

THE GERMAN CIVIL CODE.

(Part II.)

FORM, SUBSTANCE, APPLICATION.

One is much impressed upon a cursory reading of the whole work by the scope of its general divisions, absence of repetition, and omission of provisions relating to public law and judicial procedure noticeable in other great codes. Some groupings of subjects, however, seem illogical and confusing.

There are five books: I, General Provisions; II, Obligations; III, Rights *in Rem*; IV, Rights of Family; and V, Successions; each being divided into sections which are in their turn subdivided into titles, the whole Code, however, containing two thousand and three hundred and eighty-five articles consecutively numbered without regard to book, section or title.

BOOK NO. I, GENERAL PROVISIONS.

(*Allgemeiner Theil.*)

This embraces Articles 1-240, and is intended to be declaratory of certain principles and explanatory of terms used in the other books. It is divided into seven sections:

Persons, Things, Juridic Acts, Computation of Time, Prescription, Rights of Defence and Reprisal and Suretyship. Under *Persons*, while majority is fixed at twenty-one years of age a minor may be judicially declared of full age at eighteen years if he consent and it serve his interests (Arts. 2-5). There is also among the provisions for judicial declaration of incapacity the cause of prodigality, exposing one's family to poverty, so familiar to European lawyers (Art. 6). Domicile, under this same section is treated with unwonted liberality. Article 7 provides that wherever a man fixes his dwelling place shall be his domicile, but he may have many such. "*Der Wohnsitz kann gleichzeitig an mehreren Orten bestehen.*" This was a principle of the ancient laws of many German states.

Absence, the subject of so much anterior "particular"

legislation, is made the basis of a judicial declaration of decease after ten years upon certain conditions as to age and occupation minutely set out in Arts. 13-20 which also incidentally close debate on the presumption of survival by declaring that when many persons perish in one catastrophe it is presumed that they all died at the same moment. "*Sind Mehrere in einer gemeinsamen Gefahr umgekommen, so wird vermuthet dass sie gleichzeitig gestorben seien*" (Art. 20).

A peculiarity is noticeable under the title "Judicial Persons" in that associations having intellectual, moral, social, political or religious objects are considered at length, while those organized for profit are largely relegated to the Commercial Law or the Public Law so far as concerns their formation.

The Articles 21-88, together with Articles 705-740, in the Book on Obligations present the divers systems of combinations covered by our law of corporations, partnerships and associations. So varied, however, are the German conceptions of the methods and aims of aggregations of men and capital and so complex, contradictory and confusing do they appear without minute and painstaking study that few foreigners would hazard an explanation of "corporate entity" under this Code. Indeed, some Continental writers affirm that many practising Doctors of Law in Germany would not attempt it. This situation arose from the unfortunate diversity of the sources of law by which the compilers of the Code were seriously hindered, coupled with two other forces. The States desired to control corporations from the police and taxation standpoints, while the commercial, industrial and socialistic elements strove for unhampered freedom of association. The effort to meet all requirements resulted in a departure from general principles and the adoption of a mass of administrative details. The leading features are, first, a division of all aggregations of men or capital into those which have corporate entity and those which have no recognition in law apart from the component individuals personally. The former may be given life by letters-patent, by governmental sanction through general laws requiring assur-

ances of protection of the interests of third parties, and by tacit consent of the authorities through registration of the articles of association where the whole public is not interested. The latter most nearly resemble our incorporated associations, but are "regulated" and diversified to a degree unheard of in this country. All classes are likewise subject to propriety of purpose and method. To cover the whole field one must invade the Public Law, the Commercial Law, the Judicial System, litigious and voluntary, and the Administrative Law of both the Federal and the State Governments.

Under *Things*, considered from the definition standpoint, in Articles 90-103 it becomes apparent that no distinction between real and personal property is recognized. The word *sachen* is used in the corporeal sense. When a right is the subject the word *gegenstand* is used. The only exception seems to be in Article 1,551 relating to Marriage Portions.

The Code abandons the definition of *res extra commercium*, and leaves *res sacræ et religiosæ* and public things to Public Law and the Reserved Powers of the States.

The section of *Juridic Acts* contains a doctrine that whoever suffers by reason of fraud, accident or mistake even constructive or where the results arise by *force major*, is entitled to damages from the original mover. The lack of actual fault appeared as an exception in the Project of the Code but was stricken out by the followers of the theory of Jhering in his *culpa in contrahendo* (Arts. 116-123).

In defining and regulating contractual ability (Arts. 145-185) a distinction is made between the formal compact which gives rise to original rights, called a contract (*vertrag*) and an agreement to establish, alter or renew existing rights, called a convention (*einigung*). The latter usually relates to some landed interest, and is generally required to be registered before taking full effect.

Under *Verjährung* (Arts. 194-225) limitations of actions are fixed with apparently useless particularity. After announcing thirty years as a general limitation, special provision is made for the outlawry after two years, of

seventeen kinds of indebtedness founded upon mercantile transactions, relations of master and servant, etc. Then the term of four years is fixed for arrears of interest, rentals, etc. By what seems an oversight the limitation for torts is not given in this Book, but is inserted under the title of that subject and by Article 852 is fixed at three years. The provision is worthy of special mention. The right of action is extinguished in any event under the general limitation of thirty years (Art. 195), but also at the end of three years from the moment when the person injured ascertains the damage and who committed the wrong. "*Der Anspruch auf Ersatz des aus einer unerlaubten Handlung entstandenen Schadens verjährt in drei Jahren von dem Zeitpunkt an, in welchem der Verletzte von dem Schaden und der Person des Ersatzpflichtigen Kenntniss erlangt, ohne Rücksicht auf diese Kenntniss in dreissig Jahren von der Begehung der Handlung an*" (Art. 852).

The old spirit of private war and individual freedom is plainly perceptible in the provisions for personal defence of property and right to retake the same notwithstanding the modern polish of language and limitation of the powers. Ten centuries of the history of Germany are stamped upon those placid sentences (Arts. 226-231). Note the mild injunction in Article 230: "*Die Selbsthülfe darf nicht weiter gehen, als zur Abwendung der Gefahr erforderlich ist.*"

A feature under the title of *Suretyship* (Arts. 232-240) wherein are merely designated the kinds of security acceptable shows that whenever possible the Fatherland was viewed only as one great whole. It is provided (*inter alia*) that security may be entered by pledging the obligations of the Empire or by mortgage upon land or the issues of land situated anywhere in Germany.

BOOK NO. II, OBLIGATIONS.

(*Recht der Schuldverhältnisse.*)

This begins with Article 241 and ends with Article 853 covering the seven sections into which this Book is also divided.

It is significant that there is no definition of an obligation. There is also a recognition of the natural law, but without so declaring. These two facts indicate the force of the criticism which met the original Project of the Code when the Bundesrath, in 1888, decided to submit it to the whole of Germany for suggestions. It will be recalled that able men attacked it for its Romanism and general doctrinarianism. There still existed embers of the old controversy between Savigny and Thibaut. The result was this absence both of the Civil Law definition and any expressed recognition of the Natural Law School. Nor was this abandonment of the Roman Law merely formal. It is distinctly announced that obligations are not necessarily founded upon a consideration capable of pecuniary measurement. Taken altogether the provisions are a mixture of all known incidents of contractual relations with new ideas born of the multitudinous transactions of modern life, but, withal, singularly comprehensive and supple.

While many provisions are peculiar to European legislation, such as the prohibition upon alienation of that part of one's expectancy which the law reserves for him out of a parent's estate, there are many other regulations, such as requiring conveyances of lands to be written and recorded and the duty to give a written receipt when demanded, that indicate how carefully all details were considered. Article 409, providing that a notice of assignment by the assignor shall be sufficient, indicates a practical spirit. There is also a recognition of the principle that the mere happening of the event or arrival of the time stipulated places the debtor *in mora*, that is, that the fact or the time itself is notice. In Article 422 it is declared that a joint debtor cannot set off a separate debt owing to his co-debtor.

There is an unusual power given to contracting parties by Article 477, permitting them to fix the limitation of action for default in the sale of property, also fixing, in the silence of the contract, six months as to movable property and one year when it concerns land.

Sales (Arts. 481-515), under which minute regulations concerning price, quality, acceptance, deceit, rescission and

damages for breach of contract are given so carefully would seem to be too much the subject of definition to be permanent. The general principles of vendor and vendee as announced are a composite of the Roman Law, the ancient customary laws established at cattle markets and the demands of modern commerce.

The title of Donations (Arts. 516-534) carries forward the Roman Law as in other Codes where a legal "reserve" in favor of certain heirs limits the power of alienation. The subject is somewhat broadened by Article 528 which declares that if after the execution of the donation the donator become unable to meet the needs of his rank and cannot fulfill his obligations to support his parents, his wife or his *ex-wife*, then the donataire must restore the gift as "an enrichment without cause." It will be observed that no element of fraud, over-reaching or other vice of the gift itself enters into this provision which seems to be entirely founded upon public policy.

Our law of Landlord and Tenant is covered by the title "*Mieth-Pacht*" (Arts. 535-597). The principles of the Common Law of England are here so manifest that no argument is necessary to establish a common origin in the feudal system. While other parts of the Code are drawn from divers sources, when those relating to land are considered, the force of the early Saxon feudality cannot be overlooked for a moment.

There are, however, some departures from the Common Law. For example, after the question of the right to sublet had been well discussed the provision against it contained in the Prussian *Landrecht* was adopted. "*Der Miether ist ohne die Erlaubniss des Vermiethers nicht berechtigt, den Gebrauch der gemietheten Sache einem Dritten zu überlassen, insbesondere die Sache weiter zu vermieten*" (Art. 549). There can be no confusion about "holding over under the same terms," because by Article 557 if the tenant remain in possession after term expires, he must pay proportionally and that "without prejudice to the most ample damages if any have been suffered." In the absence of specific contract the period of payment fixes the term and the length of notice of an intention to surrender the prem-

ises, except that in any such tenancy notice may be given not later than the third day of any quarter of an intention to vacate at the end of that quarter. If payable by the month notice must be given not later than the fifteenth day of the final month; if by the week notice must not be later than the first day of the calendar week, and if by the day notice must be given the preceding day (Art. 565). All leases for more than a year must be in writing, otherwise it is considered to be an "undetermined" letting and subject to the previous article (Art. 566). Article 571 is rather radical: if the landlord sell the premises with the tenant in possession the grantee takes subject to the lease yet if he fail to keep its conditions the grantor can also be held liable by the tenant. There is a distinction made between ordinary lettings and farm leases. In the former the landlord is bound to repair; in the latter that duty is on the tenant. The provisions respecting farm tenancy are minute and numerous (Arts. 581-597). They are drawn principally from the Prussian *Landrecht*, the Saxon Code of 1868 and the Austrian Code of 1811.

The principles of Hiring, Lending, Services, Specific Undertakings, Rewards, Mandates and Bailments (Arts. 598-700), are not far removed from the Roman Law, except those under Specific Undertakings which regulate matters like our repairs to chattels and our building contracts. By Articles 647 and 648 the contractor is given rights of lien upon the thing repaired or the building constructed. It may not be amiss to also mention Article 656 (under Contracts of Brokerage), which says that a promise to pay for bringing about a marriage, raises no legal obligation. Under the head of Bailments may be mentioned the responsibility of inn-keepers (Arts. 701-704). Hotel proprietors are responsible for "the loss of and injury to" the goods brought by the guest, unless the loss be caused by the guest himself, his companion, some person he has brought to the hotel temporarily, the nature of the goods or a *force major*. This liability cannot be evaded by any notice to the contrary (Art. 701). The proprietor on the other hand has a lien for lodging and other things supplied for the "satisfaction of the needs" of the guest (Art. 704).

The title of Societies (Arts. 705-740) covers practically unincorporated associations or those aggregations lacking formal recognition as juridical persons. They have quite a limited field in view of other provisions and this part of the Code seems to be an endeavor to regulate all organizations that by accident, informality or intent have failed to come within the laws governing corporations and limited copartnerships. Mention has already been made of them in the notes on Book I.

Obligations arising out of Gambling and Betting cannot be enforced, unless the principle *condictio ob turpem causam* can be applied (Art. 762) and marginal dealings in stocks or merchandise are specifically under ban (Art. 764).

Suretyship and Guaranty are defined and enforced without express distinction and with effects not much differing from both in our own laws. The surety under some circumstances becomes liable as the principal debtor but otherwise has a right to insist upon prior recovery against the defaulter (Art. 773).

The titles of Assignments and Private Negotiable Obligations (Arts. 783-808) are so identified with the whole body of Commercial Law that any consideration of these particular clauses would be unsatisfactory and incomplete without referring to matters beyond the scope of this paper. It may be well to say, however, that both treat of subjects so absolutely modern that they never came within even the great foresight of Lord Mansfield when he "received" the Law Merchant into English jurisprudence. While great consistency marks the efforts to make this branch a complete body of purely substantive private law, a lapse into procedure does occur in places. The Article 809 provides for an action *ad exhibendum* by declaring that whoever has a right relative to a thing in the possession of another and wishes to assure himself of that right may compel the possessor to permit an inspection. This relates to title papers and all documentary evidence as well as to the disputed thing (*sache*) itself.

One of the most unique and interesting titles of the whole Code is that of Enrichment without Cause (*Ungerechtfertigte Bereicherung*), wherein it is declared that whoever obtains without judicial proceeding something at the ex-

pense or to the detriment of another shall be under obligation to restore it (Art. 812). This is not founded exclusively upon fraud, accident or mistake, but is a means of controlling the individual under the theory of paternal government. Its principle and details of application have the support of divers ancient Germanic laws. The receiver is entitled to reimbursement for expenses unless fraud was in the transaction, in which event the acquired thing, together with all of its increase, is confiscated for the benefit of the injured party. The scope of the measure is best revealed by other articles giving it special applicability. Article 323 applies it where a thing has passed by contract and afterwards a defect develops which must have existed before but was unknown to the vendee and injures his bargain. Article 516 makes donations, as mentioned in considering that section, subject to restoration in case of the indigence of the donator. By Article 543 a landlord who has received rent in advance and sells before the expiration of the time covered by the payment, must restore it. Under Article 628 a servant who has received wages in advance and the ending of the employment happens by some unforeseen event must make return beyond the time of actual service. Similar applications of the principle can be found concerning agency (Art. 684), torts (Art. 852), charges on land (Art. 951), treasure-trove (Art. 977), marriage (Arts. 1,301, 1,399, 1,455), and decedent's debts (Art. 1,973).

The title of Unlawful Acts (*Unerlaubte Handlungen*) embraces our general doctrine of torts and more (Arts. 823-853). Contrary to the Roman Law reparation is not limited to damage caused by specific acts, but a general principle is established that liability to compensate shall follow the commission of any act forbidden by law, which is applied upon the fundamental idea that there is no liability without personal fault. These two points are elaborated in the several articles with a precision that leaves no room for judges to speculate upon *quasi-délits* or presumptions of negligence. These twenty articles constitute the most concise expression of the whole field of generally accepted modern negligence law that can be found in the world to-day.

“Whoever wilfully or negligently injures the life, body,

liberty, property or any other right of another is liable to the latter to repair the damage caused. The same obligation is upon whoever transgresses a law which protects another" (Art. 823).

Notwithstanding the interesting features of this part, space permits mention of but a few points. The specific articles relate to Defamation, Seduction, Good Morals, Irresponsibles (unconscious, insane, minors, deaf-mutes), Responsibility without Fault (where those under preceding head may be held in their property "where equity demands an indemnity" provided it will not cause indigence), Abettors, Master and Servant, Guardians of Irresponsibles, Animals, Hunting Rights, Owners of Buildings, Public Officials, Joint Liability (providing for contribution between joint tort-feasors), Support (providing for a verdict of secured income instead of gross sum), Interested Third Parties where Death Ensues, Lost Services, Contributory Negligence (considered only in mitigation of damages in both cases of injury and of death), Limitation of Actions (three years from time the damage and its author are discovered and thirty years in any event).

BOOK No. III, RIGHTS IN REM.

(*Sachenrecht.*)

With nine sections covering Articles 854-1,296 we have pronounced amalgamation of the Roman and the ancient Feudal Laws together with features of proprietary rights founded upon the most recent social conditions.

The word *sach* is used about as we use the word property in general parlance and may relate to real estate or to chattels.

Two principles are made common to all property: 1. The recording of a deed raises a legal presumption of ownership of real estate and possession of chattels supports a like presumption. 2. A bona fide purchaser is not bound to look beyond the record.

The first section is devoted to Possession, and is remarkable as having been the occasion of unusual discussion and radical change at the last moment.

It establishes the right of property upon "the acquisition of power over it" aside from the will to acquire, contrary to the theory of the Roman Law as well as that in most of the ancient German states. It is worthy of note that the theory of Savigny was partially adopted despite the earnest and learned protest of Jhering whose powerful article on "*Corpus Possessionis*" was virtually hurled at the Reichstag on the eve of the adoption of the Code. The primitive Project had retained the classical "*corpus et animus*" but a broader ground was adopted:

"The possession of property is the acquirement of power in fact over the same" (Art. 854).

As to real estate, the feudality reappears through provisions for practically all the limited estates known to the English Common Law.

The absolute effect given to the act of recording is greater than in this country, because the obligation to record is enforced as a police regulation while necessary also for the protection of purchasers. The right of property in nearly every state is founded upon the organized "*Grundbuch*" or Land Registry Office which maintains a practical civil history of every piece of land. Whatever is upon that Registry, as conveyance, mortgage, etc., is binding upon third parties as well as all others. All conveyances or other acts pertaining to the title of or charge on lands must be in writing, except those resulting from succession, judicial execution or appropriation for public use.

The incidents of ownership are regulated somewhat but are largely left to the several states. This part as a whole is imperfectly worked out.

As to personal property, an acquirer in good faith has title against all but him who has been deprived of the article by loss, theft or other means without his consent (Arts. 932-935). Possession of a chattel for ten years gives title subject to the rule adopted from the Canon Law—*Mala fides superveniens nocet*.

The principal remaining sections and titles of this book are Tenancy in Common, Servitudes (in details unknown to the feudal system but not useless under modern conditions), Pledges (ordinary deposit of personal property

as security for debt), Mortgage Debt, Ground Debt, and Ground Charge.

These last three have distinct characteristics: a mortgage-debt (*hypothek*) is a personal obligation of the owner or another for a definite capital sum, secured by a pledge of the land; a ground-debt (*grundschild*) is also for a definite amount, but is made a charge only upon the land without specific liability on the part of any person, and a ground-rent (*rentenschuld*) is a certain sum payable at definite intervals chargeable likewise on the land only and without capitalization except for the purpose of extinguishment (Arts. 1,113-1,203). These must all be recorded. They all have the remedy of foreclosure and sale of the land for default in the terms of the respective creative acts. The last was practically inaugurated by the Code upon the demand of the farmers. The whole system of voluntary incumbrances is founded upon publicity and therefore neither of the foregoing methods is binding, even between the parties, without being recorded.

BOOK No. IV, RIGHTS OF FAMILY.

(*Familienrecht.*)

Divided into many titles the three sections (Civil Marriage, Parentage and Guardianship) cover six hundred and twenty-five Articles (1,297-1,921).

Right of action for breach of contract of marriage is recognized but is limited to actual damage except when seduction has taken place. In such case the woman is entitled to "an equitable compensation in money" (Art. 1,300). Two years is the limitation for bringing suit (Art. 1,302). All betrothal gifts must be returned in case of breach (except by death) and can be recovered under the law pertaining to "enrichment without cause" (Art. 1,301).

The foregoing indicate how minute are the provisions. The like appears concerning the marriage itself, fixing the ages at twenty-one and sixteen years for the man and woman respectively, regulating consent of parents, prohibiting inter-marriage between certain relatives, and requiring a preliminary declaration before a public officer, and a civil ceremony before such officer to be registered by him.

The civil marriage articles were bitterly opposed in the Reichstag but prevailed after the words "that by virtue of the present law" had been inserted in the formal announcement by the civil officer that the parties became husband and wife.

Marriages are void without judicial annulment if one of the parties was incapable of assent by reason of mental infirmity or legal disability, if bigamous, incestuous or adulterous (union with paramour after divorce). They are voidable whenever the legal consent has not been obtained, when one did not know a real marriage was intended, and in cases of mistake in identity, error as to the character of the other party "of such a nature that he or she would not have contracted marriage" had the facts been known, fraud or coercion (Arts. 1,330-1,335). These provisions are entirely apart from the question of divorce proper, to be considered presently.

Under the title "Effects of the Marriage" are grouped the rights and obligations of husband and wife of which are worthy of notice the household power of the wife whereby she controls the internal management of the home and to that end is agent for the husband (Arts. 1,356 and 1,357), and her duty to maintain the husband and herself when he is unable to do so and she has the financial ability (Arts. 1,360 and 1,361).

"Regulation of Property" between husband and wife was probably the most difficult chapter to prepare in the whole Code. On no other subject was there such a diversity of laws. There were more than a hundred systems of matrimonial property law. They could be loosely grouped under four heads: universal community, particular community, Germanic separate estates and the dotal régime of the Roman Law, each however modified by a multitude of local usages or statutes. The dotal idea never fully developed and was contrary to the ancient Germanic theories of conjugal property. The Code permits the parties to regulate their property by contract following one of the four systems mentioned and in the absence of ante-nuptial settlement declares the marriage to be subject to "community limited to administration," known as *Verwaltungsgemeinschaft* in

Prussia and Saxony where it was already generally established. By this system the property remains separate, but its issues and profits are owned in common and are administered by the husband for the common benefit. Article 1,367, however, reserves to the wife her clothing, jewels, the product of her own work and the income of any lucrative profession she may follow.

The ante-nuptial contractual power is wide, but still limited by many articles touching the administration of the property.

Divorce (Arts. 1,564-1,587) is treated from a decidedly modern standpoint. The two classes, absolute, and from bed and board, are recognized with about the usual well-known general incidents. The causes for both are the same, but are divided into two classes: (1) *Absolute Grounds*: Adultery, Bigamy, Immorality against Nature, Attempt upon Life, Willful Desertion for One Year; (2) *Relative Grounds*: When by a grave violation of conjugal duty or dishonorable or immoral conduct on the part of the other the husband or wife is so troubled in the marital relations that the common life cannot continue, cruel treatment (decided to include enforced isolation, refusal of conjugal duty, contagious or loathsome malady), insanity continuous during three months after marriage to such degree as to abolish intellectual communion and to preclude hope of recovery (Arts. 1,565-1,569). The last cause was a step in advance of all modern legislation except in the states of Idaho, Washington and Florida.

Permanent alimony may be ordered in favor of either party.

The section on Parentage (Arts. 1,589-1,772) is devoted to an extraordinary attempt to anticipate every possible phase of the subject. This seems beyond the purpose of a work intended for fundamental law. Broad principles would have made amendment less necessary. Little is committed to the judges beyond a perfunctory enforcement of the text. Relationship, Legitimacy Maintenance (reciprocally binding upon husband and wife, parent and child) and Parental Powers (*Elterliche Gewalt*) are so treated. The title of Natural Children has some interesting features.

While the right to establish paternity is admitted but is limited to mere sustenance until the sixteenth year, the general rule, in accordance with the former Common Law, the Prussian *Landrecht* and the Saxon Code, declares that no legal tie exists between the father and the natural child. The former may protect the latter by subsequent marriage with the mother, by petition to the Chancellor of the Empire or head of particular State for an act of legitimation or by legal adoption.

As to the mother it is quite different. The child has all the attributes of legitimacy, but must have a legal guardian, which the mother cannot become.

State guardianship of minors is a settled principle of the German law and becomes operative whenever the natural guardians are wanting or disqualified (Arts. 1,773-1,895). It is exercised through the courts as a voluntary or non-litigious jurisdiction. The Family Council is entitled to suggest as determined by the Code. The Communes also have a voice through the Council of Orphans in certain cases, particularly as respects the person of the minor. Guardianship of adults (Arts. 1,896-1,908) is under the same jurisdiction whenever the causes for intervention are presented, such as insanity or feebleness of mind preventing proper management of affairs, prodigality leading to possible indigence of family, etc. (Art. 6). An officer called *Pfleger* is sometimes appointed as overseer of a guardian or to represent an infirm person, an unborn child, etc. His functions combine those of our Next Friend, Committee in Lunacy and Receiver (Arts. 1,909-1,921).

BOOK No. V, SUCCESSIONS.

(*Erbrecht.*)

This part of the work is the most logical in its order and the most consistent in its provisions. It has four hundred and sixty-four articles classified under nine sections: I, Order of Inheritance; II, Juridical Position of the Heir; III, Wills; IV, Contract of Inheritance; V, Reserve (that part exempt from disposition by decedent); VI, Disabilities of Heirs; VII, Renunciation of Inheritance; VIII, Certifi-

cate of Heirship; IX, Sale of Inheritance. It would be impossible to consider here in detail this body of law covering every phase of decedents' estates. The base is the Common Law as established after the "reception" of the Roman Law and it is therefore not surprising to find many features recalling the feudal tenures.

The interested parties are the surviving marital partner, the descendants, taking by representation, the descendants in classes, the collaterals and finally the next of kin. This is all worked out with unmistakable certainty.

The surviving husband or wife takes one-fourth at least and in default of heirs, of the first degree (descendants) is entitled to one-half. The number of children does not affect the share, which under certain conditions embraces even the whole estate.

The Saxon law that an heir had to accept before the estate passed was repudiated and the old Prussian law that death invests the heir was adopted (Art. 1,942). He has six weeks in which to decline the inheritance (Art. 1,944). The heir can act in his own name by suit or otherwise to recover the estate and can be sued personally for the debts of the decedent although an interested party can apply for the appointment of a curator or administrator (*Nachlasspfleger*) (Arts. 1,960-1,962). The heir is in principle only responsible for debts of the decedent *intra vires hereditatis* (Art. 1,975). This is a departure from the Common Law and the Bavarian Law, which held the heir fully liable personally, but accords with the Prussian and Saxon Laws. If, however, the heir fail to file an inventory on the demand of a creditor then his responsibility becomes unlimited (Arts. 1,993-2,000).

Where there are more heirs than one they take as tenants in common and may sell their undivided interest subject to rights of creditors and the other heirs, which applies to both real and personal property, there being no separate title to any part until partition or division (Arts. 2,032-2,034). This is a distinct adherence to the Common Law and Prussian *Landrecht* (contrary, however, to the Saxon Code) recognized as the "Germanic community" and in Prussia called "*Gesammte Hand*."

Article 2,055 obliges the heir who has received an advance from the decedent to turn it into the general mass before division and fixes the value as of the time the liberality was extended. In the latter feature there was a desertion of the Roman Law which took the value at the time of the division.

Wills, singularly, receive consideration as to effect before the capacity of the testator or the form of the instrument is passed upon. Limitations are put upon the testator in favor of the legitimate heirs and his will can be set aside for fraud, accident, mistake or threats (Arts. 2,077-2,082). Limited estates and trusts are permitted. The rule of *semel heres semper heres* is abrogated (Art. 2,100). There are divers provisions concerning general and special legacies, such as lapsing of a bequest if the legatee die before the testator and also relating to encumbrances such as requiring the devisee to discharge them.

In view of the dispute of long standing among German jurists whether an Executor represents the decedent to fulfill his wishes or is an agent of the beneficiaries under the will the Code avoids any definition by simply defining his duties and allowing him compensation (Arts. 2,215-2,221). He may incur debts on behalf of the estate when necessary for proper administration (Art. 2,206). The executor presents his inventory and his account to the heir direct without the intervention of any tribunal or public official except so far as necessary for the payment of taxes due the State.

The capacity for making a will is the same as for contracts (Art. 2,229).

Wills are of two kinds:

Ordinary, (a) made before a judge or a notary, (b) made by a declaration written by the testator's own hand and signed by him with an indication of place and date.

Extraordinary, (a) made before the official head of the Commune or Section and two witnesses when extremity prevents other method and evidenced by *proces-verbal* stating the circumstances, (b) made verbally before three witnesses when isolated by disease, etc., expressed in *proces-verbal*, (c) made verbally at sea on a German vessel in presence of three witnesses (Arts. 2,231-2,251).

Nuncupative wills become invalid after three months if the testator be still living (Art. 2,252).

A common will can be made only by husband and wife (Art. 2,265).

The Contract of Inheritance (*Erbvertrag*) is authorized but circumscribed. It can relate only to appointment of an heir, legacies and charges. This stranger to our law is sanctioned by Article 2,278: "*In einem Erbvertrage kann jeder der Vertragsschliessenden vertrags-mässige Verfügungen von Todeswegen treffen. Andere Verfügungen als Erbeinsetzungen, Vermächtnisse und Auflagen können vertrags-mässig nicht getroffen werden.*"

The "Reserve" (Arts. 2,303-2,338) represents that part of a person's estate which the law prohibits him from disposing of to the prejudice of certain relatives. It is Roman Law pure and simple.

Our statutory provision for the widow is a "reserve." Under the Code not only the husband or widow and children but the parents and in some instances the next of kin are protected. It is a principle of inheritance law near to all Continental systems.

By Section VI (Arts. 2,339-2,345) it has been provided that no one shall inherit who has brought about the death or attempted the life of the decedent, interfered with his making a will or by wrongful act has prevented the decedent from carrying out his testamentary wishes.

The remaining parts (Arts. 2,346-2,385) relate to renouncement of hereditary rights or expectancies, certificate of heir (issued after adjudication of the identity and legal standing of an heir by the proper court) and the sale of undivided or unascertained interests in an estate.

LAW OF INTRODUCTION.

(*Einführungsgesetz.*)

The confusion that must have ensued had the Code at once become the only law in force in all places was avoided by this skillfully drawn act. Without announcing principles but strictly confining its 218 articles to practical matters it points out to officials as well as to the people how to put on the new legal garment.

It is divided into four sections: General Provisions, Relation between the Civil Code and the Laws of the Empire, Relation between the Civil Code and the Laws of the States, and Transitory Provisions.

In general effect it enforced some parts of the Code at once, suspended others for different periods in certain States, made it absolute and alone the law here, subsidiary there and thus prepared the way for that general application which it has at last almost wholly reached. It is not artistic but it is substantial. In not representing any particular school it the more fully speaks for every class and thereby cements the Fatherland.

William W. Smithers.