finding ready and complete answers to their questions, to read it and become familiar with its contents.

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

A.S.B.

Putnam's Handy Law Book for the Layman

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

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

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

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

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

All crimes are prosecuted by the officers of the state chosen

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

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

right to do so and the court will order him to desist until it has heard the case, and will enforce its order with a fine or penalty should he disobey.

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

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

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

the great body of the common law.

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

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

Adopted Child.– Children are sometimes adopted. By doing so the natural parents lose all personal rights and are relieved from all legal duties. The adopted parents acquire the right to the adopted child's custody and control, to his services and earnings, and they must maintain and educate him. In some states he becomes the heir of the adopted parent like a natural child, with some limitations. Who can inherit an adopted child's property is not clearly settled. He can also inherit from his natural parent and kindred as if he had not been adopted. In Massachusetts the courts hold that an adopted child will take like a natural child under a residuary clause in an adopted father's will giving all the property not otherwise devised to his child or children. See *Parent and Child*.

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

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

one is a general or special agent.

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

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

In some cases the law creates an agency. Thus an unpaid vendor of goods sometimes has authority to sell them, so has a pledgee of goods outside the authority conferred by the

contract pledging them. A married woman whose husband does not supply her has a limited power to buy necessaries on her husband's credit, which prevails notwithstanding any objection he may make. A minor sometimes has the same power.

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

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

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

An agent has no authority to purchase his principal's property.

To do this, in a sense, would be to purchase of himself. The temptation to do this is sometimes very great, too great for him to withstand, and so he resorts to a crooked method for accomplishing his end. He sells the property to another party who afterward sells it back to him. The worst violators of this principle have been railway receivers, who have taken advantage of their position to get control of the property entrusted to them at a sum much less than its real value. Such sales can be set aside by proper legal procedure. By the modern rule they are not void but are voidable, that is, can be set aside if the creditors or other interested parties wish to do so.

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

Another way of rendering a principal liable for the act of his agent is by ratifying it. Suppose A professed to be the agent of B in building a house for C, and built it so badly that C sued B to recover damages, whose defense was, that A was not his agent. Suppose, however, that B accepted payment for the house, this would be a ratification of A's authority to act for B even if he did not have proper authority in the beginning. Suppose A had authority to sell goods for B but not to collect payment, and

someone should pay him and he ran off with the money, could his principal still collect the money of the buyer of the goods? This is a hard case, and has happened many times. The buyer usually is required to pay the second time. But if B, notwithstanding his direction to his agent not to collect payment, should receive it such conduct would operate as a ratification.

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

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

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

In appointing an agent the principal has in mind the qualifications of the person appointed, he cannot therefore without his principal's consent, designate or substitute another person for himself. This rule though does not prevent him from

employing other persons for a minor service. Indeed, in many cases a general agency requires the employment of many persons to execute the business. How far one may go in thus employing others to execute the details, and how much ought to be done by the general agent himself, depends on the nature of the business. The inquiry would be one of fact, to what extent is a general agent in his particular business expected or assumed to do the things himself.

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

When a person is really acting as an agent, but this is not known by the persons with whom he is doing business, he is liable to them as if he were the principal. It often happens for various reasons that agents do not disclose their principals. Suppose a dealer finds out that the agent presumably acting for himself was, in truth, acting for another, could the real principal be held responsible and the agent escape, or could both be held? The answer is, after discovering the real principal, both can be held, or either of them. The failure of an agent to disclose his agency

will not make him individually liable if the other party knew that he was dealing with a principal with whom he had had dealings through the agent's predecessor. Notice of the agency to one member of a firm is not sufficient notice to the firm to release the agent from personal responsibility in subsequent transactions with another member who did not know and was not informed of the agency. Again, the liability must be determined by the conditions existing at the time of the contract, his subsequent disclosure will not relieve the agent. Finally, while the agent may be held in such a case, the principal also is liable, except on instruments negotiable and under seal, on the discovery of his relationship as principal.

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

you would have no action against his principal for the company did not employ him to slander its patrons; to do this was clearly not in the scope of his employment.

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

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

A principal is liable for the statements and representations of his agent that have been expressly authorized. He is also liable even for false and fraudulent representations made in the course of the agent's employment, especially those resulting in a contract from which the principal reaped a benefit. Even though the statements may not have been expressly authorized, such authority may be implied by law because they are the natural and ordinary incidents of the agent's position. Thus the position of a

business manager often calls for a great variety of acts, orders, notices, and the like, and statements made while performing them are regarded as within the line of his duty.

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

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

that effect unless the mania relates to the agency, or destroys the agent's ability to perform it.

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

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

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

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

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

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

How complete must the writing be? It need not mention the

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

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

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

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

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

A sale by auction is complete by the Sales Act when the auctioneer announces its completion by the fall of the hammer, or in other customary manner. Until such announcement is made, any bidder may retract his bid; and the auctioneer may withdraw the goods from sale unless the auction has been announced to be

without reserve.

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

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

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

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

perhaps in some cases of married women.

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

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

Automobile.– The members of the public have a right to use the public avenues for the purpose of travel and of transporting

property: nor has the driver of horses any right in the road superior to the right of the driver of an automobile. Each has the same rights, and each is equally restricted in exercising them by the corresponding rights of the other.

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

The general rule is that all travelers have equal rights to use the highways. An automobile therefore has the same rights and no more than those of a footman.

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

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

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

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

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

A party who hires an automobile from another is bound to take only ordinary care of it and is not responsible for damage

whenever ordinary prudence has been exercised while the car was in his custody. If lost through theft, or is injured as a result of violence, the hirer is only answerable when these consequences were clearly the result of his own imprudence or negligence. The hirer though must account for the loss or injury. Having done this, the proof of negligence or want of care is thrown on the bailor.

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

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

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

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

"The owner of a motor vehicle," says Huddy, "is of course

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

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

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

The law of the road requiring vehicles to pass each other on

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

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

The rights of travelers along intersecting streets are equal, and each must exercise ordinary care to avoid injury to the other. An automobilist nearing an intersection should run at proper speed, have his car under reasonable control, and along the right-hand

side of the street. If two travelers approach the street crossing at the same time neither is justified in assuming that the other will stop to let him pass. When one vehicle reaches the intersection directly in advance of the other, he is generally accorded the right of way, and the other should delay his progress to enable the other to pass in safety.

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

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

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

automobiles are used and their users are negligent.

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

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

Passing to the liability of the owner of a car for the acts of his chauffeur, the general rule is, he is then liable when the chauffeur is acting within the scope of his owner's business. When the owner himself is riding in the car there is less difficulty in fixing the liability, but when the chauffeur uses the car without the owner's consent, he is not liable for the conduct of the driver. And this is especially so in using a car contrary to the owner's instructions and for the chauffeur's pleasure; or in using it for his own business with the owner's consent. And the same rule generally prevails whenever a member of a family uses his

parent's car without his knowledge and consent, and especially when forbidden. But the parent is liable for the running of a car with his knowledge by a member of his family and for the convenience or pleasure of other members. See *Chauffeur*; *Garage Keeper*.

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

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

The statutes generally provide what a person must do who has found lost property. Suppose a person appears who claims to be the owner of the thing found, what shall the finder do in

the way of submitting it to his inspection? In one of the recent cases the court decided that it was a question of fact and not of law whether the finder of lost property had given a fair and reasonable opportunity for its identification before restoring it, and whether the claimant should have been given an opportunity to inspect it in order to decide whether it belonged to him.

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

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

The law regards the possession of an article which is lost as being that of the legal owner who was previously in possession,

until the article is taken into the actual possession of the finder. If the finder does not know who the owner is and there is no clue to the ownership, there is no larceny although the finder takes the goods for himself and converts them to his own use. If the finder knows who the owner is or has a reasonable clue to the ownership, which he disregards, he is guilty of larceny.

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

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

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

was injured from the dripping of water from overhead pipes. The bailee was, notwithstanding his receipt, held liable.

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

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

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

steal a package from the safe, the bank would not be responsible for the loss any more than if it had been stolen by an outsider. The bank did not employ him to steal, but to perform the ordinary banking duties.

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

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

Agisters and livery-stable men have no lien at common law, like carriers for keeping the animals entrusted to them because they are under no obligation to take them into their keeping. In

Pennsylvania a different rule was long ago declared, and has ever since been maintained. As he can agree on terms, he may make such as are agreeable to both parties. Elsewhere he can impose his own terms, and may demand his pay in advance, or create, by contract, a lien if he pleases. A person who is hired as a groom to a horse for a specified time and at a fixed price, has no lien on the horse for his service, but has a lien for feed, keeping and shoeing, which should have been furnished by the owner. A contract to do this is not necessary to create the lien, it arises as if the horse had been left for keep and care without saying more.

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

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

Any person who owes debts, or business corporation, may become a voluntary bankrupt. So may an alien. He may also become an involuntary bankrupt if he has had his principal place of business here, or has been domiciled within the jurisdiction of

the court for the preceding six months, or has property within its jurisdiction. Some corporations are still denied voluntary action, as well as minors and insane persons.

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

Next we may inquire, what are acts of bankruptcy? One of them is an admission of a person's inability to pay his debts. And this may be done by a corporation through its properly organized officers. Another act of bankruptcy is to convey, transfer, conceal or remove property with the intention to defraud creditors. And by concealment is meant the separation of some tangible thing like money from the debtor's estate, and secrete it from those who have a right to seize it for payment of their debts. The transfers of property covered by the act are those which the common law regards as fraudulent. If, for example, at the time of the transfer of his property one is so much indebted that it will embarrass him in paying his debts, the transfer will be deemed fraudulent; but a voluntary transfer, made by one who is free

from debt, cannot be impeached by subsequent creditors. The intention to hinder, delay or defraud creditors is a question of fact to be ascertained by proper judicial inquiry.

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

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

Passing to the filing of the petition a voluntary petitioner should file his petition in the court of bankruptcy in the judicial district where he has principally resided for the preceding six months. When there is no estate and no claim has been proved and no trustee has been appointed, a bankrupt may withdraw his

petition on paying the costs and expenses. The petition must be accompanied by a schedule of the petitioner's property, showing its kind and amount, location, money value, and a list of his creditors and their residences when known, the amount due to them, the security they have, and a claim to legal exemptions, if having any. After filing a voluntary petition the judge makes an adjudication. He may do this ex parte, that is without notice to creditors.

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

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

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

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

Only a creditor who owns a demand or provable claim can vote at creditors' meetings. Nor can other creditors through filing objections to a claim prevent a bona fide claimant from voting. A creditor of an individual member of a bankrupt partnership cannot vote. Nor can creditors holding claims that are secured or that have priority vote only to a limited extent, so far as

their claims are on the same basis as other creditors. To entitle secured and preferred creditors to vote at the first meeting on the whole of their claims, they must surrender their securities or priorities. If a portion of a creditor's debt is secured and a portion is unsecured, he may vote on the unsecured portion. An attorney, agent, or proxy may represent and vote at creditors' meetings, first presenting written authority, which must be filed with the referee. The referee who presides at the first meeting makes up or decides on its membership. Matters are decided at the meeting by a majority vote in number and amount of claims of all the creditors whose claims have been allowed and are present.

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

The claims of creditors who have received preferences are not

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

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

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

continued by his successor.

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

The federal Bankruptcy Act prescribes what property passes to the trustee and also what is exempt. Whatever property on which a levy could have been made by judicial process against the bankrupt passes to the trustee. On the other hand, the income given to a legatee for life under a will providing it shall not be subject to the claims of creditors does not pass to the trustee. If the bankrupt has an insurance policy with a cash surrender value payable to himself or personal representatives he may pay or secure this sum to the trustee and continue to hold the policy. And a policy of insurance payable to the wife, children, or other kin of the bankrupt is no part of the estate and does not pass to

the trustee.

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

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

Beneficial Associations.– Beneficial associations possess a varied aspect, they are both social and business organizations. Often the members are bound together by secret obligations and pledges. Trades-unions have a double nature, they are created for both beneficial and business purposes. Originally their beneficial character was the more important feature. Benefit societies may

be purely voluntary associations or incorporated either by statute or charter.

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

The legal status of such associations, their right to sue and be sued, the liability of the members to the public for the debts of the association, though most important questions, are not as well settled as they might be. In many states statutes exist defining their right to sue and be sued, and their liability to creditors. Yet these statutes do not cover all cases. Generally persons who associate for charitable or benevolent purposes do not regard themselves in a legal sense as partners. Nevertheless in fixing their liability to creditors, dividing their property, and closing up their affairs, the courts often, though not always, treat their association as a partnership, and the members as partners. Thus the highest court in New York declared that an unincorporated lodge, which had been mis-managed, was not a partnership. The members sought to dissolve the lodge, and distribute its property. The court said there was no power to compel the payment of dues, and the rights of a member ceased after his

failure to meet his annual subscription. On the other hand, the supreme court in the same state held that the members of a voluntary association were liable to its creditors by common law principles. "Where such a body of men join themselves together for social intercourse and pleasure, and assume a name under which they commence to incur liabilities by opening an account, they become jointly liable for any indebtedness thus incurred, and if either of them wishes to avoid his personal responsibility by withdrawal from the body, it is his duty to notify the creditors of such withdrawal."

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

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

Sometimes a quarrel springs up in one of these associations, the members divide, who shall have the property? The members of more than one church organization have fought this question, first among themselves, afterwards in the courts. Suppose a quarrel breaks out in a branch association and two parties are formed, which of them is entitled to the property? The party

that adheres to the laws and usages of the general organization is regarded as the true association, and is therefore entitled to the enjoyment of the property. Though that party may be a minority of the faithful few, the members are enough to continue the organization.

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

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

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

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

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

Controversies concerning property rights of religious societies are generally decided by one of three rules: (1) "was the property a fund which is in question devoted to the express terms of the gift, grant or sale by which it was acquired, to the support of any specific religious doctrine or belief or was it acquired for the general use of the society for religious purposes

with no other limitation; (2) is the society which owned it of the strictly independent or congregational form of church government, owing no submission to any organization outside of the congregation; (3) or is it one of a number of such societies, united to form a more general body of churches, with ecclesiastical control in the general association over the members and societies of which it is composed."

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

The power to expel members is incident to every society or association unless organized primarily for gain. Gainful corporations have no such power unless it has been granted by their charter or by statute. The revision of the list of members by dropping names is equivalent to the expulsion of those whose names are dropped, and by a majority vote or larger one as the rules of the society may require. Nor can the power of expulsion be transferred from the general body to a committee or officer. The power to expel must be exercised in good faith, not arbitrarily or maliciously, and its sentence is conclusive like that of a judicial tribunal. Nor will a court interfere with the decision

of a society except: first, when the decision was contrary to natural justice and the member had no opportunity to explain the charge against him; secondly, when the rules of the association expelling him were not observed; thirdly, when its action against him was malicious. Nor will a court interfere because there have been irregularities in the proceedings, unless these were of a grave character.

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

As subordinate lodges of a benefit society are constituent parts of the superior governing body, there may be an expulsion from membership in a subordinate lodge for violating laws which generally caused expulsion from the society itself, and there may be a conditional expulsion or suspension. If an assessment is

not paid at the fixed time, its non-payment, by the laws of the order, works a suspension, though a member may be restored by complying with the laws of the order.

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

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

An association cannot by its constitution or by-laws confer judicial powers on its officers to adjudge a forfeiture of property rights, or to deprive lodges or members of their property and

give it to another, or to other members. To allow associations to do this is contrary to public policy. For the same reason an agreement to refer future controversies to arbitration cannot be enforced; it in effect deprives a party of his rights under the law. He may do this in a known case, this indeed is constantly done, but one cannot bar himself in advance from a resort to the courts for some future controversy of which he has no knowledge at the time of the agreement. This is a rule of law of the widest application.

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

An insurance broker is ordinarily employed by the person seeking insurance, and is therefore unlike an insurance agent, who is a representative of an insurance company, and usually has the authority of a general agent. A delivery of a policy therefore,

to an insurance broker, would be a delivery to his principal. He is a special agent. Unless employed generally to keep up his principal's insurance, he has no implied authority to return a policy to be cancelled, and notice to him that a policy had ceased, would not be notice to his principal.

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

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

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

To gain his commission a broker must produce a person who was ready, able and willing both to accept and live up to the

terms offered by the owner of the property. Nor can a property owner escape payment of a broker's commission by selling the land himself and at a price less than the limit put on the broker.

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

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

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

assume all the risk himself.

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

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

business to carry such a valuable thing in that way. He must make known the contents for the carrier's protection. He cannot carry an explosive in secrecy. To attempt to do such a thing is a manifest wrong to the carrier.

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

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

When a passenger is injured and no agreement can be made with the carrier for compensation, a suit is the result and the chief question is one of fact, the extent of the injury, and the degree of negligence of the carrier. If, on the other hand, the passenger was in fault himself and contributed to the injury then the more general rule is he can recover nothing. In some states the courts

attempt to ascertain the negligence of both parties, when both are at fault, and then award a verdict in favor of the one least in fault. This is a difficult rule to apply however just it may seem to be.

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

A sleeping car company operating in connection with ordinary trains is not a common carrier, nor an innkeeper as to the baggage of a passenger. Yet it is liable for ordinary negligence in protecting passengers from loss by theft. In a well-considered case the judge said: "Where a passenger does not deliver his property to a carrier, but retains the exclusive possession and control of it himself, the carrier is not liable in case of a loss, as for instance, where a passenger's pocket is picked, or his overcoat taken. A person asleep cannot retain manual possession or control of anything. The invitation to make use of the bed carries with it an invitation to sleep, and an implied agreement

to take reasonable care of the guest's effects while he is in such a state that care upon his own part is impossible. I think it should keep a watch during the night, see to it that no unauthorized persons intrude themselves into the car, and take reasonable care to prevent thefts by occupants."

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

Though the United States is a common carrier for carrying mails, it cannot be held liable because it is a branch of the government. Mail matter may be carried by private persons, but this is limited to special trips. By statute no person can establish any private express for carrying letters or packets by regular trips or at stated periods over any post route, or between towns, cities or other places where the mail is regularly carried.

A public officer in performing his duties is exempt from all liability. But a postmaster is liable to a person injured by his negligence or misconduct and for the acts of a clerk or deputy authorized by him. The assistant unless thus shielded must answer for his own misconduct. A rider or driver employed

by a contractor for carrying the mails is an assistant in the business of the government. Although employed and paid, and liable to be discharged at pleasure by the contractor, the rider or driver is not engaged in his private service; he is employed in the public service and therefore the contractor is not liable for his conduct.

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

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

wife, and she in turn can give one to him. Likewise a corporation may make such a mortgage.

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

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

More generally the nature of the chattels conveyed determine largely the character of the description. Thus animals may be described by weight, age, height, color and breed; vehicles by their style and manufacturer's name; furniture by piece or set; crops growing or to be grown by their location and year. A

general claim of "all" articles in a stated place is regarded as sufficient. Oral evidence is admissible to aid the description in identifying the subject-matter of the mortgage, and to explain the meaning and extent of the terms of the description.

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

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

What may be mortgaged? In general, any personal property that may be sold; many of the statutes define it. They cover a life insurance policy, corporation stock, railway rolling stock,

seamen's wages, growing crops and trees, profits from the use of a steamboat, premiums earned by a horse, book accounts, leasehold interests, nursery stock, besides many other things. Whenever fixtures annexed to real estate retain the character of personal property they may be mortgaged. And when animals are mortgaged their natural increase are included. A mortgage made of an unfinished article will hold the article when finished if it can be identified.

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

When the mortgagor fails to pay his debt, the right of the mortgagee to proceed in taking the property is usually regulated by statute, except when the parties have agreed themselves and in conformity with statute. The rights of the mortgagee depend in many cases on the title, whether that has passed to him by virtue of the mortgage, or whether it still remains conditionally in the mortgagor. Where the mortgagor still retains the title, a clause is often put into the mortgage to the effect that, should the mortgagor default in payment, the mortgagee may take possession of the property and sell it; and such a provision is valid and enforcible. Where the title is vested or transferred to the mortgagee by virtue of the mortgage, this is equivalent to giving him possession whenever he chooses to demand it. In

other states the mortgagee's discretion is not so broad, before taking possession he must have reasonable grounds for believing himself insecure, that the mortgagor has done, or threatens to do, something that would impair the mortgagee's security.

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

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

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

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

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

See *Automobile*; *Garage Keeper*.

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

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

Suppose a person presents a check and the maker's deposit is not enough to pay the full amount, what can be done? Usually the bank declines to pay. Suppose the holder says he is willing to give up the check and take the amount in the bank? There is no

reason why the bank should not accede to his wishes. Suppose a bank should pay more than the amount on deposit through no fraud of the holder, from whom can it recover the amount? If the holder has been free from wrong in presenting the check, the bank cannot look to him, but to the drawer for repayment. If the maker of a check has no money in the bank, perhaps he may not be a depositor, he commits a fraud in making and giving his check to another, and the offense in many states is deemed a crime: likewise a person who receives such a check knowing its true nature is equally deep in the wrong.

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

quite impossible always to detect them, yet banks are held liable therefor.

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

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

The holder of a check should demand payment within a reasonable time after he has received it. He may keep it longer

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

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

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

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

By the fourteenth amendment of the federal constitution, all persons born in the United States and subject to its jurisdiction are citizens of the United States. In 1855 Congress passed an act conferring citizenship on alien women who should marry American citizens. An American woman therefore who marries

an alien takes the nationality of her husband. When her marital relation ends she may elect to retain her marital or her original citizenship. Since minor children follow the status of their parent, by the marriage of an alien widow to an American citizen, her children also become American citizens.

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

The rights of aliens, from the very beginning of the American government, have been expanded by treaty provisions and by liberal legislation. In nearly all the states resident aliens were given the right to take title to land, whether by deed or by inheritance, to hold such real estate and to transfer it by law or by descent. In some states they were given the right to vote and hold office. And at common law they were entitled to purchase,

own and sell personal property, engage in business and to make contracts and wills. By the fourteenth amendment to the federal constitution their rights and privileges have been further secured.

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

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

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

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

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

been largely removed by statutes in all the states, as we shall learn in another place.

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

The law has much to say about the consideration that is an element in every contract; in other words, there must be a cause, something to be gained by the parties in every contract to sustain it. If A should promise to give to B a house next week, and on the day fixed for transferring it A should change his mind, he

could not be compelled to transfer it, for the promise would be without any consideration or thing coming from B. But if the house had been transferred, A could not afterwards repent of his act and demand its return. An executed gift therefore, free from all fraudulent surroundings, is valid: the donor of an executory gift is free to withhold its execution.

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

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

Again should a bank defaulter make good the amount taken,

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

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

Suppose one signs his name to a subscription paper, calling for the payment of money, to build a church, for example, and the designated amount has been subscribed, can a subscriber refuse to pay? He cannot. Suppose he withdraws before the subscriptions have been completed, what then? He can refuse. If a subscription has not been completed, death operates as a revocation and the subscriber's estate is not held for the

amount. Sometimes a moral obligation to pay money is a good consideration for a promising to pay it. Thus if one owes another for a bill of goods, and the debt has ceased to be binding by lapse of time, yet he should afterwards promise to pay, he could be held on his promise because there was a good consideration for the debt. Lastly a contract may be modified by mutual agreement without another consideration.

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

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

An eminent jurist has said "that an offer without more is an

offer in the present to be accepted or refused when made. There is no time which a jury may consider reasonable or otherwise for the other party to consider it, except by the agreement or concession of the party making it. Until it is accepted it may be withdrawn, though that be at the next instant after it is made, and a subsequent acceptance will be of no avail."

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

When does assent occur in contracts made by correspondence? The rule is in nearly every state (Massachusetts being the chief exception) where an offeree has received an offer by letter and has put his acceptance in the postoffice, the minds of the parties have met and made a contract. The post-office is the agency of the offerer both to carry his offer and bring back the return. If the offeree should use a different agency, the telegraph for instance, to convey his acceptance, it would not be binding until the offerer had received and accepted it. Of course,

an offerer by letter may withdraw his offer at any time. Suppose he should receive an acceptance by letter or telegraph but deny it, and insist that no contract had been made. Then the controversy would turn on the proof. If the acceptance had been by letter, and the offeree could prove that the offeree had written and mailed it, the offeree's proof would be complete. If the offeree sent a telegram, then he would be obliged to prove the delivery of the dispatch. Suppose one should mail a letter of acceptance, but before its receipt by the offerer, should send a telegram declining the offer which was received before the letter of acceptance? The acceptance would stand, for as there had been a meeting of minds when the letter was put into the postoffice, the offeree could not afterwards withdraw his offer. A person who makes an offer cannot turn it into an acceptance. An old uncle wrote to his nephew that he would give thirty dollars for his horse and added, "If I hear no more about the matter, I consider the horse is mine." The game did not work, for no man can both make and accept an offer at the same time, and that is what the foxy uncle tried to do.

Offers and rewards are often made through the newspapers. Thus the owner of a carbolic smoke ball offered to pay a specified sum to any one who suffered from influenza after using one of his smoke balls in accordance with directions if he was not cured. A person who failed to receive the benefit advertised recovered the reward. Two other cases may be mentioned that illustrate the uncertainty of the law. An excited farmer offered the following reward, "Harness stolen! Owner offers $100 to

any one who will find the thief, and another $100 to prosecute him!" The farmer cooled off and declined to pay after the thief was caught and the court relieved him, declaring that his advertisement was not an offer to pay a reward, but simply an explosion of wrath. In another case a man's house was burning, and he offered $5,000 to any one who would bring down his wife dead or alive. A brave fireman accomplished the feat. This offerer too cooled off and declined to pay, but he did not escape on the ground that this was only an explosion of affection, and was obliged to pay.

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

A contract having been made, next follows its execution. When a contract is not executed, or not executed properly, the party injured usually may recover his loss. Sometimes the contract states what the offending or wrongful party must pay should he fail to execute it. Many questions have arisen from such agreements. Suppose a contractor agrees to build a home for another and to finish it within a fixed time, and, failing to do so, shall forfeit or pay to the other $5,000 as a penalty for his failure. One would think that if he failed to execute it the other party could demand the $5,000. But the courts have a way of their own in looking at things. Suppose the contractor's failure did not in fact result in any loss whatever to the other party? The courts

in such a case are very reluctant to enforce the agreement. If there had been a loss, something like that amount, then the courts would compel him to pay. In other words, the most general rule is, notwithstanding such a clearly written agreement, the courts seek to do justice between the parties. Whenever the parties do not attempt to fix the damages themselves, should their contract not be fulfilled, then the amount that may be recovered depends on a great variety of circumstances. Suppose a woman should go to a store to buy a piece of silk. She asks if the piece shown to her by the saleswoman is all silk, who makes an affirmative reply. The buyer knows much more about it than the saleswoman, which is often the case in buying things, and knows it is half cotton, can the buyer recover anything? Surely she has not been deceived. The seller may have tried to fool her but did not, and having failed, the buyer has no legal ground for an action. On the other hand, if the buyer was ignorant, knew nothing about silk and had been deceived by the seller, then she would have a clear case. This is one of the fundamentals in that large class of cases growing out of deceit. The party seeking redress, must have been deceived, and also injured by the deceit in order to recover. The remedies that may be employed whenever contracting parties have failed, or partly failed to fulfill their agreements or promises will be considered under other heads. See *Deceit*; *Drunkenness*; *Quasi Contract*.

Corporations.– There are many kinds of corporations. Those most generally known are business corporations; and

though many of them are very large, legally they are private corporations. A railroad corporation, though performing a public service, nevertheless is a private corporation.

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

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

individuals.

FORMATION OF CORPORATIONS

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

A corporation has no heirs like an individual; it continues through succession, one sells his interest or stock to another, and thus it lives to the end of its charter unless it fails or, through some

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

CAPITAL

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

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

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

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

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

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

Конец ознакомительного фрагмента.