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Soviet Civil Law: Private Rights and Their Back-Ground Under the Soviet Regime Comparative Survey and Translation of the Civil Code; Code of Domestic Relations; Judiciary Act; Code of Civil Procedure; Laws on Nationality, Corporations, Patents, Copyright, Collective Farms, Labor; and Other Related Laws

Vladimir E. Gsovski

MICHIGAN LEGAL STUDIES

SOVIET CIVIL LAW

PUBLISHED UNDER THE AUSPICES OF THE UNIVERSITY OF MICHIGAN LAW SCHOOL (WHICH, HOWEVER, ASSUMES NO RESPONSIBILITY FOR THE VIEWS EXPRESSED) WITH THE AID OF FUNDS DERIVED FROM GIFTS TO THE UNIVERSITY OF MICHIGAN BY WILLIAM W. COOK

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PRIVATE RIGHTS AND THEIR BACKGROUND UNDER THE SOVIET REGIME

Comparative Survey and Translation

of

The Civil Code; Code of Domestic Relations; Judiciary Act; Code of Civil Procedure; Laws on Nationality, Corporations, Patents, Copyright, Collective Farms, Labor; and Other Related Laws

by

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Foreword

by

HESSEL E. YNTEMA

VOLUME TWO

Translation

Ann Arbor

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Abbreviations*

Aleksandrovsky	See Nakhimson.
Bakhchisaraitsev	Civil Codes of the Soviet Republics (Grazhdanskie kodeksy sovetskikh respublik), 1928. [Soviet Official Sources]
Byelorussian Laws	Byelorussian Laws (Zbor (Sabran'ne) zakonau). [Soviet Official Sources]
Civil Code (1941), (1943), (1948)	Civil Code, R.S.F.S.R. (Grazhdanskii kodeks, R.S.F.S.R.). Imprint date indicated in parentheses. [Soviet Official Sources]
Civil Law (1944)	Agarkov and others, Civil Law (Grazhdanskoe pravo), 2 vols., 1943–1944. [Treatises]
Civil Law Textbook (1938)	Civil Law Textbook (Grazhdanskoe pravo, Uchebnik), 2 vols., 1938. [Treatises]
Code of Laws	Code of Laws of the Russian Empire (Svod zakonov Rossiiskoi Imperii), 1832–1915. [Presoviet Official Sources]
Collection of Imperial Laws	Collection of Imperial Laws (Sobranie uzakonenii i rasporiazhenii), 1863–1917. [Presoviet Official Sources]
Complete Collection of Laws	Complete Collection of Laws of the Russian Empire (Polnoe sobranie zakonov Rossiiskoi Imperii), 1649–1913. [Presoviet Official Sources]
Egoriev (Chapter VIII)	Egoriev and others, Legal Status Abroad of U.S.S.R. Legal Entities and Individual Citizens (Pravovoe polozhenie fizicheskikh i iuridicheskikh lits S.S.S.R. za granitsei), 1926. [Treatises]

* For further information on the items cited in this list, consult the relevant section [indicated in brackets] of the Bibliography.

Egoriev (Chapter X)	Egoriev and others, Legislation and International Treaties of the U.S.S.R. Concerning the Legal Status of Alien Individuals and Legal Entities (Zakonodatel'stvo i mezhdunarodnye dogovory S.S.S.R.), 1926. [Treatises]
Financial and Economic Legislation	Financial and Economic Legislation (Biuleten Finansovogo i Khoziaistvennogo Zakonodatel'stva), 1925–. [Soviet Official Sources]
Gintsburg, Course	Gintsburg and Pashukanis, editors, Course in Soviet Economic Law (Kurs sovetskogo khoziaistvennogo prava), 1935. [Treatises]
Golunsky, Theory	Golunskii and Strogovich, The Theory of the State and the Law (Teoriia gosudarstva i prava), 1940. [Treatises]
Imperial Laws	See Collection of Imperial Laws.
Judicial Practice	Judicial Practice (Sudebnaia Praktika), 1926–1930. [Soviet Official Sources]
Labor Legislation (1947)	Aleksandrov and other compilers, Goliakov, editor, Legislation Concerning Labor (Zakonodatel'stvo o trude), 1947. [Soviet Official Sources]
Law and Life	Law and Life (Pravo i Zhizn), 1924–1928. [Soviet Periodicals]
Makarov, Précis	Précis de droit international privé d'après la législation et doctrine russes, 1932. [Treatises]
Malitsky	Malitskii, Civil Code of the Soviet Republics, a Commentary (Grazhdanskii kodeks), 1927. [Soviet Official Sources]
Messenger of Soviet Justice	Messenger of Soviet Justice (Vestnik Sovetkoi Iustitsii), 1923–1930. [Soviet Official Sources]
Nakhimson	Practical Commentary to the R.S.F.S.R. Civil Code (Prakticheskii komentarii grazhdanskogo kodeksa R.S.F.S.R.). [Soviet Official Sources]

Peretersky and Krylov	Pereterskii and Krylov, Private International Law (Mezhdunarodnoe chastnoe pravo), 1940. [Treatises]
R.S.F.S.R. Laws	Collection of R.S.F.S.R. Laws (Sobranie uzakonenii, later postanovlenii), 1917–. [Soviet Official Sources]
Revolution of Law	Revolution of Law (Revolutsiia Prava) [Soviet Periodicals]
Rubinstein	Rubinstein, Soviet Economic and Civil Law (Sovetskoe khoziaistvennoe i grazhdanskoe pravo), 1936. [Treatises]
Sbornik	Collection of Treaties, Agreements, and Conventions, Entered into by R.S.F.S.R. (and later U.S.S.R.) with Foreign Powers and Now in Force (Sbornik deistvuiushchikh dogovorov, soglashenii i konventsii zakliuchennykh R.S.F.S.R.), 1921–. [Soviet Official Sources]
Socialist Legality	Socialist Legality (Sotsialisticheskaia Zakonnost), 1931–. [Soviet Official Sources]
Sources	Sources of the Soviet Civil Law (Istochniki sovetkogo grazhdanskogo prava), vol. I, 1938. [Soviet Official Sources]
Soviet Justice	Soviet Justice (Sovetskaia Iustitsiia, formerly Ezhenedel'nik sovetskoi iustitsii). [Soviet Official Sources]
Soviet Law	Soviet Law (Sovetskoe Pravo), 1922–1928. [Soviet Periodicals]
Soviet State	Soviet State and the Law (Sovetskoe Gosudarstvo i Pravo), 1931–. [Soviet Periodicals]
Stuchka, Course	Stuchka, A Course in Soviet Civil Law (Kurs sovetskogo grazhdanskogo prava), 1929–1931. [Treatises]
Svod Zakonov	See Code of Laws.

U.S.S.R. Laws	Collection of Laws and Decrees of the U.S.S.R. (Sobranie zakonov, later postanovlenii), 1924–. [Soviet Official Sources]
Ukrainian Laws	Collection of Ukrainian Laws (Zbirnik) [Soviet Official Sources]
Vedomosti	Gazette of the Supreme Soviet of the U.S.S.R. (Vedomosti Verkhovnogo Soveta S.S.S.R.) 1938–. [Soviet Official Sources]
Vestnik	Vestnik TSIKA, 1923–1924. [Soviet Official Sources]
Vyshinsky, I Course	Vishinskii and Undrevich, A Course in Criminal Procedure, vol. I., The Judiciary (Kurs ugolovnogo protsessa, t.I., Sudoustroistvo), 1936. [Treatises]
Zimeleva, Civil Law (1945)	Civil Law (Grazhdanskoe pravo), 1945. [Treatises]

PART ONE
CIVIL CODE

1

Law Enacting the R. S. F. S. R. Civil Code

Resolution of the All-Russian Central Executive Committee of November 11, 1922, Containing the Law Enacting the R.S.F.S.R. Civil Code Adopted at the Fourth Session on October 31, 1922.[1]

Comment

This Enacting Law is an introduction to the Civil Code and is an organic part of it, determining:

(a) The effective date of the Code (Section 1);

(b) Provisions applying to private rights and laws antecedent to the revolution—the problem of continuity (Sections 2, 6, 7); they are discussed in Volume I, Chapter 8;

(c) Provisions applying to rights which arose under the soviet regime before the promulgation of the Code (Sections 3, 4); see Volume I, Chapters 8 and 17;

(d) Restrictions on the interpretation of the provisions of the Code and the repudiation of all prerevolutionary law (Sections 5, 6); see Volume I, Chapter 6, II, 2, and Chapter 8, II;

(e) Rights of aliens (Section 8); these are discussed in Volume I, Chapter 10;

(f) The territorial boundaries for the application of the Code (Section 9); see Volume I, Chapter 8, V.

1. The Civil Code shall take effect on January 1, 1923.

Comment

(1) The effective date of the Civil Code is not the only date

[1] R.S.F.S.R. Laws 1922, text 904. This resolution is cited as the "Enacting Law." Text collated with the official 1948 edition.

determining the application of the provisions of the Code. The recognition of property rights antedated by a few months the promulgation of the Civil Code. The basic principles of the Code were announced in the Decree of May 22, 1922, bearing the title, "Concerning Fundamental Property Rights Recognized by the R.S.F.S.R., Secured by the Law and Protected by the Courts." [2] Therefore, the date of the promulgation of this decree (May 22, 1922), antecedent to the Civil Code, and not the effective date of the Civil Code itself, determined the beginning of protection of property rights guaranteed by the Code.[3] For the situation which arose in the Far Eastern region, see comment 4 to Section 9, *infra*.

(2) The R.S.F.S.R. Civil Code was adopted on October 31, 1922, before the official formation of the Soviet Union which took place on December 30, 1922. But, following the example of the elder sister republic, the R.S.F.S.R., the Ukrainian and the Byelorussian (White Russian) republics introduced their own civil codes following the pattern of the R.S.F.S.R. Code. These codes, as well as the codes promulgated later in the other republics, departed from the pattern only in a few minor points, and some of the sections dealing with the same subject matter bear different numbers. The Ukrainian Civil Code of December 16, 1922, took effect on February 1, 1923. The Byelorussian (White Russian) Code of February 2, 1923, took effect on March 1, 1923.

The Georgian Civil Code of August 18, 1923, took effect on September 1, 1923, and is merely a translation of the R.S.F.S.R. Code into the Georgian language.

By the Decree of January 27, 1923, the Azerbaijan Republic introduced the R.S.F.S.R. Code as of February 1, 1923. On June 16, 1923, an Azerbaijan Civil Code was adopted, which took effect on the day of its promulgation, namely, September 8, 1923;[4] the numbering of sections in this code

[2] *Id.*, text 423.

[3] See Civil Code, Section 59, Note 1, and comment to that Section.

[4] Bakhchisaraitsev 16. The date of adoption of the Civil Code in Azer-

differs from that of the R.S.F.S.R. Code. The second (1926) edition included domestic relations, the third (1927) omitted this subject matter, but included the copyright law and changed the numbering of sections accordingly. The part omitted from the third edition is to remain in force until a new code on domestic relations has been promulgated.[5]

The Armenian Code, which is a mere translation of the R.S.F.S.R. Code into Armenian, was adopted on December 13, 1923, and took effect on April 1, 1924.[6] The Transcaucasian S.F.S.R., which existed from 1922 to 1936 as a union of Georgia, Azerbaijan, and Armenia, never enacted any civil code of its own.

The R.S.F.S.R. Civil Code was introduced in the Uzbek Republic on November 27, 1924. The Tadjik Republic was at that time an autonomous republic included in the Uzbek Republic and, when it became a constituent republic in 1929, retained the R.S.F.S.R. Civil Code. The same Code was also adopted by the Turcoman Republic in February, 1926. Kazak and Kirghiz republics were until 1936 autonomous republics of the R.S.F.S.R., and the code of that republic continues to remain in effect there. In Moldavia, which was once incorporated in the Ukraine, the Ukrainian Code is in force. Concerning the Far East, see comment 4 to Section 9, *infra*.

Lithuania, Latvia, and Estonia were declared constituent republics of the Soviet Union on August 3, 5, and 6, 1940, respectively,[7] and the R.S.F.S.R. Codes, viz., Civil Code, Criminal Code, Code of Civil Procedure, Code of Criminal Procedure, Labor Code, and Code of Laws on Marriage, Family, and Guardianship, were enacted by the Edict of the federal Presidium of November 6, 1940.[8] In the edicts enacting the

baijan is given by 1 Civil Law Textbook (1938) 49, and 1 Civil Law (1944) 30, as April 16, instead of June 16.

[5] Bakhchisaraitsev 7–8.

[6] 1 Civil Law Textbook (1938) 49; 1 Civil Law (1944) 30. Bakhchisaraitsev 8, states that the Code was adopted on February 23, 1923, and took effect on April 10, 1924.

[7] Vedomosti 1940, No. 28.

[8] *Id.*, No. 46.

soviet codes in the new territories, it was stated that all property disputes involving civil and other relations, regardless of the time when they arose, should be decided "under the soviet codes and decrees of the soviet government." [9] In the Karelo-Finnish Republic, which was formerly a part of the R.S.F.S.R., the Civil Code of that republic retains its effect. No acts were thus far promulgated on the application of soviet codes in sub-Carpathia, the Königsberg Region (renamed Kaliningradskaia), Southern Sakhalin, and the Kurile Islands.[10]

Consequently, although there are in effect now in 1948 in the sixteen soviet republics numerous civil codes which have been separately enacted, this variety may be reduced to only three: the R.S.F.S.R. Code, which is in force in many other republics; the Ukrainian, which is in force in the Ukraine and Moldavia; and the Byelorussian (White Russian), in force in that republic only. Although the federal Constitution of 1936 (Section 14, subsection (u)) provides expressly for a federal civil code, no such code has been promulgated thus far. As a consequence, there are several state civil codes in Soviet Russia. Their original provisions were practically identical, and they have been amended uniformly by later federal legislation. Therefore, one can speak of soviet civil law as a body of uniform provisions, although contained in many state codes. The essential departures from the R.S.F.S.R. Code to be found in the codes of other republics are for the most part indicated in the comments to individual sections. In the absence of such indications, it may be presumed that the provisions of the R.S.F.S.R. Code enjoy nationwide recognition.

Concordances of the civil codes of the various republics were published in Russian by Malitsky (3 editions),[11] and Bakhchisaraitsev and Drabkin.[12]

[9] *Id.*, Section 4.

[10] See Volume I, p. 49.

[11] Grazhdanskii Kodeks Sovetskikh Respublik, tekst i Prakticheskii Kommentarii pod red, A. P. Malitskogo (3d ed. 1927).

[12] Grazhdanskie Kodeksy Soiuznykh Respublik, R.S.F.S.R. Ukrainsk., Belorussk., Uzbeksk., Turkmensk., S.S.R. i po Zakavkazskoi S.F.S.R.—

2. No court or other authority of the Republic shall take cognizance of disputes over private rights arising out of relations that originated before November 7, 1917.

Comment

(1) On November 7, 1917, the Kerensky government was overthrown, and the soviet regime was declared. In the Code of the Azerbaijan Republic, which became a soviet republic on April 20, 1920, this date; in the Code of Georgia, February 25, 1921; and in the Code of Armenia, February 29, 1920, are the dates of limitation, instead of November 7, 1917. For the Far Eastern region, see comment 4 to Section 9, *infra.*

(2) This section is discussed in Volume I, Chapter 8, II.

(3) The court shall refuse to try a case, if the relation from which the dispute arises originated before November 7, 1917. Whether the dispute itself originated (i.e., the cause of action accrued) after or before this date, is immaterial. This opinion of Malitsky [13] seems to be generally accepted as against the opinion of Vonsky.[14]

3. Disputes over private rights arising from relations which originated within the period from November 7, 1917, to the effective date of the R.S.F.S.R. Civil Code, shall be decided under the laws in force at the time when the relations originated.

Comment

(1) For a considerable time during the period from November, 1917, to January 1, 1923, many parts of Russia were under the rule of various anti-soviet governments. The laws of such governments are not applicable, as a rule, by the soviet courts in cases involving disputes over private rights that arose

S.S.R. Gruzii i Azerbaijanskoi S.S.R. Sistematicheskii Sbornik sostavili Khr. Bakhchisaraitsev i Drabkin (1928).

[13] Malitsky 17.

[14] (1923) Messenger of Soviet Justice No. 9, 231.

in the territories under control of the anti-soviet governments, in view of the general prohibition against applying such laws stated in Section 6 of the Enacting Law. Consequently, by "laws in force at the time when the relations originated," only the soviet laws are meant.[15] To this extent, under this provision there is no retroactive recognition of private rights granted by the Code.

However, an important exception to this rule is established with regard to marriage. Marriages celebrated under the laws of anti-soviet governments, viz., religious marriages, in the territory controlled by such governments, are valid under the soviet law, which does not otherwise recognize religious marriage. "Marriages which were celebrated according to religious rites prior to December 20, 1917, or which were celebrated in localities occupied by the enemy prior to the establishment of Civil Registry Offices shall have the same effect as registered marriages," according to the R.S.F.S.R. Code of Laws on Marriage, Family, and Guardianship of 1926, Section 2, Note.

(2) In the codes of some of the soviet republics where the soviet regime was established later than November 7, 1917, instead of this date, the date of the establishment of the soviet regime is given in Section 3, e.g., for Azerbaijan, it is April 28, 1920, for Georgia, February 25, 1921.[16] See also comment 4 to Section 9, *infra*.

(3) In the Byelorussian Enacting Law, this section bears the number 4. Section 3 declared the invalidity of transactions entered into during the German and Polish occupation before 1922.

4. Insofar as a legal relation admissible under the laws in force at the time of its origin is incompletely regulated by such laws, the provisions of the R.S.F.S.R. Civil Code shall apply to the relation.

[15] Malitsky 20.
[16] Bakhchisaraitsev 16.

Comment

The provisions of Section 4 are a supplement to those of Section 3 and therefore are applicable only to relations which originated during the period between November 7, 1917, and the effective date of the Civil Code. This was the period of so-called "Militant Communism," when numerous private rights were cancelled and many contracts prohibited (e.g., the right of inheritance was abolished and trading in agricultural products was prohibited. See Volume I, Chapter I, II). Section 3 states the general principle of nonretroactivity of the Civil Code: relations originating under the soviet regime before the Civil Code must be adjudicated under the soviet laws in force at the time of their origin, and not under the Civil Code. Section 4 makes an exception for cases where a right or a contract does not come under numerous prohibitive provisions antecedent to the Civil Code and yet the laws of that time do not offer a sufficient basis for a decision. Such gaps must be filled by application of the provisions of the Civil Code. "Incompleteness of provisions of a previous law, and not their discrepancy with the rules of the Civil Code, must be borne in mind." [17] See Volume I, Chapter 8.

5. Extensive interpretation of the R.S.F.S.R. Civil Code is permitted only in case it is required for the protection of the interests of the workers' and peasants' State and of the working masses.

Comment

(1) The provisions of Section 5 must be applied not only to the Civil Code but to any statute dealing with private rights.[18]

(2) See Volume I, Chapter 6, II, 2.

6. It is forbidden to interpret provisions of this Code

[17] R.S.F.S.R. Supreme Court, Civil Division, Case 1863, (1923) Soviet Justice No. 28; Malitsky 21.

[18] 1 Civil Law Textbook (1938) 53.

on the ground of laws of overthrown governments and the decisions of prerevolutionary courts.

Comment

Sections 5 and 6 of the Enacting Law contain the only provisions dealing with interpretation of soviet law to be found in the Civil Code. These provisions are restrictive; they state what the courts should not do rather than how soviet law in general should be interpreted and applied. Likewise, the soviet Civil Code is silent on the sources of law. This is not unusual. For example, the German Civil Code also is silent on this problem, and the directions in the Code Napoléon are meager. Nor do the English or American statutes give exhaustive answers to the question. It is the task of jurisprudence to discuss and solve the pertinent problems. For the soviet discussion and solutions, see Volume I, Chapters 5 and 6, II, 2. Section 6 also expresses the repudiation of the continuity of prerevolutionary law, which is discussed in Volume I, Chapter 8.

7. The general three-year statute of limitations shall apply also to legal relations which originated before the effective date of the R.S.F.S.R. Civil Code.

Comment

Limitation of actions is regulated by Sections 44–51 of the Civil Code and the laws indicated in the comments to those sections.

Since the Code took effect on January 1, 1923, no action involving legal relations that originated before this date can be brought after January 1, 1926. Section 7 is an additional provision restricting the recognition of claims antedating the revolution. See Volume I, Chapter 8.

8. The rights of citizens of foreign countries with which the R.S.F.S.R. has entered into agreements of

one kind or another, shall be regulated by such agreements.

Insofar as the rights of aliens are not provided for by agreements with the governments concerned or by special laws, the rights of aliens to move about freely within the territory of the R.S.F.S.R., to choose occupations, to open and to acquire commercial and industrial enterprises and rights in rem in buildings or in plots of land, may be restricted by order of the proper central organs of the government of the R.S.F.S.R., made in agreement with the People's Commissariat for Foreign Affairs (as amended November 23, 1922, Izvestiia No. 269, November 28, 1922).

Note 1: Foreign stock companies, partnerships, et cetera, acquire rights of legal entities in the R.S.F.S.R., only by special grant from the government.

Note 2: Foreign legal entities that are not authorized to conduct business in the R.S.F.S.R., enjoy, in the R.S.F.S.R. courts, the right to sue defendants residing within the R.S.F.S.R. on claims arising outside the territory of the R.S.F.S.R., but only on the basis of reciprocity.

Comment

Section 8 of the Enacting Law is the only section of the soviet Civil Code dealing with the rights of aliens. Their status is discussed in Volume I, Chapter 10.

9. The Civil Code shall be effective in the entire territory of the R.S.F.S.R.

The supreme councils of the autonomous republics shall have the privilege, with the sanction of the presidium of the All-Russian Supreme Council, of introducing into the Code such additions and modifications as are

necessary in order to adapt the Code to the peculiar needs of the respective republics.

Comment

(1) In the original text of paragraph two of this section, the words "Central Executive Committee" were used instead of "Supreme Council." The translation reflects the change introduced in this respect by the R.S.F.S.R. 1938 Constitution.

(2) The civil codes of other republics state in the first paragraph that their codes are in effect in their territory, and paragraph two does not appear.

(3) The only special local rule indicated in the official editions of the R.S.F.S.R. Civil Code provided for by this section is that for the Yakut Republic, stated in Section 250, Note. A separate law introduced in this republic a one-year term for the appearance of an heir, instead of the six months provided by Section 430 of the Code.

(4) A peculiar and confusing situation was created in the Far East where the resistance to the soviet rule first came to an end in 1920. Then, in January, 1920, a democratic Far Eastern Republic was formed, controlled in fact by the R.S.F.S.R. but nominally independent under the Declaration of April 6, 1920, and the Constitution of April 17, 1921. A treaty of closer alliance with the R.S.F.S.R. was made on February 17, 1922, but on November 15 of the same year the treaty was superseded by incorporation of this republic into the R.S.F.S.R., officially announced on November 22, 1922.[19] Thus, this territory was brought under soviet rule at the very time of transition from Militant Communism to the New Economic Policy (see Volume I, Chapter I, III). In order to determine the laws to be introduced therein, "Basic principles for application of the decrees of the Central Soviet Government in the territory of the Far Eastern region" were enacted on February 18, 1924.[20] By this decree the R.S.F.S.R. Civil Code and the Code of Civil Procedure, together with the Crimi-

[19] R.S.F.S.R. Laws 1923, text 2.
[20] R.S.F.S.R. Laws 1924, text 191.

nal Code and the Code of Criminal Procedure, were introduced in the region without stating the effective date. Likewise, there was no mention of the date which should take the place of November 7, 1917, as stated in Sections 2 and 3 of the Enacting Law. Another amendatory Decree of August 4, 1924,[21] changed the date May 22, 1922, from which recovery by dispossessed owners had been precluded, to June 1, 1923 (Civil Code, Section 59, Note). These decrees as well as certain others enacted special rules with regard to the nationalization of houses, industrial establishments,[22] gold mines, and certain other property.

(5) Although the provisions of the civil codes of the soviet republics are quite uniform, there are differences in minor details and therefore conflicts of laws are not excluded. There are no statutory provisions dealing with this subject matter, but the ruling of the U.S.S.R. Supreme Court quoted below is followed:

Ruling of the U.S.S.R. Supreme Court Concerning the Application of Conflicting Laws of Individual Constituent Soviet Republics Regulating Property Relations.

Rules established by the legislation of individual soviet republics with regard to property relations are in some instances in conflict.

In order to eliminate diversity in court decisions and establish firm rules concerning the application of such laws of individual soviet republics regulating property relations as conflict in substance, the Thirty-second Plenary Session of the U.S.S.R. Supreme Court rules as follows:

1. The validity of transactions and deeds (with regard to their form, the legal capacity of the parties and their capacity to enter into legal transactions) shall be determined pursuant to the law of the soviet republic in whose territory the transaction or deed was entered into (*locus regit actum*).

2. Disputes relating to property and involving rights in rem (building tenancy and mortgage) shall be determined by the laws of the place where the property concerned is located (*lex rei sitae*).

[21] *Id.*, text 674.
[22] *Id.*, 1923, texts 465 and 901.

3. The law of the place of trial (*lex fori*) shall be applied to disputes relating to property and arising from obligations, matrimony, alimony, and torts. On demand of a litigant, the court must also apply in such cases the following laws:

(a) The law of the place of performance of an obligation in a dispute concerning such obligation;

(b) If the place of performance of an obligation cannot be determined, the law of the residence of the creditor shall be applied to pecuniary obligations and the law of the debtor's residence at the time of making the contract shall be applied to all other obligations;

(c) The legislation of the republic where the litigants spent most of the time while their marital relations continued shall be applied to disputes concerning the alimony due to a divorced spouse;

(d) The law of the place of commission of an act shall be applied to disputes concerning damages caused by such act.

4. Questions relating to the statute of limitation, except for those connected with the exercise of rights in rem, shall be decided under the law of the place of trial.

On demand of either litigant the court must apply the laws of the constituent republic in accordance with subsections a, b, c, d, of Section 3 of this ruling.

5. This ruling does not extend to the application of rules of procedure.[23]

(6) The R.S.F.S.R. Civil Code was put into effect in several areas declared incorporated in the Soviet Union since 1939. See comment 4 to Section 1, *supra*.

(7) The effect of soviet laws outside the Soviet Union is discussed in Volume I, Chapter 8, V.

[23] U.S.S.R. Supreme Court, 32d Plenary Session, Ruling of February 10, 1931; Civil Code (1941) 128; Civil Code (1943) 129.

2

R. S. F. S. R. Civil Code

CONTENTS

GENERAL PART

I. BASIC PROVISIONS

1. The law protects private rights except as they are exercised in contradiction to their social and economic purpose.

Comment

This section is discussed at length in Volume I, Chapter 9, I.

2. Disputes concerning private rights shall be decided in a judicial proceeding. Waiver of the right to invoke the court is void.

Note: Disputes concerning property arising between governmental agencies shall be settled according to the procedure established by special provisions of law.

Comment

(1) Section 2 reproduces Section 1 of the imperial Code of Civil Procedure of 1864: "Every dispute over private rights shall be subject to the decision of a judicial authority."

Although the principle was restated in the soviet Code, it is not actually followed. In various periods of the soviet regime, different disputes were exempt from judicial determination and assigned to the administrative authorities. At present, in addition to the disputes specified *infra* under 2 and 3, numerous disputes involving land tenure, membership in collective farms, labor relations, and domestic relations, are not cognizable by the courts (see Volume I, Chapter 23).

(2) Employees of governmental enterprises who occupied apartments in houses belonging to such enterprises, in case of dismissal, are evicted by an administrative procedure under the Law of 1937. A translation is appended to the chapter on Lease of Property at pp. 130–135.

(3) U.S.S.R. Laws 1943, text 165:

(a) Persons who moved into living quarters without being authorized to do so shall be evicted in an administrative procedure.

(b) The eviction shall be carried out by the police upon approval by the district attorney within seven days upon application of the organizations or persons concerned.

(4) The prohibition against "waiver of the right to invoke the court" does not preclude arbitration. An agreement submitting a dispute to arbitration is not regarded as a waiver of the right to invoke the court. To be valid, such an agreement must be certified by a notary public (Section 199 of the Code of Civil Procedure, as amended October 4, 1926).

However, the submission to arbitration may be made only with regard to a given case. An agreement to submit to arbitration any future dispute which may arise from a legal relationship, e.g., a contract, is void. See the Law on Arbitration appended to Section 203 of the Code of Civil Procedure (*infra*, No. 44).

Arbitration between private persons is regulated by Sections 199–203 of the Code of Civil Procedure and the Law of October 16, 1924 (see *infra*, No. 50). If a request for execution of the decision of an arbitration tribunal is made, the court must verify whether the decision "was rendered in accordance with the rules established for arbitration and does not contradict the law" (*Id.*, Section 202).

(5) Arbitration procedure between governmental enterprises is explained in Volume I, Chapter 23.

(6) Special permanent arbitral tribunals are set up for disputes between foreign firms and soviet organizations and for disputes arising from maritime shipping. See Section 23 of

the Code of Civil Procedure (*infra* No. 44), also *infra,* Nos. 45 through 48, and Volume I, Chapter 23, p. 870.

3. Relations arising from land tenure, from the employment of labor, and domestic relations are regulated by separate codes.

Comment

Legislation regulating the land tenure mentioned in this section is given *infra* Nos. 30 through 35 and in Volume I, Chapters 19 through 21. Domestic relations are regulated by the Code of Laws on Marriage, Family, and Guardianship, which is given *infra* No. 3 and discussed in Volume I, Chapter 4, I. A survey of labor legislation is given in Volume I, Chapter 22, and some labor laws are translated *infra* Nos. 40 through 43.

II. Holders of Rights (Persons)

4. For the purpose of the development of the productive forces of the country, the R.S.F.S.R. has granted legal capacity (the capacity of having private rights and obligations) to all citizens who are not restricted in their rights by sentence of court.

Sex, race, nationality, religion, origin, have no bearing upon the scope of legal capacity.

Comment

(1) In line with Western European and Russian prerevolutionary doctrines, the soviet Civil Code uses the term "legal capacity" in a narrow sense as mere "capacity of having rights and obligations" (*Rechtsfähigkeit* in German, *Pravosposobnost* in Russian). Different from this concept is the concept of capacity to enter into legal transactions, the capacity to cause by one's actions legal effects (*Handlungsfähigkeit* in German, *Deiesposobnost* in Russian). This latter concept is defined

in Sections 7–9 of the Code as regards persons and in Sections 16, 19 as regards legal entities (corporations).

(2) With regard to the time when the legal capacity of a person begins, soviet law follows principles established by European jurisprudence:

The moment when the legal capacity of a human being begins is not indicated in the Civil Code. It is beyond dispute that *legal capacity of a citizen of the U.S.S.R. begins with his birth.* The soviet private law considers that children conceived during the lifetime of a deceased individual but born alive after his death may be heirs by operation of law or by testament (Section 418 of the Civil Code, Note). The stage of development of the embryo is legally immaterial, if the child is born dead. The birth of a child must be duly registered. Application for registration must be made not later than a month after the birth. Failure to apply for registration on the part of the persons whose duty it is to do so, entails a fine of from 25 to 100 rubles.[1]

Legal capacity ceases with death.

(3) The "productive forces" clause is explained in Volume I, Chapter 9, I. See also Section 5 *infra.*

(4) A discrimination made under the constitutions before 1936 between "toilers" and "nontoilers" resulted in restriction of some private rights of the "nontoiling" elements. For instance, persons living on unearned income (merchants, middlemen, owners of securities et cetera) of a certain amount were, under the Law of April 8, 1929, to be ejected from nationalized and municipalized buildings and were forbidden to rent apartments in such buildings. The same rule was applied to former owners of such buildings.[2] It is not likely that these rules were enforced after the 1936 Constitution, which did not carry over the discrimination between "toilers" and "nontoilers."

5. In accordance with the foregoing, every citizen of the R.S.F.S.R. and other republics of the Soviet Union

[1] 1 Civil Law Textbook (1938) 66; 1 Civil Law (1944) 127.

[2] R.S.F.S.R. Laws 1929, text 339; Joint Instruction of the Commissariats for the Interior and for Justice (1932) Soviet Justice 470.

has the right to move about freely and to take residence within the territory of the R.S.F.S.R., to choose any occupation and profession not forbidden by law, to acquire and alienate property within the limitations established by law, to conclude legal transactions and to incur obligations, to organize industrial and commercial enterprises, subject to all regulations governing industrial and commercial activities and protecting employed labor.

Comment

The right to organize industrial and commercial enterprises is considered abolished under the provisions of the 1936 Constitution. The right to take residence is greatly curtailed under the passport system. There are also restrictions in the choice of occupation and profession, in acquisition and alienation of property, resulting from abolition of private commerce and private industry. All the pertinent problems are discussed in Volume I, Chapter 9, II, and Chapter 16.

See also comment 3 to Section 6.

6. No one may be deprived of private rights or limited in rights except in cases and in proceedings established by law.

Comment

(1) The following sections of the R.S.F.S.R. Criminal Code, identical with those of the criminal codes of other soviet republics, deal with deprivation of rights for a criminal offense. The term "judicially corrective measures of social defense" is used in the soviet Criminal Code instead of the customary term, "punishment," its synonym. Criminal Code of the R.S.F.S.R.:

Section 20. The judicially corrective measures of social defense [punishments] are as follows: . . .

(e) Loss of political and individual private rights. . . .

Section 31. Loss of political and certain civil rights consists in deprivation of:

(a) The right to vote and to be elected;

(b) The right to occupy elective office in public organizations;

(c) The right to hold one or another government office;

(d) The right to bear titles of honor;

(e) Parental rights;

(f) The right to pensions paid on account of social insurance and social security; or to unemployment relief paid on account of social insurance.

Loss of rights may be imposed either as regards the above-mentioned rights as a whole or as regards particular categories of those rights.

Deprivation of parental rights shall be imposed by the court only in cases where it is established that the person convicted has abused such rights.

Deprivation of the right to a pension shall be imposed only in the following cases:

(a) Sentence for a crime against the State (Chapter 1 of the special part of the Code);

(b) Sentence, for a crime committed for the sake of personal gain, of deprivation of liberty or banishment with the obligation to reside in a given place (as a principal measure of social defense);

(c) Confiscation of property as a supplementary measure of social defense;

(d) Conviction in time of peace for any military crimes provided for in Sections 193 (3), 193 (4), 193 (7), 193 (9), 193 (12), 193 (13), 193 (17), and 193 (20) to (28) or in time of war for any of the crimes provided for in Chapter IX of the present Code (on Military Crimes) (as amended June 30, 1930 Laws, text 388; November 20, 1933, text 763).

Section 32. No penalty shall be imposed involving loss of rights for a period of more than five years.

When imposed as a measure of social defense to supplement the deprivation of liberty, the loss of rights shall extend for the whole period of imprisonment and, in addition, for such period as shall be prescribed in the sentence.

Section 33. Loss of the rights mentioned in paragraphs (a), (b), and (c) of Section 31 shall be accompanied by deprivation of any decoration of the U.S.S.R. or of the R.S.F.S.R. In such cases, the court shall report the matter, when the sen-

tence becomes executory, to the Presidium of the Supreme Council of the US.S.R. or the R.S.F.S.R., as the case may be.

Deprivation of other marks of distinction and of titles of honor may be effected by sentence of the court (as amended August 20, 1930, R.S.F.S.R. Laws, text 504).

Section 34. Loss of rights may be imposed as a principal or supplementary measure of social defense.

The court shall consider the question of loss of rights in all cases where a sentence of deprivation of liberty for more than a year is imposed.

Loss of rights shall not be combined with a suspended sentence or with a public reprimand (as amended December 6, 1929, R.S.F.S.R. Laws, text 854).

Section 38. Prohibition to engage in a given activity or trade for a period not exceeding five years shall be applied by the court in cases where the court considers it inadmissible to permit the convicted person to engage any longer in the exercise of his profession or trade, by reason of abuses committed by him therein.

In particular, the court has the right to forbid a convicted person to take on himself any liabilities regarding government contracts or supplies, to make agreements with state or public enterprises and institutions, or to manage, either for his own account or on behalf of others, any trading or agency undertaking.

(2) The Law of February 1, 1930[3] authorized the local administrative authorities to confiscate, in regions assigned for collectivization, the properties of such families as the authorities considered kulaki and to order their deportation (see Volume I, Chapter 19).

(3) Act concerning the formation of a federal People's Commissariat for the Interior of July 10, 1934 (excerpts):[4]

2. The People's Commissariat for the Interior shall be charged with the following duties:

(a) Protection of the revolutionary order and State Security;

(b) Protection of public (socialist) property;

[3] U.S.S.R. Laws 1930, text 105.

[4] U.S.S.R. Laws (1934) text 283; see also text 284.

(c) Recording of the acts of civil status (recording of births, deaths, marriages, and divorces);

(d) Frontier security.

. . .

8. A special board (*osoboe soveshanie*) shall be organized and attached to the U.S.S.R. People's Commissariat for the Interior, subject to regulation by a separate statute, and shall be granted the right to apply in an administrative procedure banishment from certain localities, banishment with settlement in a locality, confinement in a correctional labor camp up to five years and deportation abroad.

The board mentioned in Section 8 above consists of the U.S.S.R. Minister (prior to 1946 People's Commissar) of the Interior, his deputies, the Chief of the Central Bureau of Police and the minister (people's commissar) of the interior of the republic concerned.[5] In the R.S.F.S.R., there is no ministry of the interior and its duties are discharged by the federal Ministry.[6] For more information on the Ministry of the Interior, see Volume I, Chapter 7, I, 1.

7. Upon reaching majority, a person attains full capacity to acquire by his acts private rights and to undertake private obligations (capacity to enter into legal transactions).

Majority is reached upon attaining the age of eighteen years.

Comment

(1) It is held in soviet theory and practice that the age of majority of aliens residing in the Soviet Union shall be determined under this section and not under their national laws.[7]

(2) Marriagable age does not come under the provisions of Section 7 of the Civil Code but is determined by the Code of

[5] U.S.S.R. Laws 1935, text 84, Section 5; Studenikin, Soviet Administrative Law (in Russian 1945) 105; Evtikhiev and Vlasov, Administrative Law (in Russian 1946) 191.

[6] Studenikin, *id.*

[7] Peretersky and Krylov 70.

Laws on Marriage, Family, and Guardianship existing in each republic. The provisions vary slightly. Under the R.S.F.S.R. Code (in force also in Latvia, Lithuania, and Estonia) and the Byelorussian Code, men and women may marry upon attaining eighteen years of age. In the Ukrainian, Moldavian, Georgian, Armenian, Azerbaijan, Turcoman, Uzbek and Tadjik republics the marriageable age is eighteen years for men and sixteen years for women. In the R.S.F.S.R., the marriage age may be reduced in a given case by the authorities to seventeen. In the Ukrainian and Moldavian republics, marriage may be permitted by the authorities to persons residing in rural localities who are six months below the required age. In these republics marriage of a girl under eighteen years does not make her fully legally competent. She enjoys, however, full independence from her parents, acquires full parental rights with regard to her children and marital property rights.[8]

(3) See comment to Section 9, *infra*.

(4) Labor capacity, i.e., the possibility to take employment, begins with the age of sixteen and in some instances of fourteen years.[9] To become an apprentice in an artisan shop or co-operative, one must have reached fifteen years of age (in some instances fourteen years of age).[10] The right to be a member of a collective farm begins with the age of sixteen years.[11] Those who have reached fourteen years of age may become members of consumers' co-operatives, but before reaching sixteen years, they do not enjoy the right to vote and may not be elected officers of the co-operative.[12] For membership in productive co-operatives, the age of sixteen is required.[13] In 1942, children in collective farms who reached the age of twelve years were declared liable to earn a certain number of labor days annually.[14]

[8] 1 Civil Law Textbook (1938) 69; see also Vol. I, Chapter 4, I.
[9] 1 Civil Law Textbook (1938) 70; 1 Civil Law (1944) 131.
[10] U.S.S.R. Laws 1933, text 277, Section 3.
[11] Standard Charter of an Agricultural Artel, Section 7, see *infra*, No. 30.
[12] R.S.F.S.R. Laws 1924, text 645, Section 1.
[13] U.S.S.R. Laws 1927, text 280, Section 2.
[14] U.S.S.R. Laws 1942, text 61, translated *infra*, No. 34.

(5) See Volume I, Chapter 22, X, labor draft of youth.

(6) Concerning capacity to be held responsible for crimes, see comment 5 to Section 9, *infra.*

8. Persons who are of age may be declared, by proper institutions, incapable to enter into legal transactions if, as a result of mental disease or weak-mindedness, they are unable to manage their affairs in a reasonable manner (as amended November 14, 1927, R.S.F.S.R. Laws, text 770).

Comment

(1) It is to be noted that no provision is made in Section 8 for a curatorship over a spendthrift. However, the original text of the section, as promulgated in 1922, contained an additional clause at the end, to the effect, "or if by their extravagant expenditures they dissipate property under their control." This clause was repealed in the R.S.F.S.R. Civil Code in 1927 but is still to be found in the Ukrainian, Byelorussian, Turcoman, and Azerbaijan Civil Codes.

(2) Curatorship is regulated by Sections 68–102, and the procedure for examination of the mentally deranged by Sections 103–110 of the R.S.F.S.R. Code of Laws on Marriage, Family, and Guardianship (see *infra,* No. 3).

9. Minors who have reached the age of fourteen years may enter into legal transactions with the consent of their legal representatives (parents, parents by adoption, guardians or curators). Minors who have reached the age of fourteen years have the right to dispose at their free will of wages earned by them and are liable for damage caused by their acts to other persons (as amended November 14, 1927, R.S.F.S.R. Laws, text 770).

Comment

(1) Two stages of minority similar to *tutela* and *curatela*

in Roman law, are distinguished under the Civil Code and the Code of Laws on Marriage, Etc. An act of a minor under the age of fourteen years is void, an act of one between fourteen and eighteen years of age requires the consent of the legal representative, but no such consent is needed whenever the minor disposes of his own earnings.

The Code of Laws on Marriage, Family and Guardianship includes the following provisions:

Section 69. Guardians shall be appointed over minors who have not reached the age of fourteen years and over persons duly declared feeble-minded or mentally deranged. Guardians also shall be appointed in cases provided by law over the property of absentees or dead persons. A guardian, in the name and interests of the ward, exercises all the rights and fulfills the obligations of the latter.

Section 70. Curators shall be appointed over minors who are between the ages of fourteen and eighteen years; also over adults who by reason of their physical condition are incapable of protecting their rights themselves. A curator assists the person under his authority, in appropriate cases, in the exercise of his rights and the fulfillment of obligations, as well as protects such persons against abuse by a third party.

Section 71. Parents, natural or by adoption, are deemed guardians and curators [of their minor children] without any special appointment.

(2) A peculiar institution of soviet law is the so-called patronage. Orphans, inmates of orphanages, and children taken away from parents by court decision, between the ages of five months and fourteen years may be given by the proper authority to families under the contract of patronage. The patron must take care of the child and receives monthly allowance from the local public funds. If, upon reaching the age of three (originally four), the child is not adopted by the patron, it is placed in an educational institution or a new contract is made until the child reaches fourteen (originally sixteen) years of age. If, upon reaching the age of fourteen, the child is not adopted by the patron, it is placed in a vocational school or obtains em-

ployment. The patron enjoys, with regard to the child, the authority of a guardian or a curator.[15]

(3) A minor over fourteen years of age who by himself has made savings deposits may dispose of them independently without participation by his legal representative (Statute on Governmental Savings Banks, Section 12, U.S.S.R. Laws 1929, text 149).

(4) See also Section 405 of the Civil Code.

(5) For the purpose of application of the criminal law, full responsibility begins at fourteen years of age.[16] However, since 1935 "minors who have reached twelve years of age and are indicted for larceny, violence, causing bodily injury or mayhem, or murder or attempted murder, shall be tried by the criminal court, which may impose upon them any measure of punishment."

By the Edict of the Presidium of December 10, 1940, this rule was extended to minors who have reached twelve years of age and commit an act endangering railroad traffic, such as loosening rails, placing objects on the rails, et cetera.[17] Under the Law of May 31, 1935,[18] the police are authorized to fine parents up to 200 rubles for the disorderly conduct of their children.

10. All transactions seeking to limit legal capacity or capacity of entering into legal transactions shall be void.

[15] Law of April 1, 1936, R.S.F.S.R. Laws, text 49; Joint Instruction of the Commissariats for Health, Social Security, and Justice of June 2, 1936 (1936) Soviet Justice No. 26, 26. Similar laws were introduced in other republics, Byelorussian Laws 1928, No. 10, Turcoman Laws 1936, No. 15, Uzbek Laws 1929, No. 5 and No. 37. For the R.S.F.S.R., the Act of 1936 was replaced by the Act on Patronage, Guardianship, and Adoption of Children Who Lost Parents of April 8, 1942, R.S.F.S.R. Laws 1943, text 24, Sections 1–12. See *infra* No. 3.

[16] Edict of July 7, 1941, Vedomosti 1941, No. 32. Prior to that date the responsibility began at sixteen years of age. See Vol. I, Chapter 4, I, 2, b.

[17] Federal law of April 7, 1935, U.S.S.R. Laws 1935, text 155, Section 12 of the R.S.F.S.R. Criminal Code as amended November 25, 1935, R.S.F.S.R. Laws 1936, text 1; Edict of December 10, 1940, Vedomosti 1940, No. 52.

[18] U.S.S.R. Laws, text 252, Section 19.

11. Domicile is the place of a person's permanent or principal residence by reason of employment, permanent occupation, or the location of his property.

The domicile of minors or persons placed under guardianship shall be deemed to be that of the person authorized by law to represent them (parents, parents by adoption, guardians, or curators) (as amended November 14, 1927, R.S.F.S.R. Laws, text 770).

12. A person missing from his domicile may be declared an absentee after the expiration of *one year* from the date of receipt of the last information concerning his whereabouts.

The absentee may be declared dead upon the expiration of *three years* from the date of receipt of the last information concerning his whereabouts; or of *six months* from the date certified by the military authorities, as the date of his being missing in a military action, or from the date of an accident, where the attending circumstances justify the presumption of his passing away in that accident.

Where it is impossible to establish the exact time when the last information concerning the missing person was received, the first day of the month following that in which the receipt of the last information was established shall be regarded as the beginning of the term; where it is impossible to establish the month, then January 1 of the year following shall be so regarded.

A person shall be declared absent or dead by means of the issuance of a certificate to interested parties or institutions by a competent notarial office. Where death of the missing person is presumed, such a certificate may be issued by notarial offices only upon documentary data which substantiate the fact of death (such as shipwreck

affidavits, certificates concerning accidents, communications of officials, et cetera). In the absence of said documentary data, the declaration of such person as dead can be made only by the court upon complaint.

A person may be entered as dead in the Records of Civil Status on the basis of a notarial office certificate or of a court decision; the date of the issuance of the certificate or the date when the court decision became executory shall be deemed the date of death.

If a person declared dead reappears, the certificate or court decision declaring his death may be cancelled only by the notarial office which issued the certificate or by the court which rendered the decision (as amended May 27, 1929, R.S.F.S.R. Laws, text 419).

Note: The rules of procedure governing declaration of persons as absentees or dead are laid down in Sections 57–61 of the Statute on Governmental Notaries Public of 1930 (R.S.F.S.R. Laws 1930, text 476, as amended *id.*).

Comment

(1) After a person is declared an absentee, a guardian for the management of his property is appointed (Code on Marriage, Family, and Guardianship, Section 69. See *supra,* comment 1 to Section 9). After a person is declared dead the succession devolves under Sections 416 and following of the Civil Code.

(2) The rights of a person who reappears to reclaim his property are governed by Section 60*a* of the Civil Code.

(3) The R.S.F.S.R. Supreme Court has held that in cases where a declaration of death is petitioned it is the task of the court to establish, not the very fact of death, but the presence of circumstances justifying the presumption that the absentee has passed away.[19]

[19] R.S.F.S.R. Supreme Court, Civil Division, Decision of January 17, 1937 (1937) Soviet Justice No. 7, 53–54.

(4) Under the Ukrainian Code the expiration of *six months* suffices for declaration as absentee, and expiration of five years is required for declaration as dead.

(5) Letter of Instruction of the U.S.S.R. People's Commissariat for Justice of February 23, 1943, No. AD–9, Concerning the Procedure to be Followed in Declaring Missing Servicemen Dead.

Messages and notifications concerning men missing in action, sent by the competent agencies of the Commissariat for National Defense to the next of kin, do not represent in themselves, under the conditions of the present great patriotic war, proof of the fact that a serviceman missing in action has passed away. A serviceman missing in action may be at the enemy's rear, may be active in a guerrilla detachment, may also have become a prisoner of war, et cetera. Therefore, if the notarial agencies should issue certificates of death of missing men solely on the ground of notification by military authorities, they may cause in many instances difficult material consequences for persons improperly declared dead.

Notification by the competent military authority stating that a serviceman is missing merely constitutes a good reason for the filing by the persons and offices concerned of a petition to declare the missing man dead upon the expiration of the shortened terms provided for in Section 12 of the Civil Code. However, the petitioners are not relieved from the presentation of proper proof supporting the fact that the missing person has passed away.

In view of the foregoing, I order that:

1. Notarial offices discontinue issuance of certificates of death of servicemen missing in action solely on the basis of such notifications by the competent military agencies if no other documentary proof is presented supporting the fact of the death of a serviceman.

2. All cases of this sort shall be heard by the courts in accordance with Section 12 of the Civil Code upon complaint of the persons and offices concerned, and the case must be well prepared for trial before hearing.[20]

(6) The people's courts and not the notarial offices are competent to declare an absentee dead in the Ukrainian, Byelo-

[20] Civil Code (1943) 132–133.

russian, Azerbaijan, and Georgian republics. See Volume I, Chapter 23, note 47.

13. Legal entities are such associations of persons and such organizations or institutions as may, in their own name, acquire rights in property, assume obligations, and sue and be sued in court.

Comment

Legal entities in soviet law are discussed in Volume I, Chapter 11.

14. A legal entity must have a charter (bylaws) duly approved and, in specified cases, registered by agencies authorized by law. Certain kinds of partnerships engaged in business as specified by law may have, instead of a charter, a duly registered partnership contract. The legal capacity of a legal entity begins at the moment of the approval of the charter (bylaws) or, whenever the law requires that the legal entity register, at the moment of such registration.

Comment

(1) Approval of a charter means approval by proper authorities. See Volume I, Chapter 11, 4.

(2) With regard to registration, the Statute of Governmental Registration of Enterprises, Organizations and Persons Participating in Business of February 9, 1931,[21] required registration of all governmental, co-operative, and private enterprises. It also stated that the legal capacity of legal entities subject to registration begins only upon registration. The new Statute on Governmental Registration of Governmental, Co-operative and Public Business Organizations and Enterprises of 1940,[22] provides only for registration of governmental

[21] U.S.S.R. Laws 1931, text 99.
[22] *Id.* 1940, text 363.

and co-operative enterprises. Private business is not mentioned. This does not mean that private business is free from registration but probably results from the absence of private business of any importance at the present stage of soviet national economy. The statute of 1940 explains that "the purpose of government registration is to keep on record such organizations and enterprises of the socialist economy as enjoy the rights of a legal entity, and their branch offices, as well as to control the legality of their origin, reorganization, and discontinuance of activities" (Section 1). Registration is conducted by the Ministry of Finance and its field agencies. The statute prohibits dealing with an organization prior to its registration, and the State Bank may not open any account for any business organization prior to its registration.

(3) Among the partnerships provided for by the Civil Code, only the full partnership (Section 295) and limited partnership (Section 312) are recognized as having the status of a legal entity (Sections 298, 313). Both are established by means of a contract, which must be notarized (Sections 297, 313), and do not require a charter (bylaws). Partnerships, being a form of private business, are of little importance now.

(4) Although Section 14 sets up the existence of a charter (bylaws) as a prerequisite of a legal entity, certain public bodies enjoy such status by virtue of express statutory provisions. The R.S.F.S.R. Supreme Court held that "only such associations and organizations enjoy the status of a legal entity as are given such status *under the law,* or by a charter, or by laws determining the scope of their activities." [23]

Governmental bodies enjoying this status by virtue of express statutory provisions are indicated in Volume I, Chapter 11, 2, 8.

(5) Only charters approved by the higher governmental bodies, such as the Council of Ministers (prior to 1946 of People's Commissars), the Council of Labor and Defense, the

[23] R.S.F.S.R. Supreme Court, Report for 1925, Collection of Rulings of the R.S.F.S.R. Supreme Court (in Russian 1935) 29. Italics inserted.

Presidium, and the Central Executive Committee (prior to 1937), are published. Charters approved by individual Ministries (prior to 1946 People's Commissariats) do not require publication. Charters of legal entities which are authorized "to enter the foreign market" must be published in the departmental publication of the Ministry which approved the charter.[24] Standard or model charters of legal entities engaged in some fields of business have been established and officially printed.[25]

15. Private institutions enjoying the rights of a legal entity, such as hospitals, museums, institutions of learning, public libraries, et cetera, may be organized only with the permission of the proper authorities.

Comment

The soviet textbook on civil law of 1944 states that "private institutions provided for in Section 15 ceased to exist in the Soviet Union long since." [26] The status of the so-called nonprofit organizations, termed in soviet law "voluntary associations," such as literary, sporting, and art societies, is discussed *supra* in Volume I, Chapter 11, p. 408 *et seq.*

16. Legal entities shall participate in business intercourse and enter into legal transactions through the medium of their organs or through their representatives.

Note: The participation of government institutions and enterprises in business intercourse shall be deter-

[24] U.S.S.R. Laws 1931, text 94.

[25] E.g., Charter of a Plant Under the Authority of the People's Commissariat for Heavy Industry, 1 Sources of Civil Law (in Russian 1938) 87; Charter of a Governmental Grain Farm, *id.* 90. The People's Commissariat for Foreign Trade included a collection of charters of governmental quasi corporations under its authority in a directory (*Spravochnaia Kniga* N.K.V.T., edited by Shub) in 1936. Most of these have since been amended.

[26] 1 Civil Law (1944) 146. For full quotation see Vol. I, Chapter 11, p. 391.

mined by special regulations (as amended October 16, 1924, R.S.F.S.R. Laws, text 476).

Comment

See Volume I, Chapter 11 and Chapter 12, 7.

17. All persons in the R.S.F.S.R., legal entities and human beings, shall participate in foreign trade only through the medium of the government as represented by the Ministry of Foreign Trade. Independent appearances in the foreign market shall not be permitted except under the control of the Ministry of Foreign Trade.

Comment

Section 17 states the principle of government monopoly of foreign trade. Although the text reads "all persons in the R.S.F.S.R.," it is understood that the monopoly refers to the entire Soviet Union (U.S.S.R.) which was officially formed after the promulgation of the Civil Code.

Decree of March 13, 1922:

The foreign trade of the R.S.F.S.R. shall constitute a government monopoly.[27]

1936 Constitution, Section 14:

The jurisdiction of the U.S.S.R. as represented by its supreme organs of state power and organs of government shall cover:

(h) Foreign trade on the basis of government monopoly; . . .

Thus it is the federal (U.S.S.R.) Ministry of (prior to 1946 People's Commissariat for) Foreign Trade that exercises the monopoly. For a period of time, the government monopoly did not preclude the practice of issuing licenses to private persons or corporations. Contracts in foreign trade are discussed

[27] R.S.F.S.R. Laws 1922, text 266.

in Volume I, Chapter 10, 9 and Chapter 13, IV. See also *infra* Nos. 22, 23 and 47.

18. The existence of a legal entity may be terminated by the proper organ of government authority, if the legal entity deviates from the purpose defined by the charter or contract or if the activities of the organs of the legal entity (general meeting or management) deviate in a direction contrary to the interests of the State.

Comment

See discussion in Volume I, Chapter 11, 5.

19. Such government enterprises and combinations thereof as are assigned to operate on a commercial basis and are not financed by incorporation of their incomes and expenditures into the budget of the government, proceed in trade as separate legal entities not connected with the fisc. Only property at their free disposal, i.e., not exempt from commerce under Sections 21 and 22, shall be liable for their debts. Exceptions to this rule must be expressly indicated by law.

[Note, repealed December 20, 1927, R.S.F.S.R. Laws, text 58.]

Comment

The status of governmental agencies operating on a commercial basis and of the fisc is discussed in Volume I, Chapter 11, 2, 6 and 7; see also Chapter 13, I, 2.

19*a*. Special rules shall determine the manner in which a firm name may be used by enterprises belonging to legal entities and physical persons, as well as the contents of a firm name[28] (enacted December 20, 1927, R.S.F.S.R. Laws, text 58).

[28] See comment on p. 36 *et seq.*

Comment

The special provisions referred to in Section 19*a* are as follows:

A. Statute Concerning Firm Names of June 22, 1927 (excerpts):[29]

1. The firm name of a governmental enterprise must indicate the nature of its business, the governmental agency under the authority of which it operates, and the type of the enterprise (trust, *torg,* syndicate, and the like).

2. The firm name of an enterprise belonging to a co-operative organization must indicate the nature of its business and the type of co-operative organization (consumers', producers', agricultural, etc.) and, if the organization is an association of co-operative organizations, the level of the association must be indicated (district, provincial, regional, union, and the like).

3. The firm name of an enterprise belonging to a joint-stock company (share company) or a partnership with limited liability must indicate the nature of its business and the type of company or partnership (in full, joint-stock company, share company, partnership with limited liability, or briefly, j.s.c.o. or ltd.).

The firm name of a government-owned or mixed joint-stock company must indicate whether it is government-owned or mixed. The firm name of a government-owned company operating under a definite governmental agency must name such agency (as amended August 17, 1927, U.S.S.R. Laws, text 499). . . .

6. The firm name of enterprises mentioned in Sections 1–3 must include in addition to the indications specified in those sections, information necessary to differentiate the enterprise from enterprises of the same kind (special name, number, and similar identification). . . .

8. The right to the firm name consists in the right of exclusive use of the firm name in trading, signs, advertisements, announcements, stationery, bills, goods and their packings, etc. . . .

11. Whoever possesses the right to the firm name under the present statute may sue in court for discontinuance of the use of an identical or similar firm name by other persons, as well as for reparation of damages caused by such use, insofar as his

[29] U.S.S.R. Laws 1927, text 395.

right to the firm name originated prior to the others, and insofar as his firm name may be taken for that of others because of identity or similarity.

B. Statute Concerning Trade-Marks and Trade-Signs of March 7, 1936 (excerpts): [30]

In order to increase the responsibility of industrial enterprises for the quality of products released by them and to facilitate customers' selection of the products of enterprises which have established their reputations, the Council of People's Commissars has resolved:

1. All enterprises of governmental industries, producers' artels (co-operative associations) and co-operatives of invalids, as well as enterprises of public organizations, must attach to their products trade-marks which indicate: (a) the full or abbreviated name of the enterprise; (b) its location; (c) the full or abbreviated name of the people's commissariat, the central bureau, or the co-operative center under which the enterprise operates; (d) the grade of goods and the number of the standard.

Note: A list of enterprises and goods which do not require trade-marks shall be issued by the Council of Labor and Defense. . . .

3. Release of products without trade-marks makes the director of the industrial enterprise liable to prosecution in a disciplinary or judicial procedure. . . .

10. Trade-marks of all kinds of goods shall be registered with the U.S.S.R. Ministry of Commerce (as amended March 4, 1940, U.S.S.R. Laws, text 153).

Prior to March 4, 1940, trade-marks of certain goods were registered with the U.S.S.R. People's Commissariats for Heavy Industries and for Health, depending upon the trade concerned.

. . .

21. Trade-marks of foreign legal entities (corporations) and citizens may be registered in the U.S.S.R.:

[30] U.S.S.R. Laws 1936, text 113. The difference between a trade-mark and a trade-sign is in that the trade-mark is of a symbolic or conventional nature, e.g., a design or motto, while a trade-sign is a plain statement containing information required under Section 1 of the act. Governmental and co-operative enterprises must attach to their products trade-marks as defined in Section 1, but do not need to incorporate the information there mentioned in a pictorial or symbolic form. Their trade-marks, technically speaking, may be regarded as trade-signs.

(a) If the enterprises and organizations of the U.S.S.R. enjoy, on the basis of reciprocity, the right of registration of their trade-marks in the country of the applicant;

(b) Provided the trade-mark to be registered in the U.S.S.R. has been registered in the name of the applicant in his own country.

C. Regulation of Registration of Trade-Marks of January 5, 1944:[31]

1. Governmental and co-operative enterprises and enterprises of public organizations, as well as such foreign legal entities and persons as desire to secure under the Statute on Trade-Marks and Trade-Signs of March 7, 1936 (U.S.S.R. Laws 1936, text 113) the right of exclusive use of trade-marks, shall register such marks in accordance with the present regulation.

2. Registration shall be made by the U.S.S.R. Ministry of Commerce in accordance with the Resolution of the U.S.S.R. Council of People's Commissars of March 4, 1940 (U.S.S.R. Laws 1940, text 153).

3. Petitions for registration shall be filed with the Bureau of Trade-Marks of the U.S.S.R. People's Commissariat for Commerce (since 1946, Ministry of Commerce), either personally or by attorneys authorized thereto under special powers of attorney.

4. Petitions shall be filed separately for each trade-mark and must recite:

(a) The full name and the precise mailing address of the enterprise, organization, or person in whose name the mark is to be registered;

(b) The period of time for which the petitioner seeks that the registration be effective;

(c) An exhaustive enumeration of the merchandise with specification of the kind of merchandise (according to the classification stated in the schedule appended to the present regulation) for which the trade-mark is registered, as well as specification of the method by which the trade-mark shall be attached to the merchandise (whether directly to the merchandise itself, to its packaging, or in any other manner);

(d) A description of the trade-mark the registration of which is petitioned, with reference to an attached sample drawing. If original words or a motto, regardless of the method

[31] U.S.S.R. Laws 1944, text 24.

of their design, are used, the petitioner shall indicate in his petition that he seeks to register his exclusive right to use such words or motto as a trade-mark.

Trade-marks may be registered in the U.S.S.R. in the name of foreign legal entities and persons:

(1) Provided organizations and enterprises of the U.S.S.R. are granted, on the principle of reciprocity, the right to register their trade-marks in the country of the petitioner;

(2) Provided in addition that the trade-mark for which registration in the U.S.S.R. is petitioned, has been registered in the country of the petitioner in his name.

A foreign petitioner may petition for the registration of a trade-mark, used by him, only for a period of time not exceeding the period for which the trade-mark is registered in the country of the petitioner.

5. The following shall accompany the petition:

(a) An extract from the register for registration of governmental business organizations (U.S.S.R. Laws 1940, text 363), or any other documents certifying to the fact that the enterprise exists legally;

(b) Three copies of a clearly made drawing of the trade-mark with a description of it (color, size, etc.);

(c) A receipt from the U.S.S.R. State Bank for deposit of the fee of twenty-five rubles for registration of a trade-mark.

A foreign petitioner shall attach to his petition, in addition to the addenda specified in clauses (b) and (c) of the present section, a copy of the certificate of proper registration under his name of the given trade-mark in his country, together with a duly certified translation of it into Russian.

6. To a petition for registration filed by an attorney, a duly certified power of attorney shall be attached. Powers of attorney executed abroad shall be duly certified in the consular offices of the U.S.S.R., except in cases where, by virtue of an international treaty, no such certification is required. Certification of powers of attorney executed in a country where there is no diplomatic or consular representation of the U.S.S.R. shall be effected by the Ministry of Foreign Affairs in a procedure prescribed by Section 58 of the Statute on Consuls.

7. [Defines the details of the filing of the petition.]

8. A petition which meets the requirements of the law (U.S.S.R. Laws 1936, text 113) shall be entered in the Register of Trade-Marks, and the Bureau shall make a separate decision to this effect upon each petition.

From the date of entry of the trade-mark in the Register, the petitioner shall be granted the right of exclusive use of the registered trade-mark, and a certificate thereof shall be issued by the Bureau of Registration.

The Bureau shall publish at the expense of the petitioner a notice of the issuance of each certificate in the official periodical of the Ministry of Commerce, with a detailed description of the trade-mark and, if necessary, a reproduction of the trade-mark.

9. [States that the Bureau must show adequate reason for denial of registration or of requests for changes of trade-mark.]

10. If several petitions are filed for an identical or similar trade-mark, the Bureau of Registration shall request the petitioners to furnish evidence concerning the initial moment of their use of the trade-mark.

The Bureau of Registration shall fix a period of time for the submission of such evidence, which shall be not less than one month.

When the initial moment of continuous use of the trade-mark submitted for registration is established, the Bureau of Registration shall enter the trade-mark in the Register and shall issue a certificate of the right of exclusive use of the trade-mark to the petitioner who began to use it continuously prior to others.

The date on which the trade-mark was first applied industrially or commercially to the exact kind of merchandise for which registration is petitioned, shall be considered the initial date of continuous use of the trade-mark.

If no petitioner has used the trade-mark before, the trade-mark shall be registered in the name of the petitioner who was first to file the petition.

11. The Bureau of Registration shall keep a register in accordance with Section 12 of the present regulation. Each entry shall be signed by the chief of the Bureau of Registration.

In addition to the register, the Bureau shall keep a classified album of drawings of trade-marks. . . .

12. [Describes the contents and form of the register.]

13. Upon the petition of persons concerned, the Bureau of Registration shall issue registered excerpts and information from the register.

The albums of registered trade-marks shall be open for inspection to all persons concerned.

14. A certificate of the right of exclusive use of the trade-mark shall be issued to the petitioner upon his filing with the Bureau of Registration the following:

(a) A receipt from the Moscow Budget Division of the U.S.S.R. State Bank for deposit to the account of the U.S.S.R. Ministry of Commerce of thirty rubles to cover the expenses of publication of notice of the issuance of the certificate;

(b) A plate of the trade-mark with fifty impressions of it; this plate shall be in form a woodcut or a zincographic or galvanoplastic plate and shall consist of a whole block of a size in accordance with the requirements established by the Bureau of Registration.

In case these requirements are not met within two months from the date of receipt by the petitioner of the relevant communication from the Bureau of Registration, the petitioner shall be deemed to have renounced his right to exclusive use of the trade-mark, whereof a notation shall be made in the register.

15. Extension of the time limit for the effect of the certificate of exclusive right to the use of a trade-mark shall be made by the Bureau of Registration upon a special petition to such effect by the owner of the trade-mark.

[The remainder of the section defines the procedure for extension.]

16. Upon the petition of the owner, the certificate may be cancelled before the expiration of the period for which it was issued.

17. [Describes the procedure for registration of a transfer of the right of exclusive use of a trade-mark.]

18. Appeals from decisions of the Bureau of Registration of Trade-Marks may be lodged by the persons concerned with the U.S.S.R. People's Commissariat for [since 1946, Ministry of] Commerce, whose decisions shall be final.

Appendix (to Section 4 (c))

Classification List of Merchandise

1. Seeds; plants.
2. Weaving; threads.
3. Textiles; haberdashery.
4. Tailored and knitted wear; headgear.
5. Carpets, mats; articles manufactured from hemp, wool, flax, and bark; nets.

6. Timber; articles manufactured of wood; plywood; articles manufactured of wood, cork, and plant materials; furniture.
7. Paper and cartons.
8. China; utensils.
9. Printed and engraved matter.
10. Machines, mechanical equipment.
11. Metal articles; handicraft tools.
12. Cold steel arms; game and sports equipment.
13. Electromechanical and radio equipment.
14. Musical instruments.
15. Jewelry; watches and clocks.
16. Hides, leather, furs, bone, hair, and articles manufactured from these; footwear; down; feathers.
17. Foodstuffs; spices.
18. Bakery and confectionery products.
19. Tea, coffee, cocoa, and their substitutes.
20. Grape wines.
21. Distilled liquors.
22. Beer; soft drinks; mineral waters.
23. Tobacco; cigars; cigarettes; *makhorka* tobacco; cigarette paper and unfilled cigarettes.
24. Perfumes; cosmetics; articles of hygiene and sanitation; surgical dressings.
25. Paints.
26. Explosives; matches; fireworks.
27. Stationery.
28. Rubber and articles made of rubber.
29. Toys, games; works of art.
30. Chemicals.
31. Building materials; heat resistant articles.
32. Medicines; pharmaceutical products; veterinary medicines; medical instruments.
33. Metallurgical products.
34. Optical equipment; photographic, still and motion-picture, cameras and appliances.

III. Objects of Rights (Property)

Comment

Sections 20–24, in defining property withdrawn from civil commerce, deal in fact with limitations on private ownership.

The provisions of these sections are discussed together with those of Section 5, dealing with private rights, in Volume I, Chapter 9, II, and Chapter 16.

20. Property withdrawn from civil commerce may be the object of private rights only within the limits expressly stated by law.

Comment

See Volume I, Chapter 16.

21. The land shall be the domain of the State and shall not be subject to private commerce. Land tenure shall be permitted only in the form of the mere right of use.

Note: In consequence of the abolition of private ownership of land, the division of property into movable and immovable is abolished.

Comment

(1) The abolition of the distinction between movable (personal) and immovable (real) property does not mean that rights pertaining to land are subject to the same rules as govern other property. On the contrary, those rights to land (see *infra,* comment 2) which the soviet law recognizes as belonging to citizens, come under special regulations. Recent soviet writers consider the Note to Section 21 to be an error in drafting the Code. See Volume I, Chapter 16.

(2) Property withdrawn from "civil commerce" (Section 20) or "private commerce" (Section 21) is not subject to any private transaction, such as sale, barter, or bequest. Thus, any such transaction with regard to land not only is null and void but also makes the parties to the transaction liable to imprisonment for up to three years.[32] Although the title to land is in a broad sense vested in the government, this does not mean that

[32] R.S.F.S.R. Criminal Code of 1926, Section 87*a* (enacted on March 28, 1928, R.S.F.S.R. Laws 1928, text 269). For translation, see Vol. I, p. 703.

all land is directly used only by government agencies. Only a small portion of agricultural land is exploited by the governmental farms (soviet farm, *Sovkhoz*). Likewise, only apartment houses in large cities are owned by the central or local government and managed by it. The soviet law, while constantly denying to private persons ownership of land, has provided for various forms of land tenure which give the tenant a measure of security comparable to that of a private owner. Soviet legislation on land has been changed several times and these changes are discussed at length in Volume I, Chapters 3, II, 8, IV, 16, II and especially in Chapters 19 through 21. At present the land tenure permitted to soviet citizens may be either in the form of tenure of a plot upon which a small dwelling is erected, viz., private ownership of so-called nonmunicipalized buildings and building tenancy, or in the form of so-called toil tenure of agricultural land, which again may be the tenure of a collective farm, which at present prevails, or of an independent farming household.

22. Title to the government properties listed below shall not be alienable to private persons or their associations, nor to public organizations or co-operatives not included in the system of co-operatives, nor are such properties subject to mortgage or execution for the benefit of creditors:

(a) Industrial, transport and other enterprises taken as a whole;

(b) Industrial establishments, factories, plants, mines, and the like;

(c) Equipment of industrial establishments;

(d) Rolling stock of railroads, aircraft, seagoing vessels and river craft;

(e) Installations serving transportation by rail, water, or air or public communication (telegraph, telephone, and radio installations for public use), hydro-

technical installations, and those designed to serve commerce in goods (grain elevators, cold storage plants, and the like) as well as electrical installations for public use;

(f) Public utilities;

(g) Municipalized and nationalized buildings (as amended August 30, 1930, R.S.F.S.R. Laws, text 502).

Note 1: The conditions and procedure of alienation of government properties enumerated in this section, as well as their transfer by one government organization to another or to co-operative organizations which are included in the co-operative system, shall be determined by special laws (see Appendix) (as amended August 30, 1930, R.S.F.S.R. Laws, text 502).

Note 2: Buildings erected on tracts of land granted for use without time limit to governmental institutions, enterprises, and organizations, regardless of whether they are financed through the central or local government budget or are operating on a commercial basis, or to co-operative centers or other unions of co-operatives, as well as to primary co-operatives which are within the co-operative system (U.S.S.R. Laws 1929, text 462), and, likewise, buildings which were located upon these tracts prior to their transfer for such use without time limit, may be alienated only to the institutions, enterprises, and organizations enumerated in this note (as amended November 20, 1932, R.S.F.S.R. Laws, text 396).

Comment

(1) Section 22 was designed to protect the sphere of business assigned to government control under the New Economic Policy, primarily industry, transportation, and housing, from encroachment by private capital. The provisions of Section 22 do not withdraw property there listed from private transactions in general. A small-scale industrial enterprise could be sold

and purchased as a whole under the Civil Code and enactments effective during the New Economic Policy. But if the government once acquired the title to one of the properties enumerated in Section 22, the title was frozen and not procurable by a private person (see Volume I, Chapters 11, 13, 16).

At present, the principal significance of Section 22 lies in the fact that it defines a substantial element of the status and legal capacity of soviet government agencies enjoying the status of legal entities (quasi corporations), which are discussed in Volume I, Chapter 11. According to the Note to Section 58, the right of these bodies to dispose of government property assigned to them is limited by the provisions of Section 22. Thus, in fact, Section 22 limits the contractual freedom of the quasi corporations; it freezes the title to property therein enumerated and also sets a limitation upon the liability of quasi corporations for obligations which they may incur. No such properties may be either conveyed to a private person or seized by a writ of execution. Only cash and goods are at present left to the free disposal of the quasi corporations and are accessible to their private creditors.[33]

The provisions of Section 22 were indirectly amended by the Edict of the Presidium of the Supreme Soviet of February 10, 1941, which prohibited governmental enterprises from "sale, barter, or release of equipment or material which appears to be surplus or not utilized." [34] Thus, not only equipment but also surplus material, i.e., surplus raw materials of governmental enterprises, may not be alienated to private persons.

(2) The designation "co-operatives not included in the system of co-operatives" refers to co-operative organizations which are outside of nationwide unions of co-operatives controlled by the government. See Volume I, Chapter 11, 13.

(3) The official Appendix referred to in Note 1 has not been translated because it is omitted from the recent editions of the

[33] 1 Civil Law (1944) 167; 1 Civil Law Textbook (1938) 88.
[34] Vedomosti 1941, No. 8.

Civil Code (1943) as obsolete. The following enactments now regulate the transfer of governmental property between governmental agencies and government-controlled co-operatives: U.S.S.R. Laws 1935, text 221; *id.* 1936, text 93; *id.* 1940, text 364; and Instruction of May 26, 1940, No. 349/62–58–GA/10 printed in the Civil Code (1943) 139–147.

(4) The terms "nationalized and municipalized buildings" are at present obsolete. During the first years of the soviet regime, certain properties taken from their owners (e.g., industrial establishments) were declared "nationalized," which meant that they were taken over by the agencies of central government. Others, primarily houses in cities, were declared "municipalized," i.e., taken over by the local soviets. Both categories now constitute one category—government property. Thus, subsection (g) of Section 22 should in fact read "government-owned buildings." See Volume I, Chapter 8, IV and Chapter 16, III.

22*a*. [This section, enacted on October 11, 1926 (R.S.F.S.R. Laws, text 531), dealt with the property of mixed corporations and was repealed on August 30, 1930 (*id.* 1930, text 502), when most of these corporations had been dissolved.]

23. Arms, explosives, military equipment, aircraft, telegraph and radiotelegraph apparatus, annulled stocks and bonds, radium, helium, spirits of higher proof than that established by law, as well as quick-acting poisons, shall be withdrawn from private commerce (as amended October 16, 1924, R.S.F.S.R. Laws, text 785, and March 20, 1937, *id.*, text 19).

Note 1: The acquisition of hunting firearms and ammunition, as well as of rough or semi-finished emeralds, shall be regulated by special rules (as amended October 1, 1924, R.S.F.S.R. Laws, text 785).

Note 2: Aircraft, aircraft motors, and other aviation and air navigation equipment may be acquired: (a) by such institutions and enterprises of the socialized sector and public organizations as have been granted that right by the government of the U.S.S.R. or by the Main Office of the Civil Air Fleet; (b) by private persons, with the special permission of the Main Office of the Civil Air Fleet (as amended August 1, 1932, R.S.F.S.R. Laws, text 301).

Comment

The possession and sale of hunting arms are regulated by the act of November 29, 1940 (U.S.S.R. Laws 1940, text 777). See also Volume I, Chapter 16.

23*a*. Archive materials which are under the jurisdiction of the agencies of the archives administration may be the object of private legal transactions only where such material has been duly earmarked for destruction (archive waste) (as amended May 9, 1929, R.S.F.S.R. Laws, text 380).

24. Gold, silver, platinum and metals of the platinum group, in coin, bullion or raw metal, foreign currency, instruments payable in foreign exchange (checks, promissory notes, money orders, et cetera) and foreign securities (stocks, bonds, bond coupons, et cetera) may be the objects of private legal transactions only in the manner and within the limits established by special laws (as amended March 20, 1937, R.S.F.S.R. Laws, text 19).

Comment

(1) At the present time, private transactions in the metals specified in Section 24 and in foreign exchange are prohibited under the following monopoly of the U.S.S.R. State Bank:

Joint Resolution of the Central Executive Committee and Council of People's Commissars of the U.S.S.R. of January 7, 1937 (excerpts): [35]

1. The exclusive right of the U.S.S.R. State Bank to enter, in the territory of the U.S.S.R., into legal transactions involving gold, silver, platinum, and metals of the platinum group, in coin, bullion, and ingots (raw stuff), as well as foreign exchange and instruments reciting payment in foreign exchange (bills and notes, checks, money orders, etc.) and foreign securities (stocks, bonds, coupons, etc.) is hereby established.

Note: This section shall not apply to the operations of the governmental enterprises of the gold and platinum industry relating to the buying up of precious metals and their surrender to the U.S.S.R. People's Commissariat for Finance.

2. Be it enacted that the making of payments in foreign exchange in the territory of the U.S.S.R. and acceptance of such payments shall be permitted only:

(a) In legal transactions relating to foreign trade concluded in accordance with laws governing this subject;

(b) In other cases especially provided for by law.

Be it enacted that, in cases dealt with in subsections (a) and (b) of this section, payment in foreign exchange and acceptance of such payment, shall be made exclusively through the intermediary of the U.S.S.R. State Bank.

3. Where the financial obligations arising from legal transactions in foreign commerce are in terms of foreign exchange, the making of payment in U.S.S.R. currency is permitted only if such manner of payment is provided for by the terms of the transaction.

4. The U.S.S.R. People's Commissariat for Finance shall be authorized to make exceptions in individual cases to the present resolution.

(2) See also Volume I, pp. 475, 629–630.

25. An accessory shall be deemed a thing intended to serve the principal thing and connected with it by a common economic purpose.

[35] U.S.S.R. Laws 1937, text 25; Civil Code 1943, 148–149; see also Vol. I, Chapter 13, V, 2.

The accessory follows the disposition of the principal thing, unless the contract or the law provides otherwise.

IV. Legal Transactions

Comment

A person schooled in Anglo-American legal theory would classify with the law of contracts both the present chapter and Part Three of the Code dealing with "Obligations." In placing this chapter apart among the "general provisions," the framers of the soviet Civil Code followed certain doctrines of European law, explained in Volume I, Chapter 12. "Legal transaction" is a generic term designed to unite, as two species, both contract as the legally relevant concurrence of at least two wills and the legally effective expression of a single will (e.g., a testament). The adjectives bilateral and unilateral are used in this connection, in Section 26 of the soviet Code in particular, in a meaning somewhat different from that of the Anglo-American law. Bilateral legal transaction simply means a contract of any kind, while bilateral contract means a contract establishing mutual obligations of both parties thereto, e.g., sale (Section 139, Note).

Consequently, contracts are regulated under the soviet law by two sets of rules: one applicable to contracts as well as to unilateral legal transactions (Sections 26–43), and another provided for contracts in particular (Sections 130–151). Moreover, the soviet Civil Code also contains provisions concerning any obligations in general, that is to say, regardless of the grounds from which it arose, whether from contract, tort, or any other (Sections 106–129). These provisions must be also examined in addition to the above to obtain a general picture of the soviet law of contracts (see Volume I, Chapter 12). At the time when the Civil Code was enacted, its provisions were intended to govern all contracts in the soviet land, whether made by individuals or government agencies. However, with the advent of the Five-Year Plan in 1929 numerous enactments

were adopted and not included in the Civil Code, which outlined the special rules governing contracts among the government agencies engaged in business as a method of carrying out a general governmental economic plan. This problem is discussed at length in Volume I, Chapters 12 and 13.

Unilateral legal transactions play a smaller role than contracts, and therefore the main importance of the present chapter dealing with legal transactions in general lies in that it contains provisions fully applicable to contracts, referring to form (Sections 27–29), illegality (Section 30), competence (Section 31), duress (Section 32), necessity (Section 33), pretended transactions (Sections 34–35), invalidity (Sections 36–37), contracts made through an agent (Sections 38–40), and conditions (Sections 41–43). Of all the provisions of the present chapter only those of Section 30 depart from the standards of nonsoviet laws; these are discussed in Volume I, Chapter 12, 5.

26. Legal transactions, that is to say, acts intended to establish, modify, or terminate civil legal relations may be unilateral or bilateral (contracts).

Comment

See Volume I, Chapter 12.

27. A legal transaction may be concluded either orally or in writing.

Written legal transactions are divided into: (1) ordinary and (2) notarially certified transactions (as amended October 4, 1926, R.S.F.S.R. Laws, text 579).

Comment

See comment to Section 29.

28. A written legal transaction must be signed by the maker or by his agent.

Where, owing to illiteracy, physical disability or illness, a party cannot sign personally, he may request an-

other person to sign the legal transaction in his stead. The signature of the latter person must be duly certified and must recite the reason for the maker's inability to sign in person.

29. Failure to comply with the form prescribed by law shall invalidate the legal transaction only if such consequence of noncompliance with the form is expressly provided for by law.

Comment

(1) The following legal transactions require notarization for their validity, i.e., they must be executed in the office of a notary public, certified by him and entered into the record: (a) wills (Section 425); (b) establishment and conveyance of building tenancy (Sections 70, 72); (c) sale, barter, and mortgage of buildings and building tenancies, and contracts to sell a residential building (Sections 79, 90, 94, 182*a*, 185, 207); (d) a gift of over 1,000 rubles in value (Section 138); (e) sale or mortgage of mining rights (Section 90); (f) authority or power of attorney issued for acts to be performed before a governmental agency or an official (Section 265) but authority to receive mail may be certified by some other agencies (Section 265, Note) and a power of attorney to prosecute an action may be granted orally in court and entered in the court record (Code of Civil Procedure, Section 17, see *infra,* No. 40); (g) power of attorney for the management of property (Section 266); (h) full partnership (Section 297) and limited partnership (Section 313), as well as contribution of a building for a partner's share (Section 279, Note); (i) renting of government property (Section 153); (j) renting of a dwelling house with living space of not over 60 square meters (U.S.S.R. Laws 1937, text 361); (k) submission to arbitration (Code of Civil Procedure, Section 199).

In addition, the law requires notarization for the following contracts, although the consequences of noncompliance therewith are not specified: all legal transactions entered into by

private persons with government enterprises and institutions, except transactions involving less than 1,000 rubles, banking transactions, cash sales, insurance contracts, conveyances of copyright, contracts in foreign trade by government agencies under the authority of the Ministry of (People's Commissariat for) Foreign Trade (Section 137); assignment of a claim guaranteed by the mortgage of a building or building tenancy (Section 103).[36]

Documents certified by a notary for presentation abroad must be submitted by the owner of the document or the notary to the ministry of justice of the constituent or autonomous republic in which the notarial office is located. The ministry of justice certifies the signature of the notary, after which the document must be presented to the federal Ministry of Foreign Affairs for further certification, and, finally, the signature of the official of the Ministry is certified by the diplomatic mission of the country to which the document is sent, or by the diplomatic mission of another country.[37]

The signature on documents made in the United States but to be presented in the U.S.S.R. must be certified by a notary public, whose signature should in turn be verified by the county clerk. Then the document should be presented for legalization by the Consul of the U.S.S.R. in the U.S.A.

(2) The soviet law requires that numerous contracts be made in writing. However, various consequences are attached to noncompliance with this requirement. In this respect, contracts for which a written form is prescribed may be divided into three groups. To the first group belong: any contract of 500 rubles or more in value (Section 136), any loan of over 50 rubles (Section 211), lease of any property for a period over

[36] The most recent enumeration of instruments to be notarized is given in the Instruction for Notarial Offices by the R.S.F.S.R. Commissariat for Justice of November 17, 1939, as amended up to February 20, 1941 (Section 25). See Notariat, Collection of Orders (in Russian 1942) 20.

[37] Order of the U.S.S.R. People's Commissar for Justice of August 26, 1937, No. 85, and Letter of Instruction of the R.S.F.S.R. People's Commissar for Justice of August 14, 1942, No. 9-B-57, *op. cit.* 68.

one year (Section 153) (lease of governmental property must be notarized), suretyship (Section 238), and commission agency (Section 275*b*). In these cases, a verbal contract is not a nullity in itself, but the parties may not prove the contract by witnesses and must present written evidence thereof. In contrast to this, mortgages (Section 90), sales by payment in installments (R.S.F.S.R. Laws 1923, text 770), insurance contracts (Section 379), consent of a prior insurer to additional insurance (Section 371), or consent of the person insured to a change of beneficiary if the person insured against the risk of death is not the insurer himself (Section 374), must be made in writing under penalty of invalidity.

In addition, the law requires that powers of attorney (Section 264), any promise of a loan regardless of the amount (Section 218), and agreements stipulating penalties for nonperformance (Section 141) must also be made in writing, although the consequences of noncompliance with these provisions are not specified.

(3) All the above requirements of a definite form were to some extent liberally interpreted by the R.S.F.S.R. Supreme Court in the following rulings:

In deciding the question whether a contract which should have been executed in a certain form is valid in spite of noncompliance with such form, it must be borne in mind that noncompliance with the form required by law entails invalidity of the legal transaction only in cases in which such penalty is expressly provided for by law. The Civil Code makes the validity of a legal transaction dependent upon compliance by the parties with prescribed formalities, i.e., in the instances provided for in Sections 72, 79, 90, 138, 153, 185, 265, 266, 279 Note, 297, 313, 371, 374, 379, and 425.

In these instances, the law views the form of the legal transaction as an essential part thereof, and the absence of the required form makes the whole legal transaction faulty and incapable of giving rise to any right or obligation of the parties. All legal transactions coming under the above-mentioned sections, if they do not meet the formalities prescribed by law for their execution, must be ruled null and void by the

court, regardless of whether or not the parties so petition, with the consequences stated in Section 151 [restitution of the *status quo ante*], which the court must duly motivate. However, if a legal transaction executed in violation of Section 29 does not involve anything illegal or any obvious prejudice to the State and has been, in fact, performed wholly or in the major part by the parties, the court may recognize it as valid in the interest of the parties who are workers and impose upon the party concerned the duty of notarizing the legal transaction within a period of time fixed by the court. Such is the general trend of the appellate decisions of the Supreme Court with regard to the application of Section 29 of the Civil Code.

In cases where the form is not prescribed by law, the Civil Code leaves it to the parties to stipulate a certain form, although the law does not require such form for the legal transaction involved. The Civil Code attaches binding force to such stipulation, so that the contract is deemed effective only upon its execution in accordance with the stipulated form (Section 130, Note 2). In case of noncompliance with the form stipulated, the legal transaction is deemed nonmaterialized, and its effect on the property shall also be determined under Section 151, i.e., the *status quo ante* must be restored. However, in examining a legal transaction from the point of view of Section 130, Note 2, the courts must bear in mind that the agreement of the parties concerning form is in such case merely one of the conditions under which the contract, voluntarily stipulated by the parties or by one of them, was made (Section 41). Therefore, before refusing effect to such contract and applying Section 151, the court should consider: first, whether the interested party did not prevent the performance of the stipulated formality, and, secondly, whether any agreements or actions certifying the repeal of the stipulation in question (a subsequent agreement, readiness to perform the contract, and the like) did not take place between the parties. If such circumstances are established, the court is entitled to declare the legal transaction binding upon the parties although it was not executed in accordance with the stipulated formalities. There is still less reason to apply Section 151 to legal transactions which were wholly, or in the major part, performed by one party and to which the other party raised the formal objection of noncompliance only after the legal transaction proved to be unprofitable in the course of its perform-

ance (R.S.F.S.R. Supreme Court, Civil Appellate Division, Letter of Instruction, 1927, No. 1).[38]

The most recent soviet monographic study of the invalidity of legal transactions under the soviet law (1945) reiterated the principles stated in this ruling as expressing the general doctrine followed by the soviet courts.[39]

(4) According to Section 151, if a contract is declared invalid because of noncompliance with the form prescribed by law, each party must restore to the other party whatever was received under the contract so invalidated.

(5) Provisions regarding the form of contracts in particular are to be found in Sections 130, 136–138.

30. A legal transaction made for a purpose contrary to law, or in fraud of law, as well as a transaction directed to the obvious prejudice of the State, shall be invalid.

Comment

The concluding clause of Section 30 was designed to guard against undesirable growth of private business. But according to the recent interpretations, this section is applicable to contracts between government trading agencies as well. See Volume I, Chapter 12, 6. Under Sections 147 and 402, whatever one party may have delivered to the other under a legal transaction invalidated under Section 30 shall not be restored but shall be forfeited to the State.

31. No transaction is valid when made by a person entirely incapable of entering into legal transactions or while temporarily in a state of mind which precludes his understanding of the significance of his acts.

Comment

Compare Sections 148 and 7–10.

[38] Civil Code (1943) 149.

[39] Novitsky, "Invalidity of Legal Transactions," 1 Problems of the Soviet Civil Law (in Russian 1945) 83.

32. The person who concludes a legal transaction under the influence of fraud, threat, violence, or as a result of a fraudulent agreement between his agent and the other party, or as a result of a mistake which has material significance, may sue in court to have the transaction declared invalid in full or in part.

Comment

Compare Section 149.

33. Where a person, under the pressure of distress, concludes a transaction clearly unprofitable to him, the court, on the petition of the damaged party, or on the petition of a proper government agency or social organization, may either declare the transaction invalid or preclude its operation in the future.

Comment

Compare Sections 149, 150.

Note: Government officials must bring civil suits to declare invalid such clearly unprofitable transactions (indenture labor) as have been made by families of persons called to compulsory military service in the Red Army and Navy (as amended October 16, 1924, R.S.F.S.R. Laws, text 785).

34. A legal transaction made by agreement of the parties for pretence only, and without intent to produce legal effect, shall be invalid.

35. If a pretended legal transaction is made in order to conceal another legal transaction, then such provisions shall apply as would govern the legal transaction which was actually contemplated.

36. A legal transaction declared invalid shall be deemed invalid from the moment when made.

37. The invalidity of some provisions of a legal transaction shall not affect its other parts insofar as it may be presumed that the transaction would have been made even without the inclusion of the invalid part thereof.

38. Persons having capacity to enter into legal transaction may make them through their agents, except where this is forbidden by law.

Comment

See Sections 251 *et seq.*, where the Law of Agency is given.

39. Legal transactions concluded by an agent, within the limits of his authority, in the name of his principal shall be binding upon the principal and engender rights and obligations directly for the principal.

40. An agent may not enter into legal transactions in the name of the principal which affect either himself (the agent) in person, or affect a third party whom he represents simultaneously.

41. A legal transaction is deemed subject to a condition precedent if the rights and obligations established by the transaction become effective upon the occurrence of a condition.

A legal transaction is deemed subject to a condition subsequent if the rights and obligations established by the transaction terminate upon the occurrence of the condition.

42. A person conditionally bound must forbear causing by his acts a situation which would adversely affect or destroy a right which depends upon the condition. Otherwise, upon the occurrence of the condition, he must compensate for the damage sustained.

43. If the occurrence of the condition has been prevented in bad faith by the party who would gain by

nonoccurrence of the condition, the condition is deemed to have occurred.

If the party who would gain by the occurrence of the condition contributed in bad faith to its occurrence, the condition is deemed not to have occurred.

V. Statute of Limitations

Comment

The provisions of the soviet law with regard to lapse of time are characterized by the following features: (a) soviet law recognizes only barring of action, but no adverse possession by lapse of time, i.e., no acquisition of title by lapse of time; (b) the general statute of limitations is very short: three years; (c) the statute of limitations does not apply to the recovery of government property (see comment to Section 44).

44. The right to bring an action shall be extinguished upon the expiration of the period established by law (statute of limitations).

For disputes between government enterprises and institutions, collective farms, co-operative and public organizations, the statute of limitations shall be *one and one-half years,* with the following exceptions:

(a) For claims arising from the delivery of goods of improper quality, it shall be *six months;*

(b) For all claims for the enforcement of contractual fines, forfeitures, and penalties, it shall be *six months;*

(c) A *six-month* limitation period shall apply for claims arising from shipping by rail, water, and air, as well as for claims of the clients of communication agencies (U.S.S.R. Railway Statute, Sections 72 and 96, U.S.S.R. Laws 1935, text 73; Statute on Inland Water Transport, Section 172, U.S.S.R. Laws 1930, text 582; U.S.S.R. Air Code, Section 89, U.S.S.R. Laws 1935,

text 359*b*; U.S.S.R. Statute on Posts, Telegraphs, Telephones and Radio Service, Section 85, U.S.S.R. Laws 1933, text 405);

(d) For claims relating to mixed rail-water and rail-air transportation, the limitation period shall be *one year;*

(e) For claims provided for by the Maritime Code of the U.S.S.R. (U.S.S.R. Laws 1929, text 366), the periods of limitation established by Section 241 of that code shall apply (as amended December 10, 1934, R.S.F.S.R. Laws, text 268).

For disputes between government enterprises and organizations, collective farms, co-operative and public organizations, on the one hand, and private persons, on the other, as well as for disputes between private persons, the statute of limitations shall be *three years,* unless special laws provide for other periods of limitation.

Note: The one-half-year limitation period specified in subsection (a) of the present section shall apply to all claims relating to quality of goods, not yet precluded by the statute of limitations prior to the effective day of the Resolution of the Central Executive Committee and the U.S.S.R. Soviet of People's Commissars of October 7, 1934, regulating the periods of limitation for disputes arising from delivery of goods of improper quality (U.S.S.R. Laws, text 404). All other periods of limitation specified in this section governing disputes between government organizations and enterprises and co-operative and public organizations shall also apply to their claims in which the cause of action accrued after December 31, 1933, as well as to all claims by collective farms not yet precluded by the respective periods of limitations fixed in this section. With respect to other claims, such periods of limitation shall apply as were in

force prior to the effective date of the Resolution of the Central Executive Committee and the Soviet of People's Commissars of the U.S.S.R. Governing Limitation Periods in Disputes Between Government Organizations, Collective Farms, and Co-operative and Public Organizations (U.S.S.R. Laws 1934, text 347, as amended December 10, 1934, R.S.F.S.R. Laws, text 268).

Comment

(1) The R.S.F.S.R. Supreme Court has ruled:

(a) General provisions regarding the statute of limitations (Section 44) shall not apply to the recovery of government property from unlawful possession or use, in particular in case of invalidity due to illegality of a contract (Sections 185 and 30 of the Civil Code).

As regards private persons, their claims for invalidity of a contract under Section 185 and other sections of the Civil Code shall be barred according to the general rule stated in Section 44, because no exemption is made by law for claims of this sort, with the exception of possible instances coming under Section 49 of the Civil Code and Section 5 of the Enacting Law.[40]

(b) Periods of time established by law, e.g., periods of limitation (such as provided for in Sections 44, 250, 311, 388, 404, Note, and other sections of the Civil Code; Section 36 of the Statute on Bills and Notes; Section 96 of the Railway Statute, and others), may not be changed, i.e., extended or shortened, by agreement of the parties except in cases especially provided for by law (e.g., Sections 197, 229 of the Civil Code).[41]

(2) Special shorter periods of limitation:

(a) Civil Code:

(i) Two years for all claims arising from insurance contracts (Section 396) and suits for damages caused by govern-

[40] R.S.F.S.R. Supreme Court, Plenary Session, Resolution of June 29, 1925, Civil Code (1943) 151–152.

[41] R.S.F.S.R. Supreme Court, Plenary Session, Resolution of November 16, 1925, *id.* 152; *id.* (1948) 143–144.

ment-owned enterprises involving special danger to the public (Section 404);

(ii) From three months to one year for all claims arising from a surety agreement (Section 250);

(iii) If a buyer of property has discovered defects therein, he must notify the vendor within one year with respect to buildings, and within six months with respect to all other property, in order to have the right to demand either delivery of articles of proper quality, if the goods sold are determined by generic characteristics, or a proportionate decrease of price, or rescission of the contract and compensation for all damages (Section 197);

(iv) Absent heirs must present their claim to an estate within six months (Section 433);

(v) Creditors of a decedent must also file their claims within six months (Section 434, Note).

(b) Statute on Bills and Notes of August 7, 1937, Sections 70, 71, 77 (U.S.S.R. Laws, text 221).

All actions against the acceptor of a bill of exchange or the maker of a promissory note are barred after three years from the date of maturity. Actions by the holder against the indorsers and against the drawer of a bill of exchange are barred after one year from the date of a protest drawn up within proper time, or from the date of maturity where there is a stipulation *retour sans frais*. Actions by indorsers against each other and against the drawer of a bill of exchange are barred after six months from the day when the indorser took up and paid the bill or note, or from the day on which he himself was sued.

(c) Statute on Checks of November 6, 1929, Sections 33, 34 (U.S.S.R. Laws, text 697).

Actions by the holder against all persons liable on the check are barred after three months from the date when the drawee refused to pay the check. All claims on a check are barred after three years from the refusal of the drawee to pay. Actions of recourse by an indorser against all persons responsible to

him are barred after three months from the day when he paid the check. Checks drawn in the Soviet Union must be presented within ten days. Checks issued abroad but payable within the Soviet Union must be presented for payment within sixty days from the date on which they were drawn.

(d) Statute on Inventions of 1941, Sections 38, 45 (U.S.S.R. Laws, text 150). See No. 25, *infra.*

(e) Action for payment of the earnings of a member of a collective farm is barred after one year from the actual distribution of annual income in a given collective farm (U.S.S.R. Laws 1937, text 191).

(f) Sums of money deposited with governmental institutions and courts must be withdrawn after three years if they are deposited for the benefit of a private person, or within one year and a half if the deposit is made for the benefit of a government or co-operative enterprise (U.S.S.R. Laws 1938, text 185).

(3) Payments by collective farms to the machine-tractor stations for work performed and obligations to return governmental loans of seeds are equivalent to taxes and are not, therefore, subject to the statute of limitations.[42]

45. The running of the statute of limitations shall commence with the accrual of the right to sue (as amended December 10, 1934, R.S.F.S.R. Laws, text 268).

For obligations which must be performed upon demand by creditor, the running of the statute of limitations shall commence from the date when the obligation arose.

For disputes between government organizations and institutions, collective farms and co-operative and public organizations arising from delivery of goods of improper quality (subsection (a) of Section 44), the

[42] Orders of the U.S.S.R. People's Commissar for Justice of May 27 and August 10, 1941, *id.* 155.

running of the period of limitation shall commence from the date of the making of an instrument testifying to the improper quality of the goods delivered.

46. As soon as the action for the principal claim is barred by lapse of time, actions for collateral claims shall be also barred.

47. In the event the debtor has performed the obligation after the expiration of the period of limitations, he shall have no right to recover the amount paid, even though he did not know at the time of payment that the period of limitation had expired.

48. The running of the period of limitation shall be suspended:

(a) If the plaintiff has been prevented from bringing the action by *vis major,* provided such obstacle occurred during the last six months of the period of limitation;

(b) By virtue of a moratorium declared on the obligation;

(c) For the personnel of the Red Army and Navy called to the colors for war duty, for the duration of the war emergency.

Note: From the day when circumstances which served as grounds for suspension of the running of the period of limitation have ceased, the running of the period shall be resumed, with the proviso that if the remaining period is less than six months, it shall be extended to six full months.

Comment

(1) The difference between interruption (Section 50) and suspension (Section 48) is that, after suspension has ceased, the running of the period which had begun is continued, but after interruption has ceased, a fresh period of limitation begins to run.

(2) With regard to situations created by World War II, the U.S.S.R. Supreme Court has ruled:

Under Section 48, subsection (c) of the Civil Code, the running of the period of limitation shall be suspended with regard to all obligations arising from any relation based on private law, where the party to such relation, whether creditor or debtor, belongs to the Red Army or Navy.[43]

(3) Concerning the suspension of the running of the six months' period for appearance of an heir, see comment to Section 433.

49. In all instances where the court finds that the delay in bringing an action before the expiration of the period of limitation was caused by sound reasons, the court may extend such period.

Comment

The R.S.F.S.R. Supreme Court has ruled:

Section 49, authorizing the court to extend the general period of limitation, shall not apply to the shorter periods of limitation and those established by special laws, such as the Statute on Bills and Notes, the Statute on Railways, and others.

In instances in which extension of the period of limitation is not permitted, the court may only in exceptional cases, after hearing the parties, restore under Sections 62–63 of the Code of Civil Procedure the period of time for filing the complaint, if it deems justifiable the reasons for which the party failed to bring the suit in due time.[44]

50. The running of the period of limitation shall be interrupted by bringing an action. In disputes in which one of the parties is a private person, the statute of limitations is likewise interrupted by any act of the debtor evidencing acknowledgment of the debt. In disputes between government institutions and enterprises,

[43] U.S.S.R. Supreme Court, Plenary Session, June 11, 1943, Resolution No. 11/M/7/Y, *id.* 233.

[44] R.S.F.S.R. Supreme Court, Plenary Session, Resolution of November 16, 1925, Protocol 19, *id.* 155; *id.* (1948) 146.

collective farms, co-operatives and public organizations, the commission of acts by the obligated organization evidencing acknowledgment of the debt does not interrupt the running of the statute of limitations (as amended May 10, 1936, R.S.F.S.R. Laws, text 62).

51. After the interruption has ceased, the statute of limitations shall begin to run anew, and the time elapsed shall not be counted in the new period.

RIGHTS IN REM

I. Right of Ownership

52. A distinction is made between: (a) governmental ownership (nationalized and municipalized properties), (b) co-operative ownership, and (c) private ownership.

Comment

This section may be considered obsolete in view of the provisions of Sections 4–7, 9, and 10 of the 1936 Constitution. See Volume I, Chapter 9, II and especially Chapter 16, I, 2 and 3.

53. Land, subsoil, forests, waters, railways in public use, and their rolling stock may be owned by the government only.

Aircraft may be possessed and exploited by organizations and persons that have been granted such right under the Air Code of the U.S.S.R. (Paragraph 2 was enacted August 1, 1932, R.S.F.S.R. Laws, text 301.)

Comment

Compare Section 21 of the Civil Code and Section 6 of the 1936 Constitution. For discussion, see Volume I, Chapter 16, I, 2 and 3.

54. The following objects may be in private ownership: nonmunicipalized buildings; commercial enter-

prises; industrial enterprises employing a number of hired workmen not exceeding that fixed by special laws; instruments and means of production; money, securities, and other valuables, including gold and silver coin and foreign currency; household effects and utensils; articles of personal consumption; goods the sale of which is not forbidden by law; and all property not withdrawn from private commerce.

Note: Ownership by private persons of commercial seagoing vessels is regulated by the Commercial Maritime Code of the U.S.S.R. (U.S.S.R. Laws 1929, text 366); ownership rights in commercial vessels plying the interior waterways are regulated by the Statute of Inland Waterways Transportation of October 24, 1930 (as amended November 10, 1929, R.S.F.S.R. Laws, text 837; also U.S.S.R. Laws 1930, text 582).

Comment

(1) This section is for the most part obsolete, being in conflict with the provisions of Sections 4, 6, 7 paragraph 2, 9, and 10 of the 1936 Constitution, which especially affected the clauses concerning commercial and industrial enterprises and instruments and means of production. See Volume I, Chapters 9, II and 16, I, 3.

(2) While private industrial establishments were permitted, it was held in practice that a Decree of July 7, 1921 (R.S.F.S.R. Laws, text 323), retained its effect after the promulgation of the Civil Code and, on the ground of this decree, a private industrial establishment of not more than twenty workers was permitted. Employment of a larger number required a license under Section 55 of the Civil Code.

(3) The term "nonmunicipalized buildings" means buildings in cities which were not taken by the government from their prerevolutionary owners or were returned to them under the New Economic Policy. See Volume I, Chapter 8, IV, 1.

55. Enterprises employing a number of hired workers exceeding that specified by statute, telegraph and radio transmission stations, as well as other installations of importance to the State, may be in private ownership only under a concession to be obtained from the government.

Note: Any conveyance of the object of a concession to another person by the holder of the concession, in full or in part, may be effected only with unconditional observance of the procedure established for the original grant of the concession. An unauthorized conveyance shall be null and void, shall confer upon the third party no rights, and shall entail premature cancellation of the concession originally granted to the holder (enacted October 16, 1924, R.S.F.S.R. Laws, text 785).

Comment

(1) The practice of granting concessions was discontinued about 1932. See Volume I, Chapter 10, note 28. Prior thereto, a concession was required for an establishment employing more than twenty workers. See comment 2 to Section 54.

(2) While concessions were granted the soviet jurists treated them as exemptions from the soviet legal order, as follows:

> For us a concession is a contract of the soviet government with its class enemy—a foreign capitalist—made for the purpose of restoring the productive forces of the country. . . . From the legal point of view, a concession implies an element of exemption from the general regime established by law. A concessionaire is granted rights with regard to the exploitation of the object of concession (in industries, concessions with regard to the industrial enterprise) which under general laws are not granted to private business.[45]

56. Arms and military equipment, explosives, platinum and metals of the platinum group, their combina-

[45] Karass, "Concession," Magerovsky, Fundamentals of Soviet Law (in Russian 2d ed. 1929) 356, 358. See also Vol. I, pp. 22, 24.

tions and alloys, radium, helium, spirits (above the strength specified by law) and quick-acting poisons may be held privately only under a permit by the authorities concerned (as amended October 16, 1924, R.S.F.S.R. Laws, text 785).

Comment

See Section 23 and comment 2 preceding Section 52, also Volume I, Chapter 16, I, 2 and 3.

57. Legally established co-operative organizations may possess all kinds of property equally with private persons. Industrial establishments organized or acquired by co-operative organizations in accordance with the laws governing the particular kind of co-operative, may be owned by such organizations regardless of the number of workers employed by the establishment.

Note: Ownership rights of co-operative organizations in seagoing commercial vessels are regulated by the Commercial Maritime Code of the U.S.S.R. of 1929 (U.S.S.R. Laws 1929, text 366). Ownership rights in commercial vessels plying the inland waterways are regulated by the Statute of Inland Waterways Transportation of October 24, 1930 (U.S.S.R. Laws 1930, text 582, as amended November 10, 1929, R.S.F.S.R. Laws, text 837, and October 24, 1930, U.S.S.R. Laws 1930, text 582).

Comment

The provisions of Section 57 no longer represent the present status of co-operative organizations. This is discussed at length in Volume I, Chapter 11, 13, and in Chapter 16, I, 2, 3 and 6.

58. Within the limits laid down by law, the owner has

the right to possess, to use, and to dispose of his property.

Note: Disposal of government property exercised by government agencies, including those operating on a commercial basis, is limited by the provisions of Section 22 of the present Code and the statutes governing the agencies concerned.

Comment

Ownership is here defined by the soviet Civil Code in terms to be found in the civil codes of capitalist countries. For translations of pertinent provisions of nonsoviet codes, see Volume I, Chapter 16, note 1.

According to all the capitalist civil codes, the right of ownership is not above law, and limitations either imposed by law or following from the rights of a third party (*cf.* German Code) are recognized in principle. The latter limitation is not mentioned by the soviet Code. Limitation of private ownership under the soviet law is not expressed in the general definition given in Section 58. Section 58 of the Civil Code gives a definition of ownership in general. However, at present the soviet law distinguishes several types of ownership, and for each, specific limitations are laid down by law. Governmental (State) ownership appears as the only type of ownership enumerated in Section 52 unlimited in rights. As far as private ownership is concerned, four different types are in fact in existence in the Soviet Union and for each type specific limitations are laid down by law. See Sections 20, 21–24, 51–54 of the Civil Code and Section 10 of the 1936 Constitution, discussed in Volume I, Chapter 9, II, and Chapter 16, I, 2 and 3.

59. The owner shall be authorized to recover his property from the unlawful possession of another and to claim restoration of, or compensation for, all revenues the unlawful holder derived or ought to have derived from the property; but a holder in bad faith must re-

store or compensate for such revenues during the entire period of conversion; and a holder in good faith must restore or compensate for such revenues only from the time he learned or should have learned that his possession was unlawful, or from the time that he was served in a lawsuit instituted by the owner for recovery of his property. The holder has, in turn, the right to recover from the owner compensation for all expenses necessary for the upkeep of the property from the time when the income became due to the owner.

The owner shall be authorized to demand that all infringements of his rights cease, even though such infringements do not deprive him of possession of his property.

Note 1: Former owners whose property was confiscated on the basis of revolutionary law or in general passed into possession of the toilers prior to May 22, 1922, have no right to recover such property.

Note 2: The Decree of the Council of People's Commissars of March 16, 1922 (R.S.F.S.R. Laws, text 283), concerning recovery of household effects by former owners from actual holders, is hereby repealed.

Note 3: The right of co-operative associations to claim enterprises and other property belonging to them is regulated by special provisions.

Comment

(1) The R.S.F.S.R. Supreme Court has ruled that Note 1 to Section 59 shall not apply to disputes between a private person and the government concerning governmental property or property wrongfully acquired by the government.[46]

(2) Instituting an action under Section 59 the owner must show his title. The soviet Code does not provide for protec-

[46] R.S.F.S.R. Supreme Court, Civil Division, Report for 1926, Civil Code (1943) 164.

tion to mere possession, offering no remedies comparable to trover or trespass *de bonis asportatis*. See also Volume I, Chapter 16, p. 590.

60. Where a person in good faith has acquired property not directly from its owner, the latter shall have the right to claim his property (Section 59) only if such property was lost by the owner or stolen from him. Governmental institutions and enterprises shall have the right to recover their properties, unlawfully conveyed by any means, from anyone who has acquired such properties.

Note 1: The owner is deemed in good faith if he did not know and was not required to know that the person from whom he acquired the property had no right to alienate it.

Note 2: Governmental and other securities payable to bearer and admitted to negotiability within the U.S.S.R. which recite an obligation to pay a sum certain, as well as bank notes, cannot be claimed from a holder in good faith on the ground that they have been lost or stolen or have belonged to a governmental institution or enterprise and were unlawfully alienated by any means (as amended May 25, 1925, R.S.F.S.R. Laws, text 209).

Comment

There is controversy in Continental jurisprudence concerning the extent of the right of the owner to recover his property from a third party who has acquired it in good faith for consideration from an unlawful holder of the property. Against the strict rule of the Roman law, *ubi rem meam invenio, ibi vindico* (reclaim my thing wherever I find it), the French maxim (French Civil Code, Section 2279), *en fait de meubles la possession vaut titre* (where movables are concerned, possession is considered equivalent to title), was accepted by cer-

tain codes. According to the French point of view, properties acquired by a third person in good faith cannot be recovered by the true owner unless they were lost by or stolen from him. However, this exception has no effect if the thing stolen or lost has been bought at a fair or market, or at a public sale, or from a merchant selling similar articles.

The soviet Code accepts only the first part of the French provisions and does not make any exception for things bought at a fair, et cetera. Thus, the owner is not entitled to reclaim his property from a possessor in good faith who has not acquired it directly from the owner, unless the property was lost by or stolen from the owner (Section 60, first sentence). However, governmental institutions and enterprises have the right to recover their properties unlawfully conveyed by any means from anyone who acquires such properties (*id.*, second sentence). See also Volume I, Chapter 16, p. 590.

60*a*. Where a person declared dead (Section 12) reappears, he has the right, irrespective of the time of reappearance, to claim by action in court his property which is still in existence, from the respective institutions and persons holding it. However, from a third party to whom the property has been passed by a person who held it under agreement with the person who reappears or his heirs, the property may be recovered only if the acquiring party knew, or ought to have known, that the property belonged to the person declared dead (enacted May 27, 1929, R.S.F.S.R. Laws, text 419).

61. The right of ownership may belong to two or more persons jointly by shares (joint ownership).

Comment

The provisions of Sections 61–65 concerning joint ownership do not apply to the undivided family ownership of a peasant household, which is regulated by the Land Code. Undivided

joint ownership by a family is not ownership by shares. See Volume I, Chapters 18 and 21.

62. The possession, use, and disposal of a joint estate shall be exercised by common agreement of all joint owners, and all disagreements shall be decided by majority of votes.

63. Each joint owner, in proportion to his share, must contribute to all kinds of payments and dues incidental to the joint estate, as well as toward the expenses of management and safeguarding of the same.

64. Joint owners shall have priority in the purchase of a share sold by any of them to a third party, except where a share is sold at public auction.

65. Each joint owner has the right to claim the separation of his share from the joint estate insofar as this does not conflict with the law or with the provisions of the contract. If agreement regarding the method of separation is not reached, the estate shall be divided in kind, by court judgment, insofar as this is possible without disproportionate prejudice to its economic purpose; otherwise the separated joint owner shall receive compensation in money.

66. The right of ownership in a thing shall be conveyed on the basis of a contract made between the person who alienates the thing and the person who acquires it. The right of ownership of the acquiring party in an individually defined thing shall arise from the moment when the contract is concluded, but with respect to things defined by generic characteristics (number, weight, measure), it shall arise from the moment of their delivery.

Comment

On this point, soviet law offers a compromise between the

French point of view that the agreement itself transfers ownership (Code Napoléon, Articles 938, 1138) and the German (BGB, Article 929), which requires both agreement and delivery for movables. The soviet Code follows the rule established by the judicial practice of the imperial supreme court—the Ruling Senate (Decisions of the Civil Division, Nos. 229, 788 of 1868; 317, 462 of 1869; 695 of 1870; 618 of 1871; 10 of 1875; 94, 288 of 1880).

67. Delivery is deemed accomplished by handing over the thing to the acquiring party; also, except when the contract otherwise provides, by handing over to the acquiring party documents of title to goods (invoices, bills of lading, warehouse certificates, et cetera); or by deposit of such documents with the post office for mailing pursuant to instruction of the acquiring party; or by handing over to the carrier for dispatch by order of the acquiring party things alienated without obligation to deliver; and by deposit of such things with the post office for dispatch as ordered by the acquiring party.

68. Ownerless property, that is, property whose owner is unknown, or which has no owner, reverts to the ownership of the State in accordance with regulations established by special laws.

The property of ownerless peasant households shall revert to the disposition and use of the respective peasants' mutual aid societies. In localities which have no peasants' mutual aid societies, the property of ownerless peasant households passes to the disposition of the respective village soviets (as amended November 18, 1926, R.S.F.S.R. Laws, text 666).

Note: The rules for disposition of stray cattle are determined by the Regulation of the Council of People's Commissars of October 26, 1932, R.S.F.S.R. Laws,

text 569 (as amended March 20, 1933, R.S.F.S.R. Laws, text 66).

Comment

(1) The R.S.F.S.R. Supreme Court, in interpreting this section, established in 1925 the presumption of government ownership of any disputed property within the Soviet Union until the contrary is proved. However, at present this interpretation is considered obsolete. The problem of ownerless, mismanaged and neglected property under the soviet law is discussed in Volume I, Chapter 16, III. The principal sources printed in the latest edition of the Civil Code are given below under 2.[47] The soviet writers stress that these apply primarily to privately owned houses. Some rules are also to be found in the Statute of April 17, 1943, Concerning the Procedure of Recording and Exploitation of Nationalized, Ownerless and Escheat Property, and the R.S.F.S.R. acts issued in its implementation.[48]

(2) The R.S.F.S.R. Supreme Court ruled in 1934 (Presidium Ruling of August 13/14, 1934, Protocol No. 37):

(a) Property may be declared ownerless if its owner is unknown, is an absentee, or the property is in escheat (Section 68 of the Civil Code), but no property, in particular a building, of owners whose whereabouts is precisely known may be declared ownerless.

If no care is taken to safeguard a building and it is threatened with destruction or pillage, the village soviet may institute proceedings by filing in court a civil suit for declaration of the building as ownerless, which suit shall be decided by the court under the Civil Code.

(b) In case of a planned emigration, the buildings shall pass over to the appropriate agency, village soviet, or District Land Office only by voluntary consent of the owners, provided they are compensated for the value of the building. Otherwise, the owner retains the right of a lawful owner.

(c) Whenever a village soviet or District Land Office is

[47] Civil Code (1943) 167–170; *id.* (1948) 155–156.

[48] U.S.S.R. Laws 1943, text 98; Act of December 28, 1943, R.S.F.S.R. Laws 1944, text 21, amended by Act of March 7, 1946, *id.* 1946, text 16.

concerned with the transfer of a tract of land which has been left unused, the question of the buildings and plants on it may be decided by filing a suit against the owner of the buildings or the plants by the village soviet or the person concerned for their alienation to the new tenant of the land with compensation after fair appraisal. If the address of the defendant is unknown, the court shall proceed in accordance with Sections 2, 6, and 72 of the Code of Civil Procedure.

(3) Joint Circular Letter of the R.S.F.S.R. People's Commissars for Municipal Economy and for Justice of October 22, 1935, No. 128/227:

(a) A building whose owner is unknown or which has no owner, as well as a building whose owner was declared an absentee or dead under Section 12 of the Civil Code, shall be transferred to the municipal fund as ownerless by the resolution of the city soviet or district executive committee.

Note: Buildings belonging to the peasant household and declared ownerless under the present act shall be converted to the ownership of the mutual aid associations of collective farmers, or peasant mutual aid societies.

(b) A building shall not be considered ownerless if its owner is known but resides in a place different from the site of his building and has not been declared an absentee. If, because of the absence of the owner and of a person authorized by him to superintend the building, it is threatened with destruction, the housing department of the local soviet shall be entitled to institute a suit in court petitioning for declaration of the building as ownerless and its transfer upon court decision to the municipal fund.

Before transfer to the municipal fund, the local soviet must draw up a record of the fact that the owner of the building cannot be identified and must publish in the local papers a summons on the owner to make appearance within three months. If the owner does not appear within three months, the local soviet submits to the regional authorities the petition for the transfer of property to the municipal fund (*id.* Section 3); the local soviet also is in charge of the temporary management of property (*id.* Section 4).

68*a*. The finder of lost property must give immediate notice thereof to the person who lost the property, or give notice of the find and turn the lost property over to the police or to the village soviet (as amended June 30, 1930, R.S.F.S.R. Laws, text 387).

Comment

Find and treasure-trove are discussed in Volume I, Chapter 16, IV.

68*b*. The periods of time during which the police and the village soviets shall keep property found and deposited with them shall be established by the orders of the Councils of Ministers (prior to 1946 People's Commissars) and the regional (provincial) soviets in accordance with local conditions. Such periods may be not less than three nor more than six months. If the person who lost the property appears or is identified prior to the expiration of the established period of time, the property shall be returned to him, and he shall be bound to compensate the keeper for the expenses of custody and to pay the finder 20 per cent of its value. In case of dispute, the amount of remuneration shall be determined by the people's court; in rural localities by the village court, in case the amount of remuneration does not exceed fifty rubles (as amended June 30, 1930, R.S.F.S.R. Laws, text 387).

Note: If the property found belongs to the government, the remuneration provided for in the present section shall not be paid (as enacted November 18, 1926, R.S.F.S.R. Laws, text 664).

68*c*. In individual cases, depending upon the economic status of the loser and of the finder of the property, the court may reduce the remuneration provided for by Section 68*b* or even absolve the owner from payment

of remuneration (as enacted November 18, 1926, R.S.F.S.R. Laws, text 664).

68*d*. If the person who lost the property fails to appear or is not identified within the period established under Section 68*b*, the property reverts to the ownership of the State pursuant to Section 68. In such case, remuneration shall be paid in accordance with the general rules (as amended June 30, 1930, R.S.F.S.R. Laws, text 387).

68*e*. The period of time established under Section 68*b* shall run from the date where the find is surrendered to the police or to the village soviet (as amended *id.*).

68*f*. The provisions of the preceding Sections (68*a*–68*e*) shall not apply to property found in offices, business premises, premises open to general use, rolling stock of railroads, steamships, and the like. In such cases no remuneration is paid to the finder; the property found shall be surrendered to the management of the office or business in question in accordance with special regulations issued by the government departments and agencies concerned (as amended November 18, 1926, R.S.F.S.R. Laws, text 664).

69. Expropriation of property from the owner shall be permitted only in accordance with the procedure established by the decree concerning expropriation and confiscation of property of private persons and organizations with compensation to the owner at the average market prices at the time when the property is seized.

Note: Rules concerning compensation to owners for animals slaughtered for the purpose of checking the spread of contagious disease or which have died as a result of inoculation, as well as compensation for articles destroyed, are contained in the Veterinary Code of

the U.S.S.R. (as amended U.S.S.R. Laws 1936, text 446; R.S.F.S.R. Laws 1937, text 8).

70. Confiscation of property from the owners is permitted only as a penalty in the cases and manner established by law (Appendix).

Comment

Sections 69 and 70 were included in the Civil Code to emphasize the end of arbitrary unlawful expropriations and confiscations which were frequent under Militant Communism. The official Appendix mentioned in Section 70 consisted of the R.S.F.S.R. Law of March 28, 1927, concerning the expropriation and confiscation of property (R.S.F.S.R. Laws 1927, text 248, amendments *id.* 1929, texts 774 and 872). Although still on the statute books, it is generally considered for the most part obsolete and its text was omitted in the 1943 edition of the Civil Code.[49] For this reason, it was not translated. A résumé of its provisions that are still in force and of the discussion of expropriation and confiscation given in the textbooks of 1938 and 1944 [50] is offered instead.

Expropriation arises when government compulsorily alienates or temporarily seizes private property, in either case for compensation to meet State emergencies. Confiscation is defined as compulsory forfeiture to the State of property without compensation made under the sentence of the court or under an administrative order in instances especially provided for by law. Under expropriation, the property may be taken temporarily so that the title remains with the owner and the government authorities have only temporary use of the property. In case of confiscation, the title is always transferred to the government. Although Section 69 states that the owner is compensated for expropriated property at the average market prices "at present," according to the textbook of 1944, "the compensation is made not at the market prices but at the fixed prices. In particular, an expropriated building is compensated

[49] Civil Code (1943) 127; Zimeleva, Civil Law (1945) 63.
[50] 1 Civil Law Textbook (1938) 180; 1 Civil Law (1944) 239 *et seq.*

for according to its appraisal for taxation or insurance purposes." [51]

"Confiscation shall occur: in cases where a person possesses property, the holding of which is prohibited; in cases provided for in the Criminal Code as a penalty; with regard to persons who fled abroad for political reasons; and whenever the smuggled goods are seized." [52] The R.S.F.S.R. Supreme Court ruled that a court sentence confiscating property shall be carried out even if the convicted person died after it was rendered but before its execution.[53]

Compulsory delivery of various types of property and their commandeering to meet war emergencies are related to confiscation and expropriation but are different. Such deliveries have the character of a universal duty in contradistinction to the sporadic confiscations and expropriations. Property seized may be or may not be compensated. In some instances, the owner is even obligated to make repairs on the seized property. The title may be retained in some instances by the owner and is transferred to the State in others. Such deliveries and commandeering were in particular provided for by the Edict of June 22, 1941, concerning localities under martial law, Section 3 and the Edicts of February 5, 1940, and June 30, 1941, concerning compulsory delivery to the Red Army of motorized and animal-drawn means of conveyance.[54]

See also Law of February 1, 1930, Volume I, p. 711, at note 73.

II. Building Tenancy

Comment

For discussion of this chapter, see Volume I, Chapter 16, II.

[51] 1 Civil Law (1944) 240.

[52] *Ibid.*

[53] R.S.F.S.R. Supreme Court, Ruling of February 2, 1925, Collection of Rulings of the R.S.F.S.R. Supreme Court (in Russian 1935) 233.

[54] Vedomosti 1941, No. 29. See translation *infra* No. 39; 1 Civil Law (1944) 241; Zimeleva, Civil Law (1945) 63.

71. Contracts granting city lots for building construction shall be made by the municipal department of the city government with legal entities and physical persons for the following periods of time: for stone (brick) and reinforced-concrete buildings—up to sixty-five years; for mixed buildings—up to sixty years; for wooden structures—up to fifty years.

Where land lots are granted for the construction of workers' homes and new buildings are to be erected, contracts of building tenancy must be concluded for the afore-mentioned maximal periods; but if, under such contracts, only the restoration, completion, super-structure, expansion or remodeling of the existing buildings for workers' homes is to be made, the contract may not be concluded for periods shorter than two thirds of the maximal period (that is, not less than for forty-three years, forty years, and thirty-three years, respectively) (as amended November 21, 1928, R.S.F.S.R. Laws, 1927, text 797; *id.* 1932, text 396).

Note 1: The contract establishing a building tenancy may include land lots not directly intended for construction but serving for the economic needs thereof.

Note 2: The rules laid down in Sections 71–84 apply also to contracts concluded with respect to land lots in localities outside of city limits. In such localities, contracts of building tenancies shall be made by local land authorities, by village soviets possessing the rights of legal entities, and by authorities who have the right to enter into contracts of this kind with respect to land under the jurisdiction of village communes. The rights and duties provided by Sections 71–84 for municipal departments of city governments shall be exercised by such local agencies in the cases under their jurisdiction

(as amended March 11, 1929, R.S.F.S.R. Laws, text 276).

Note 3: Government organizations, enterprises, and institutions which are financed by including their incomes and expenditures in the governmental central or local budget, or operate on a commercial basis, as well as co-operative centers and unions of co-operatives and primary co-operatives, forming a part of the co-operative system, shall be granted land lots for the purpose of building thereon for use, without time limit, under the terms and procedure provided for by special law (U.S.S.R. Laws 1932, text 295). Housing co-operative associations are entitled to elect tenancies either for the time limit prescribed for building tenancy contracts, or for use without time limit (as amended November 20, 1932, R.S.F.S.R. Laws, text 396; October 17, 1937, U.S.S.R. Laws, text 314).

Note 4: The maximal period of contracts for the construction of houses upon lots furnished for the construction of large-scale housing by private capital shall be determined by special law (as amended August 27, 1928, R.S.F.S.R. Laws, text 759).

Comment

(1) Order of the R.S.F.S.R. Commissariat for Municipal Economy of March 10 ,1941, No. 125:

In a number of cities, workers' communities, and suburban summer resorts, the agencies of municipal administration have concluded with individual citizens short-term contracts of building tenancy for ten to fifteen years, while Section 71 of the Civil Code establishes the term for wooden buildings up to fifty years.

I consider this practice incorrect and, for the purpose of co-ordinating short-term contracts with Section 71 of the Civil Code, hereby order:

All agencies of municipal economy in cities, workers' com-

munities, and suburban and other summer resorts shall examine contracts of building tenancy concluded by them with individual citizens and take the necessary steps to extend the duration of short-term contracts up to terms established in Section 71 of the Civil Code, for which purpose a written clause, notarized under Section 72 of the Civil Code, shall be added.[55]

(2) Note 4 to Section 71 became obsolete, because the law sponsoring construction of houses by private capital was repealed on February 13, 1938.[56]

72. Contracts establishing building tenancy must be notarially certified, under penalty of invalidity (as amended October 4, 1926, R.S.F.S.R. Laws, text 579).

73. The contract establishing a building tenancy must recite the following:

(a) The names of the contracting parties;

(b) The effective period of the contract;

(c) The exact determination of the area granted by the contract;

(d) The rent and terms of payment, where rent charges are permitted by law;

(e) The character and dimensions of the structure which the tenant builders are obligated to erect;

(f) The time when construction is to begin;

(g) The time when construction is to be completed;

(h) The conditions of maintaining the buildings in proper order;

(i) The conditions of the structure's insurance and its restoration in the event of destruction;

(j) The penalty in the event of delay or other violations of the contract by the grantees (as amended March 11, 1929, R.S.F.S.R. Laws, text 276).

Note 1: Construction must begin within one year

[55] Civil Code (1943) 171.
[56] U.S.S.R. Laws 1938, text 45.

from the day when the contract is concluded. Where land lots are granted for the construction of workers' homes, construction must begin within two years and must be completed within four years, but for organizations which have for their purpose the construction of whole villages or groups of buildings, the term for completion is extended up to eight years (as amended October 18, 1926, R.S.F.S.R. Laws, text 545).

Note 2: Increase in rent, where rent changes are permitted by law, may be fixed in the contract at intervals not more frequently than every five years, and each time only to the extent fixed by the contract (as amended March 11, 1929, R.S.F.S.R. Laws, text 276).

Comment

Under the Edict of the U.S.S.R. Presidium of April 10, 1942, no ordinary rent but only the so-called land rent, which is a form of taxation, is collectable for building tenancy.[57]

74. In the construction of the buildings and in their exploitation, the tenant must observe all construction standards established by the government and all sanitary and fire-protection regulations.

75. The tenant must carry fire insurance, to the full amount of the actual value, on all buildings located upon the land granted to him (as amended March 11, 1929, R.S.F.S.R. Laws, text 276).

76. Dwelling buildings newly erected, restored, or completed (added, enlarged, or remodeled), under the building tenancy contract, as well as dwellings erected or restored upon land granted to housing co-operative societies for use without time limit, shall be exempt, in full or in part, from payment of State and local taxes and assessments upon the structures or land lots. Simi-

[57] Vedomosti 1942, No. 13.

larly, they shall be exempt from land-rent assessments, as prescribed by and within the limits of, special laws of the U.S.S.R. or the R.S.F.S.R. (as amended June 6, 1927, R.S.F.S.R. Laws, text 383).

Comment

The new Edict of the U.S.S.R. Presidium of April 10, 1942, concerning local taxes no longer provides for the privileges stated in Section 76.[58]

77. Within limits fixed by the contract, the tenant shall have the right to use in construction and for the upkeep of the building, building materials which are found within the granted lot, for which purpose he has the right to conduct works to obtain said materials.

78. The tenant shall have the right to use water on his lot and to dig wells and to embed springs and sources of water within its confines.

79. The building tenancy may be alienated or mortgaged. Under penalty of invalidity, contracts concerning the alienation or mortgage of the building tenancy must be notarized and subsequently registered in the proper municipal department of the city government concerned.

Alienation of the building tenancy by shares without division of shares in kind (ideal share) shall be permitted. In such case, the original tenant and those acquiring shares shall be liable jointly and severally for all obligations arising out of the building tenancy contract (Section 115) (as amended March 11, 1929, R.S.F.S.R. Laws, text 276).

Note: Where the tenant (including housing co-operative associations) has failed to undertake the construction, or where the construction, though begun, neverthe-

[58] *Ibid.*

less was accomplished to the extent of less than 30 per cent of the construction volume specified by the contract, the alienation of the tenancy, in whole or in part, may be made only with the consent of the agency which granted the land lot to the tenant for construction.

No such consent shall be required where the building tenancies are alienated by operation of law under claims of State organizations and enterprises, co-operative organizations or credit institutions with which the tenancies are mortgaged, nor where the tenancies are subsequently alienated by the above institutions, enterprises, and organizations which acquired the tenancies at public sale (as amended January 9, 1928, R.S.F.S.R. Laws, text 757).

79a. Building tenancies held or buildings owned by a workers' housing co-operative may be alienated by it only to other workers' housing co-operative associations or to governmental agencies. Building tenancies held or buildings owned by citizens' housing co-operatives may be alienated by them only to other co-operative organizations or to governmental agencies.

The same regulations apply to alienations by public sale of building tenancies held by the afore-mentioned co-operatives (as amended April 27, 1927, R.S.F.S.R. Laws, text 276).

Comment

Under the new standard charter of the housing co-operatives and co-operatives for construction of suburban cottages, buildings may be alienated only in case of liquidation of the co-operatives (R.S.F.S.R. Laws 1939, text 43, Section 7).

79b. Building tenancies held or buildings owned by workers' and citizens' housing co-operatives may be mortgaged only with such governmental agencies, co-

operative organizations, and credit institutions as have the right, according to their charter or bylaws, to accept mortgages of buildings and of building tenancies (as amended April 27, 1927, *id.*).

80. [Repealed March 11, 1929, R.S.F.S.R. Laws, text 276.]

81. When execution is issued against a building tenancy, the claims of the municipal department of city government shall have equal priority with arrears in taxes and assessments (as amended March 11, 1929, *id.*).

81*a*. Neither the buildings nor building tenancies of housing co-operatives shall be subject to attachment for the benefit of private persons in execution of obligations of such co-operatives (as amended April 27, 1927, R.S.F.S.R. Laws, text 276).

82. When a building tenancy fails to be sold at public sale, the building tenancy shall be transferred to the municipal department of the city government.

83. When a building tenancy is transferred under Section 82, or when it terminates upon the expiration of the term of the contract, all buildings must be delivered by the tenant in good condition, to the municipal department of the city government, which shall reimburse the tenant for the actual cost of the buildings at the time of their delivery, with deduction of debts due to the said department. The value of the buildings shall be established by an appraisal committee, composed of representatives of the municipal department and of the Board of Building Control.[59] In the event that the tenant disagrees with the appraisal, he shall have the right to petition the court for an increase in the valuation

[59] The Board of Building Control has been abolished.

(as amended March 11, 1929, R.S.F.S.R. Laws, text 276).

84. Under a contract of building tenancy made in conformity with the provisions of Sections 71–83, such city lots and lots outside the city limits may be granted as have the following types of buildings:

(a) Unfinished buildings, for the purpose of completion;

(b) Destroyed buildings, for the purpose of restoration;

(c) Buildings permitting the addition of new stories;

(d) Buildings capable of extension, that is, the erection of new buildings with the use of the walls of the existing structure;

(e) Houses small in size and in value, the reconstruction of which into houses of larger dimensions and value is deemed economically desirable by the municipal department of the local executive committee;

(f) Land area of which a considerable part is left unbuilt (vacant), and which may be utilized for the purpose of building additional structures technically connected with the existing structure by a common yard, absence of a separate exit, a common water main, common sewers, heating plant, etc. (as amended January 10, 1927, R.S.F.S.R. Laws, text 57).

84*a*. The building tenancy may be extended to the instances enumerated in Section 84, provided the cost of construction work, as stipulated, is not less than 30 per cent of the original cost of the existing structure.

Local executive committees shall have authority to extend building tenancies to the cases enumerated in Section 84, provided the cost of the construction works stipulated constitutes not less than 25 per cent of the

existing structures (as amended January 10, 1927, R.S.F.S.R. Laws, text 57).

84*b*. The building tenancy shall include the entire plot granted. Tenants, at the moment of making of the building tenancy contract, occupying buildings not assigned for destruction, restoration, or remodelling, have priority rights for renting the premises which they occupy. But tenants occupying buildings assigned for demolition, restoration, or remodelling may be ejected in a court proceeding from these buildings, provided the tenant-builder furnishes them other suitable housing space within the same settlement (as amended March 11, 1929, and June 24, 1938, R.S.F.S.R. Laws 1929, text 276; *id.* 1938, text 163).

84*c*. In cases provided for by subsection (e) of Section 84, the tenant-builder shall have the right to claim by court action the dispossession of persons living in houses small in size and value, but the respective executive committee or the tenant-builder (where this is provided for by his contract with the municipal department) must furnish the persons so dispossessed with premises suitable for habitation in accordance with the established standards, and provide additional space to such tenants as by law are entitled to additional space and who are actually using such additional space at the time of dispossession (as amended March 11, 1929, R.S.F.S.R. Laws, text 276).

84*d*. [Enacted March 11, 1929, R.S.F.S.R. Laws, text 276; repealed June 24, 1938, *id.*, text 163.]

III. Mortgage of Property

Comment

The form of guarantee dealt with in this chapter cannot be fully identified with either mortgage, pledge, or lien, but

has characteristics common to all three. In some instances, possession of the thing which serves as security is transferred to the creditor, as in pledge; in others, the debtor retains possession as in the case of mortgage (Sections 92, 93). The guarantee may arise not only by contract but by operation of law like a lien. Of two terms in Russian legal language, *zalog* (mortgage) denoting the *hypotheca* of Roman law and *zaklad* (pledge) denoting the Roman *pignus,* the framers of the soviet Code selected the former for the name of the soviet form of guarantee. In view of the foregoing, the term mortgage is used in the translation. But the attention of the reader is drawn to the fact that in some instances this mortgage is more like a lien and in others resembles a pledge.

Among the forms of land tenure that constitute in soviet law substitutes for real property, only ownership in urban houses and building tenancy are subject to mortgage. Tenure of agricultural land is completely exempt from such liens because it comes under the concept of property withdrawn from commerce (Section 87). Precious metals, foreign exchange, and instruments payable in foreign exchange may not be held under mortgage by a private person but only by the U.S.S.R. State Bank.

Special rules govern the mortgage of governmental bonds with savings banks,[60] pledges with the governmental (city) pawnbrokers,[61] and mortgage with the U.S.S.R. State Bank.[62]

85. By virtue of mortgage, the creditor (mortgagee) has the right, in case of nonperformance by the debtor of the claim guaranteed by the mortgage, to satisfy such claim out of the value of the mortgaged property prior to other creditors.

86. The mortgagor may be either the debtor himself or a third party. The mortgagor must be the owner of

[60] U.S.S.R. Laws 1936, text 330.
[61] Standard Charter of Pawnbrokers, R.S.F.S.R. Laws 1940, text 6.
[62] Statute of the U.S.S.R. State Bank, U.S.S.R. Laws 1929, text 333, and special rules issued by this Bank.

the mortgaged property. If he mortgages someone else's property, Sections 59 and 60, respectively, shall apply.

87. Any property not withdrawn from commerce may be the subject of a mortgage, including debt claims, building tenancy, as well as patents for mining of newly prospected deposits and the right of development of deposits previously discovered (as amended October 30, 1929, R.S.F.S.R. Laws, text 794).

Note: Precious metals and other values enumerated in Section 24 of this Code may be the subject of mortgage only within the regulations established by special law (Resolution of the Central Executive Committee and of the Soviet of People's Commissars of the U.S.S.R. of January 7, 1937, U.S.S.R. Laws, text 25, as amended March 20, 1937, R.S.F.S.R. Laws, text 19).

88. Only a valid claim may be guaranteed by a mortgage.

89. A mortgage arises either by contract or by specific provision of law.

90. The contract of a mortgage must be in writing. Mortgages of buildings or of building tenancies, as well as of patents for mining of newly prospected deposits or right of development of deposits known before, must be notarially certified under the penalty of invalidity. In such cases, the mortgage instrument must be delivered to the mortgagee. Mortgage of buildings and of building tenancies made to guarantee loans by credit institutions, or to guarantee contracts with governmental organizations and governmental enterprises, shall be made on the basis of mortgage certificates issued by notarial offices.

The procedure in mortgaging of the patent for newly prospected deposits and of the right of development of deposits known before shall be determined by special

law (as amended October 30, 1929, R.S.F.S.R. Laws, text 794).

Comment

(1) Special rules govern the procedure of mortgaging buildings erected by means of a loan from a communal (municipal) bank to promote individual housing for employees. In such instances, the bank sends to the notarial office a notice indicating the amount and terms of the loan. The notarial office dispatches the original to the communal department of the local soviet of the place where the building is located and files the second copy with the mortgage record of the notarial office.[63]

(2) In foreign trade, the mortgage of goods is often performed by hypothecation of instruments of title to goods, such as bill of lading. Delivery of such instruments to the mortgagee is equivalent under Section 67 of the Civil Code to delivery of the goods.[64]

91. The mortgage contract and the mortgage instrument must recite the names and addresses of the debtor and creditor, the description of the property mortgaged, the valuation and the location thereof, the substance and extent of the claim secured by the mortgage, and the time of performance. Moreover, other conditions, not forbidden by law, may be included.

92. The mortgaged property, except for buildings and the right of building tenancy, shall be delivered to the mortgagee. By agreement of the parties, the property may be retained by the debtor under lock and seal of the creditor, except as the law or the regulations of credit institutions provide for another procedure. An individually defined thing may be left in the mortgagor's possession, provided it is identified by earmarks asserting the mortgage.

[63] U.S.S.R. Laws 1939, text 188; Instruction of the U.S.S.R. Commissariat for Justice of May 19, 1933, 1 Civil Law (1944) 409.

[64] 1 Civil Law (1944) 410.

93. In the cases provided for by Section 92, the mortgage right in things defined by generic characteristics, arises from the time of delivery or sealing, while the mortgage of things individually defined, arises from the moment when the contract is concluded.

94. Property may be mortgaged to several creditors, in which case the mortgagor must notify each subsequent mortgagee of the preceding mortgages.

Creation of the second and further mortgages on buildings and building tenancies must follow the procedure established by Section 90. Remortgaging of other property shall take place by written contract and by written order to the preceding mortgagee to deliver, upon satisfaction of his claim, the mortgaged property to the new mortgagee.

95. The mortgage guarantees the claim to the extent of the claim at the moment of its actual discharge; in particular, it guarantees interest, damages caused by delay in performance, and, in proper cases, penalties, as well as reimbursement of the costs of collection.

96. The mortgagee may not make use of the mortgaged property or profit by its fruits, except as the law or agreement otherwise provides.

97. The mortgagor must maintain the mortgaged property in good condition and must insure the property. If the property has been delivered to the mortgagee, the latter shall be responsible for its safekeeping and is obliged to insure the property at the expense of the mortgagor.

98. A mortgagee who has lost the mortgaged property or from whom it has been stolen, shall have the right to recover it from any holder, including the owner. Where the mortgaged property has been left with the debtor (Section 92), the mortgagee may claim it from

every holder who is not in good faith; however, a governmental agency may claim it from any person acquiring it.

Note: Any persons acquiring property bearing the earmark of a mortgage shall be deemed not to be in good faith.

99. Where there are several mortgages (Section 94) each of the subsequent mortgages shall be satisfied out of the mortgaged property only after complete satisfaction of the claim of the preceding mortgages (seniority).

Where the U.S.S.R. State Bank and other credit organizations, State, co-operative, or private, are among the mortgagees, the claims of the U.S.S.R. State Bank shall be satisfied out of the mortgaged property prior to other claims accrued; the claims of other credit institutions, including those of governmental savings banks, shall be satisfied after the satisfaction of the claim of the U.S.S.R. State Bank, but prior to the satisfaction of the claims of all other mortgagees, regardless of the time when their respective claims accrued.

Where several credit institutions (except the U.S.S.R. State Bank) are among the mortgagees, the satisfaction of the claims of said credit institutions shall be marshaled in the order of seniority indicated in the first paragraph of this section (as amended October 20, 1929, R.S.F.S.R. Laws, text 769).

100. If the proceeds realized from public sale are insufficient to satisfy the claim, the mortgagee, except as the law or contract otherwise provides, shall have the right to recover the amount of the deficiency out of the other property of the debtor. But the mortgage of itself shall not constitute a claim to prior satisfaction over other creditors.

101. If the other property of the mortgagor is insuf-

ficient to satisfy the following claims, the mortgaged property belonging to the debtor shall be used to satisfy these claims prior to the claim of the mortgagee:

Claims to discharge liabilities of the debtor for wages and salaries of employees and for other claims of wage earning and salaried employees based on labor legislation or arising out of collective agreements or employment contracts; claims for compensation for bodily injuries and death (including a capitalized lump sum, i.e., a single full payment in compensation for all damages caused by injury or death); claims for alimony under legislation concerning marriage and family, and other claims placed by the Resolution of the Central Executive Committee and the Soviet of People's Commissars of the U.S.S.R. of February 6, 1929 (U.S.S.R. Laws 1929, text 98), and by other special laws on the order of seniority in satisfaction of claims, equal with the claim for wages; claims arising from social security, general State and local taxes and revenues to which the law extends the issue of execution established for taxes, including fines or penalties incidental to them; claims of agencies of State insurance and organizations of mutual co-operative insurance for insuring property of the socialized sector, as well as claims of agencies which grant land for construction, as provided for by Section 81 of this Code. The property belonging to the debtor mortgaged to a credit institution (including governmental savings banks) shall be applied, prior to the satisfaction of the claim of the mortgagee, to the satisfaction of claims for wages and such other claims as are by law placed on the same footing with wage claims; and claims for social insurance.

Property belonging to the debtor which is mortgaged to the U.S.S.R. State Bank shall be applied, prior to the

claims of the mortgagee, only to the satisfaction of wage claims and other claims enumerated in subdivision (a) of Section 266 of the R.S.F.S.R. Code of Civil Procedure, except claims relating to social insurance.

This section does not repeal the rights of railway, steamship lines, and other governmental enterprises and institutions to prior satisfaction over other creditors, out of the value of the property concerned, provided for by special laws and in particular by the Railway Statute and Water Transportation Law; nor the provisions of special laws establishing the privileged right of governmental agencies conducting public sales of the property of tax delinquents to priority in satisfaction of expenses incurred in attachments, safekeeping, shipping, and sale of property out of proceeds of the sold property; nor does it repeal any other provisions for special priority of certain categories of claims enumerated in Section 4 of the Resolution of the U.S.S.R. Central Executive Committee and the Council of People's Commissars of February 6, 1929, on the order of seniority in the satisfaction of claims (U.S.S.R. Laws, text 98).

The order of seniority in satisfaction of claims enumerated in the first paragraph of this section is established by the R.S.F.S.R. Code of Civil Procedure and by special laws (as amended October 20, 1929, February 10, 1920, R.S.F.S.R. Laws 1929, text 769; *id.* 1930, text 85; U.S.S.R. Laws, text 476). [Notes 1–4 were repealed October 20, 1929, R.S.F.S.R. Laws, text 769.]

101.[1] Where, in cases provided by law, and in due conformity with legal procedure, the mortgagee retains the property mortgaged after it has failed to be sold at public auction, the mortgagee must satisfy the claims which by virtue of Section 101 or by special law, enjoy

priority over his claim if the other property of the debtor is insufficient to satisfy such claims, but not in excess of the value of the property as fixed for the purpose of public sale (as amended October 20, 1929, R.S.F.S.R. Laws, text 769).

102. Where the mortgaged property has perished, the mortgagee shall have the right to prior satisfaction out of the insurance payments.

103. With the assignment to a new creditor of a claim guaranteed by mortgage, the mortgage is also transferred to him. Assignments of claims guaranteed by mortgage of buildings or building tenancies shall be effected by surrendering the mortgage instrument with the assignment written on the instrument and notarially certified. In all other cases, the claim shall be assigned by writing upon the mortgage contract and by surrender of the mortgaged property where such surrender is necessary to create the mortgage (Sections 92 and 93).

The debtor and the mortgagor must be notified of the assignment of the mortgage rights (as amended October 4, 1926, R.S.F.S.R. Laws, text 579; June 3, 1929, *id.*, text 436).

104. The mortgage shall be terminated: (1) by termination of the claim guaranteed by the mortgage, and (2) by public sale of the mortgaged property.

105. At the request of an interested party, proper notation concerning the termination of a mortgage on a building or building tenancy shall be made upon the original copy of the transaction kept in the notarial office.

Where the mortgage comes to an end owing to the termination of the claim guaranteed by the mortgage, the mortgaged property left with the mortgagee must

be restored by him to the mortgagor or transferred to the mortgagee following next in order of seniority (Section 94) (as amended October 4, 1926, R.S.F.S.R. Laws, text 379; June 3, 1929, *id.*, text 436).

III*a*. Mortgage of Goods in Flow of Commerce or in the Stage of Processing

Comment

Chapter III*a* was enacted by the joint Resolution of the All-Russian Central Executive Committee and the Council of People's Commissars of December 20, 1928 (R.S.F.S.R. Laws 1928, text 33).

105*a*. Only such credit institutions and other legal entities may accept mortgages of goods which are in flow of commerce or in the state of processing, as are authorized by law to conclude transactions of this kind.

Comment

After the credit reform of 1930, only banks are authorized to accept mortgages in the manner provided for in Sections 105*a*–*p*.[65]

105*b*. Mortgage of goods in flow of commerce is defined as such mortgage thereof under which the mortgagor retains the goods and the privilege to substitute for articles of the mass of goods mortgaged other articles belonging to the same assortment as the mortgaged mass of goods, provided, however, that there remains always a balance of goods of a value not less than an amount agreed upon by the parties.

105*c*. Mortgage of goods in flow of commerce shall arise from the moment the contract is concluded in writing.

[65] 1 Civil Law (1944) 413.

To make a contract of mortgage of goods in flow of commerce valid, the following conditions must be observed:

(a) The goods must be placed within premises definitely fixed by agreement of parties (a warehouse, store, and the like) apart from other property of the mortgagor;

(b) An inventory of the mortgaged goods, with their valuation, must be made indicating articles which may be substituted for the mortgaged goods, which inventory must be attached to the contract.

105*d*. Wherever the goods in flow of commerce are mortgaged, any goods taken off the premises specified in the contract shall be free of mortgage while any goods placed on such premises shall become mortgaged.

105*e*. The mortgagor must keep a special book or record for the mortgage operations to enter all operations concerning the mortgaged goods deposited in or removed from the premises on the day of the last operation.

105*f*. The mortgagee has the right at any time to check the quantity, kind, and value of the mortgaged goods, as well as the conditions of their safekeeping and the condition of the premises in which the goods are stored.

105*g*. Sections 85, 86, 89, 91, 94, 95, 97, and 99–104 of this Code shall apply to the mortgage of goods in flow of commerce.

105*h*. If the mortgagor fails to fulfill the conditions stated in Sections 94, 97, 105*c* and 105*e* of this Code the mortgagee may demand the surrender of the mortgaged goods, allow the debtor to retain the goods but under the mortgagee's lock and seal, or collect the debt guaranteed by the mortgage prior to the date due.

105*i*. Any issue of execution for the benefit of third parties against the property mortgaged under Sections 105*a*–105*g*, must immediately be reported by the mortgagor to the mortgagee, but in no event later than three days from the date of issue of execution.

105*j*. A contract of mortgage of goods (rawstuffs and semifabricated goods) in the state of processing shall arise from the moment the contract is concluded in writing and an inventory and valuation of the goods mortgaged is attached to the contract.

105*k*. The mortgage of goods in the course of processing shall be made on condition that the goods mortgaged are (a) either left with the mortgagor for the purpose of processing, or (b) delivered to a third party for processing.

105*l*. The terms governing mortgage of goods in state of processing must recite the substance of the processing and the periods within which the goods must be delivered for processing and their processing completed.

To goods mortgaged prior to their entering the processing stage, the rules stated in subsection (a) of Section 105*c* shall apply.

105*m*. Finished products (manufactured goods), manufactured from the mortgaged rawstuffs, and semifabricated goods must be surrendered immediately by the mortgagor or by the third party to the mortgagee, all general rules governing mortgage being applicable. However, it may be stipulated by the contract that either the mortgagor who processed the goods may retain the manufactured goods for safekeeping, or that the third party who processed the goods must surrender them to the mortgagor for safekeeping.

105*n*. The mortgagee has the right at any time to inspect the mortgaged goods in processing, whether kept

by the mortgagor or by a third party, in order to ascertain that the goods correspond to the quality and quantity stipulated in the contract, and that all other terms of the contract are observed by the mortgagor or the third party who holds the goods. The mortgagee shall have the right to establish a continuous survey over the process of manufacture. The mortgagor must inform the mortgagee when the goods change location and whenever their transfer for processing takes place; simultaneously with the transfer of the goods for processing, the mortgagor shall be obliged to inform the third party to whom the goods have been transferred for processing, that the goods are mortgaged.

105*o*. Where the mortgagor or the third party fails to observe the rules stated in Sections 105*l*, 105*m* and 105*n*, the mortgagee may enforce his rights with respect to the debt guaranteed by the mortgage, even prior to the date due.

105*p*. Failure to report issue of execution for the benefit of third parties against mortgaged goods held by the mortgagor or by a third party (Sections 105*b* and 105*k*), as well as the alienation, either in full or in part, of the permanent balance of the goods fixed by the parties or the removal of goods (mortgaged in the flow of commerce) from the premises without new goods being substituted (Section 105*b*) entails, besides the consequences enumerated in Sections 105*h* and 105*o*, also the liability of the mortgagor under criminal law.

LAW OF OBLIGATIONS

I. General Provisions

Comment

The part of the Civil Code called Law of Obligations deals primarily with topics pertaining to the law of contracts. But, broader in some respects, it does not cover all these topics. The Law of Obligations furnishes rules applicable to any civil obligation, regardless of the ground from which it arises—contract, tort, or any other. On the other hand, contract is conceived as a form of legal transaction in general, dealt with in Sections 26–43 of the Civil Code, and, therefore, the provisions of those sections being also applicable to contracts, constitute a part of the soviet law of contract in addition to Sections 130–151, which especially deal with contracts. The general problem of the role of contract in the soviet legal system is discussed in Volume I, Chapter 12.

106. Obligations arise from contracts and on other grounds stated by law, in particular in consequence of unjust enrichment and the causing of injury to another.

Comment

See Volume I, Chapter 12, I, 3.

107. By virtue of an obligation, one person (creditor) has the right to claim from another person (debtor) the performance of a specific act, in particular, to deliver things or to pay money, or to abstain from an act.

Receiving and making payments in foreign exchange upon the territory of the R.S.F.S.R. is permitted only in cases especially provided by law, and solely through

the medium of the U.S.S.R. State Bank (as amended March 20, 1937, R.S.F.S.R. Laws, text 19).

Comment

See Volume I, Chapter 12, pp. 419 *et seq.* and 440 *et seq.* Special rules regarding transactions in foreign exchange are quoted in the comment to Section 24 and *infra* in Nos. 22–24, 43. See also Volume I, Chapter 10, p. 373 *et seq.* and Chapter 13, IV.

108. Where the subject of the obligation is defined by generic characteristics only, and the right of choice is not granted by law or agreement to one of the parties or to a third party, the thing to be delivered by the debtor must not be below average quality.

Where the subject of the obligation is defined alternatively, the debtor has the right of election in the absence of other provisions in the law or contract.

109. The creditor has the right to refuse acceptance of performance in part or on installment, unless otherwise provided by law or contract.

110. Where by law or contract, the debt carries interest the rate of which is not indicated, such interest (legal interest) shall be computed at the rate of 6 per cent per annum upon the sum of the debt (as amended October 16, 1924, R.S.F.S.R. Laws, text 785).

111. Performance must be effected at the time determined by law or contract. Where the time of performance is not indicated, or is determined by demand, the creditor shall have the right to demand performance, and the debtor must perform, immediately. In such case the debtor, upon demand made by the creditor, shall have seven days' grace, except as the law otherwise provides.

112. The debtor shall have the right to perform his

obligation prior to the term, if it does not contradict the sense of the contract. However, the right to deduct interest for the period remaining until the date due (discount) shall belong to him only in cases provided for by law or contract.

113. Where the place of performance is not determined by law or contract, and is not apparent from the essence of the obligation, performance must be effected as follows:

(a) With respect to obligations which have for their subject the transfer of right to buildings or land lots—at the place where the buildings or lots are located;

(b) With respect to transactions which fall within the sphere of business of the debtor's enterprise—at the place where his enterprise is located;

(c) With respect to money obligations—at the residence of the creditor at the time the obligation arose; but where the creditor, by the time of performance of the obligation, had changed his residence, giving the debtor timely notice thereof, the debtor must effect performance at the new residence of the creditor, charging the creditor for all expenses connected with the change of the place of performance;

(d) With respect to all other obligations—at the place of the debtor's residence at the time the obligation arose.

114. Where the creditor is absent, evades acceptance, or is guilty of other delay, or where he lacks capacity to enter into legal transactions, there being no representative who is authorized and willing to accept performance, the debtor may deposit the amount of his debt in a notarial office, and the latter shall notify the creditor by service of a notice or by publication (as amended January 16, 1928, R.S.F.S.R. Laws, text 91).

115. A liability shall be joint and several where it is so provided by contract or established by law.

Under an obligation establishing joint and several liability, the creditor shall have the right to demand performance from all debtors jointly as well as from each severally, either of the debt in full or of a part thereof. Where the creditor does not succeed in collecting the debt from one debtor, he may collect from all other debtors the outstanding part of the debt.

A debtor who has performed an obligation for which he was liable jointly and severally has the right to enforce contribution from the other debtors in equal shares, unless otherwise provided by law or by contract. Whatever is unpaid by one of the co-debtors falls equally upon all the other debtors.

Comment

R.S.F.S.R. Laws 1940, text 72:

All members of the family of a tenant who live with him and have independent earnings shall be jointly and severally liable with him under Section 115 of the Civil Code for delay in payment of rentals and penalty.

116. Where several creditors or several debtors participate in a single obligation, and the object of the obligation is unitary, the debtors shall be deemed liable jointly and severally, and the creditors jointly and severally entitled, each having the right to sue for the whole. Where the object of the obligation is severable, each debtor shall render, and each creditor has the right to claim, performance in equal shares, except as the law or contract provides to the contrary.

117. Where the debtor fails to perform his obligation, he must compensate the creditor for damages caused by the nonperformance. Damage shall be

deemed not only the positive loss to property but also loss of such profit as would occur under normal conditions of trade.

Comment

(1) For discussion of damages in soviet law, see Volume I, Chapter 12, p. 440 *et seq.*, also Chapters 14, IV and 15, IV.

(2) R.S.F.S.R. Criminal Code:

131. Failure to fulfill obligations under a contract made with a governmental or public institution or enterprise shall be punished, if the malicious nature of such failure is established in the course of civil proceedings, by confinement for a period of not less than six months [and up to five years] and total or partial confiscation of property.

(3) For responsibility of executives of government agencies in similar instances, see Volume I, Chapter 12, 8, (a) and (b) in fine.

118. Unless otherwise provided by law or contract, the debtor shall be relieved from liability for nonperformance, if he proves that impossibility of performance resulted from circumstances which he could not prevent, or that it came about owing to intentional design or negligence of the creditor.

Comment

For discussion of damages in soviet law, see Volume I, Chapter 12, p. 440 *et seq.*, also Chapters 14, IV and 15, IV.

119. In any event, impossibility of performance shall not relieve the debtor from liability:

(a) Where the subject of the obligation is defined by generic characteristics, and delivery of property of the same kind has not become objectively impossible;

(b) Where persons charged, by operation of law or by orders from the debtor, with performance of the obli-

gation have, by intentional design or negligence, caused the circumstance which rendered performance impossible or failed to avert it.

120. Where the debtor fails to perform an obligation the subject matter of which is the grant of use of an individually defined thing, the creditor shall have the right by court action to demand that the same be taken from the debtor and delivered to the creditor. This right cannot apply where the thing has been transferred to a third party who has a similar right to the thing. If the thing has not yet been transferred, of two creditors, the one shall be preferred in whose favor the obligation first arose.

Comment

The soviet jurists deduce from this section the principle of specific performance which is discussed in Volume I, Chapter 12, p. 438 *et seq.*

121. Delay in performance on the part of the debtor shall obligate him to compensate the creditor for damages sustained by such delay, and shall render the debtor liable for nonperformance if it becomes impossible by accident after the delay. If in consequence of delay the performance is no longer of interest to the creditor, he may refuse to accept performance, and may demand payment of damages for nonperformance. The debtor who delays payment of a sum of money shall be obligated, in any event, to pay the legal rate of interest for the period of delay, unless a higher interest rate is fixed by the contract.

Note: A debtor shall be deemed in delay in performance if he fails to carry out his obligation within the prescribed period of time (Section 111). No delay arises while performance cannot be effected owing to

circumstances for which the debtor is not liable, in particular, in case of delay by the creditor (Section 122).

122. Delay by the creditor in acceptance of what is due to him under the contract gives the debtor the right to compensation for damages sustained by the creditor's delay, and relieves the debtor from liability for subsequent impossibility of performance, except when intentional or due to gross negligence (on his part). Where a money loan bears interest, the debtor is not obliged to pay the creditor interest for the period of the creditor's delay.

Note: The creditor shall be deemed in delay, if he either refuses, without any lawful ground, to accept performance or omits to act as he is obliged, so that without his act the debtor cannot perform his obligation.

123. In determining the manner of enforcing the payment of compensation adjudicated to the creditor for nonperformance by the debtor or his delay in performance, the court may take into consideration the economic status of the debtor (deferred payment or payment in installments).

Comment

See Volume I, p. 444.

124. Assignment of a claim by the creditor to another person shall be permitted insofar as it does not contradict the law or the contract and insofar as the claim is not connected with the person of the creditor. The debtor must be notified of the assignment of the claim and, prior to such notice, shall have the right to effect performance to the former creditor.

Comment

No assignment of claims of a consignor or consignee against the carrier arising from shipping is allowed under soviet law.

See Volume I, Chapter 13, III in fine, see also *infra,* Section 202.

125. The assignee of the claim shall acquire all rights that guarantee performance.

126. Assignment by the debtor of the debt to another person shall be permitted only with the consent of the creditor.

127. Suretyship and mortgage established by a third person to guarantee an obligation shall terminate with the assignment of the debt, unless the mortgagor or the surety express their consent to be liable for the new debtor.

128. Assignment of claim and transfer of debt must be made in the form required for contracts in general, unless the law specifically provides otherwise. Assignment of claim or transfer of debt arising from a written contract must in any event be clothed with the same formality.

129. An obligation shall terminate either in full or in part: (a) by performance; (b) by set-off of a counterclaim of similar kind which is due; (c) by merger of the creditor and debtor in one person; however, when this merger ceases, the obligation arises anew; (d) by agreement of parties, in particular by the conclusion of a new contract intended to replace the former; (e) by impossibility of performance for which the debtor cannot be held liable (Section 118).

II. Obligations Arising from Contracts

Comment

See Volume I, Chapter 12.

130. A contract shall be deemed concluded when the

parties have expressed to one another—in proper cases in the form required by law—their agreement in all essential points thereof. In any event, the following are regarded as essential: the subject matter of the contract, the price, the time, as well as all other particulars with respect to which, according to the preliminary declaration of either party, agreement was to be reached.

Note 1: Where the law requires an obligatory notarial certification of the contract, the contract, except as the law otherwise provides, shall be valid from the time of its certification by a notary (as amended October 4, 1926, R.S.F.S.R. Laws, text 579).

Note 2: Where, in accordance with the preliminary agreement of the parties, the contract must be clothed in a certain form, though not required by law, the contract shall be valid only after it has been clothed in said form.

Comment

See Volume I, Chapter 12, 4, also *supra* pp. 52–56.

131. An offer to conclude a contract made to a party present without indicating the time limit required for an answer, shall obligate the offeror only where the other party announces immediate acceptance of the proposal.

Note: An offer made by telephone is regarded as one made to a person present.

132. If an offer to conclude a contract is made to a person absent without indicating the time limit required for an answer, the offer shall bind the offeror for the period normally necessary to receive an answer.

133. If a definite time period is fixed for answer to an offer, the offeror shall be bound by the offer only until

the expiration of the period. If an acceptance received with delay indicates that it was dispatched in time, the acceptance shall be deemed tardy only where the recipient of the answer gives immediate notice thereof to the other party.

134. A contract with an absent party shall be deemed concluded from the moment that the answer is received by the offeror, except as the contrary follows from the meaning of the offer.

135. An acceptance of the offer on terms other than those stated in the offer shall be deemed to be a refusal to accept the offer and at the same time a new offer.

136. Contracts for sums exceeding 500 rubles must be made in writing, except in cases especially provided for by law.

Note: Violation of the rule stated in this section shall deprive the parties of the right, in the event of dispute, to refer to the testimony of witnesses in evidence of the contract, but shall not deprive them of the right to introduce written proof.

Comment

See Volume I, Chapter 12, p. 431 *et seq.*, also *supra*, comment to Section 29.

137. Contracts of governmental institutions and enterprises, and co-operative and other public organizations, including trade-unions, with private persons and organizations, must necessarily be notarially certified except:

(a) Contracts in sums not exceeding 1,000 rubles;

(b) Transactions relating to deposits, loans, and commission operations of credit institutions;

(c) Contracts of sale for cash;

(d) Insurance contracts;

(e) Contracts of delivery of agricultural products by farmers instead of taxes in kind (*kontraktatsiia*);

(f) Contracts relating to transfer of author's rights, and powers arising therefrom;

(g) Transactions with respect to foreign commerce made by organizations subordinate to the People's Commissariat for Foreign Commerce, or made by other organizations which conduct trade operations under its supervision (as amended December 6, 1929, R.S.F.S.R. Laws, text 853; April 20, 1935, *id.*, text 135).

[Notes 1 and 2 were repealed December 6, 1929, R.S.F.S.R. Laws, text 853.]

138. A contract involving gratuitous transfer of property (gift) of a sum over 1,000 rubles must be notarially certified under the penalty of invalidity (as amended October 4, 1926, R.S.F.S.R. Laws, text 579).

Comment

At the beginning of the soviet regime, any gift of a value exceeding 10,000 rubles was prohibited and gifts of from 1,000 to 10,000 rubles in value required notarization and were subject to a heavy progressive tax (Act of May 20, 1918, R.S.F.S.R. Laws 1917–1918, text 525). The same limitation was originally included in the Civil Code and only in 1926 Section 138 was amended in execution of a federal act which repealed the limitation of gifts and inheritance (U.S.S.R. Laws 1926, text 37). Section 138 is the only soviet statutory provision dealing with gifts and this section leaves many pertinent problems undecided, in particular the possibility of revocation in case of the ingratitude of the recipient of the gift. The soviet jurists deny such possibility. 2 Civil Law (1944) 43.

139. In a bilateral contract, each side shall have the right to refuse compliance with his promise, until the

other party performs his counter-promise, unless the law, contract, or essence of the mutual relationship imply the duty of one party to perform his obligation prior to the other party.

Note: Bilateral contracts shall be deemed those in which both parties undertake mutual obligations.

Comment

See Volume I, Chapter 12, 4.

140. Where a contract is made for the benefit of a third party, performance of the obligation may be demanded, unless otherwise provided by the contract, both by the party who contracted with the debtor and by the third party beneficiary. If the third party beneficiary informs the debtor of his intention to avail himself of the rights stipulated in his favor, the contracting parties are deprived of the right to modify or cancel the contract without his consent. If the third party beneficiary waives the right granted him by the contract, the party who bargained for this right may make use of it himself, except as this contradicts the sense of the contract.

141. A penalty is defined as a sum of money or other property value which one contracting party undertakes to transfer to the other contracting party, in the event of nonperformance or improper performance of the contract.

Where a penalty clause is stipulated in the contract or is additionally agreed upon by the parties, the creditor shall have the right to demand as he may elect, according to his choice, either damages caused by the nonperformance or the payment of the penalty. If the penalty is fixed for delay or improper performance, the creditor shall have the right to demand simultaneously both per-

formance of the contract, and either the payment of the penalty or payment of damages caused by the delay or improper performance.

Note 1: The simultaneous collection of penalty and damages shall be permitted only in cases specifically provided by law or contract.

Note 2: Agreements with respect to penalties must be in writing, regardless of the sums involved and the form in which the principal contract is made.

Comment

See Volume I, Chapter 12, 9.

142. If the penalty due is excessively high in comparison with the actual losses of the creditor, the court shall have the right, on the petition of the debtor, to reduce the penalty.

In doing so the court must take into consideration:

(1) The extent to which the debtor has performed his obligation;

(2) The economic status of either party;

(3) Not only the property but every other interest of the creditor which deserves consideration.

Comment

The R.S.F.S.R. Supreme Court ruled in 1926:

The penalty may be reduced in instances where it is out of proportion to the actual damage caused by the nonperformance or improper performance of the contract. However, this does not authorize the court under this section to rescind the penalty altogether, if the plaintiff suffers no damage. Such practice of some courts not only lacks any legal foundation (Section 142 of the Civil Code) but also is not in accord with the purpose of the penalty in contractual relations. The penalty serves two purposes: to compensate for damage and to guarantee the contract. Therefore, a complete denial of the penalty to the plaintiff, if he suffers no damage where it is established that the defendant failed to perform the contract or performed it

improperly, would uselessly (from the point of view of the economic role of penalty in our business) deprive the plaintiff of guarantees stipulated in the contract to secure performance. This leads to weakening of the contractual discipline and should not, therefore, take place.[66]

143. An earnest is defined as a sum of money or other property value given by one contracting party to another on account of payment due under the contract to attest the making of the contract and to guarantee its performance.

When the party who tendered the earnest becomes liable for nonperformance of the contract, he forfeits the earnest. Where the recipient of the earnest becomes liable for nonperformance of the contract, he must return double the value of the earnest. Moreover, the party liable for nonperformance of the contract must pay damages to the other party with a deduction for the earnest, unless otherwise provided by contract.

The earnest may be regarded as "forfeit money" [complete compensation of the recipient in case the party who gave it withdraws from the contract] only if the parties made an agreement to this effect.

144. If performance of a bilateral contract by one of the parties becomes impossible owing to circumstances for which neither party is liable, then, unless the law or contract provides otherwise, such party shall have no right to claim any benefits under the contract from the other party. Each party shall have the right to claim from the other party the restoration of that which the claimant performed without receiving counterperformance from the other party.

[66] R.S.F.S.R. Supreme Court, Civil Appellate Division Report for 1926, Civil Code (1943) 178.

Comment

See Volume I, Chapter 12, 8 and 9.

145. If performance of a bilateral contract by one party becomes impossible owing to circumstances for which this party is liable, the other party shall have the right to rescind the contract and seek damages caused by nonperformance unless otherwise provided by law or contract (Section 117).

Comment

See Volume I, Chapter 12, 8 and 9.

146. If performance of a bilateral contract by one party becomes impossible owing to circumstances for which the other party is liable, the first party shall retain the right to claim performance by the other party with a setoff for benefits saved or acquired by the first party because such party was relieved from obligation.

Comment

See Volume I, Chapter 12, 4.

147. In the event the contract is invalid as one contrary to law or directed to the obvious prejudice of the State (Section 30), none of the parties shall have the right to claim from the other the restoration of that which such party has performed under the contract.

Unjust enrichment shall be collected for the benefit of the State (Section 402).

Comment

This section was designed to express the specific feature of soviet law. See comment to Section 402, also Volume I, Chapter 12, p. 426 *et seq.*, and Chapter 1, pp. 28 and 31.

148. If the contract is invalid as one made by a party incapable of entering into legal transactions (Section

31), each of the parties must return whatever was received under the contract. The party who has capacity to enter into legal transactions shall be obligated to make restitution to the incompetent party for actual damage to property sustained by the latter as a result of the contract.

Comment

See Volume I, Chapter 12, 4.

149. In the event the contract has been declared invalid by reason of fraud, violence, threat, or malicious agreement between the agent of one party and the other party (Section 32), or where the contract is invalid as one intended to take advantage of distress (Section 33), the party aggrieved may claim from the other party the restoration of all that which was performed by that party under the contract. The other party shall have no such right.

Unjust enrichment by the aggrieved party shall be collected for the profit of the State (Section 402).

Comment

See comment to Section 402, also Volume I, Chapter 12, 4.

150. Where a contract intended to take advantage of the distress of another (Section 33) is not declared void from its very inception but has been rescinded merely as to its operation in the future, the aggrieved party shall have the right to claim from the other party the restoration of only that part of the bargain performed by the claimant for which the aggrieved party, up to the time of rescission of the contract, did not receive counterperformance.

Unjust enrichment of the aggrieved party shall be collected for the profit of the State (Section 402).

Comment

See comment to Section 402, also Volume I, Chapter 12, 4.

151. Where a contract is declared invalid owing to violation of the form required by law (Section 29) or owing to mistake of one of the parties (Section 32), each of the parties must restore to the other all that which he received under the contract.

The party liable for the circumstance which caused the mistake shall be obligated to compensate the other party for the actual damage to property sustained under the contract.

The party who caused the mistake by gross negligence must compensate the other party in damages, as one who failed to perform the contract.

Note: The mistaken person shall be presumed to be liable for the mistake. Gross negligence of one party must be proved by the other party.

Comment

See comment to Section 29.

III. Lease of Property

Comment

(1) This chapter does not apply to the lease of land in general and of agricultural land in particular. At present lease of agricultural land is forbidden altogether. See Volume I, Chapter 19.

(2) Renting of housing (landlord and tenant) comes to a great extent under special laws. The most important of these is that of October 17, 1937. A translation of excerpts from this enactment is given *infra,* p. 130ff. Landlord and tenant in soviet law in general is discussed in Volume I, Chapter 13, II, see also Chapter 16, II on building tenancy.

152. Under the contract of lease of property, one party (lessor) undertakes to place property for temporary use by the other party (lessee) for a definite compensation.

153. Contracts of lease of governmental or municipal enterprises must, under the penalty of invalidity, be notarially certified.

Contracts of lease of any property for a term longer than one year must be made in writing, under the penalty of the consequences stated in the Note to Section 136.

A detailed inventory of the property delivered must be attached to a contract leasing a governmental or municipal enterprise, under the penalty of invalidity (as amended October 4, 1926, R.S.F.S.R. Laws, text 579).

Note: Contracts of lease of governmental and municipal enterprises by governmental agencies, co-operative organizations of all types and levels which belong to the respective co-operative systems, as well as by other public organizations, are not subject to obligatory notarial certification, irrespective of the sum of the agreement (as amended July 9, 1928, R.S.F.S.R. Laws, text 574).

Comment

The meaning of the phrase "co-operatives belonging to a co-operative system" is explained in Volume I, Chapter 11, 13.

154. The term of lease must not exceed twelve years. At the expiration of the agreed term, the lease may be extended by the conclusion of a new contract. In the case of actual continuation of use of the leased property with the tacit consent of the lessor, the contract shall be deemed renewed for an indefinite term (Section 155).

Note: The term of lease by governmental agencies

and co-operative organizations of governmental, including municipal, enterprises and buildings shall not exceed twenty-four years. At the expiration of the term of lease, the afore-mentioned categories of lessees shall have the preferential right to renew the contract for a new term, provided they have properly complied with the conditions stipulated under the old contract (as amended November 28, 1927, R.S.F.S.R. Laws, text 816).

Comment

For ten year leases of small houses to private persons, see Section 17, and for maximum five-year lease of apartments, see Section 24 of the Law of October 17, 1937, *infra* pp. 131, 132.

155. If the lease contract is made without indicating any period of time, it shall be deemed made for an indefinite period of time, and each of the parties may terminate the contract at any time, giving notice thereof to the other party, for enterprises and premises rented for commercial or industrial enterprises and for habitation, *three months* in advance, for other kinds of property *one month* in advance.

Note 1, enacted October 16, 1924, R.S.F.S.R. Laws, text 785, and Note 2, enacted July 30, 1928, *id.*, text 727, were repealed June 24, 1938, R.S.F.S.R. Laws, text 163.

Comment

See Volume I, Chapter 16, II, 4.

156. [Repealed June 24, 1938, *id.*, text 163.]

156*a*. Members of housing co-operative associations shall have the right to the permanent use of housing, the area of which depends on the number of shares held by them, during the entire period that their association holds the building tenancy or holds ownership rights

to the given building (as amended April 27, 1927, R.S.F.S.R. Laws, text 276; October 17, 1937, U.S.S.R. Laws, text 314).

Note: The rights of members of housing co-operative associations stated in the present section shall pass, in the event of death, either to members of their families, residing with them, or to their heirs in accordance with charters of such associations (as amended on August 19, 1924, November 21, 1926, and February 13, 1938, U.S.S.R. Laws 1924, text 60; *id.*, 1927, text 14; *id.*, 1938, text 45; also R.S.F.S.R. Laws 1927, text 276).

Comment

See Sections 2, 4, 25 of the Law of October 17, 1937, p. 130 which set forth the conditions under which the housing co-operatives may continue to exist and the rights of their members.

[156*b*. Enacted on November 20, 1929, R.S.F.S.R. Laws, text 822; and

156*c*, enacted on February 13, 1938, *id.*, text 171, were repealed on June 24, 1938, *id.*, text 163.]

Comment

See Volume I, Chapter 16, II, 4.

157. The lessor must surrender the property to the lessee within the time specified and in a condition which is in keeping with the contract and with the purpose of the leased property. He shall not be liable for defects which were known, or should have been known, to the lessee at the time of the conclusion of the contract.

158. If the lessor fails to surrender the leased property to the lessee's use, the lessee may either claim the property from him in accordance with Section 120, or may withdraw from the contract (Section 171, subsec-

tion (a)) and seek damages caused by nonperformance.

159. The duty to make capital repairs shall rest on the lessor unless the law or the contract provides otherwise. Noncompliance with this duty on the part of the lessor shall give the lessee the right to make capital repairs provided for by the contract or necessitated by urgent need, and to set off the cost of repairs against the rent, or he may withdraw from the contract (Section 171, subsection (b)) and seek damages caused by nonperformance.

Note: In instances of lease of nationalized or municipalized enterprises and buildings, capital repairs must be made by the lessee, unless otherwise provided by the contract.

160. The lessee must use the leased property in keeping with the contract, and insofar as the contract gives no indication, in keeping with the purpose of the property.

161. All current repairs of the leased property must be made by the lessee at his own expense, insofar as the law or the contract do not otherwise provide.

162. The lessee of any nationalized or municipalized industrial enterprise must maintain production within schedules not below the minimum fixed by the contract. Minimum production schedules and periods within which the schedules must be realized must be included in the contract, under the penalty of invalidity of the contract.

163. Taxes and assessments connected with the leased property shall rest upon the lessee, except as the law or the contract otherwise provide.

164. The lessee of any governmental property, or of property owned by a mixed stock company organized without participation of foreign capital, or by a co-opera-

tive, trade-union, or any other public organization, must insure said property at his own expense, designating the lessor as the beneficiary, in accordance with established rules.

Where both parties to the lease contract are governmental organizations or enterprises which are on the State budget, the duty of insuring the leased property shall be determined by the terms of the contract (as amended February 10, 1930, R.S.F.S.R. Laws, text 85).

[Note: Repealed on February 10, 1930, R.S.F.S.R. Laws, text 85.]

Comment

In the application of this section one must be guided by the Resolution of the U.S.S.R. Council of People's Commissars of February 3, 1938, Concerning the State Insurance of Enterprises, Institutions and Organizations (U.S.S.R. Laws 1938, text 46).

165. Rental payments may be made: (a) by payments in money or in kind made at definite intervals; (b) by surrender of a stipulated share of the product, manufactured goods, premises, or money income; (c) by performance of certain services; (d) by a combination of the aforesaid forms of payment.

166. Rentals for housing cannot exceed under a contract for toilers the rates established by the local executive committees, pursuant to the laws concerning rentals, and must be paid, for each month elapsed, not later than the tenth day of each subsequent month (as amended June 6, 1925, R.S.F.S.R. Laws, text 305; June 24, 1938, *id.*, text 163).

[Note, enacted November 20, 1932, R.S.F.S.R. Laws, text 396, was repealed June 24, 1938, *id.*, text 163.]

Comment

(1) See Volume I, Chapters 13, II, and p. 584.

(2) Undisputed overdue rentals are collectable by means of an execution clause issued by a notarial office on the next day after the day of payment stated in Section 166 (Act of July 19, 1939, R.S.F.S.R. Laws 1939, text 31).

167. The lessee shall have the right to claim a proportionate reduction of the rental where, by virtue of circumstances for which he is not liable, the possibility of such use of the leased property, as provided by the contract, has been materially decreased.

168. The lessee shall have the right, except as the contract otherwise provides, to sublet the entire rented property or a part thereof, remaining liable to the lessor under the terms of the contract.

Note: Nationalized or municipalized property may be sublet by the lessee only upon written permission from the lessor.

169. Where the ownership right to property is transferred by the lessor to another party, the lease contract continues to be effective with respect to the new owner.

[Notes 1 and 2, enacted December 13, 1926, R.S.F.S.R. Laws 1927, text 2, amended April 6, 1928, *id.*, text 355, and October 10, 1934, *id.*, text 785, were repealed June 24, 1938, *id.*, text 163.]

Comment

See Volume I, Chapter 16, II, 4.

169*a*. Where a land lot with a structure upon it is transferred for use without time limit to an institution, enterprise, or organization of the socialized sector, the then effective lease contract which granted the right to the use of this structure shall become null and void.

Moreover, all obligations of the lessee to third parties, relating to the use of the given structure, shall pass to the new tenant of the land lot without time limit (as amended November 20, 1932, R.S.F.S.R. Laws, text 396).

170. The lessee shall have the right to invoke the court for protection against everyone who encroaches upon his possession, including the owner.

171. The lease contract may be, prior to the expiration of the term, rescinded by the court at the request of interested parties and institutions in the following cases:

(a) If the lessor fails to surrender the property stipulated to the use of the lessee;

(b) If the lessor fails, within the time stipulated, to make repairs which he is obligated to make or if the property, by virtue of circumstances for which the lessee is not liable, falls into a state unsuitable to the use stipulated;

(c) If the lessee, intentionally or through negligence, deteriorates the condition of the property;

(d) If the lessee uses the property not in conformity with law, contract, or the purpose of the property;

(e) If the lessee of living quarters makes it impossible, by his conduct, for other tenants to continue joint habitation with him in the room or apartment;

(f) If the lessee of a governmental enterprise fails, within the stipulated time, to increase production to meet the schedules fixed by the contract;

(g) If the lessee fails to make within the established period repairs which he is obliged to make;

(h) If the tenant does not pay rentals for living quarters within three months from the day payment was due;

(i) If it is necessary to make capital repairs of the premises, provided that after such repairs are made living quarters must be furnished to persons who resided there prior to the repairs if they so desire (as amended October 16, 1924, R.S.F.S.R. Laws, text 785; November 10, 1930, *id.*, text 680; June 24, 1938, *id.*, text 163).

Comment

See Volume I, Chapters 16, II, 4 and 13, II.

171*a*. Where an employment contract is conditioned upon the furnishing of the employee with special living quarters, the employer shall have the right to demand the vacation of the premises upon the termination of the employment contract.

After the expiration of one month after demand is made, the employer may commence an action for the ejection by court action of the person who refuses to vacate the premises of his own will (as amended November 18, 1929, R.S.F.S.R. Laws, text 666).

Comment

The provisions of this section have become at present inoperative in view of Section 31 of the Law of October 17, 1937, *infra,* pp. 133–134.

172. Eviction from habitation structures by administrative order shall be permitted only in cases especially provided for by law.

In these cases, the period of notice may be shorter than that provided in Section 155.

Comment

For cases where ejection by administrative order is permitted, see Section 31 of the Law of October 17, 1937, *infra,* p. 133, also U.S.S.R. Laws 1943, text 165 providing for eviction in

this manner of all those who took premises without authorization by a proper office. See *supra* p. 17.

173. [Repealed June 24, 1928, R.S.F.S.R. Laws, text 163.]

174. Upon the termination of the term of the contract, the lessee must surrender the property with all accessories to the lessor in good condition.

175. Where the lessee had accepted for his use property with implements thereto appertaining, he must, on the termination of the lease, return the implements according to the inventory, if such is available, in full working order, restoring that which is lacking and all that has fallen into disrepair.

176. Where the lessee suffered or caused the leased property to become deteriorated or depreciated, he must compensate the lessor for damages sustained thereby.

177. The lessee shall be liable for damage caused to the leased property by members of his household, clerical employees, or workmen.

178. Where the lessee, with the permission of the lessor, makes improvements on the property, the lessee shall have the right to obtain appropriate compensation from the lessor.

179. Where the lessee, without consent by the lessor, makes improvements severable without damage to the property, they may be removed by the lessee, if the lessor refuses to compensate him for their value.

Note 1: Improvements made by the lessee of a nationalized or municipalized enterprise or building shall pass without compensation after the expiration of the period of lease, to the State or to the local soviet, as the case may be.

The present note shall not apply to leases of municipal

and other enterprises which are government property to co-operative organizations of all kinds and levels belonging to the respective co-operative systems; nor to leases of municipal and other structures in government ownership to producers' co-operatives which belong to the system of such producers' co-operatives (as amended February 25, 1929, R.S.F.S.R. Laws, text 214).

Note 2: Where the lessee of an enterprise is a co-operative organization, which is a member of the system of the respective types of co-operatives, and has installed, with or without the permission of the lessor, new equipment or in any other manner has improved and increased the property leased, then at the termination of the lease contract, the lessee may remove new equipment or property, if it is severable without damage to the property; or may have the right to compensation for this new equipment or property, including improvements to the extent of the unamortized part during the effective duration of the contract.

The same right shall also accrue to the lessee of a building, if the lessee is a producers' co-operative organization, which is a member of the producers' co-operative system (as amended February 25, 1929, R.S.F.S.R. Laws, text 214).

Comment

(1) The term "co-operative belonging to co-operative system" is explained in Volume I, Chapter 11, 13.

(2) The law which follows is discussed in Volume I, Chapter 13, II.

Law on the Preservation of the Housing Fund and the Improvement of Housing in Cities, of October 17, 1937 [67]

(excerpts)

I. Abolition of the Dwelling Leasing Co-operatives and of the Association of Dwelling Construction Co-operatives

1. There shall be abolished the dwelling leasing co-operatives and their associations—partial ward, ward, city, regional (provincial), republic, and the Moscow and Leningrad city associations of dwelling construction co-operatives; as well as associations of dwelling co-operatives in railroad and water transport, the All-Union Council of Dwelling Co-operatives, and such dwelling construction co-operatives as shall not comply with the conditions set forth in Section 4 of the present enactment.

2. Buildings used by dwelling leasing co-operatives shall be transferred to the direct administration of local soviets and government enterprises. Buildings handed over to co-operatives in accordance with the U.S.S.R. enactment of July 6, 1927, shall be transferred to government enterprises. . . .

3. [This section ordered the taking over by the government from dwelling construction co-operatives of all houses built or under construction primarily with aid from government funds.]

4. As an exception to Section 3 of the present enactment, buildings shall be left under the control of dwelling construction co-operatives by which they were built if, within a period of six months from the moment of publication of the present enactment, these dwelling construction co-operatives completely repay the loans received from the government.

In the future the construction of buildings and cottages by dwelling construction co-operatives may take place only with their own funds.

Government offices and enterprises shall be forbidden to invest in any form whatever their financial or material assets in the construction of buildings and cottages erected by dwelling construction co-operatives.

[67] U.S.S.R. Laws 1937, text 314. For full translation, see Hazard, Soviet Housing Law (1939) 130 *et seq.*, wherefrom the present excerpt is derived, with some changes in terminology. The kind permission of Mr. Hazard is hereby acknowledged.

5. In order to preserve and improve the suburban cottages, city soviets shall be advised, in case they have in their jurisdiction considerable cottage plots, to organize (under the housing administration division) cottage trusts as fully responsible legal entities. Cottage trusts shall be given the task of administering and developing communal economy of cottage hamlets (plumbing, sewage disposal, roads, etc.). . . .

7. Economic enterprises and local soviets in various localities shall be permitted to offer assistance (with building materials, and bank credits for periods not over five years) to toilers for building their own dwellings.

8. Direct administration of governmental housing and complete responsibility for its preservation shall be placed upon local soviets and upon governmental institutions and industrial enterprises with respect to buildings under their control. . . .

11. Direct administration of individual buildings (groups of buildings) shall be placed upon a house administrator named by the housing administration of the local soviet.

Administration of the buildings shall be carried on by the house administrator on a strict commercial basis in accordance with an economic financial plan approved by the housing administration. . . .

17. Local soviets shall be permitted to transfer small buildings belonging to them (not exceeding in area sixty square meters of floor space) to the use of individual citizens on the basis of long-term leases for a period of from five to ten years, executed on a standard form presented to the Council of People's Commissars of the U.S.S.R. for approval. . . .[68]

III. Rules for the Use of Housing

23. Vacated dwelling space in the houses of local soviets shall be made available to citizens for use only on the basis of an order of the housing administration of the department of communal economy of the local soviet.

Vacant dwelling space in buildings of government offices, enterprises, and public organizations, as well as in houses leased by them, shall be made available for the use of their employees

[68] A standard lease contract was approved by the Council of People's Commissars on November 25, 1937, and an Instruction regulating the making of such contracts was issued by the R.S.F.S.R. Commissariat for Municipal Economy on November 5, 1938. U.S.S.R. Laws 1937, text 361; (1938) Bulletin of the People's Commissariat for Municipal Economy No. 23, text 422.

on the basis of an order of the administration of these offices, enterprises, or organizations.[69]

24. The right to use dwelling space shall be legalized in all buildings by means of a written contract executed by the occupant with the house administrator or with the lessee of the entire building, the rights and duties of the parties and the consequences of the violation being precisely defined in the contract.

The contract shall be made for a definite period, but for not longer than five years.

25. Members of the dwelling construction co-operatives living in the former co-operative buildings shall retain the dwelling space occupied by them, but on the basis of a leasing contract.

26. There shall be granted:

(a) To citizens living in buildings of the local soviets, of government offices, enterprises, or public organizations, including also former co-operative buildings as well as buildings belonging to individual citizens, a preferred right to contract for the dwelling space occupied by them;

(b) To citizens performing all their duties under the contract and conscientiously maintaining the dwelling space assigned them for use, a preferred right to renew the contract at its expiration.

27. Unilateral denunciation of the lease contract or changes in its terms shall be forbidden during the period for which it runs.

If, during the period of the contract, there develops on the premises of the occupant surplus living space above that established by the housing norm, and this space is an isolated room, the local soviet or the responsible administration of a government office, enterprise, or public organization may use this surplus space at its own discretion.

Local soviets shall have the right to use the afore-mentioned surplus living space only in case the occupant does not at his own discretion fill the surplus space in his apartment within three months after suitable notice from the housing administration.

28. Occupants of dwelling space shall be given the right to exchange their space with other occupants, with mutual trans-

[69] From the provisions of paragraph 1 of Section 23, an exception was made by the Act of October 21, 1938 (U.S.S.R. Laws 1938, text 274), reserving the living quarters occupied by servicemen of the army and navy in active service to the disposal of the commander of the garrison.

fer of the rights and duties under the lease contract, but only by permission of the housing administration of the local soviet or of the government office, enterprise, or social organization owning or leasing the building as the case may be.

29. The occupants of dwelling premises and members of their families shall be required to observe strictly the established rules of internal order in the apartment, to keep the premises clean and in good repair, and to use with care and keep clean all conveniences set aside for general use.

In case of destruction or damage to the dwelling premises or place of general use by the occupant or by members of his family, the necessary repairs shall immediately be carried out by the house administrator, all expenditures being recovered from the occupant responsible.

30. The contract furnishing dwelling premises may be rescinded in court without supplying the occupant any other premises only in the following instances:

(a) If the occupant or members of his family systematically destroy or damage the dwelling premises or places in general use;

(b) If the occupant, or members of his family, make it impossible by their conduct for other occupants to continue joint habitation in the same apartment or room;

(c) If the occupant does not pay rent for three months from the day when it became due.

31. The occupant may be evicted by administrative procedure without the provisions of dwelling space in the following cases:

(a) If the occupant, to whom, in connection with his work, dwelling space has been provided in a building of a government enterprise or in a building leased by this enterprise, is dismissed from his work;

Note: This does not apply to employees dismissed in connection with illness or disability, or to the family of employees called for active service in the Worker-Peasant Red Army.

(b) If the occupant to whom, in connection with his work, dwelling space has been provided in the building of a government office or of a public organization, or in a building leased by them, is dismissed at his own request or for violation of labor discipline or for the commission of a crime;

(c) In accordance with the provisions of the Act . . . of July 21, 1936, "On the rules for evicting from buildings designated for destruction and for extensive reconstruction in the cities of Moscow, Leningrad, and Kiev";

(d) In accordance with the provisions of the Acts . . . of August 17, 1931, "On eviction from buildings belonging to agencies of the People's Commissariat for Defense of persons not in the ranks of the Worker-Peasant Red Army"; of February 13, 1931, "On eviction from premises belonging to organs of transport of persons outside the field of transport, and on the transfer of employees in transport," and of September 22, 1939, "Concerning eviction from the dwelling houses of the U.S.S.R. People's Commissariat for the Interior of persons not in the service of this commissariat" (U.S.S.R. Laws 1939, text 462; *id.* 1940, text 30);

(e) If the occupant is given quarters reserved for a person dispatched abroad, or to the Cola Peninsula, the Far East, or the Arctic (as amended March 10, 1939, U.S.S.R. Laws, text 117).[70]

32. In all other cases, eviction of occupants from the premises occupied by them may be permitted only by a court and only when the organs carrying out the eviction have the task of supplying the evicted person with other premises suitable for habitation.

33. Reservation of dwelling space for persons departing with their families shall be abolished, except in cases of departure for work abroad or to the Cola Peninsula, the Far East, the Arctic, and the Yakut Republic north of parallel 62. For persons dispatched to the Arctic, the Far East, the Cola Peninsula and the Yakut Republic, premises may be reserved for a period up to two years, and for those dispatched abroad, for the whole period of their stay abroad (as amended March 10, 1939, U.S.S.R. Laws, text 117; January 29, 1939, *id.*, text 12).

34. For occupants departing temporarily with their families, dwelling space as a rule shall be held only for six months.

[70] In addition to instances stated in the present sections the soviet law allows: from quarters taken without authorization by housing officials; eviction by administrative order, from hotels, dormitories, and barracks for workers of various kinds; from houses assigned for demolition; from school buildings and buildings under the control of public health offices. U.S.S.R. Laws 1943, text 165; Act of June 14, 1926, Section 5, R.S.F.S.R. Laws 1926, text 282 as amended by Acts of May 23, 1927 and June 24, 1938, *id.* 1927, text 334 and *id.* 1938, text 163; Act of August 9, 1926, *id.* 1926, text 394; Act of April 7, 1932, U.S.S.R. Laws 1932, text 153, also R.S.F.S.R. Laws 1932, text 249; Act of April 1, 1935, *id.* 1935, text 124; Order of Attorney General of October 5, 1938, No. 1448, Civil Code (1943) 207–210. See also comments 2, 3 to Section 2 of the Civil Code.

This period may be extended in each individual case by the housing administration of the department of communal economy of the local soviet or by the managers of the government office, enterprise, or social organization.[71]

35. The following privileges and immunities of building tenants shall be abolished: the right to collect, in addition to periodic payments, also lump sums at the time of leasing (admission fee), the right to lease dwelling space without limitation under any norm and the right to evict occupants at the end of the period for which the premises are leased.

36. Collection of rent in excess of the rates established by law but not in excess of 20 per cent above the rate shall be permitted in houses belonging to individual citizens under building tenancy or in personal ownership, or in houses leased by citizens from the local soviets.

IV. Sale

Comment

Sale under soviet law is discussed in Volume I, Chapter 13, I.

180. By the contract of sale one party (the seller) undertakes to transfer property to the ownership of another party (the buyer), while the buyer undertakes to accept the property and to pay the price agreed upon.

181. Any property not exempt from civil commerce may be the object of a sale.

Note: The right of persons to acquire precious metals and other valuables enumerated in Section 24 of this Code shall be regulated by special law (Resolution of the Central Executive Committee and Soviet of People's Commissars of the U.S.S.R., January 7, 1937, U.S.S.R. Laws, text 25, as amended March 20, 1937, R.S.F.S.R. Laws, text 19).

[71] For the duration of the war for all persons in the ranks of the army, navy, and troops of the People's Commissariat for the Interior, dwelling space was reserved by the Act of August 5, 1941 (U.S.S.R. Laws 1941, text 342).

Comment

(1) Property exempt from civil commerce embraces land, forests, waters, industrial establishments and their equipment, railroads, merchant marine and other objects specified in Sections 21–24, 53 of the Civil Code and Section 6 of the Constitution. See Volume I, Chapter 16, I, 2, 3.

(2) The special law mentioned in the Note (U.S.S.R. Laws 1937, text 25) is given *supra* in the comment to Section 24, p. 49.

182. Nonmunicipalized and demunicipalized housing buildings may be the object of contracts to sell and of sales, provided that:

(1) As a result of these contracts, no purchaser, including his spouse and minor children, may have two or more houses;

(2) Not more than one house may be alienated within a period of three years in the name of the seller, his spouse and minor children (as amended May 5, 1925. R.S.F.S.R. Laws, text 209).

Note: A house includes the habitation and service structures of the yard appertaining thereto (as amended *id.*).

Comment

(1) Under the Ukrainian Code not more than three houses may be owned by a family (spouses and minor children). Not more than one sale may be made by the same person within one year. An owner desiring to sell his house must notify the local soviet, which may within one month either purchase the house, paying the actual value, or let the owner sell at his discretion.

(2) According to the rulings of the R.S.F.S.R. Supreme Court, the restrictions established by Section 182, subsection 1,

apply also in case of gift, testate succession, and acquisition at a public sale. But the U.S.S.R. Supreme Court excluded the reference to intestate succession on June 20, 1947. See also Volume I, p. 287 *et seq.*[72]

182*a*. The instrument of agreement to sell (i.e., a preliminary contract for making in the future a contract of sale of a building) must be notarially certified. Not later than within six months from the date of the notarial certification of the instrument, either the contract of sale of the building must be notarially certified or the suit filed by one of the parties against another for execution of the contract of sale, otherwise the effect of the instrument ceases (as enacted October 4, 1926, R.S.F.S.R. Laws, text 579).

182*b*. If a party to the preliminary agreement to sell avoids entering into the contract of sale of the building, then the court, taking into consideration the specific terms of the instrument of agreement, may either declare that the contract of sale of the building has been made with the consequences provided for in Sections 189 and 190 of the present Code or may rescind the instrument of agreement to sell with the consequences provided for in Sections 117 and 123 of the present Code (as enacted May 5, 1925, R.S.F.S.R. Laws, text 209).

182*c*. By request of the parties concerned there must be registration with the competent municipal department to show that an instrument of agreement to sell was drawn as well as that its effect ceased (as enacted May 5, 1925, R.S.F.S.R. Laws, text 209).

[72] R.S.F.S.R. Supreme Court, Plenary Session, July 9, 1923; Protocol No. 12; *id.* April 7, 1924, Protocol No. 9; *id.* May 12, Protocol No. 11, Civil Code (1943) 211, 212; *id.* (1948) 224.

183. The right of sale of property, except where it is sold at public sale, shall belong to the owner. If the property is sold by one who is not its owner, the purchaser shall acquire ownership rights only where, in conformity with Sections 59 and 60, the owner has no right to claim the property from him.

Comment

See Volume I, Chapter 13, I.

184. Sales for cash may be made orally in any amount.

185. Sales of buildings and of building tenancies must be, under penalty of invalidity, notarially certified with subsequent recordation in the proper municipal department (as amended October 4, 1926, R.S.F.S.R. Laws, text 579).

Comment

See comment to Section 29.

186. In the absence of any other agreement, and in the event of accidental loss of the property sold, the risk attaches to the buyer simultaneously with the transfer to him of ownership rights (Section 66). But if the seller is in delay in delivering the things to the buyer, or if the buyer is in delay in accepting them, the risk of accidental loss shall be borne by the party in delay.

187. Where the right of ownership is transferred to the buyer prior to delivery of the property, the seller must preserve the property and prevent its deterioration up to the moment of such delivery.

Expenses incurred for this purpose by the seller after the transfer of ownership rights to the buyer, must be reimbursed by the latter to the seller.

188. The seller must deliver the property sold to the buyer in accordance with the contract, and the buyer must accept it and pay the price agreed. Except as the contract provides to the contrary, these acts on the part of both parties must be performed simultaneously.

189. If the seller fails, in violation of the contract, to deliver to the buyer the property sold, or offers property which does not correspond to the terms of the contract, the buyer may either demand performance of the contract and delivery to him of the property sold, together with damages caused by the seller's fault; or the buyer may rescind the contract and demand compensation for all loss sustained by him through the violation of the contract by the seller (Section 117).

Comment

Soviet law provides for many instances of criminal responsibility of the seller. See *supra* comment to Section 117 and Volume I, Chapter 12, I, 8(a) and (b).

190. If the buyer, in violation of the contract, refuses to accept the property bought or to pay the agreed price for it, the seller may either demand performance of the contract and payment of the agreed price, together with damages caused by the buyer's fault or he may rescind the contract on his part and demand compensation of loss sustained by him through violation of the contract by the buyer (Section 117).

191. If the seller of an individually defined thing has sold the same to several persons, the right of ownership

(Section 66) shall be vested in that buyer with whom the contract was first concluded (seniority).

If it is impossible to determine seniority, the buyer to whom the thing had been delivered shall be deemed the owner. If an action for delivery of the thing is instituted by one of the buyers before the thing has been delivered to any one of them, the person who first sues shall be deemed to be the owner.

192. If a third party begins an action against the buyer for the recovery of the property purchased for a reason antedating the sale, the seller, upon request by the buyer, must join the lawsuit as a party and defend the buyer from the recovery of the disputed property.

193. If the property sold is recovered from the buyer, the seller must compensate the buyer for all damages (Section 117).

194. Failure to cite the seller as a party to the action shall relieve him from liability to the buyer, provided the seller proves that, by joining the action as a party, he could have prevented the recovery from the buyer of the property sold. Should the seller, cited by the buyer as party to the action, fail to take part therein, he shall be estopped to prove improper prosecution of the suit by the buyer.

Comment

If the seller cited by the buyer joins the action and presents evidence, but nevertheless the property sold is recovered from the buyer, the seller must compensate the buyer for damage sustained, according to the U.S.S.R. Supreme Court.[73]

195. The seller shall be liable to the buyer if the quality stipulated by the contract is lacking in the property

[73] U.S.S.R. Supreme Court, Trial Division, Decision of July 4, 1940 (1940) Soviet Justice No. 17/18, 39; 2 Civil Law (1944) 16.

sold, as well as for defects which considerably decrease the value of the property or its suitability to its usual purpose or that specified by the contract.

The seller shall not be liable for defects of the property sold if such defects were known to the buyer at the time of making of the contract, or could have been ascertained by the buyer by the exercise of due diligence. In the latter case, the seller shall be liable only if he denied the presence of the defects concerned.

Note: Under the sale of the particular kinds of cattle enumerated in the special instruction to be issued by the People's Commissariat for Agriculture and the People's Commissariat for Justice, the seller shall be liable only for basic defects stated in the said instruction.

Comment

(1) With respect to the statute of limitation for claims growing out of the supply of goods of improper quality, see subsection (a) of Section 44. See also Section 198.

(2) The instruction of the People's Commissariat of Agriculture and People's Commissariat for Justice to which the Note refers has not been issued.

(3) Liability for defects of goods sold by one government agency to another is regulated by the Instruction on Government Arbitration of August 29, 1939 (U.S.S.R. Laws 1939, text 427).

(4) Directors, chief engineers, and chiefs of the sections of technical control of governmental industrial establishments are subject to imprisonment for a period of from five to eight years, imposed by judicial procedure, in case of issue of produce of bad quality, incompletely assembled, or violating established standards (Edict of Presidium of July 10, 1940).

(5) See also *supra,* comment to Section 117, and Volume I, Chapter 12, pp. 438 *et seq.* and 440 *et seq.* and Chapter 22, V.

196. The buyer must immediately inspect the property

received and inform the seller concerning the defects discovered.

If the buyer accepts the property sold without reservation, he may not protest defects, except such defects as could not have been discovered in the usual manner of acceptance, or such defects as were intentionally concealed by the seller. The buyer may protest such defects only when he gives notice of the defects immediately upon discovery of the same.

197. Claims on account of defects (Section 198) may be filed by the buyers, except as the agreement prescribes a longer period of time, only within one year when they relate to buildings and only within six months in case of other property, counting from the date of the delivery of the property. In the event of fraud practiced on the part of the seller, the buyer may present his claim with respect to defects discovered within a period of three years; if the contract fixes a longer period for filing claims, then such period shall govern.

Note: Where cattle are sold, the seller in good faith shall be liable only if the buyer has informed him of the defects, or has commenced action, or requested an inspection prior to the expiration of the periods fixed by the instructions to be issued by the People's Commissariat for Agriculture and the People's Commissariat for Justice (Note to Section 195).

Comment

No instruction as referred to in the Note has been issued.

198. The buyer who has discovered defects in the property sold and has given timely notice thereof, may demand either:

(1) Delivery of articles of proper quality, if the things sold are determined by generic characteristics, or

(2) Proportionate decrease of purchase price, or

(3) Rescission of the contract and compensation for all damages (Section 117).

199. In the event of rescission of the contract in consequence of defects in the property sold, the buyer must return to the seller the property, together with profits received, and compensate the seller for the deterioration of the property, except for such deterioration as could not have been prevented by the buyer. The seller, on the other hand, must compensate the buyer for all necessary and useful expenses incurred in connection with the property and compensate, also, for all damages sustained (Section 117).

200. The seller must inform the buyer concerning encumbrances on the alienated property, including leases affecting the property in question.

If the seller fails to comply with this duty the buyer may demand either rescission of the contract and collection from the seller of all damages sustained, or appropriate reduction of the purchase price.

201. If a sale is made by sample, the seller shall be liable for failure of the quality indicated by the sample in the goods delivered.

202. The seller of a debt claim or other right, except as the agreement otherwise provides, shall be liable only for the genuineness of the claim or for the actual existence of the right.

Comment

Compare Section 124.

203. An agreement waiving or limiting the liability of the seller for recovery of the property from the buyer by a third party, or defects in the property, and made in advance, shall be invalid if the seller, knowing of the

existence of the rights of a third party, or aware of the defects of the property, has intentionally concealed these circumstances from the buyer.

204. Rules governing the liability of the seller for adjudication to a third party of the property sold and for defects in the property sold shall not apply to cases of public sale of property by operation of law conducted in conformity with the procedure provided for by law.

Comment

See comment to Section 399.

205. If the contract stipulates that the goods sold must be delivered to the buyer and paid for by him consecutively in separate parts or installments, default by the buyer or seller with respect to one part or installment, or the discovery of defects therein, may serve as a basis for the rescission of the entire contract, if such partial violation contradicts the meaning and purpose of the entire bargain. Otherwise, the party liable for the default or the defects must compensate the other party for damages caused by the partial violation of the contract, but the contract continues in effect with respect to the subsequent parts or installments of goods.

V. Barter

206. By the contract of barter, one property is exchanged for another between the parties.

Each of the participants in barter is regarded as the seller of that which he gives in exchange and as the buyer of that which he receives in exchange.

207. The respective rules governing the law of sales apply to barter contracts.

VI. Loan

208. By the contract of loan, one party (the lender) transfers to the ownership of the other party (the borrower) money or things defined by generic characteristics; and the borrower undertakes to return to the lender the sum of money received or a number of things equal to that borrowed and of the same kind and quality, together with interest, or without it.

209. The parties may put any debt resulting from sale, lease of property or any other cause in the form of a loan obligation. In such case, the rules governing loans shall apply.

Comment

Compare Section 217.

210. The sum of the loan must be expressed in rubles (as amended October 16, 1924, R.S.F.S.R. Laws, text 785).

Note: The U.S.S.R. State Bank shall have the right to accept on deposit and on current account gold and silver in coin and ingots, as well as foreign exchange, on the condition of repayment of these deposits in the respective metal or currency. Interest on deposits and current accounts in gold and silver in coin and ingots should be paid in the currency of the U.S.S.R.

The U.S.S.R. State Bank, in receiving foreign exchange for current account and deposit on the condition of their repayment in the same currency, shall have the right to pay interest on them in the currency of the respective account (as amended November 18, 1926, R.S.F.S.R. Laws, text 666; March 20, 1937, *id.*, text 19).

Comment

See rules quoted in the comment to Section 24.

211. The contract of loan for a sum exceeding fifty rubles must be in writing under penalty of the consequences provided by the Note to Section 136.

Comment

(1) The R.S.F.S.R. has ruled:

Under Section 211 of the Civil Code, contract of loan for a sum exceeding fifty rubles not made in writing shall be invalid in toto and not merely in the sum exceeding fifty rubles. But in cases where the court arrives at the conclusion that in the given concrete case the violation of form should not result in the invalidity of contract, the court may declare the contract valid also for the sum exceeding fifty rubles.[74]

(2) See also comments to Section 29.

212. The lender may demand interest on the loan only when interest is provided for by the contract.

213. Interest must be computed only on the principal sum of the debt. Computation of interest upon interest (compound interest) is forbidden. This prohibition shall not apply to transactions made by legally existing credit institutions.

214. In the absence of other agreement, interest must be paid monthly.

215. If no interest is charged, the borrower may effect payment of the debt prior to the date due, and the lender must accept such payment.

216. If the loan bears interest in excess of 6 per cent per annum, the borrower may, on three months' advance notice to the lender, or on payment of interest for a month in advance, discharge the obligation prior to the due date by repayment of the sum borrowed. Waiver by the borrower of the right granted him by this section

[74] R.S.F.S.R. Supreme Court, Plenary Session, Ruling of August 13, 1928, Protocol No. 14, Civil Code (1943) 213.

shall be null and void (as amended October 16, 1924, R.S.F.S.R. Laws, text 785).

Comment

This provision was carried over from the imperial law, Code of Laws, Volume X, Part 1, Section 2023:

In cases of loans for which the stipulated rate of interest exceeds the legal rate (6 per cent per annum) the borrower may at any time after the lapse of six months from the making of the loan repay the capital borrowed, provided he gives a written notice to the lender three months in advance.

217. The borrower may contest the validity of the loan contract, either in full or in part, on the ground of lack of equivalent (exchange value) if he proves that the money, things, or their property equivalents (Section 209) actually either were not received by him from the lender, or were received in a quantity smaller than that stated in the contract.

In cases where the contract of loan is required to be in writing, no contest of the contract by testimony of witnesses shall be allowed, except in cases involving criminal acts.

Comment

Regarding the strict requirement of written proof stated in paragraph 2 of Section 217, the R.S.F.S.R. Supreme Court took a somewhat vague attitude. On the one hand it characterized as a not permissible attempt to circumvent the law "the practice of the courts in admitting witnesses presumably for clarification of the 'circumstances under which the deal occurred' while in fact their testimony serves the purpose of refuting the contract, of proving the payment, or of contesting its amount." On the other hand, the court allowed exceptions from the strict requirement of the statute. "However," states the court, "our law does not deprive the court of the right, by resorting to Section 4 of the Code of Civil Procedure and Sec-

tion 4 of the Law Enacting the Civil Code, to make in exceptional cases an exemption [from the requirement of written evidence] stating the reasons therefor to enable the appellate court to verify them." [75]

See also comment 3 to Section 29.

218. A preliminary agreement promising the conclusion in the future of a loan contract must be made in writing, regardless of the sum of the loan.

219. The party to a preliminary agreement who undertakes to make a loan to another, may demand the rescission of the preliminary agreement, if subsequently the economic status of the other contracting party deteriorates materially, in particular, if he has been adjudged bankrupt or has stopped payment.

VII. Independent Contractor

220. By contractor's agreement, one party (the contractor) binds himself to perform at his own risk certain work at the request of the other party (customer) and the latter undertakes to pay compensation for work performed.

221. In the absence of any other agreement, the contractor must perform the work at his own cost and expense.

222. The contractor must take all steps to assure the safety of the property entrusted to him, and will be liable to make good any loss, peril or damage to said property caused by want of care on his part.

223. In case materials delivered by the customer are of poor quality, or in the presence of other circumstances for which the contractor is not liable, but which affect

[75] R.S.F.S.R. Supreme Court, Plenary Session, Ruling of November 16, 1925, Protocol No. 19, Civil Code (1943) 214.

the soundness or suitability of the work, the contractor must give timely notice thereof to the customer, under the penalty of liability for damages which may be sustained by the customer in consequence of the aforementioned circumstances.

224. The contractor performing the work by use of his own material, shall be liable for the good quality of the same.

225. If the contractor fails to undertake the performance of the contract within the proper time, or performs the work so slowly as to make the termination of the work in time obviously impossible, the customer may demand the rescission of the contract and compensation for damages without waiting for the expiration of the term of the contract (Section 117).

226. If, in the course of the work, it becomes apparent that the work will not be performed properly, the customer may fix a reasonable period of time in which the contractor must remove the defects of the work, and should the contractor fail to comply within the fixed period, the customer may either rescind the contract or engage a third party to continue, or correct, the work at the expense of the contractor.

227. The contractor must deliver the job in accordance with the contract and without defects which might make the job unsuitable to either the purpose provided by the contract or to its usual purpose. In the presence of said defects or in the absence of the stipulated quality, the customer may demand either: (a) correction of the defects within an appropriate time without charge, insofar as such correction is possible without disproportionate expense; or (b) corresponding reduction in the contract price; or, (c) rescission of the contract and compensation for damages sustained (Section 117).

If the defects are less essential, the court may, at the request of the contractor, deny rescission of the contract, and bind the contractor to correct the defects or reduce the contract price.

Note: The customer may not avail himself of the right indicated in the present section insofar as the defects are attributable to the circumstances specified in Section 223, and the contractor has complied with the duty prescribed by said section.

228. The customer must accept the work in accordance with the contract and must immediately give notice to the contractor of the disclosed defects, under penalty of losing the right to refer to these defects. A notice of the defects which could not be discovered under the usual method of accepting the work, or which were intentionally concealed by the contractor, must be given to the contractor by the customer immediately upon their discovery.

229. Claims relating to defects may be presented by the customer within a period of six months; those concerning buildings and structures—within three years from the time of delivery of the work, unless the contract provides for a longer term. In the presence of fraud on the part of the contractor, claims relating to defects may be presented within three years; if the contract provides for a longer period for presenting claims, the claim may be presented within the period stipulated.

230. The customer must pay the contractor the stipulated price upon the delivery of the entire job, unless the contract provides for payment in installments, in step with the delivery of the completed parts of the job.

231. If, owing to change in objective conditions, it becomes imperative to exceed disproportionately the approximate estimate drawn by the contractor, approved

by the customer, and accepted as a basis of the contract, the customer may demand the rescission of the contract either during the performance of the work or after its termination, but must compensate the contractor for actual property damage sustained by the latter.

If the contractor fails to give timely warning to the customer of the need to exceed the estimate, he must perform the work without claiming from the customer expenses incurred over and above the estimate.

232. If, prior to the delivery of the subject matter of the contract, it is destroyed or the termination of the work becomes impossible, the contractor may not claim compensation for the job (Section 144). But if said circumstances have arisen owing to defects in the materials furnished by the customer, or as a result of his orders concerning the method of performance of the contract, or after default on his part in accepting the job (Section 122), he must compensate the contractor in accordance with Section 146.

233. Risk of accidental loss of materials prior to delivery of the job shall rest upon the party furnishing the materials. If the loss took place owing to intent or omission by the other party, the latter shall be liable for damages.

234. In the presence of justifiable reasons, the customer may, at any time prior to the termination of the work, withdraw from the contract, provided he compensates the contractor for the part of the work performed and for damage caused to him by the rescission of the contract, with a setoff for what the contractor saves or gains owing to the rescission of the contract.

235. With respect to contracts in which the customer is an organ of the State, the rules of the Statute on Gov-

ernmental Contracts and Deliveries shall apply (Appendix).

Comment

This statute was not translated because it is considered obsolete and as such omitted in the editions of the Civil Code beginning with 1941.[76]

VIII. Suretyship

236. By the contract of suretyship, the surety undertakes liability to the creditor of a third party for the performance by said party of his obligations either in full or in part.

Note: A recommendation or an information concerning the credit standing of the debtor without expressly stated intention to become obligated equally with him shall not be deemed a suretyship contract.

237. Only a valid obligation may be guaranteed by suretyship contract.

238. Suretyship contracts must be made in writing under the penalty of the consequences specified in the Note to Section 136.

239. Unless otherwise provided in the suretyship contract, the surety shall be liable to the same extent as the principal debtor, in particular, for the payment of interest, for damages caused by default, and in certain cases for the payment of penalties as well as for expenses incurred in collection.

240. Persons simultaneously and jointly undertaking as sureties shall be liable jointly and severally.

241. If the debtor fails to perform the obligation, the creditor may institute action against both the principal

[76] E.g., Civil Code (1943) 127.

debtor and the surety as joint and several debtors, unless otherwise provided by the suretyship contract.

242. If an action is instituted against the surety, he must cite the debtor as party defendant. Should he fail to do so, the debtor may raise against the surety (Section 246) all defenses which he could have interposed against the creditor.

243. The surety must inform the principal debtor of the surety's intention to pay the debt on his account. The surety who fails to comply with this duty shall lose his right to recourse against the debtor if the latter also fulfills the obligation.

244. A debtor who has performed the principal obligation must give immediate notice thereof to the surety. Otherwise, the surety who likewise has paid the creditor shall not be deprived of his right to collect this debt from the principal debtor (Section 246); the latter may claim from the creditor the amount unjustly accepted.

245. Against the claims of the creditor, the surety may avail himself of all the defenses which could be raised by the debtor. The surety shall not be deprived of the right to these defenses, even though the debtor himself may have waived them or has acknowledged his obligation.

246. A surety who has discharged the obligation instead of the debtor, shall be subrogated to the creditor with respect to the principal obligation.

247. A creditor who has received full satisfaction from the surety, must surrender to him all rights which guarantee the claim against the debtor, together with documents which prove the claim.

248. If the creditor waives his right to preferential satisfaction, or waives a guarantee of the debt established in his favor the surety shall be relieved from his

obligation, to the extent that the creditor could have satisfied his claim by the exercise of the aforesaid rights.

249. The suretyship contract shall terminate with the termination of the principal obligation.

250. The suretyship contract shall terminate, if the creditor fails to institute action in court against surety within three months from the maturity of the principal obligation. If the date of performance of the principal obligation is not indicated, then, in the absence of any other agreement, the liability of the surety shall cease at the expiration of one year from the date when the suretyship contract was made.

Note: In the Yakut Soviet Socialist Republic, the respective periods of three months and one year, specified in Section 250, are extended, respectively, to one year and three years (as amended August 24, 1925, R.S.F.S.R. Laws, text 465).

IX

A. Agency

Comment

The relationships regulated in common law under the comprehensive subject heading of Principal and Agent were framed by the compilers of the soviet Code after the pattern of modern civil law countries. This pattern differs from common law both in concepts and terminology. Therefore, although there is no difficulty in expressing the soviet terms in French or especially German legal nomenclature, no precise English equivalents are available. Those used in the translation are no more than the best possible approximations. The variety of relations covered by our broad topic of Principal and Agent are divided by the soviet Civil Code into two categories, as follows:

(a) The agent transacts business in the name and on the

account of the principal, acquiring for him rights and incurring obligations. To designate this type of agency, the term "agency" is used in the translation. Its name in Russian is *poruchenie* and it corresponds to *mandatum* in Roman law, *mandat* in French, *Auftrag* in German (Civil Code 662), and mandate in the Louisiana Code (Article 2985).

(b) The agent, a "commission merchant," transacts business in his own name but on account of the principal. The Russian term, *kommissiia* or *torgovaia kommissiia,* corresponds to the agreement between the "commission merchant" and his principal or to agency with undisclosed principal; compare German *Kommission* (Commercial Code 383), similar to French *commissionaire* (French Commercial Code, Article 91). The term "commission agency" is used in the translation to designate this type of agency.

The framers of the soviet Code followed the pattern of European codes, French and German, in the arrangement of the material pertaining to agency, viz., they segregated the provisions under two separate headings: agency (Sections 251–263) and power of attorney (Sections 264–275), similar to the headings "mandate" and "letter of attorney" in the Louisiana Code. The provisions of the soviet Code relate primarily to the relations between the agent and the principal, while the relations with the third parties are not well covered. The Code is not explicit on the difference between a messenger who simply transmits the message of another and an agent who is authorized to perform for the principal acts producing legal effect binding upon the principal. Section 251 states that the agent "performs for the account and in the name of the principal the *acts* entrusted to him" without specifying the nature of such acts. However, the recent soviet legal writers think that the real sphere of agency is "performance of legal acts, that is to say, acts intended to establish, alter, or terminate civil legal relations." [77]

The activities of the agent are presumed to be gratuitous.

[77] 2 Civil Law (1944) 96.

An agent may claim compensation only in the cases where this is provided by law, contract, or special tariffs (Section 251, paragraph 2). Thus, the soviet law follows the European concept of agency in civil law in contrast to agency in commercial law, where remuneration is presumed.

The contract of commission agency (mercantile agency) was not provided for in the original text of the Code promulgated in 1922. Sections 275*a*–275*y* covering this type of agency were enacted in 1926 when the New Economic Policy was at its peak and were drafted by the representatives of the most individualistic trend in soviet jurisprudence, primarily the counsels of the government trading corporations, prerevolutionary lawyers. These provisions follow the German law closely and would not be out of place in any capitalist code. The whole subject matter is dealt with in great detail and with precision.

The Ukrainian Code was simultaneously amended while in other codes the amendments were incorporated at a later date. The provisions of individual soviet civil codes regulating commission differ on several minor points. Thus, under the R.S.F.S.R. Code (Section 275*e*) and the Turcoman Code (Section 275*g*), the commission agent has to disclose to the principal the third party with whom he has made a contract, and defines the consequence in case the agent fails to do so. The codes of the Ukrainian, Byelorussian, Uzbek, and Azerbaijan republics do not contain provisions to this effect. The Ukrainian Code mentions the possibility of sales between the agent and the principal, while the R.S.F.S.R. Code does not do so.

In addition to the Civil Code, commission agency is regulated by several enactments, in particular, by the Act of July 22, 1935,[78] Concerning Governmental Commission Stores, and various rules issued by the Ministry of Commerce on the ground of this act. The regular commission in these stores is 15 per cent and 30 per cent of the sale price for antiques.

[78] U.S.S.R. Laws 1935, text 332.

An Act of February 3, 1936,[79] regulates the relations between such stores and government agencies (pawnshops, custom, et cetera) which have entrusted for sale merchandise not redeemed or confiscated. The soviet textbook of 1944 states that at the present time commission agencies seldom occur in relations between private persons.[80] Any professional exercise of such a trade would not be considered a legal occupation in view of the regulation of trade licenses quoted in Volume I, Chapter 9, II, 4(f).

251. By an agency contract, one party (the agent) undertakes to perform, for the account and in the name of the other party (the principal), the acts entrusted to him by the principal.

The principal must pay compensation to the agent only where such compensation is fixed by the contract or by rates officially established in a manner prescribed by law.

Note: Agents under agency contracts may be either physical persons or legal entities but the latter may accept agency for the performance of such acts only as do not transcend the limits of their activities, as determined by appropriate charters, statutes and partnership contracts (as amended November 18, 1926, R.S.F.S.R. Laws, text 664).

252. The agent must perform the acts entrusted to him in accordance with the directions of the principal. He is authorized to depart from these instructions only when, under the circumstances of the case, it appears to be necessary in the interests of the principal, and the agent is unable to confer with the principal beforehand.

253. The agent must: (a) upon the principal's re-

[79] *Id.* 1936, text 79.
[80] 2 Civil Law (1944) 102.

quest, furnish information concerning progress made in discharge of his duties; (b) upon the completion of the duties incidental to the agency, submit a report with all evidentiary documents; (c) deliver in proper time to the principal all that he has received by virtue of the agency; and (d) compensate the principal for all damage to the principal intentionally or by negligence occasioned by the agent.

254. The agent must perform in person all acts of agency entrusted to him. He shall have the right to assign their performance to another person (the substitute), if authorized to do so by contract or if compelled thereto by force of circumstances and to protect the principal's interests. In such event, the agent shall be liable only for the choice of the substitute. The principal shall have the right to remove the substitute chosen by the agent.

255. The agent who entrusted another person with performance of his duties (Section 254) must immediately give notice thereof to the principal and supply the necessary information concerning the person of the substitute and his address.

Failure to comply with this duty places liability upon the agent for all acts of the substitute as if they were the agent's own.

256. The principal must (a) accept whatever was legally performed by the agent in the discharge of the agency; (b) compensate the agent for necessary expenses incurred in the course of performance; (c) upon completion of the agency, pay compensation to the agent where such is due (Section 251).

A proper advance of funds must be made by the principal to the agent to cover expenses necessary in the performance of the agency.

257. The principal may at any time cancel the agency, and the agent may at any time withdraw from performance. Agreements waiving this right shall be invalid.

258. If the contract is rescinded by the agent under conditions rendering the principal unable to find a substitute for him or otherwise to assure the performance of the business, the agent shall be liable for the damages caused.

259. The principal who terminates the contract prior to the performance of the acts contemplated by the agency, must compensate the agent proportionately for his work and for the damages caused.

260. The agency shall be terminated: (a) by revocation by the principal; (b) by the principal's death, or his being declared incapable to enter into legal transactions, or an absentee or bankrupt, and by dissolution of the legal entity to which the powers of agency were entrusted; (c) by the agent's withdrawal; (d) by the agent's death, his loss of capacity to enter into legal transactions, or dissolution of the legal entity to which the agency was entrusted (as amended November 18, 1926, R.S.F.S.R. Laws, text 664).

261. An agency to manage commercial business or industrial enterprises continues in effect even after the death of the principal, until revoked by his legal successor.

262. Where the agency terminates due to the circumstances indicated in subsections (a) and (b) of Section 260, then, to the extent necessary to protect the interests of the agent, it shall be presumed that the agency contract is in full force and effect, until the agent shall have learned or ought to have learned of the termination of the agency.

263. In the event of the agent's death, his heir must

notify the principal and must take necessary measures to protect the interests of the principal.

B. Power of Attorney

264. In order to perform such acts in the name of the principal as will create rights and obligations directly for the principal, an agent must be given a written power of attorney or authority.

Comment

The Presidium of the R.S.F.S.R. Supreme Court has ruled on July 22, 1932,[81] that it is permissible to issue one power of attorney for several attorneys in fact, and expressly overruled the contrary Ruling of the Plenary Session of the same court of June 6, 1928 (Protocol No. 4).

265. If the act is to be performed in a governmental office or before an official, the power must be notarially certified under the penalty of invalidity, unless, by special regulation, another form of power is permitted (as amended October 4, 1926, R.S.F.S.R. Laws, text 579).

Note 1: Powers of attorney to receive money, parcel post, and general types of correspondence, may be certified by a notarial office (by people's judges, by *volost* executive committees), and in addition, by village soviets and agents of village soviets elected in conformity with Section 42 of the Statute on Rural Soviets of 1931, as well as governmental, social organizations and enterprises and military units in which the recipient of the mail correspondence is employed (as amended October 4, 1926, R.S.F.S.R. Laws, text 579; May 16, 1927, *id.*, text 321; *id.* 1931, text 142).

[81] R.S.F.S.R. Supreme Court Presidium, July 22, 1932, Protocol Ruling No. 24, Civil Code (1943) 214.

Note 2: Powers of attorney to perform operations in the U.S.S.R. State Bank and governmental workers' savings banks do not need notarial certification.

Powers of attorney to perform operations in the U.S.S.R. State Bank in the name of organizations of the socialized sector require the form established by the Rules of the State Bank co-ordinated with the R.S.F.S.R. People's Commissariat for Justice (as amended July 1, 1929, R.S.F.S.R. Laws, text 517; September 1, 1935, *id.*, 1935, text 194).

Comment

Words placed in parenthesis in Note 1 are obsolete.

The U.S.S.R. Council of People's Commissars has resolved (on September 15, 1942, No. 1536):

It is hereby ordered that in wartime all sorts of powers of attorney as well as wills of persons in the ranks of the Red Army and Navy may be certified not only by notarial agencies but also by commanders of the individual military units (regiments, escadrilles, ships of the 1, 2, and 3 ranks, divisions, companies, battalions, batteries, detachments, and other similar military units) and the powers of attorney and wills of servicemen under treatment in hospitals may be certified by the chiefs of the hospitals.[82]

By Resolution of the same council of June 26, 1945, No. 1496, the above resolution was declared to continue in effect also in peacetime.[83]

266. Powers of attorney to manage property must be notarially certified under the penalty of invalidity (as amended October 4, 1926, R.S.F.S.R. Laws, text 579).

267. Powers of attorney for governmental institutions or enterprises must be issued over the signature of the proper executive officer and with the seal of the institution or enterprise attached.

[82] U.S.S.R. Laws 1942, text 133.
[83] U.S.S.R. Laws 1945, text 67.

Comment

Powers of attorney for transactions in foreign trade are regulated by special rules given in Volume I, Chapter 13, IV.

268. A power of attorney may be issued for a period not to exceed three years. If the effective period of the power is not stated therein, it remains in effect for one year from the date of issue.

269. The acts of an attorney directly create rights and obligations for the principal, if such acts have been performed in accordance with the power of attorney or if they have been subsequently affirmed by the principal.

270. The principal may at any time revoke the power of attorney and the attorney may withdraw from it. Waivers of this right shall be invalid.

271. The principal or his heirs must give notice of the termination of the power of attorney both to the attorney and the persons and institutions with which the attorney in fact was to deal, if the names of these are known to the principal (to the heirs).

272. At the request of the principal, the attorney must immediately surrender the power of attorney to the principal, together with other documents relating to the business entrusted.

273. The attorney may empower another person in cases specified in Section 254, and a notation must be made thereof on the original power.

274. The transfer of power may be revoked at any time either by the principal or by the attorney issuing it.

275. Upon the termination of the power of attorney, by virtue of the circumstances indicated in subsection (b) of Section 260, an assignment of the power of attorney is likewise ended.

IX*a*. Contract of Commission Agency

Comment

(1) Chapter IX*a* was introduced by the resolution of the All-Russian Central Executive Committee and the Council of People's Commissars on September 6, 1926 (R.S.F.S.R. Laws, text 666).

(2) See comment preceding Chapter IX, p. 155.

275*a*. By the contract of commission agency, one person (the commission agent) undertakes to perform, as authorized by another person (the commission principal), and for payment of a commission, one or several transactions, in his own name but on account of the commission principal.

Physical persons and legal entities as well may be commission principals and commission agents.

The subject matter of the contract of commission agency may be all transactions not forbidden by law, such as sales, shipping and insuring of freight, receipt and disbursement of payments, procurement of credit, and the like (as amended October 1, 1933, R.S.F.S.R. Laws, text 235).

275*b*. The commission agency contract must be in writing under the penalty of the consequences specified in the Note to Section 136.

275*c*. Whenever a commission agent concludes a contract with a third party the agent and not the principal shall acquire rights and incur obligations under such contract, notwithstanding the fact that the commission principal may have been named in the contract, or may have dealt with the third party in connection with the performance of the contract concluded by the commission agent with such party.

275d. Goods held by the commission agent, including those delivered to him by the commission principal or purchased on account of the principal, are deemed to be the property of the principal.

This rule applies also where either the commission principal or the commission agent is declared bankrupt.

275e. The commission agent shall not be liable to the principal for the performance by a third party of the contract made by him with the third party on account of the principal.

In the event the third party violates the contract, or where damage is inflicted by any person upon the property of the principal, in the actual possession or at the disposal of the commission agent, then the commission agent must give immediate notice thereof to the principal, and collect and secure in a proper manner proof thereof.

If the commission agent guarantees performance of the contract by a third party, with whom he made the contract on account of the principal, the agent must furnish the principal with all that which is due to him under the contract which the third party failed to perform. For this guarantee (*del credere*) the commission agent shall be entitled to separate compensation from the principal.

The commission agent must disclose to the principal the name of the third party with whom he has made a contract. The commission agent, who, in informing the principal of the making of the contract, fails to disclose to him the name of the contracting third party, shall be liable for the performance of the contract and is not entitled to a commission.

Note 1: Governmental enterprises, as well as enterprises enjoying the same status and co-operative enterprises whenever they are acting in the capacity of a commission agent, may be relieved, by contract, from the duty to disclose to the principal the names of third parties with whom a commission agent has concluded a contract, without losing their appropriate commission fees. In such cases, the afore-mentioned enterprises shall be liable for the performance of the contract by third parties.

Note 2: Under commission contracts for import or export of goods, the commission agent is not obliged to disclose to the principal the names of third parties with whom the agent enters into transactions in fulfillment of his commission contract. The commission agent who fails to name the contracting (third) party shall be liable to the principal for performance of the transaction entered into with the third party, unless the commission contract otherwise provides, but is not deprived of commission fees provided for by the contract (as amended October 3, 1927, R.S.F.S.R. Laws, text 685).

275f. The commission agent must perform the service for which he is commissioned upon terms most advantageous to the principal. Where the agent acts on direct instructions from the principal the commission agent has the right to depart from these only where, by virtue of changed circumstances, such departure appears necessary in the interest of the principal, and the commission agent either cannot confer in advance with the principal or else fails to receive from him timely answer in response to inquiry.

In particular, the commission agent must:

(a) Immediately notify his principal of the conclusion of a transaction with a third party and of its performance;

(b) Perform all duties and exercise the rights flowing from transactions with third parties;

(c) Upon the termination of the commission submit a report to the principal and transfer to him all that which is due to him in connection with the execution of the commission; and surrender to the principal, at his request, all obligations of third parties flowing from the contract of commission (as amended October 3, 1927, R.S.F.S.R. Laws, text 685).

275*g*. Should the commission agent conclude a contract with a third party upon terms more advantageous than those indicated by the principal, the entire advantage resulting shall accrue to the principal.

275*h*. If the goods sent by the principal for sale or reshipment show, upon receipt by the commission agent, damage or shortage discoverable on exterior inspection, the commission agent must, under penalty of liability for damages, take measures to protect the rights of the principal, collect proof of the damage to or shortage in the goods, and give full immediate notice thereof to the principal.

The principal must inspect goods acquired for him by the commission agent and notify the latter of defects discovered.

275*i*. A commission agent holding the principal's goods shall be liable to the latter for loss or damage thereof, unless the agent proves that the loss or damage resulted from circumstances which he could not prevent by the exercise of due diligence.

The commission agent shall be responsible for uninsured goods only where the principal had ordered him

to insure them, or where insurance of goods is prescribed by law.

275j. If the goods under the control of the commission agent are subject to rapid deterioration and there is no time to ask the principal for instructions, or the principal, though notified of the urgency of sale, delays answer, then the commission agent may sell the goods at the market or exchange price, but if this is necessary in the interest of the principal, the agent must do so. In the absence of market or exchange prices, he must sell at a price most advantageous to the principal.

275k. If the commission agent purchases goods at a price exceeding that fixed for him by the principal and the latter is unwilling to accept such purchase for his account, he must give notice thereof to the commission agent immediately upon receipt of notification from the agent that the contract with third parties had been made; otherwise the principal is deemed to have affirmed the purchase.

If the commission agent, in notifying the principal of the executed purchase, states that he accepts the price difference on his own account, the principal may not withdraw from the transaction made for his account.

275l. A commission agent who sells goods at a price below that fixed for him by the principal must compensate the latter for the difference, unless he proves that it was impossible to sell the goods at the price fixed and, moreover, that the sale at a lower price prevented even a greater loss, and that the agent was unable to ask the principal for new instructions, or did not receive a prompt answer to his request therefor.

275m. Without the principal's permission, the commission agent shall have no right to make advance payments on his account, or to grant credit to third parties.

Otherwise, the commission agent: (a) shall be liable to the principal for all advance payments and for the entire sum of the credit granted; (b) must restore immediately to the principal upon his request, all advance payments made by the agent, and pay in full for the goods sold and delivered by him on credit.

The price at which the transaction could have been made without grant of credit shall be taken into consideration in settling the mutual accounts of the principal and agent under subsection (b) of the present section, as well as in the event the principal claims compensation for damages.

275*n*. Unless otherwise provided by contract, the commission agent may at any time withdraw from the execution of the commission with which he is entrusted, but must give written notice of his withdrawal to the principal; in such case the commission contract shall remain effective for a period of two weeks from the day the principal receives the agent's notice of withdrawal from execution of the commission. The commission agent in this case does not lose the right to reimbursement for expenses incurred, but may not claim commission fees.

If the commission agent withdraws from the contract owing to violation thereof by the principal, he shall be entitled to compensation for expenses incurred, and to commission fees.

If the commission agent withdraws from the contract due to impossibility of performance, he shall be entitled, besides expenses incurred, to commission fees proportionate to the part of the commission contract performed by him.

275*o*. The principal, informed of the agent's withdrawal (Section 275*n*), must, within a two weeks' period

from receipt of such notice, dispose of the goods held by the commission agent; in the absence of such instructions and after the expiration of the afore-mentioned period, the commission agent shall have the right, at the risk and cost of the principal to deposit the property at a warehouse for storage, or to store it in any other manner assuring the safety of the goods, and he also has the right to sell the goods in the manner indicated in Section 275*j*, to satisfy his own claims against the principal. The agent shall have the same right if the principal revokes the commission given to the agent, and fails to make immediate disposition of the goods.

275*p*. The commission agent, to assure the sums due to him from the principal for the performance of all commissions entrusted to him (Section 275*r*), as well as for all advances, promissory notes and bills issued or other obligations assumed by him towards third parties, in connection with the performance of the commission, shall have the right to mortgage goods, securities, and other property of the principal, which are according to the commission contract at the disposition of the commission agent.

275*q*. Out of the sums received by the commission agent for the account of his principal, the agent may deduct his money claims against the principal arising from the commission contract. However, creditors of the principal, whose claims enjoy, under Section 101 of the present Code, priority in satisfaction before the claims of the mortgagee, shall not be deprived of the right to obtain satisfaction out of the sums retained by the agent.

275*r*. The principal must:

(a) In addition to paying commission fees, reimburse the agent for all disbursements made by him in connec-

tion with the performance of the commission as well as for sums received by the principal from the agent in the form of advances or loans, with interest on each sum from the date of disbursement or payment;

(b) Reimburse the agent for expenses incurred in keeping the property in special warehouses and in transportation;

(c) Relieve the agent from obligations assumed by him to third parties in the discharge of the commission.

Note: Under a commission contract for import or export of goods, the principal may be relieved from the obligation specified in subsection (b) of this section (as amended October 3, 1927, R.S.F.S.R. Laws, text 685).

275*s*. In the absence of other agreement, the report submitted by the agent (subsection (c) of Section 275*f*) shall be deemed accepted by the principal if he fails to object within three months from the date of its receipt.

275*t*. If the commission agent receives his principal's instructions revoking the commission in whole or in part, prior to entering into the corresponding transactions with third parties, the commission contract shall be deemed rescinded in whole or in part. In such case the principal must pay the agent commission fees for transactions concluded by the agent prior to the revocation of the commission, and to compensate him for expenses incurred in execution of the commission prior to its revocation.

275*u*. The amount of the commission fees, as well as the compensation for suretyship (Section 275*e*) shall be determined by agreement of the parties, and in absence of such agreement, by judgment of the court.

The commission fees may be stipulated in the form

of a definite percentage of the sum of the transaction or in other form not forbidden by law. In all commission contracts, except commission contracts for import or export of goods, the remuneration of the agent may not be fixed in terms of the difference, or of a certain part of the difference, between the sales price fixed by the principal and the more advantageous price at which the commission agent shall have concluded the transaction (as amended October 3, 1927, R.S.F.S.R. Laws, text 685).

275v. In the event the principal dies, is declared an absentee, or incapable of entering into legal transactions, the agent must continue his acts in connection with the commission until the receipt of proper instructions from the principal's representative or successor in interest.

When the principal's original legal capacity to participate in commission transactions of the given kind becomes restricted, the commission contract shall terminate from the moment when the commission agent learns, or ought to learn, of the restriction on the principal's capacity.

275w. In the event the agent dies, is declared an absentee or incapable of entering into legal transactions, or his legal capacity in general becomes restricted, the commission contract shall terminate.

The rules of the present section shall not apply where the successors in interest or agents of the commission agent continue the conduct of his commercial enterprise; in such case, the successors in interest or the agents of the commission agent must continue to act in the performance of the commission until receipt of proper instructions from the principal.

275x. The principal may claim assignment to himself of the agent's claims against third parties derived from

contracts made for the account of the principal, only where third parties have violated the contract (Section 275*e*), or where the agent is declared bankrupt. In the latter case, the principal shall receive, in addition to the general distribution, the payments made by third parties under said contract, and received after the declaration of bankruptcy, less the amount due the agent from the principal.

275*y*. Agreements of parties are deemed invalid if they tend to diminish the liability or to relieve from obligations imposed upon the agent by Sections 275*c* and 275*d*, by paragraph 4 of Section 275*e* and by subsection (c) of Section 275*f*, or to relieve him from liability for the performance of the contract by third parties in the cases specified by the Note to Section 275*e*, or to relieve the principal from the obligations specified by Section 275*d* of the present Code.

X. Partnership

Comment

Soviet law provides for four forms of partnership, two of which are comparable to Anglo-American forms of partnership. These are: full partnership, which corresponds to the Anglo-American general partnership, and limited partnership.

A full partnership (Sections 295–311) conducts its business under a common firm name and all the partners are jointly and severally liable with all their property for the obligations of the firm. The formation of a full partnership requires a notarized contract between the partners followed by an entry of the partners' declaration of organization in the commercial register kept by competent public authority. Upon such entry the full partnership enjoys the status of a legal entity. Each of the partners has the right to act singly in the name of the partnership unless the contract otherwise provides.

A limited partnership (Sections 312–317) conducts busi-

ness under a general firm name and consists of two kinds of partners: general partners, liable for partnership debts with all their property, and limited partners liable only to the extent of their contribution to the partnership. The rights and obligations of a limited partner accrue only upon his contribution to the partnership assets. A limited partner may manage the business of a limited partnership only under special authority, and in the absence of such authority, he may not contest the acts of the general partners. If he acts without such authority he incurs liability equal to general partners. If the partnership is bankrupt, the limited partners may recover their contributions prior to the general partners from the partnership's property remaining after satisfaction of the creditors. A limited partnership is considered to be a legal entity, and the formation of the partnership requires the same notarization of contract and registration as is required for a full partnership.

Soviet law also provides for a so-called simple partnership (Sections 276–294) which arises by a contract under which two or more persons mutually bind themselves to pool their contributions and act together in business, but not under a common name. Every partner is liable for common debts in proportion to his participation in the partnership unless the partnership contract otherwise provides. The liability of partners for common debts shall not be presumed to be joint and several. Under soviet law the simple partnership is not considered a legal entity. Each partner proceeds against third parties individually, but is accountable to the partnership for any transactions conducted in the common interest.

In a partnership with limited liability (Sections 318–321), all partners conduct business under a common firm name. Each makes a definite contribution to the partnership capital, and these contributions may vary. Each is liable beyond his contribution to the extent of an amount equal to the contribution multiplied by a number which is the same for all partners. This type of partnership may be organized only for conduct of such business as is specified by law.

At the present time only simple partnership is of some importance in the Soviet Union, according to the soviet textbook, but even this form is used to a very limited extent.[84]

1. Simple Partnership

276. By contract of partnership, two or more persons mutually bind themselves to pool their contributions and act jointly in pursuit of a common economic purpose.

277. A partnership contribution shall be considered anything that each partner brings into the common business, be it money, other property, or services.

278. Contributions of individual partners may be different in kind and value. It is presumed that the contributions of all partners are equal unless the contract provides otherwise.

279. Money, as well as consumable and replaceable things contributed by partners, shall be held by the partners in joint ownership, while every other property contributed shall be in their common use unless the contract provides otherwise.

Note: If a nonmunicipalized building is contributed to partnership capital, the right to such a building may be established only in compliance with the procedure and conditions provided for the alienation of buildings.

280. The contributions of the partners and all property acquired by the partnership on its account shall constitute the partnership capital. The partnership capital shall also comprise all acquisitions made in exercise of the various separate rights which constitute the capital.

281. The partnership business shall be conducted by

[84] The outline of partnerships under the soviet law first appeared in the author's abstract of U.S.S.R. law in the Lawyers Directory (1946) 1176–1177 and subsequent editions.

common consent of all partners. When the partnership contract provides that decisions on partnership affairs shall be made by majority vote, this majority shall be determined not by the size of the contributions but by the number of partners, unless otherwise provided by contract. The power to conduct a partnership business may be granted to one or several partners, whose rights and duties in this case shall be determined by the partnership contract or by a special power of attorney signed by all partners. Where such empowered persons are appointed, the other partners are removed from the conduct of the partnership business.

282. The authority to conduct the business of the partnership granted by the partnership contract shall continue in full force until the termination of the partnership, and may be revoked only for justifiable reasons. Likewise, the partner vested with said authority may withdraw from the conduct of partnership affairs only for justifiable reasons.

283. A partner who has performed acts in the common interest of the partnership, without having proper authority thereto, shall be entitled to reimbursement for expenses paid from his own resources, if he had reason to deem said acts necessary in the interest of the partnership.

A partner has the right to remuneration for his work only where it is so stipulated in the partnership contract.

284. A partner shall be liable to the partnership for failure to perform the partnership contract or his duties as a managing partner, in accordance with the general rules of liability for the violation of obligations arising from contracts.

285. Every partner shall have the right to acquaint

himself personally with the state of the partnership business by examination of its books and documents. Agreements waiving or limiting this right shall be invalid.

286. The right to participate in the partnership cannot be assigned without consent of the remaining partners. The partner shall have no right to dispose of his share in the partnership capital during the existence of the partnership.

287. Every partner shall be liable for common debts in proportion to his participation in the partnership unless the partnership contract provides otherwise. The liability of partners for common debts shall not be presumed to be joint and several.

288. Where the distribution of profits and losses among the partners is not specified by contract, the interest on the contribution of each partner shall first be assigned at the rate charged by State banks for discount of bills and notes; then this interest shall be deducted from all profits and losses, and the balance shall be equally divided among the partners. In the absence of special agreement thereto, profit and loss accounts shall be settled among the partners at the end of each fiscal year, and in partnerships organized for less than one year, at the termination of the partnership.

289. Except for the cases specified in Sections 290 and 292, a partnership shall be dissolved:

(a) By death of one of the partners;

(b) By the declaration that one of the partners is incapable to enter into transactions or is bankrupt;

(c) By demand of a partner that a partnership not limited in time be dissolved;

(d) By premature withdrawal of a partner from a partnership organized for a certain time;

(e) Upon the expiration of the period for which the partnership was organized;

(f) When the purpose of the partnership is realized or becomes impossible;

(g) By demand of a creditor for whose benefit execution against the share of one of the partners in the partnership capital is issued;

(h) By agreement of the partners to terminate the partnership.

290. In the event of a partner's death the partnership shall continue, provided the partnership contract contains a provision either for the separation of the share of the deceased or for the substitution for the deceased of his heirs at law or by will or the institution to which the property of the deceased passes in accordance with the law.

291. Declaration of premature withdrawal from a partnership organized for a definite term shall be permitted only for justifiable cause. Withdrawal from a partnership which is unlimited in time must be made in due time.

An agreement which waives or restricts the right of withdrawal from a partnership shall be invalid.

292. In the cases specified by subsections (b), (c), (d), and (g) of Section 289, or where one of the partners dies and a successor of the deceased refused to join the partnership (Section 290), the partnership shall continue if its continuation in such case is provided in the partnership contract or is consented to by the remaining partners. The share of the departing partner shall be paid out in cash in accordance with the balance sheet on the date of severance.

293. If the creditor of one of the partners has served

execution against the said partner's share in the partnership capital but has not demanded liquidation of the partnership (Section 289, subsection (g)), he has the right to participate in the profits of the partnership, but cannot exercise any right or perform any duty of a partner.

294. The liquidation of the partnership business upon the dissolution of the partnership must be conducted by the partners by observing the following conditions:

(a) Articles contributed to the partnership for common use must be restored to the partners who contributed them without compensation for the use made of these articles, unless otherwise stipulated;

(b) The division of common property shall take place only after satisfaction of the undisputed debts and the guaranteed disputed debts contracted by the partners on behalf of the common business. Contributions of partners in things shall be repaid in money at a valuation fixed in the partnership contract, and in absence thereof, according to the value of the things when contributed. When the common property of the partners is insufficient to satisfy or guarantee the debts, the deficiency shall be made up by the partners to the extent of each partner's share in the losses. Where one of the partners is bankrupt, his share in the loss must be distributed among other partners on the same basis (as amended October 16, 1924, R.S.F.S.R. Laws, text 785).

Note: The method of settling mutual accounts among partners during the liquidation of the partnership may be fixed also by agreement of partners.

2. Full Partnership

295. A partnership whose participants (partners) are

engaged in trade or commerce under a common firm name shall be deemed a full partnership, if all the partners are jointly and severally liable with all their property for the obligation of the partnership (as amended December 20, 1927, R.S.F.S.R. Laws, text 58).

Note: [Repealed, *id.*]

296. A declaration of organization of a full partnership, signed by all partners, must be filed by the partners with the office in charge of the Commercial Register at the place where the partnership is located, for entry into the Register and publication. The signature must be duly certified.

Note 1: The declaration for the registration of a full partnership must recite the information required by the Statute on Commercial Registration (U.S.S.R. Laws 1927, text 579, as amended December 20, 1927, R.S.F.S.R. Laws, text 58).

Comment

The statute here referred to was repealed by the Act of February 9, 1931 (U.S.S.R. Laws 1931, text 98).

Note 2: Every modification of the data contained in the original declaration, the dissolution of the partnership, election or appointment of liquidators, and every change of liquidators, as well as all other data specified by special regulations, must be filed and published in the manner indicated in the present section.

Note 3: The withdrawing partner may also file a declaration of his withdrawal, together with all necessary proof thereof. Notice of the dissolution of a partnership declared bankrupt by court shall be entered in the Commercial Register by order of the court which declared the bankruptcy.

297. A contract of full partnership must be in writing and certified by a notary under penalty of invalidity (as amended October 4, 1926, R.S.F.S.R. Laws, text 579).

298. From the date of its entry in the Commercial Register, a full partnership shall be deemed a legal entity and may, under its firm name, acquire all property rights within the limits laid down by law, undertake obligations, and sue and be sued in court through its representatives.

299. The rules specified in Sections 277, 278, 283, 284, 285, 289, 290, 292, and 294 of the Code shall apply to full partnerships.

300. If the partners' contributions have decreased as a result of losses sustained, the partners may not claim payment of their shares in the profits of the partnership, until the partnership capital is replenished from these profits to equal the amount stated in the entry in the Commercial Register.

301. Without the consent of the other partners, a partner may neither enter, on his own account or on the account of a third party, into transactions which are within the commercial or industrial business of the partnership, nor participate as a full partner in a partnership similar to the first partnership. A partner who violates this rule must, at the choice of his partners, either make compensation for the losses sustained by the partnership or transfer to the partnership all profits and advantages resulting from his acts.

302. Each of the partners may act singly in the name of the partnership, unless the contract otherwise provides. An objection by any partner against a disposition made or act committed by one partner singly shall be sufficient to prohibit him from carrying out the act or disposition.

303. A power of attorney for the conduct of partnership business may be revoked by any one of the partners who participated, or has the right to participate, in the issue thereof. Removal of a partner from the management of partnership business for which he is empowered by the contract shall be valid only when pronounced by the court on justifiable grounds, at the request of the remaining partners or the majority of partners (depending on the determination of this subject in the partnership contract).

304. Partners shall be liable jointly and severally with all their property for all obligations of the partnership or for transactions which, as is evident from the intention of the parties, were concluded for the partnership. A person joining the partnership as member shall be liable equally with the other partners, even for those obligations which had arisen prior to his joining the partnership. A partner who has paid a partnership debt shall be entitled to contribution from the other partners in proportion to each partner's share in the losses of the partnership.

305. Creditors of a partnership may issue execution against property belonging to the individual partners only where the partnership is bankrupt in fact or has been declared bankrupt by a court or upon the liquidation of partnership business. In order to obtain satisfaction of his claim by execution against his debtor's share in the partnership property, the creditor must serve notice on the partnership of his demand for the dissolution or liquidation of the full partnership at least six months prior to the end of the fiscal year, irrespective of whether the partnership is organized for a limited time or not.

306. Modifications in partnership contracts shall take

effect against third parties who have not been informed of these modifications only upon entry and publication in the Commercial Register. As against third parties, agreements by partners contrary to the rules governing their liability specified in Section 304 of this Code shall be invalid. If third parties rely on modifications in fact effected in the partnership contract, the partners are estopped from referring in their pleading against such third parties, to the fact that these modifications were not entered in the Commercial Register and have not been published.

307. In addition to the cases specified in Section 289, full partnerships also shall be dissolved when declared bankrupt by a court.

Note: Withdrawal from a full partnership organized for unlimited time must be declared by the partner not less than six months prior to his actual severance from the partnership. Withdrawal of a partner from a partnership limited in time prior to the expiration of time for which it was organized, may be granted only for justifiable reasons.

308. Where a partnership has not been declared bankrupt by court, the partners, in order to liquidate the partnership business, may elect special liquidators either from among themselves, or outsiders. If the partners fail to agree on the selection of liquidators, the latter shall be appointed by the court on the petition of any partner. For the liquidation of a partnership declared bankrupt by the court, the liquidators shall be appointed by the court and must be persons who are strangers to the partnership, and such appointment must be independent of any request by any one of the partners.

309. The liquidators shall wind up the current affairs and may enter into new transactions insofar as these are necessary to wind up current affairs. Buildings and building tenancies belonging to a partnership declared bankrupt by the court may be alienated by the liquidators only at public sale; the same procedure shall govern buildings and building tenancies owned by a partnership which is being liquidated for any other grounds, if the alienation is effected without the consent of the partners. Upon the completion of the liquidation, the liquidators must submit a report to the partners; if the partnership liquidated was declared bankrupt by the court, the report must be submitted to the court in which the bankruptcy proceedings were instituted. If the liquidation proceedings extend for a period exceeding one year, the report must be submitted at the expiration of every twelve months.

Note: Liquidators chosen or appointed shall be liable jointly and severally for violations of their duties, both to the members of the partnership and to its creditors.

310. Liquidators who are not members of the partnership, shall be entitled to compensation for their work relating to liquidation; the extent of the compensation shall be determined by agreement with the partners; in the absence of such agreement, by order of the court. Compensation to the liquidators of a partnership declared bankrupt by court shall be fixed by the court in which the partnership bankruptcy proceedings are pending.

311. A partner severed from the partnership shall be liable for the debts of the partnership within a period of two years from the date of approval of the accounts for the year during which he left the partnership.

3. Limited Partnership

312. A limited partnership shall be deemed a partnership organized for conducting commerce or trade, under a common firm name, and consisting of one or more members, liable to the creditors of the partnership with all their property (general partners) and of one or more members, whose liability is limited to their contributions to the partnership capital (limited partners).

Note: If the name of a limited partner is included, with his consent, in the partnership firm name, he shall be liable, excluding liability for violations of rules concerning trade, for the partnership obligations equally with the general partners (as amended December 20, 1927, R.S.F.S.R. Laws, text 58).

313. Regulations governing full partnerships apply to limited partnerships, with the exceptions stated in the subsequent sections.

314. A declaration for the registration of a limited partnership must recite all the particulars required by the Statute on Commercial Registration (U.S.S.R. Laws 1927, text 579, as amended December 20, 1927, R.S.F.S.R. Laws, text 58).

Comment

The statute here referred to was repealed by the Act of February 9, 1931 (U.S.S.R. Laws 1931, text 98).

315. Relations between the partners in a limited partnership shall be regulated by the following mandatory rules:

(a) Only contributions in property create the rights and obligations of a limited partner;

(b) A limited partner may manage the business of

a limited partnership only in the capacity of an authorized officer thereof and, in the absence of such authority, he may not contest the acts of the general partners;

(c) Where the partnership is bankrupt, the limited partners have the right as against the general partners to recover their contributions out of the partnership property remaining after the satisfaction of creditors.

When the contract does not otherwise provide, the following rules shall also apply:

(a) A limited partner shall not be bound by the limitations of Section 301 of the present Code;

(b) A limited partner may demand that an annual balance sheet be delivered to him and may verify its correctness by examining the books and papers of the partnership.

Upon justifiable grounds, the court at any time may recognize the right of a limited partner to inspect the books and papers of the partnership.

316. A limited partner shall be liable to third parties (a) with his contribution or with his property to the extent of the stipulated contribution, if it has not been made or has not been made in full; (b) for improperly received profits.

Note: An agreement to reduce the amount of the contribution, until such agreement is entered in the Commercial Register and duly published, shall have no effect against the creditors of the partnership. With respect to obligations which have arisen prior to such publication, the contributor is liable in the amount of the original contribution.

317. [Repealed December 20, 1927, R.S.F.S.R. Laws, text 58.]

4. Partnership with Limited Liability

318. A partnership with limited liability is a partnership, all the members of which (partners) are engaged in trade or commerce under a common firm name, and are liable for the obligations of the partnership not only with their contributions to the partnership capital, but with their individual property as well in a multiple, equal for all partners, (for example, three times, five times, ten times) of the amount of the contribution of each partner.

319. If one of the partners becomes bankrupt, his liability for the partnership debts shall be distributed among the other partners in proportion to their contributions. None of the partners shall be liable to third persons or to other partners over and above his respective contribution and the stipulated multiple ratio.

320. Partnerships with limited liability may be organized only in those branches of the national economy in which they are expressly permitted by law (for example, electrification partnerships, partnerships of guaranteed work, et cetera), or by special permission in each individual case granted by authorized organs of the workers' and peasants' government.

321. In other respects, the activities of limited liability partnerships shall be determined by their duly approved charters.

5. Joint Stock Company (Partnership by Shares)

322. The organization of stock companies (partnerships by shares), of their capital and boards of directors, and of the rights of shareholders, as well as the procedure governing the activities and dissolution of stock companies, are determined by the Statute on Stock Com-

panies, approved by the Resolution of the Central Executive Committee and Soviet of People's Commissars of the U.S.S.R., August 17, 1928 (as amended March 1929, R.S.F.S.R. Laws, text 282; *id.*, text 509).

Comment

The Statute on Stock Companies referred to in Section 322 contemplates the issuance of governmental licenses for organization of stock companies. Such licenses, in case foreign capital participates in the contemplated company, may be issued by the Council of People's Commissars. The statute has been amended several times: U.S.S.R. Laws 1928, texts 380, 432; *id.* 1929, texts 47, 172, 273, 616, 656, 706; *id.* 1930, texts 349, 369; *id.* 1931, texts 94, 299, 373; *id.* 1933, text 250. The practice of issuance of licenses has been discontinued, but the above-mentioned laws remain on the statute books.

Sections 323, 323*a–d*, 324, 324*a*, 325–366 were repealed March 19, 1928, R.S.F.S.R. Laws, text 282; November 20, 1931, *id.* text 509.

XI. Insurance

Comment

The provisions of the Civil Code dealing with insurance are a mere skeleton of the soviet insurance law. Numerous enactments (see *infra*) contain special rules for individual kinds of insurance. Insurance business is the monopoly of the soviet State and is used as a means of economic and financial policy.[85] A special federal office—the Chief Administration of Government Insurance of the U.S.S.R. (*Gosstrakh*) attached to the U.S.S.R. Ministry of Finance—exercises the monopoly of the insurance business and operates on a commercial basis (see (Volume I, Chapter 11, 3). It is in charge of numerous kinds of mandatory insurance and also carries on a regular business of property and life insurance comparable to that of the insurance companies of the capitalist world. The statute that regu-

[85] See Vol. I, pp. 11, 27.

lates the activities of the *Gosstrakh*[86] grants it authority to insure its risks with foreign insurance companies or accept their risks. In actuality, such insurance has been used only in connection with insurance of vessels and export-import cargoes.[87]

The textbook on civil law of 1944 describes the function of government insurance as follows:

Government insurance does not merely give financial aid to economic units which have suffered from elemental disasters. In many instances, the rates of [mandatory] insurance payments serve the purpose of stimulating the reinforcement and development of socialist ownership. Thus, for example, the collective farms which have developed animal breeding in excess of the governmental plan and show a high degree of efficiency in taking care of the animals receive a 25 per cent reduction from the mandatory insurance payments.

Money collected by the *Gosstrakh* is used not only to compensate damage caused by some elemental disaster but also for preventive measures. From the total amount of insurance payments certain appropriations are made to fight fires and contagious diseases of animals (establishment of fire departments, veterinary hospitals, and the like).

Government insurance plays a considerable role as a means to mobilize financial resources (in addition to government loans, bonds, taxes, and the like). Unobligated assets and a portion of the savings of the *Gosstrakh* are used to finance the socialist economy (purchase of governmental bonds and other things). A portion of the profits of the *Gosstrakh* reverts directly to the government budget.[88]

Thus, the soviet mandatory insurance is in a way a method of direct and indirect taxation. Again, voluntary insurance is not in the nature of mutual insurance in which the customers share the profits of the insurance operations, but has the form of outright capitalist insurance with the only difference that the profits belong to the government and not to private insurance companies.

[86] Act of September 18, 1925, U.S.S.R. Laws 1925, text 537.
[87] Organization and Technique of Government Insurance in the U.S.S.R. (in Russian 1939) 24; 2 Civil Law (1944) 198.
[88] 2 Civil Law (1944) 196.

The following types of mandatory insurance are provided for in soviet law. The so-called assessed insurance (*okladnoe strakhovanie*) is regulated by the Law of April 4, 1940, as amended on July 8, 1942.[89] Business units of collective farms, collective farmers, employees, and other citizens in the country and the cities are subject to insurance requirements. The collective farms must insure: (1) buildings, implements, means of conveyance, produce, and raw and other materials, which must be insured against fire, lightning, flood, and certain other natural disasters; (2) agricultural crops must be insured against hail, storms, fire, frost, soaking, and the like; (3) fishing boats must be insured against storm, fire, and similar risks. Individual citizens need insure only buildings, agricultural animals, and field crops. The amount of insurance is fixed by law. Thus, buildings in the collective farms are insured at the amount at which they are entered in the inventory. For crops and animals a fixed sum is established, e.g., a collective farm is insured for a cow, 600 rubles, and an individual citizen, 500 rubles.[90] Twice a year a registration of such properties is made and the insurance payments assessed.

Another form of mandatory insurance is that of all housing managed by government offices and enterprises and by the local soviets and of government property in use by individual citizens.[91]

Finally, passengers traveling over long distances by rail, water, and air are subject to mandatory insurance, which is collected with the sale of the ticket.[92]

The following separate kinds of voluntary insurance are regulated by special statutes. Insurance of agricultural crops

[89] Vedomosti 1940, No. 12; *id.* 1942, No. 28.

[90] 2 Civil Law (1944) 209.

[91] Act of February 3, 1938, U.S.S.R. Laws 1938, text 46; Regulation of the U.S.S.R. People's Commissar for Finance of September 7, 1938; Collection of Laws on Government Insurance (in Russian 1940) 122; 2 Civil Law (1944) 210.

[92] Act of April 6, 1931, as amended, U.S.S.R. Laws 1931, text 190; *id.* 1932, text 15; *id.* 1935, text 81; *id.* 1936, text 279.

and animals is regulated by the Act of July 4, 1942,[93] and insurance of animals also by the Rules issued by the U.S.S.R. People's Commissar for Finance on July 25, 1942,[94] being a form of insurance supplementary to similar assessed insurance. Government enterprises financed through local budgets of provinces and smaller territorial subdivisions may be insured under the Act of February 3, 1938,[95] and the Rules issued by the People's Commissar for Finance on March 8, 1941.[96]

Insurance by citizens of their household furnishings and personal effects is regulated by the Rules issued by the same commissariat on October 9, 1940.[97] Insurance of the means of transportation belonging to the government or to private persons (cars, buses, streetcars, airplanes, and the like) is regulated by the Rules issued by the same commissariat on February 19, 1941.[98]

Maritime insurance is regulated by Sections 192–218 of the Maritime Code of June 14, 1929.[99] Rules issued by the abovementioned commissariat on December 14, 1942,[100] regulate the insurance of cargo shipped by inland water, ground, and airways.

Life insurance was for a time regulated primarily in the form of group insurance. However, on December 13, 1942,[101] issuance of any new group insurance policies was discontinued, the old policies to be transformed into individual policies and only individual life insurance to be permitted in the future. The new rules provide for various forms of life insurance, straight, mixed, accident insurance, et cetera.

[93] U.S.S.R. Laws 1942, text 102.
[94] (1942) Financial and Economic Legislation No. 9/10.
[95] U.S.S.R. Laws 1938, text 46.
[96] Collection of Laws on Governmental Insurance (in Russian 1940) 145; 2 Civil Law (1944) 212.
[97] (1940) Financial and Economic Legislation No. 23/24, 23; (1942) *id.* No. 7/8, 27.
[98] (1941) *id.* No. 4, 13.
[99] U.S.S.R. Laws 1929, texts 365, 366.
[100] 2 Civil Law (1944) 213.
[101] U.S.S.R. Laws 1942, text 189; Rules issued by the U.S.S.R. People's Commissar for Finance on December 22, 1942, 2 Civil Law (1944) 215.

All the above-mentioned rules and regulations must be consulted in addition to the provisions of the Civil Code as constituting the soviet law of insurance.

367. By a contract of insurance, one party (the insured) undertakes to make a stipulated payment (insurance premium), and the other party (the insurer) undertakes, in the case of the happening of the event provided for in the contract (the insurable event), to compensate the insured or the third party (the beneficiary), in the case of property insurance, by reimbursement for damages sustained within the limits of the amount established by the contract (insurance amount); and in the case of life insurance, by payment to him of the sum of the insurance.

368. In property insurance, the amount of insurance may not exceed the direct losses which the insured or beneficiary may sustain upon the happening of the insurable event (insurable interest). Indirect losses may be insured only insofar as this is permitted by insurance rules.

In life insurance, and in accident insurance, the insurance amount shall be fixed by contract at the time the contract is made.

369. If, in property insurance, the amount of insurance indicated in the contract exceeds the insurable interest, the contract shall be valid only within the limits of the insurable interest, and the insurance premium is correspondingly reduced, beginning with the insurance period next following the discovery of this circumstance. If the afore-mentioned excess was the result of fraud on the part of the insured, the insurer may sue to cancel the contract and claim compensation for losses, insofar

as these exceed the premiums received, which in this case he is not obligated to repay to the insured.

370. If, in property insurance, the insurable sum is fixed in the contract below the insurable interest, the difference shall be deemed to be left at the risk of the insured, and the insurer must compensate the insured for losses sustained by the happening of the insurable event only in proportion to the ratio of the insurance sum to the full insurable interest.

371. In property insurance, additional insurance by contract with another insurer of such part of the interest as is already insured shall be permitted only with the written consent of the earlier insurer who already has accepted the risk for such interest. Contracts made in violation of this rule shall be invalid, and the premiums paid by the insured are not subject to refund, if the subsequent insurer did not know of the insurance contract made earlier.

372. If the total amount of insurance of several contracts of property insurance made with respect to one and the same insurable interest exceeds the extent of this interest (double insurance), the subsequent contracts shall be invalid in the part which exceeds the insurable interest, and the premiums paid by the insured shall not be subject to refund. Where, however, the purpose of the insured was to exact unfair advantage upon the happening of the insurable event, all contracts concluded are invalid, and the insurer, moreover, may claim compensation for losses caused him by the insured.

373. Contracts of property insurance may be concluded by any person interested in the preservation of property, such as its owner, persons who have rights in rem therein or the rights of a tenant, or who, by contract, are liable for the deterioration or loss of the prop-

erty. When the contract is made, the insured must exactly specify the nature of his interest and the interest of the beneficiary.

374. Contracts of life insurance may be made against the happening of insurable events connected with the life of the insured himself, or of a third person (insured person). If the person insured against the risk of death is not the insured himself, the conclusion of the contract of insurance, as well as the appointment of the beneficiary and subsequent changes of beneficiary (Section 375) may be made only with the written consent of the insured person.

Personal group insurance of wage earning and salaried employees of organizations and enterprises, as well as of members of organizations and groups combined on other criteria, may be made without the consent of the insured persons, provided the insurance payments are made by these institutions, enterprises, organizations, and groups (as amended June 1, 1925, R.S.F.S.R. Laws, text 283; November 10, 1929, R.S.F.S.R. Laws, text 797).

Comment

Life insurance is at present regulated by the Rules of Voluntary Life Insurance of December 13, 1942, U.S.S.R. Laws 1942, text 189.

375. If, by law or contract, the amount of insurance is payable upon the happening of the insurable event not to the insured, but to a third party (the beneficiary), such provision must be stipulated in the insurance receipt or in the policy.

In the case of life insurance, the following persons shall be deemed the beneficiaries:

(a) Persons named by the insured at the making of the insurance contract and named in the insurance policy (or insurance receipt) as beneficiaries (name policy);

(b) The bearer of the policy or insurance receipt if, at the request of the insured, the policy is written to bearer (bearer policy);

(c) Heirs of the insured, by operation of law or by will, where the policy stipulates that beneficiaries shall be, respectively, heirs by operation of law or by will;

(d) The State, if the policy does not name a beneficiary (as amended June 1, 1925, R.S.F.S.R. Laws, text 283).

Note 1: The insured may, after the insurance contract is made, convert a name policy into a bearer policy by a note written upon the policy or by special notice to the insurer and vice versa, or substitute other persons for those previously designated as beneficiary. If the beneficiary was designated by naming in the policy or inscription upon the policy, the substitution of other persons for the designated beneficiary shall be permitted only by inscription upon the same policy (as amended June 1, 1925, R.S.F.S.R. Laws, text 283; November 10, 1929, *id.*, text 797).

Note 2: If the person insured against the risk of death is the insured himself, then in the event of his death prior to his receipt of a bearer policy or prior to the delivery of such policy to the beneficiary, the legal heirs of the insured person shall be deemed beneficiaries. If the person insured against the risk of death is not the insured himself, then in the event of finding a bearer policy in the hands of the insured at the moment of his death, his legal heirs shall be deemed to be the bene-

ficiaries; in the event of death of the insured person prior to the receipt of a bearer policy by the insured, the insured is deemed to be the beneficiary (as amended November 10, 1929, R.S.F.S.R. Laws, text 797).

Note 3: Under group life insurance, in the event of the death of an insured person, his legal heirs shall be deemed to be the beneficiaries, unless the insured had otherwise provided by written declaration to the insurer (as amended November 10, 1929, *id.*).

375*a*. In life insurance the limitations established by law for testamentary disposition and gifts do not apply to the designation of the beneficiary. Any physical person or legal entity may be designated as beneficiary, and the insurance compensation is paid to him to the extent determined by the insurance contract. The insurance compensation payable to the beneficiary after the death of the insured and after the death of a third party insured, does not become a part of the estate (as amended June 1, 1926, R.S.F.S.R. Laws, text 283).

375*b*. Execution may not be levied for debts of the insured himself or of a third party insured against the insurance compensation payable to the beneficiary, unless the insured is himself the beneficiary. The insurer may deduct from the insurance compensation the sum due from the insured arising out of the same insurance contract (as amended June 1, 1925, R.S.F.S.R. Laws, *id.*).

375*c*. The insurance compensation in case of life insurance and the sums payable by reason of social security provisions shall be determined and paid independently from one another and are not subject to mutual setoff (as amended June 1, 1925, *id.*).

376. Unless the law or the contract provide otherwise, the beneficiary shall be obligated under the contract only if the insurance receipt or insurance policy has been assigned to him.

377. The insurer may avail himself against the beneficiary of all defenses which he has against the insured.

378. The insurance contract must specify the term for which the contract is made or the periods by which the insurance premium shall be computed (insurable period).

379. The insurance contract must be in writing under the penalty of invalidity.

380. On execution of the insurance contract, the insurer must issue to the insured a receipt or policy. These must recite the following:

(a) The name of the insured and the insurer;

(b) Description of the insurable interest (property or person insured);

(c) Description of the risk against which the insurance contract is made, or the event upon the happening of which the insurer must pay the insurance amount;

(d) The beginning and end of the effective period of insurance;

(e) The amount of the insurance;

(f) The premiums (payments) and the time and place of their payment.

Other mandatory terms to be recited in the insurance receipt or policy may be also established for individual kinds of insurance.

381. The insurance receipt or policy may be transferred to another person only in agreement with special rules established for each separate form of insurance, but, in any event, the insurer may, as against every

holder of the insurance policy, avail himself of all defenses which he has against the insured.

382. In making the insurance contract, the insured must inform the insurer of all circumstances which have an essential bearing in determining the risk, or the probability of the happening of the insurable event, or the extent of the probable losses from its happening (the insurance risk), insofar as these circumstances were known or ought to have been known to the insured at the time the insurance contract is made.

In this respect, all circumstances definitely specified by the insurer in the insurance rules submitted to the insured, as well as concerning which the insurer inquired of the insured in definite unequivocal terms, shall be deemed essential in any event. If the contract of insurance is made at a time when some of the questions asked in writing by the insurer of the insured have not been answered, this circumstance may not subsequently serve as a basis for the rescission of the insurance contract.

383. If, after the insurance contract is made, it appears in fact that circumstances essential to determine the insurance risk, do not accord with the declarations of the insured, the insurer may sue in court for invalidation of the contract, either before or after the happening of the insurable event. If such circumstances become known to the insurer prior to the happening of the insurable event, he may, not later than within two weeks, demand the invalidation of the contract; otherwise he shall lose the right to seek, on this ground, the invalidation of the contract.

384. An insurance contract shall be invalid, if, at the time of its making, the insurable property is no longer in existence; or if the insurable interest of the insured

has ceased; or if the property is no longer subject to the risk against which it was insured; or, in the case of life insurance, if the persons with whose lives the insurable event was connected are no longer alive; or if the persons are no longer exposed to the risk specified in the contract.

385. In property insurance, the insured as well as the beneficiary, after assumption of the obligations under the contract, must inform the insurer immediately of all essential changes of which they have learned, and which have occurred in the facts communicated to the insurer at the time the contract was made, which may essentially affect the increase of the insurance risk. In any event, all modifications specified in the insurance rules submitted to the insured shall be deemed essential in this connection. In the event of the violation of this duty, the insurer may seek rescission of the contract or corresponding modification of its terms from the time of the increase in risk.

386. If, in property insurance, the risk or the probability of the happening of the insurable event (insurable risk) has increased during the effective period of the contract for reasons not provided for therein, the insurer may propose to the insured or the beneficiary, after assumption by the latter of the obligations under the contract, that a proportionately increased premium be paid; if the insured refuses to pay the said increase within a seven-day period from the date of written notification thereof, the insurer may demand rescission of the contract.

387. In the event the insured property is transferred to another person, the insured or the new owner of the property must immediately give notice thereof to the

insurer, and furnish him the name and address of the new owner.

388. Upon the receipt of notification concerning the transfer of the insured property to the new owner, the insurer may, within a period of seven days, rescind the contract unless he expresses, directly or indirectly (e.g., by acceptance of a premium from the new owner and the like), his consent to the transfer to the new owner of rights under the insurance contract. If the insurer fails to avail himself of this right, the contract shall remain in force, and the person acquiring the property is vested with all rights and duties of the insured. If the insurer avails himself of such right, he must return to the new owner of the property the part of the insurance premium received in advance, proportionate to the time remaining from the moment of the transfer of the property up to the period when the next payment becomes due.

389. The insured must pay the insurance premium to the insurer within the stipulated periods and at the stipulated place.

Unless otherwise provided for in the contract, the insurance contract shall not become effective prior to payment of the premium or the first payment thereon.

In the event of delay in making subsequent payments of premium, the insurer, unless the contract provides otherwise, shall be relieved from the duty to pay the insurance amount if the insurable event happens prior to the payment of the delayed premium.

In the absence of agreement concerning the rate of interest, the insurer may demand payment of legal interest for a delayed premium.

390. In property insurance, the insured or the beneficiary on the happening of the insurable event must

immediately, and in any case, within the period and by means specified in the insurance rules, give notice thereof to the insurer. Failure by the insured to observe this duty shall relieve the insurer from the obligation to pay the insurance amount.

391. The persons specified in the preceding section must also take all steps within their means, as may be possible, in keeping with instructions from the insurer, to decrease the losses from the insurable event.

If such steps have been taken at the direction of the insurer, reimbursement for the cost of these steps must be made by the insurer.

392. The insured and the beneficiary shall have no right to take steps or to perform acts which may render more difficult the ascertainment of the actual extent of losses.

393. The insurer shall be relieved from payment of the insurance sum if the insurable event happens due to intentional design or gross negligence of the insured or of the beneficiary.

The insurer shall be relieved from payment of the insurance compensation under contracts of life insurance in the following cases:

(a) If the insurable event happens owing to the intentional design or gross negligence of the insured or beneficiary who is not simultaneously the insured person as well;

(b) If the insurable event, in the course of the first two years after the insurance contract is made, happens owing to the intentional design of the insured person (as amended June 1, 1925, R.S.F.S.R. Laws, text 283).

394. To the extent the contract does not otherwise provide, the insurer shall not be liable for damage caused by foreign or civil war.

Comment

Act of the U.S.S.R. Council of People's Commissars of July 8, 1941:

The agencies of *Gosstrakh* shall not be liable in case of death of the insured persons or loss of their ability to work, as well as for loss or injury of the insured property whenever this occurred as a result of military action.[102]

395. The insurer who pays the insurance amount shall acquire, within the limits of this amount, all claims and rights which the insured or the beneficiary have against third parties for compensation for damage covered by the insurance amount.

If the insured or the beneficiary waives, against third parties, such claims or rights, the insurer shall be relieved proportionately from the duty to pay the insurance amount.

396. All claims arising out of insurance contracts shall be barred by a two-year statute of limitations.

397. The terms of the specific kinds of property insurance, such as fire, cattle epidemic, hail, and transportation insurance, as well as of life insurance in the event of death, or endowment insurance, and insurance against accident risks, shall be determined by special regulations and statutes approved by the People's Commissariat for Finance (as amended October 16, 1924, R.S.F.S.R. Laws, text 785; also July 22, 1930, U.S.S.R. Laws 1930, text 414).

Comment

The name of the People's Commissariat for Finance was changed to the Ministry of Finance in March, 1946. Rules and regulations referred to in the present section are indicated in the comment preceding the present chapter.

[102] U.S.S.R. Laws 1941, text 320.

398. The provisions of the present chapter do not extend to all types of mandatory insurance, except as the rules governing the latter refer to these provisions.

XII. Obligations Arising from Unjust Enrichment

Comment

The provisions of Sections 399 through 401 of the soviet Code deal with a subject matter covered in nonsoviet jurisdictions by quasi contracts,[103] unjust enrichment,[104] or specific cases of restitution.[105] They are designed to apply to situations where the enrichment of one person at the expense of another, and the loss of the latter, do not appear just, and nevertheless, no remedy is available under the law of contracts or that of torts. No contractual relations between the parties preceded the enrichment, and it cannot be attributed to the fault of the person enriched. Nonsoviet jurisprudence has had difficulty in finding a general formula which would cover satisfactorily the variety of circumstances under which a need for such remedy might arise. Though frequent, they are in a way exceptional because one cannot say that the law generally forbids enrichment at the expense of another.[106] On the contrary, enrichment in one form or another is a legitimate purpose of many legal transactions.

Roman law provided for several specific and exceptional remedies (*condictio*). One action was open to the party who, by mistake or otherwise, had paid or given the other party something that was not due him (*condictio indebiti*). Another was available to the party who had performed in anticipation of a counter-performance by the other party which did not

[103] French Civil Code, Arts. 1376–1381.

[104] German Civil Code, Arts. 1812–1822; Swiss Code of Obligations, Arts. 62–67.

[105] American Law Institute. Restatement of the Law of Restitution, Quasi Contracts and Constructive Trusts (1937) 11 *et seq.*

[106] Shershenevich, 2 Textbook on Civil Law (11th ed. in Russian 1915) 253.

follow (*condictio causa data non secuta*). Still another remedy allowed the recovery of prôperty from a party who had obtained it without legal grounds (*sine causa*), and finally, there was the action to recover property obtained on grounds not worthy of protection by law (*ex injusta causa*) or obtained for an immoral purpose (*turpis causa*).

The French Civil Code treated the problem under the topic of quasi contracts and abstained from a general formula. There was no specific statutory provision in the Russian imperial law, but the Ruling Senate deduced from the provisions on torts "based upon general principles of justice, that any loss in property must be restituted by the one who obtained through it a benefit without legal grounds." [107] Both codes extensively used by the compilers of the soviet Code, the German and, in particular, the Swiss Civil Code, contain a somewhat general statement, but it is coupled with provisions concerning specific situations. The German jurists emphasize that there is no general action for recovery of unjust enrichment but actions based each on a specific situation are provided for in the Code.[108]

The compilers of the soviet Code confined themselves to the most general statements and failed to include any regulation of specific instances of enrichment. Drafted in this manner, the provisions of the soviet Code are not a success in the opinion of the soviet jurists (see *infra*), except Goikhbarg, the principal compiler of the Code. The soviet Code also deviates from the capitalist codes in that it fails to state that the enrichment may be recovered from a party who acted in good faith only if it still exists at the time when claimed.[109] The majority of soviet jurists deduce from this omission that the enrichment must be restituted as it was obtained.[110] This was not the

[107] Civil Laws, Section 574, Svod Zakonov, Vol. X, Part 1; Ruling Senate, Civil Appellate Division, Decisions No. 81 of 1891; No. 183 of 1877; No. 32 of 1883.

[108] Achilles-Greiff, Bürgerliches Gesetzbuch, (18th ed. 1944) 345.

[109] Swiss Code of Obligations, Art. 64; French Civil Code, Arts. 1379, 1380.

[110] 1 Civil Law (1944) 361.

opinion of Stuchka, who made, in general, the most critical comments on Sections 399–400, as follows:

Unjust enrichment is outlined in our Code in terms too broad, without any need therefor. In fact, these provisions are mostly applied by various arbitral tribunals settling disputes among government agencies and thus are concerned with "enrichment" of one governmental pocket at the expense of another such pocket. . . . Our Code has borrowed only a few casual sections from the capitalist codes but omitted sections stating that only such enrichment may be recovered as is still in existence when claimed. The text of our Code absolutely does not fit the soviet conditions.[111]

Contrary to this opinion, the authors of the soviet textbooks of 1938 and 1944 think that provisions regarding unjust enrichment serve to protect both socialist and personal ownership in the soviet State. But they also admit the shortcomings of the provisions of the soviet Code. Says the textbook of 1938:

The language of Sections 399 and 400 has many defects. . . . The most frequent and practically important instance, viz., recovery of what was unduly paid, is not specifically treated or even mentioned in the Code. Therefore, the provisions of the Code appear to be too general in character. It is desirable to regulate in a more specific manner the duty to restore property unduly received.[112]

Both textbooks criticize the second part of Section 400 dealing with the liability of the holder for property unduly received, as follows:

Section 400 is not and could not be applied. Wherever the question of liability for deterioration of or expenditures for property unduly held comes up, the aggrieved party may sue for recovery of property (replevin) and not for unjust enrichment. But then these questions are governed by Section 59 and not 400 of the Code.[113]

In particular, soviet provisions are to be found in Section 402, according to which unjust enrichment at the expense of

[111] Stuchka, 3 Course (1930) 163.
[112] 2 Civil Law Textbook (1938) 388.
[113] *Ibid;* also 1 Civil Law (1944) 361.

another is to be collected for the revenue of the State wherever it arises from an act of the person enriched, which is either "contrary to law" or "was directed to the prejudice of the State." The full significance of this provision will appear if Sections 30 and 147 of the Code are consulted. These sections declare null and void transactions directed to the obvious prejudice of the State, prohibit the parties to such transactions from recovering whatever they have performed under such transactions and require them to surrender to the State any enrichment which may arise. The application of these provisions is discussed at length in Volume I, Chapter 12, p. 426 *et seq.*

The Code also refers to Section 402 in connection with transactions which are void because they were made under duress (Section 149) or in a state of necessity (Section 150). In these instances, the aggrieved party may recover from the guilty party whatever he paid or gave, but the guilty party has no such right. Thus, the aggrieved party may be unjustly enriched if, having recovered, he is also in possession of what he received from the guilty party under the contract. Such enrichment must also be collected for the State. The extreme complexity of these provisions perhaps explains the absence of information on their application by soviet courts.

Section 401 deviates from the capitalist codes on one point only. Like these codes, it bars restitution of payment under an obligation which is not enforcible in court but "not invalid under the law" (the so-called *obligatio naturalis* of Roman law). This applies in particular to actions barred by lapse of time (see Section 47 of the Code). But the soviet Code fails to stress that there may be no recovery of performance of a moral or social obligation,[114] although soviet jurists indicate several such instances as coming under Section 401.[115]

[114] E.g., German Civil Code, Art. 814; Swiss Code of Obligations, Art. 63, paragraph 2.

[115] 1 Civil Law (1944) 357; 2 Civil Law Textbook (1938) 383.

399. Whoever has been enriched at the expense of another, without sufficient ground provided by law or contract, must restitute that which he has groundlessly received. The duty of restitution arises also if the ground justifying enrichment subsequently ceases.

Comment

The R.S.F.S.R. Supreme Court has ruled:

A. The owner of property legally sold at public sale, where it was subsequently held that the property is to be restored, has the right to claim the sum realized from the sale but not the restoration of the property itself. But where the sale was conducted with such substantial violations of law that it cannot remain in effect, the specific property is restored to the former owner and the purchaser of the property at public sale shall receive the price paid by him. Where it is impossible to return the specific property, the party injured has the right to seek from the purchaser at the public sale which was subsequently adjudged illegal, the restoration of the actual value within the limits of unjust enrichment. But where, in the public sale of property, the officials who had charge of the sale were guilty of unlawful acts, then in addition to their prosecution, penal or disciplinary, the former owner of the property has a right of action against these officials for damages.[116]

B. Property (and other valuables) improperly received by a legally incompetent person under a contract or without a contract must be taken away from him and restored on the general grounds of Section 399 of the Civil Code while Sections 405 and 148 of the Civil Code shall not apply in such cases.[117]

400. Whoever has been unjustly enriched must restore or compensate for all profits which he gained or ought to have gained out of the unjustly acquired property from the time when he has learned or ought to have learned that such enrichment has been unjust. From the

[116] Resolution of the Plenary Session, January 26, 1931, No. 1, Civil Code (1943) 216, 217.

[117] R.S.F.S.R. Supreme Court, Plenary Session, Resolution of June 20, 1927, Protocol No. 11, Civil Code (1943) 216.

same time, he shall be liable for letting or causing the property to deteriorate. Until that time, he shall be liable only for intentional acts and gross negligence. On the other hand, he may claim reimbursement for necessary expenses in connection with the property incurred by him from the beginning of the period for which he must restore profits.

401. Whoever performs an obligation which, though unenforcible in court, is not invalid under the law, may not claim restitution of that which he has paid.

402. Whoever has been enriched at the expense of another by reason of his act which is either contrary to law or is directed to the prejudice of the State, must surrender to the State whatever he has unjustly received.

XIII. Obligations Arising from Injury Caused to Another

Comment

(1) This chapter deals with liabilities corresponding by and large to torts in Anglo-American law and is discussed at length in Volume I, Chapters 14 and 15.

(2) Terminology

There is a certain inconsistency in the original Russian text: Sections 403, 410, 413, and 414 speak of "reparation" for injury, while Sections 409, 411, and 415 speak of "compensation" therefor. This terminology has been preserved, but the soviet writers and courts do not attach any difference in meaning to these terms.

403. Anyone causing injury to the person or property of another must repair the injury caused. He is absolved from liability, if he proves that he could not prevent the injury, or that he was privileged to cause the injury, or that the injury arose as a result of the intent or gross negligence of the person injured.

Comment

(1) See Volume I, Chapter 14.

(2) The U.S.S.R. Supreme Court ruled on June 10, 1943:

1. The provisions of Sections 403–415 of the Civil Code shall be applied by the courts only in cases where reparation of such injury as arose outside contractual relations is claimed. If the injury suffered by the plaintiff arose from nonperformance of an obligation undertaken by the defendant under a contract or imposed upon him by operation of law, liability for the injury shall be determined either in accordance with the terms of the contract made by the parties (Sections 117–122 of the Civil Code) or under the provisions of law regulating the legal relationship of the parties.

2. If an injury which arose outside contractual relations was caused by the activities of a person or enterprise connected with the use of a source of increased hazard for bystanders, the liability of the person causing the injury to the person injured shall be determined under Section 404 of the Civil Code.

In all other cases, liability for injury shall be determined pursuant to Section 403 of the Civil Code.[118]

. . .

12. Where, according to the facts established in a case, the injury occurred not only as a result of improper action of the person causing the injury, but also in consequence of gross negligence or gross carelessness of the injured person himself, the court may, applying the principle of "mixed liability," impose upon the person causing the injury the duty of partial compensation for the injury in proportion to the degree of fault of each party.[119]

(3) Mixed liability and contributory negligence are discussed in Volume I, Chapter 15, I.

404. Individuals and enterprises whose activities involve increased hazard for persons coming into contact with them, such as railways, tramways, industrial establishments, dealers in inflammable materials, keepers of

[118] U.S.S.R. Supreme Court, Plenary Session, Ruling of June 10, 1943, Civil Code (1943) 238, 239.

[119] *Id.* 242.

wild animals, persons erecting buildings and other structures, and the like, shall be liable for the injury caused by the source of increased hazard, if they do not prove that the injury was the result of *force majeure* or occurred through the intent or gross negligence of the person injured.

Note: The period within which actions based on this section may be filed against governmental agencies shall be limited to two years and shall be computed from the day of the injury.

This period shall be suspended, aside from the general grounds for the suspension and extension of periods of limitations (Sections 48 and 49), from the day that the injured person or, in the event of his death, persons theretofore supported by him, apply to the proper agency of social insurance, until the day when the pension is either awarded or refused (as amended December 27, 1926, R.S.F.S.R. Laws 1927, text 3).

Comment

Section 404 establishing the so-called liability for increased hazard is discussed in Volume I, Chapter 14, III.

405. A person incapable of entering into legal transactions is not liable for injury caused by him. The person who has the duty of supervision over him is responsible in his stead. For injuries caused by minors who come under the provisions of Section 9, their parents and guardians are also liable as well as the minors (as amended November 25, 1935, R.S.F.S.R. Laws 1936, text 1).

Comment

(1) By persons "incapable of entering into legal transactions" are meant minors under the age of fourteen and weak-minded adults placed under guardianship or curatorship (Sec-

tion 8). "Minors who come under the provisions of Section 9" are those between fourteen and eighteen years of age. Persons under the "duty of supervision" ordinarily include parents, guardians and curators of minors, and persons taking care of weak-minded adults (e.g., directors of insane asylums). Under the original provisions of Section 405, minors over fourteen years of age alone were liable for damage that they had caused. In 1935, in line with the general strengthening of paternal authority and responsibility, Section 405 was amended to make the parents and curators equally liable with such minors. See also *supra,* comments to Sections 7, 8, 9, and Volume I, Chapter 4, p. 117 *et seq.*

(2) The U.S.S.R. Supreme Court ruled on June 10, 1943:

3. In cases involving liability for injury caused by a minor who has reached the age of fourteen years, the court shall, upon petition of the plaintiff or on its own motion, order joinder of the parents or guardians of the minor as parties defendant and, where circumstances contemplated by Section 403 of the Civil Code are proved, shall hold such minors causing injury and their parents or guardians jointly and severally liable for reparation of the injury.[120]

(3) See Volume I, Chapter 15, III, 3.

406. In situations where, in accordance with Sections 403–405, the person causing the injury is not under a legal duty to repair, the court may nevertheless compel him to repair the injury, depending upon his property status and that of the person injured.

Comment

This section is discussed in Volume I, Chapter 15, II.

407. An institution shall be liable for injury caused by improper acts of an official thereof committed in the performance of his duties, but only in the cases specially prescribed by law, provided that the improper nature of

[120] *Id.* 239.

the acts of the official is recognized as such by a competent judicial or administrative authority. The institution is absolved from liability, if the person injured fails to file an appeal from the improper act in due time. The institution shall have the right, in turn, to deduct from the wages of the official to the extent of the compensation paid to the injured person.

Comment

This section is discussed in Volume I, Chapter 15, III, 5.

407*a*. An institution shall be liable for the acts of its officials committed within their jurisdiction, and for their omissions in the performance of their duties, found to be improper, illegal, or criminal by a proper judicial or administrative authority, in cases where the person injured has deposited property (in particular, sums of money) with the institution or with the official in compliance with a legal duty or a judicial decision, sentence, or order, or an order of an official based thereon, or with the rules of internal organization of a governmental institution. An institution shall be liable on the same grounds in cases where the property (in particular sums of money) was deposited for the benefit of the injured person (enacted April 6, 1928, R.S.F.S.R. Laws, text 355).

Comment

(1) Joint Circular Letter of the U.S.S.R. Commissariat for Justice and the federal Police Office of 1933, No. 212:

Under Section 407*a*, the organs of police are civilly liable for property which was delivered to the police officer by the party injured, was taken from him, or was otherwise received by the police officer in connection with the discharge of his duties.[121]

(2) This section is discussed in Volume I, Chapter 15, III, 5.

[121] *Id.* 222.

408. Persons who jointly cause an injury shall be jointly and severally liable to the injured person.

Comment

This section is discussed in Volume I, Chapter 15, III, 1.

409. In the event that death is caused by an injury, the right to compensation shall belong to the persons who had been supported by the deceased and who have no other means of livelihood. Persons bearing the cost of the burial shall be reimbursed.

Comment

The compensation which may be claimed by dependents under Section 409 is limited in amount by the provisions of Sections 413–415. See Volume I, Chapter 15, IV, 2.

410. Reparation of injury shall consist in the restoration of the condition existing before the injury and, to the extent to which such restoration is impossible, in compensation for the damage caused.

Comment

See Volume I, Chapter 15, IV, 1.

411. In determining the amount of compensation to be awarded for an injury, the court in all instances must take into consideration the property status of the party injured and that of the party causing the injury.

Comment

The U.S.S.R. Supreme Court ruled on June 10, 1943:

13. . . . The provisions of Section 411 concerning taking into consideration the property status of the party injured shall not apply to cases where a governmental, co-operative, or public institution, enterprise, or organization is the party injured.

14. Section 411 shall not be applied by the courts in cases involving pilfering, missing goods, or products, or their mis-

management, in governmental, co-operative, and public institutions, enterprises, and organizations. According to the Resolution of the Committee for National Defense of January 22, 1943, and its Order of May 22, 1943, the value of pilfered or missing foodstuffs in such cases shall be recovered from the guilty persons at market prices, and that of industrial goods at commercial prices, multiplied by five.[122]

In view of these exceptions, Sections 406 and 411 lose the features of a general rule and do not protect the poor.

See also Volume I, Chapter 15, II.

412. Persons insured under social insurance shall obtain satisfaction from the social insurance agencies on the happening of an insurable event.

Comments to Sections 412–415

Sections 412–415, together with Section 409, form a separate set of rules covering liability for a specific class of injuries, viz., bodily injuries (including death). They are not applicable to damage to property. The generality of the language used in these sections confuses their import at first glance. However, such interpretation is firmly established in soviet theory and practice for an obvious reason. Whenever general terms, such as compensation and injury, are used in these sections, they refer exclusively to injury insurable "under social insurance" (workmen's compensation), but social insurance in Soviet Russia extends only to bodily injury (including death).[123]

413. The person or enterprise making insurance payments for the injured person under social insurance provisions shall not be liable to repair injury caused by the happening of the insurable event.

However, where the injury is caused by a criminal act or omission on the part of the entrepreneur, the social insurance agency which satisfied the injured person shall

[122] *Id.* 242, 243.

[123] See Vol. I, Chapter 15, note 66, where Section 176 of the Labor Code describing social insurance is quoted.

have a claim against the entrepreneur to the extent of the compensation paid to the injured person (subrogation).

In such case, the injured person who has not received full reparation of his injury under social insurance has an additional claim against the entrepreneur.

Comment to Sections 413 and 414

(1) These sections are discussed in Volume I, Chapter 15, V.

(2) The U.S.S.R. Supreme Court clarified several specific points respecting Sections 413 and 414 in its Ruling of June 10, 1943, as follows:

In cases involving damages for injury to health (bodily injury), the courts often fail to establish with sufficient completeness the circumstances under which the accident causing injury occurred, fail to request information respecting the amount of the earnings of the person injured and the degree of his disability to work, and in general do not ascertain whether or not a pension or aid was granted under social insurance or social security, and in what amount.

Infrequently the courts entertain claims of wage earning and salaried employees concerning payments due them under social insurance for temporary disability.

When, under Section 413 of the Civil Code, the courts grant the claims of trade-unions and social security agencies for subrogation, as well as claims of persons injured for additional damages, they fail to indicate in the decision for what criminal act of commission or omission in particular the insurer is to be held responsible and with which particular rules of labor or technical safety the entrepreneur failed to comply.

Some courts have not held the owners of enterprises, machines, and motors, whose use involves increased danger for bystanders, liable for damages for injury caused by the increased hazard (Section 404 of the Civil Code), but have placed such liability directly upon the wage-earning and salaried employees whose acts caused injury, which practice is incorrect.

In order to alleviate the above-mentioned defects of the court decisions, the Plenary Session of the U.S.S.R. Supreme Court has decided to issue to the courts the following directives:

. . .

16. The courts are not authorized to take cognizance of claims of wage earners and salaried employees for recovery of aid due them under social insurance on account of temporary disability or for change in the amount of such aid.

17. Should a wage earner or a salaried employee be denied wholly or in part aid for temporary disability because he did not stay continuously on the job with the given enterprise or institution for a required period of time (U.S.S.R. Laws 1939, text 1, Section 5), he shall not be deprived, as an injured person, of the right to recover, under Section 413 of the Civil Code, wages not received during the period of disability, if the injury was caused by the insurer's (entrepreneur's) criminal act of commission or omission.

18. The liability of the insurer (entrepreneur) under Section 413 of the Civil Code exists in the event of labor relations between the parties when the injury occurred as a result of the entrepreneur's criminal act of commission or omission, provided he is unable to prove that he could not have prevented the injury.

By an entrepreneur's criminal act of commission or omission is meant noncompliance by him, or by persons exercising technical supervision of the works, with the rules in force concerning the safety of labor and technical safety, and other rules regulating employment of labor, if such noncompliance has been established by competent agencies and resulted in the labor accident of the person injured.

19. Enterprises, institutions, and organizations liable under Section 413, paragraph 2, of the Civil Code to compensate for injury caused by fault of their employees, shall be authorized to recover the amount paid from the employee guilty of causing the injury, either under Section 83 of the Labor Code, if the injury was caused by negligence on the job, or under Section 83*d* of the Labor Code, if the injury was caused by an act constituting an offense subject to prosecution under criminal law.

20. Subrogation of trade-unions and agencies of social security for recovery under Section 413 of the Civil Code of aid and pensions paid to injured persons shall be granted whenever it has been established that the injury was caused by a criminal act of commission or omission of the insurer.

Subrogation of trade-unions and social insurance agencies under Section 414 of the Civil Code, in case the person causing injury is not the insurer of the injured party, shall be

granted regardless of whether such person is guilty of a criminal act of commission or omission.

In addition to trade-unions and social insurance agencies, the right to subrogation under Sections 413 and 414 of the Civil Code belongs also to mutual insurance societies of industrial co-operatives and societies of mutual insurance of members of co-operative artels of invalids.

21. The people's courts shall be competent to adjudicate subrogation, regardless of the amount of the claim.

22. The period of limitation for subrogation commences to run: for claims concerning compensation for aid paid on account of temporary disability, from the date on which payment of aid terminated; and for claims of compensation for pensions to invalids, from the day of each periodical payment of the pension.

The right to subrogation against governmental, co-operative, and public institutions, enterprises, and organizations shall be barred after the lapse of a one and one-half year period (U.S.S.R. Laws 1934, text 347, Section 1); in all other cases, the general periods of the statute of limitations of each constituent republic shall apply.

23. It is the duty of the judge, before docketing a case for trial, to request the parties, under Section 88 of the Code of Civil Procedure, to present evidence essential for the proper and expeditious disposal of the case.

In cases involving reparation of damage occasioned by injury to health (crippling, maiming), the following must be filed with the case:

(a) A record of the accident compiled by the management of the enterprise, the respective agency of inspection (technical, architectural, or sanitary inspection, and the like) or the police;

(b) A memorandum respecting the earnings of the injured on the date of the injury;

(c) A memorandum respecting the amount of the pension or subvention granted to the injured party under social insurance or social security;

(d) Information concerning the family and property status of the injured person.

In addition, in order to elucidate the degree of the loss of earning capacity and the causes of the accident, the court must request the parties to submit expert opinions of the medical board and technical inspection, and, if it is impossible or

difficult to procure such documents, the court must appoint forensic medical or technical experts for this purpose.[124]

414. Where the person who caused the injury has not insured the injured party, the latter, insofar as he has not received full reparation for the injury under social insurance, shall have the right to claim additional compensation from the person who caused it. Social insurance agencies shall have a claim against the person who caused the injury to the extent of the payment made by them to the insured person (subrogation).

Comment

See comment to Section 413, and Volume I, Chapter 15, V.

415. An uninsured person may not claim from the person who caused the injury compensation which would exceed the compensation that an insured person could have received, both from social insurance and under Section 414 from the person who caused the injury. In such case, the injured person shall be treated equally with such category of workers or clerical employees as the court may determine, in view of the property status of the injured person and the degree of his social usefulness.

Comment

See comment to Section 413, and Volume I, Chapter 15, V.

INHERITANCE LAW

Comment

(1) The soviet inheritance law is discussed in Volume I, Chapter 17.

(2) Provisions of this part of the Code do not apply to the property constituting undivided joint ownership of a peasant

[124] Civil Code (1943) 237–238, 243–246.

household of independent farmers and members of collective farms. Such property comes under special provisions discussed in Volume I, Chapter 17, V, 2. See also provisions concerning the marital community property of spouses, Section 10 of the Code of Laws on Marriage, Etc., *infra* No. 3 and Volume I, Chapter 4, p. 132 *et seq.* and Chapter 17, V, 1.

416. Inheritance by operation of law and under a will shall be permitted in accordance with the following sections (as amended February 15, 1926, R.S.F.S.R. Laws, text 73).

Comment

(1) The original provisions of the Code were more restrictive. Up to February 15, 1926, R.S.F.S.R. Laws, text 73, Sections 416 and 417 read as follows:

416. [As originally promulgated in 1922.] Inheritance under a will and by operation of law (intestate) shall be permitted under the following sections, the maximum value of the estate not to exceed 10,000 gold rubles after the deduction of all debts of the deceased.

Note: The rights arising out of contracts (leases, concessions, constructions, et cetera) between government institutions and private individuals shall be transferred as inheritance by law and under will within the terms stipulated in such contracts, without being limited by the maximum amount as provided for in the present section.

417. If the total value of the estate exceeds 10,000 gold rubles, then the government, as represented by the People's Commissariat for Finance and its agencies, and the private persons entitled to the estate by law or under the will, shall carry out the partition or the liquidation of that part of the estate which exceeds the inheritable maximum of the estate in favor of the interested government institutions.

If, by the nature of the component parts of the estate, a partition would be economically disadvantageous or undesirable, it shall form a joint ownership of government institutions and private persons or each party shall be given the opportunity to purchase the share of the other party, if such purchase by private persons is compatible with the interests of the State.

(2) See Volume I, Chapter 17, III and IV, 1.

417. [Repealed on February 15, 1926, R.S.F.S.R. Laws, text 73.]

418. The children (including the adopted children) of the decedent, his spouse, and his parents who are unable to work, as well as other persons unable to work who had been dependent upon the decedent for not less than one year before his death, shall be his heirs by operation of law.

Should any of the children of the decedent die before the opening of the succession, his portion of the estate shall devolve upon his children (the grandchildren of the decedent), and, in case the latter have died, upon their children (the great-grandchildren of the decedent).

In case there are none of the heirs mentioned above, or if they refuse to accept the inheritance, the able-bodied parents of the decedent and, in their absence, his brothers and sisters, shall be heirs by operation of law.

Note: Only persons who are alive at the moment of the death of the deceased and those conceived during his lifetime but born after his death may inherit (as amended March 14 and June 12, 1945, Vedomosti 1945, No. 15, 2; *id.*, No. 38, 4).

Comment

(1) Prior to the Edict of June 12, 1945, this section read as follows:

418. The group of persons entitled to inherit by both methods stated in Section 416 shall be limited to direct descendants (children, grandchildren, and great-grandchildren), adopted children (with their descendants), the surviving spouse of the deceased, as well as disabled persons without means who actually were fully supported by the decedent for a period of not less than one year prior to his death.

The testator may also bequeath his property:

1. To the State or its separate organs, and to governmental organizations and enterprises;

2. To Party organizations and professional organizations;

3. To duly registered public organizations, as well as to co-operative organizations, provided the latter are members of the system of the respective types of co-operatives organized for the entire Union (as amended April 6, 1928, R.S.F.S.R. Laws, text 355).

Note: Among physical persons, only those who are alive at the moment of the death of the deceased, and children conceived during his lifetime and born after his death, may inherit (as amended April 6, 1928, R.S.F.S.R. Laws, text 355).

(2) The new text of Section 418 was enacted by the Edict of the R.S.F.S.R. Presidium of June 12, 1945, which was issued in implementation of two edicts of the U.S.S.R. Presidium of March 14, 1945. The essence of the change is discussed in Volume I, Chapter 4, I, and Chapter 17, IV, 3 and 5. The text of these acts is as follows:

(a) Concerning Heirs by Operation of Law and Under a Will (Edict of the Presidium of the U.S.S.R. Supreme Council of March 14, 1945)[125]

1. Be it enacted that the children (including the adopted children) of the decedent, his spouse, and his parents who are unable to work, as well as other persons unable to work who had been dependent upon the decedent for not less than one year before his death, shall be his heirs by operation of law.

Should any of the children of the decedent die before the opening of the succession, his portion of the estate shall devolve upon his children (the grandchildren of the decedent), and in case the latter have died, it shall devolve upon their children (the great-grandchildren of the decedent).

In case there are none of the heirs mentioned above, or if they refuse to accept the inheritance, the able-bodied parents of the decedent and, in their absence, his brothers and sisters, shall be heirs by operation of law.

2. Every citizen may bequeath by will all of his property, or a part thereof, to one or several persons from among those mentioned in Section 1 of the present edict, as well as to government agencies and public organizations.

[125] Vedomosti 1945, No. 15.

However, the testator may not deprive his minor children who are unable to earn of the portion which would belong to them under intestate succession.

If there are no persons specified in Section 1, the property may be bequeathed to any person.

3. The effect of the present edict shall extend to all successions opened prior to its publication and not accepted by the heirs and not forfeited to the State by escheat.

4. The presidia of the supreme councils of the constituent republics are commissioned to enact corresponding amendments to the civil codes of the constituent republics.

(b) Concerning the Procedure of Application of the Edict of the Presidium of the U.S.S.R. Supreme Council of July 8, 1944 with Regard to Children Whose Parents are not United under a Registered Marriage (Edict of March 14, 1945)[126]

In the development of Sections 19 and 20 of the Edict of the Presidium of the U.S.S.R. Supreme Council of July 8, 1944, Concerning the Increase of Government Aid to Pregnant Women, to Mothers of Many Children, and Single Mothers; Concerning the Strengthening of Protection of Motherhood and Childhood; Concerning the Establishment of the Honorable Title, "Mother Hero," and the Creation of the Medal, "Mother's Glory," and the Medal, "Medal of Motherhood," the Presidium of the U.S.S.R. Supreme Council has resolved:

1. Be it enacted that lawsuits of mothers claiming alimony for the maintenance of a child born prior to the promulgation of the Edict of July 8, 1944, from a person with whom the mother did not enter into a registered marriage, shall be tried by the judicial institutions, provided that the defendant is entered on the book of the Civil Status Record as the father.

2. Children born after the promulgation of the Edict of July 8, 1944, of parents who are not united under a registered marriage shall, in case of the death of the father who is entered in the book of the Civil Status Record, have the right of succession to him, as well as the right to pensions and government aids established for the families of servicemen, equally with children born of a registered marriage.

3. Should a mother enter into a registered marriage with a person by whom she has previously born children and who has acknowledged paternity with regard to the child, the child shall be on an equal footing in every respect with children born of

[126] *Ibid.*

a registered marriage. A patronymic of the father's first name and, by mutual consent of the parents, the father's last name, shall belong to him.

(3) Regarding the rights of the surviving spouse, see Volumn I, p. 132 *et seq.*, and Chapter 17, V, 1.

419. Intestate succession shall take place in all cases where, and insofar as, it is not modified by will (as amended February 15, 1926, R.S.F.S.R. Laws, text 73).

420. Where inheritance is by operation of law, the estate shall be divided in equal shares per capita among the persons upon whom the inheritance devolves under paragraphs 1 and 3 of Section 418.

Grandchildren and great-grandchildren of the decedent upon whom the succession devolves under the provisions of paragraph 2 of Section 418, shall distribute among themselves equally the share which would have belonged to their dead parent (as amended March 14, and June 12, 1945, Vedomosti 1945, No. 15, 2; and No. 38, 4).

Comment

The original text of the section reads as follows:

420. Where inheritance is by operation of law, the estate shall be divided in equal shares per capita among all the persons specified in Section 418.

See Volume I, Chapter 17, IV, 7. Regarding the surviving spouse, see *id.* V, 2 and p. 132.

421. Of the persons upon whom the inheritance devolves under Section 418, those who have lived together with the decedent shall inherit property belonging to the usual household effects and furnishings (except objects of luxury), over and above the shares in the estate due them under the provisions of Section 420 (as

amended February 15, 1926, R.S.F.S.R. Laws, text 73, and June 12, 1945, Vedomosti 1945, No. 38, 4).

Comment

(1) The Edict of June 12, 1945, introduced only stylistic changes in this section.

(2) The provisions of this section are discussed in Volume I, Chapter 17, IV, 6.

(3) The surviving spouse also receives, over and above his or her share in the estate, his or her share in community property. See Section 10 of the Code of Laws on Marriage, Etc. (*infra* No. 3); Volume I, p. 132 *et seq.* and Chapter 17, V, 1.

422. Every citizen may bequeath by will all his property or a part thereof to one or several persons from among those mentioned in Section 418 as well as to government agencies and public organizations.

However, the testator may not deprive his minor children, or his other heirs who are unable to earn, of the portion which would belong to them under intestate succession.

If there are no persons specified in Section 418, the property may be bequeathed to any person (as amended March 14 and June 12, 1945, Vedomosti 1945, No. 15, 2; and No. 38, 4).

Comment

(1) The provisions of this section as in force before the 1945 inheritance reform were as follows:

422. By a will is meant a disposition made in writing by a person, assigning property in the event of his death to one or several definite persons from among those enumerated in Section 418, or distributing it among several or all of them in a manner different from that provided by Section 420.

Note 1: The testator may, by so providing in the will, deprive of the right to succession one, several, or all of the persons designated in paragraph 1 of Section 418. In such case, the estate passes in full or in part to the State, under Section 433,

to the extent that the testator did not bequeath it to one of the organizations mentioned in paragraph 2 of Section 418 (as amended February 10, 1930, R.S.F.S.R. Laws, text 93).

Note 2: The testator may not deprive of their intestate share those heirs by operation of law (Section 418) who shall not have reached the age of eighteen years at the death of the testator. Likewise, testamentary dispositions by virtue of which the persons specified in the present note receive less than three quarters of the intestate share they would otherwise have received under Section 420 of this Code, are forbidden (as amended May 28, 1928, R.S.F.S.R. Laws, text 468).

(2) For a general discussion of wills under the soviet law, see Volume I, Chapter 17, IV, 10.

(3) Deposits with governmental banks are subject to unlimited disposal *causa mortis*. See Section 436.

423. The testator may impose upon any of the persons specified in Section 418 who receive property under a will, the performance of any obligation on behalf of one, several, or all of the remaining heirs who, by virtue of this disposition, obtain the right to claim performance of such obligations by the afore-mentioned persons; the testator likewise may impose upon them the performance of any acts directed toward the realization of some socially useful objective.

The testator may impose upon persons who inherit under the provisions of paragraph 3 of Section 422 performance of an obligation on behalf of any person (enacted June 12, 1945, Vedomosti 1945, No. 38, 4).

Where property is bequeathed to governmental agencies or public organizations, the testator has the right to specify the precise purpose for which the testamentary estate must be used (as amended April 6, 1928, R.S.F.S.R. Laws, text 355, and June 12, 1945, Vedomosti 1945, No. 38, 4).

Comment

See Volume I, Chapter 17, IV.

424. A will shall be permitted by which the testator, in case his beneficiary should die before the opening of the succession or refuse to accept it, appoints another from among his heirs by operation of law (Section 418) or, in the absence of such heirs, any other person (as amended June 12, 1945, Vedomosti 1945, No. 38, 4).

Comment

The term "opening of succession" is explained in Volume I, Chapter 17, IV, 8.

425. The will must be signed by the testator and submitted to a notarial office for notarial certification.

Wills of illiterates shall be signed, instead of by the testator, by a third party on behalf of the testator (as amended October 4, 1926, R.S.F.S.R. Laws, text 579).

Note: Share payments to primary co-operative organizations may be bequeathed by their members to persons for whose benefit this Code permits the making of testamentary dispositions, by writing a proper assignment to the heirs upon the membership book, without notarial certification thereof (as amended May 14, 1928, R.S.F.S.R. Laws, text 403).

Comment

(1) A person to whom property is bequeathed under the will may not sign on behalf of an illiterate testator (Instruction for Notarial Offices of November 17, 1939, Section 53).

(2) The wills of soviet citizens made abroad may also be certified by the consuls and consular agents of the U.S.S.R.[127] A captain of a seagoing vessel may certify during the voyage wills made by persons on board and a captain of a riverboat

[127] Consular Statute, U.S.S.R. Laws 1929, text 567, Section 60.

may certify wills of persons on board.[128] Since September 15, 1942, commanders of military units (regiments, battalions, companies, batteries, and the like) may certify wills of men in their units, and heads of hospitals may certify wills of servicemen treated therein.[129]

(3) For discussion of wills made abroad, see Volume I, Chapter 17, IV, 10.

426. A will subsequently drawn cancels a previous will, except as the previous will recites testamentary dispositions not provided by the later will. The testator may revoke the former will without making a new one by filing a declaration at the notarial office (as amended July 20, 1930, R.S.F.S.R. Laws, text 441).

427. The carrying out of the provisions of the will devolves upon the heirs appointed therein, unless the testator in the will entrusts its execution to another person. In such cases, the consent of the executor is required to be stated either on the will itself or in a separate declaration appended to the will.

428. Dissensions and disputes among private persons or between private persons and government agencies with respect to valuation, distribution, and methods of settling accounts concerning the estate shall be determined by the court.

429. If an heir present at the place of opening of the succession fails, within three months from the date of opening, to inform the proper notarial office of his refusal to accept his share of the estate, he shall be deemed to have accepted the inheritance.

The heirs who are present may assume management of inherited property without awaiting the appearance

[128] *Id.*, text 365, Section 59; *id.* 1930, text 582, Section 27.
[129] *Id.* 1942, text 133.

of other heirs who, if they appear in due time, may claim their share of the estate (as amended July 20, 1930, R.S.F.S.R. Laws, text 441).

Comment

(1) For explanation of the term "opening of succession," see Volume I, Chapter 17, IV, 8.

(2) By the Edict of June 12, 1945, the following paragraph (2) was repealed:

The share of an heir who refuses to accept the inheritance passes to the State organs or organizations specified in Section 433 of this Code.

See also Volume I, Chapter 17, IV, 9 and 12.

430. Heirs who are absent from the place where the estate is located may accept in person or by attorney their shares in the estate within six months from the date of opening of the succession (as amended July 20, 1930, R.S.F.S.R. Laws, text 441).

Persons for whom the right of succession may arise under paragraph 3 of Section 418 only in the absence of other heirs or in the event that these refuse to take the estate, may declare within the same period their consent to take the estate, regardless of whether the estate will devolve upon them (enacted June 12, 1945, Vedomosti 1945, No. 38, 4).

Note: The share of an heir unborn at the time of opening of the succession may be claimed by the heir's legal representative within three months after the heir's birth.

Comment

(1) The term "opening of succession" is explained in Volume I, Chapter 17, IV, 8.

(2) See comment to Section 433 and Volume I, Chapter 17, IV, 9 and 12.

(3) The three and six month-periods provided for in Sections 429, 430, and 433 are computed under the Ukrainian, Armenian, Georgian, and Uzbek Civil Codes from the date when the measures of protection of the estate were taken and not from the date of the opening of the succession. The same provision was in the original text of the R.S.F.S.R. Code before 1930.

431. Notification of heirs by means of publication or by any other means shall not be made, but the notarial office at the place where the succession opens shall take measures to protect the estate, if such office deems it justifiable in the interest of the State or of the heirs. Measures of protection shall be taken immediately upon receipt of notice of the decedent's death. The safeguarding of the estate shall continue until the appearance of the heirs, but shall not exceed six months (as amended February 10, 1930, R.S.F.S.R. Laws, text 93).

[Notes 1 and 2 were repealed February 10, 1930, *id.*]

Comment

(1) The term "opening of succession" is explained in Volume I, Chapter 17, IV, 8.

(2) The notarial offices were instructed in 1939 to advise absent heirs, whose addresses are known, of the opening of succession (*supra, id.*).

See also Volume I, Chapter 17, IV, 9.

432. In the absence of heirs to property requiring to be managed (enterprise, buildings, etc.), the notarial office shall appoint a curator over such estate at the suggestion of the government agency having charge of similar enterprises or property (as amended February 10, 1930, R.S.F.S.R. Laws, text 93).

Comment

See Volume I, Chapter 17, IV, 11.

433. In the event of nonappearance of heirs within a period of six months from the date of opening of the succession, or where the heirs refuse to take the estate (except in cases provided for in Section 424) or the testator has deprived one or several heirs of succession rights, the share of such heirs shall devolve upon other heirs by operation of law and shall be distributed among them in accordance with the provisions of Section 420, unless the testator has stated in his will that he bequeaths all his property to the beneficiaries therein named.

In case all heirs fail to appear within the specified period of time, refuse to take the estate, or are deprived of the right of succession by the testator, the estate shall be deemed in escheat and shall pass to the ownership of the State (as amended June 12, 1945, Vedomosti 1945, No. 38).

Comment

(1) Prior to June 12, 1945, this section provided as follows:

433. In the event of nonappearance of heirs within a period of six months from the date of opening of the succession, or where the heirs refuse the inheritance (except in cases provided for in Section 424), the property shall be deemed in escheat and shall pass, depending on its character, to the disposition of the corresponding organs of the State or to the organizations enumerated in paragraph 2 of Section 418 (as amended July 20, 1930, R.S.F.S.R. Laws, text 441).

Note: The enumeration of property which may be transferred to the disposition of organizations enumerated in paragraph 2 of Section 418 shall be established by the People's Commissariat for Justice, jointly with the People's Commissariat for Finance of the R.S.F.S.R., in co-ordination with other departments concerned (as amended April 6, 1928, R.S.F.S.R. Laws, text 355).

(2) The term "opening of succession" is explained in Volume I, Chapter 17, IV, 8.

(3) The running of the periods of time specified in Sections 430 and 433 of the Civil Code was suspended in cases of war emergency by the following Ruling of the U.S.S.R. Supreme Court of September 15, 1942:

In time of war, persons called to the colors of the Red Army and Navy, as well as persons residing in localities temporarily occupied by the enemy or those evacuated in view of the war emergency, are actually unable to announce their acceptance of succession within the six months' period established by Section 430 of the Civil Code. . . . Likewise, the heirs upon whom the succession devolves who are members of the Red Army and Navy, or who reside in territory temporarily occupied by the enemy, or who are evacuated because of the war emergency, may not always be able, in view of the war emergency, to appear to accept the succession within the six months' period established by Section 433 of the Civil Code . . . after the expiration of which period, in case of nonappearance of the heirs, the estate is deemed in escheat.

In view of the foregoing, the Plenary Session of the U.S.S.R. Supreme Court has ruled that the following instructions be issued to the courts:

1. If the heirs cannot appear for acceptance of the succession within the periods of time provided for in Sections 430 and 433 of the Civil Code . . . because of the above-mentioned emergency, the running of these periods of time shall be suspended under Section 48 of the Civil Code until the emergency causing the suspension of the period for acceptance of the inheritance ceases.

2. The suspension of the running of the period of time for acceptance of succession by heirs mentioned in paragraph 1 does not deprive the heirs who are present at the place of the opening of the succession of their right to take over the management of the estate and obtain from a notarial office, according to the procedure established by law, a certificate attesting their succession rights, but only within the limits of their proper shares in the estate, provided the shares of the heirs with regard to whom the running of the period is suspended are previously separated and measures for protection of the shares of the absent heirs are taken.

3. In issuing certificates attesting the succession rights of heirs who are present at the place of opening of the succession, the notarial office must ascertain whether or not there are any heirs of the decedent in the ranks of the Red Army and Navy, or among the residents of areas temporarily occupied by the enemy, or among those evacuated by reason of war emergency; where it appears that there are such heirs, it is the duty of the notarial office to take measures to protect the shares of the absent heirs, if such measures have not yet been taken under Section 431 of the Civil Code. . . .[130]

(4) Rules of Transfer to the State of Estates of December 28, 1943 [131] (as amended March 7, 1946)[132]

I. General Provisions

1. The estate shall pass to the State in the following instances (R.S.F.S.R. Civil Code, Section 433, paragraph 2):

(a) If the estate escheats by reason of all the heirs failing to accept it, i.e., the heirs present at the place of opening of the succession have renounced the inheritance within three months from the date when the succession became open (Civil Code, Section 429), or the heirs absent from the place of opening of succession have failed to appear for acceptance of the estate within six months from the date when the succession became open (Civil Code, Section 433, paragraph 1);

(b) If the estate escheats because there are neither heirs by operation of law nor testamentary beneficiaries (Civil Code, Sections 418, 422);

(c) If in his will the testator has deprived of succession rights all his heirs by operation of law (Civil Code, Section 418) (as amended March 7, 1946, R.S.F.S.R. Laws, 1946, text 16).

Note: In instances provided for in the present section, estates left within the confines of the R.S.F.S.R. by deceased aliens shall also pass to the State unless another method of devolution is provided for by an agreement between the U.S.S.R. and the foreign country concerned.

The question of passing to the State of such property shall be decided in each case by the R.S.F.S.R. Ministry of Finance,

[130] U.S.S.R. Supreme Court, Plenary Session, Resolution of September 15, 1942, No. 15/M/16/Y; Civil Code (1943) 230.

[131] R.S.F.S.R. Laws 1944, text 21.

[132] *Id.* 1946, text 16.

in agreement with the R.S.F.S.R. Ministry of Foreign Affairs (as amended *id.*).

2. In instances where a property belonging to a minor has been jointly used by him and the other members of his family, such property shall not pass upon the death of the minor to the State but shall become the property of such members of his family.

3. The estate shall pass to the State on the ground of a certificate issued by a notarial office after the expiration of six months from the date of opening of the succession.

4. The right of the State to the estate which has passed to it shall be deemed originated on the date of opening of the succession.

5. The following shall be considered the place of opening of the succession:

(a) The place of the last permanent domicile of the decedent, i.e., the place where the decedent had his permanent or principal residence by reason of employment, permanent occupation, or location of his property (Civil Code, Section 11);

(b) If the domicile of the decedent cannot be established, then the place where his estate is located;

(c) The succession to a person who has died outside the R.S.F.S.R. and has had no domicile within the R.S.F.S.R. shall be deemed opened at the place where his estate is located within the R.S.F.S.R.

6. The time of opening of the succession shall be deemed the date of the death of the decedent or the date when an absentee is declared dead (Civil Code, Section 12).

II. Ascertainment and Recording of the Estates in Escheat [Sections 7–16 describe the procedure in this matter.]

III. Composition of the Estate in Escheat

17. The estate shall be in escheat as comprising all the assets of the decedent as well as all property (including sums of money) due him from third parties (as amended March 7, 1946, R.S.F.S.R. Laws 1946, text 16).

18. [Provides for payment from the estate of medical and funeral expenses as well as debts of the decedent certified by a court judgment or notarial clause levying execution.]

IV. Separation of the Portion in Escheat from Property which has been in Joint Ownership of the Decedent and Other Persons

19. If only a portion of a property must be transferred to the State by reason of escheat, the transfer shall be effected in one of the following manners:

(a) By means of redemption by the surviving joint owners (holders of joint property) of the portion which constitutes the share of the State;

(b) By means of partition of the property in kind between the State and the surviving joint owners, if such partition is feasible;

(c) By means of sale of the property with the subsequent distribution of the proceeds between the State and the surviving joint owners in proportion to their shares;

(d) In the presence of especially valuable property, by means of redemption by the State, with the permission of the R.S.F.S.R. Council of Ministers, of the portion due the surviving joint owners (as amended March 7, 1946, R.S.F.S.R. Laws 1946, text 16).

20. The transfer to the State of a part of the estate shall be effected:

(a) By an agreement between the local tax authorities and the joint owners concerning the partition of the estate laid down in a formal act of partition;

(b) By the decision of the people's court partitioning the estate in instances where no agreement on this matter was reached between the parties (as amended March 7, 1946, R.S.F.S.R. Laws 1946, text 16).

434. Heirs who accept the inheritance and State organizations and organs acquiring an estate by escheat are liable for debts burdening the estate only within the limits of the actual value of the estate (as amended April 6, 1928, R.S.F.S.R. Laws, text 355).

Note: Creditors of the deceased must file their claims within six months from the date of opening of the succession, under penalty of loss of right of claim (as amended July 20, 1930, R.S.F.S.R. Laws, text 441).

435. Persons who inherit by operation of law or under a will may request that the local notarial office issue

to them a certificate attesting their right to the inheritance (as amended January 16, 1928, R.S.F.S.R. Laws, text 91).

Comment

Such a certificate is issued to the heirs after the expiration of six months from the date of opening of the succession. Prior to the expiration of this period, such certificate may be issued only if all heirs and beneficiaries are present. The heirs must present for this purpose all documentary evidence of the fact of death and of relationship to the deceased, or the will.[133] A governmental fee is charged for the issuance of such certificate, amounting to from 10 to 100 rubles for estates of a value of not more than 5,000 rubles, 5 per cent of the value of the estate, if the estate amounts to from 5,000 to 10,000 rubles, and 10 per cent of the value if the estate is valued at 10,000 or more rubles.[134]

The procedure for issuing such certificate is regulated by the Instruction of the R.S.F.S.R. Commissariat for Justice for Notarial Offices of November 17, 1939, Sections 109 *et seq.*

436. Depositors who have deposited money or securities with State savings banks or have deposited money for a term, on call, or on straight current account with the U.S.S.R. State Bank and the U.S.S.R. State Bank for Foreign Trade, shall be authorized to indicate the person or persons to whom the deposit shall be given in case the depositor dies. Such indication must be communicated to the bank in writing. Individual citizens, even if they are not the heirs of the depositor, as well as legal entities, may be authorized to receive such deposits. This rule also covers the disposal of the bonds of State loans, of loans guaranteed by the government,

[133] Instruction of November 17, 1939 by the R.S.F.S.R. Commissar for Justice Concerning Notarial Offices, Sections 115–124.

[134] U.S.S.R. Laws 1942, text 71. See *infra* No. 49.

and of the lottery loan of the Moscow Provincial Executive Committee, deposited with the above-mentioned and other banks of the Soviet Union.

The deposits mentioned above shall not belong to the estate, and the rules of the present chapter stated in the preceding sections shall not apply to such deposits. For such persons as shall receive said deposits and who are heirs of the depositor, these deposits shall not be accounted for in the determination of the size of their shares in the estate.

In case the depositor did not make such an announcement *causa mortis,* the deposits pass to the heirs according to the general rules established in the present chapter (as amended April 1, 1935, R.S.F.S.R. Laws, text 111).

Comment

This section enacted in 1935 is discussed in Volume I, Chapter 17, IV, 4.

The Plenary Session of the U.S.S.R. Supreme Court decided several problems of succession rights affected by the inheritance reform of 1945 in its rulings of January 1, 1946, No. 1/2/y and of June 20, 1947, No. 9/4/y. See Civil Code (1948) 220–224.

PART TWO

MARRIAGE, FAMILY, AND GUARDIANSHIP

3

Code of Laws on Marriage, Family, and Guardianship

Code of Laws on Marriage, Family, and Guardianship, of the R.S.F.S.R. of November 19, 1926,[1] in effect since January 1, 1927, with all amendments up to July 1, 1947.[2]

Part One. Marriage

Chapter I. General Provisions

1. Registration of marriage is established not only in the State and public interest, but also for the purpose of protecting the personal and property rights and interests of spouses and children.

Only a registered marriage creates the rights and obligations of spouses provided for in the present Code (as amended April 16, 1945, Vedomosti 1945, No. 26).

Note: Persons living in *de facto* marital relations prior to the Edict of the U.S.S.R. Supreme Soviet of July 8, 1944, Concerning Increase of Governmental Aid to Pregnant Women, Mothers With Many Children, and Mothers Without Husbands, Etc., may legalize their relations by registration of their marriage with indication of the period of time that they have actually lived

[1] R.S.F.S.R. Laws 1926, text 612.

[2] Domestic relations under soviet law are discussed in Vol. I, Chapter 4, p. 111 *et seq.* Translation collated with official text of 1947 edition.

together. If the *de facto* marital relations cannot be registered because one party has died or is missing in action, the other party may file with the people's court a petition to declare him or her to be the spouse of the person who is dead or missing in action under the hitherto existing legislation (Sections 11 and 12 of the Code of Laws on Marriage, Family, and Guardianship) (as amended April 16, 1945, Vedomosti 1945, No. 26, 4).

Comment

Prior to July 8, 1944, *de facto* marriage duly proved had the legal effect of registered marriage. See Volume I, Chapter 4, p. 114 *et seq.* See also *supra,* No. 2, comment 2 to Section 418 of the Civil Code.

2. Registration of a marriage at a Civil Registry Office shall furnish conclusive evidence of the existence of the state of matrimony. Documents attesting the fact of celebration of marriage according to religious rites shall have no legal effect.

Note: Marriages which were celebrated according to religious rites prior to December 20, 1917, or which were celebrated in localities occupied by the enemy prior to the establishment of Civil Registry Offices, shall have the same effect as registered marriages.

3. [Repealed April 16, 1945, Vedomosti 1945, No. 26.][3]

CHAPTER II. CONDITIONS GOVERNING THE REGISTRATION OF MARRIAGES

4. The following shall be required for registration of a marriage: (a) mutual consent to registration of the

[3] See Vol. I, Chapter 4, p. 114.

marriage must be given; (b) both parties must be of marriageable age; and (c) the documents specified in Section 132 of the present Code must be produced.

5. Marriageable age is fixed at eighteen years.

Note: The presidia of the central executive committees of autonomous republics, the executive committees of autonomous regions, the executive committees of circuits, cities, and districts, in exceptional cases upon petition, may reduce the marriageable age for women, but not more than one year (as amended April 6, 1928, R.S.F.S.R. Laws, text 355; February 28, 1930, *id.*, text 146).

Comment

Marriageable age is not uniformly regulated in the Soviet Union. It is eighteen years not only in the R.S.F.S.R. but also in the Byelorussian, Latvian, Lithuanian, Estonian, Karelian, and Kazak republics. In all these republics, the local administrative authorities may reduce the marriageable age for a woman in a given case to seventeen years. Marriageable age is eighteen years for men and sixteen for women in the Ukrainian, Moldavian, Uzbek, Turcoman, Tadjik, Georgian, Armenian, and Azerbaijan republics.[4] In the Ukrainian and Moldavian republics, a marriage between persons who are six months under the required age may be registered in rural localities.[5] Marriage with a person under age entails imprisonment for from two to five years, depending upon the republic in which it was entered into.[6]

6. No marriage may be registered: (a) between persons of whom one at least is still bound by a marriage previously registered; (b) between persons of whom

[4] 2 Civil Law Textbook (1938) 424.
[5] Ukrainian Code, Section 109, Note.
[6] See Vol. I, Chapter 4, p. 117.

one at least, in the manner prescribed by law, has been adjudged feeble-minded or insane; (c) between relatives in the direct line of descent; nor between brothers and sisters, whether of the full blood or the half blood (as amended April 16, 1945, Vedomosti 1945, No. 26).

Comment

Prior to July 8, 1944, a previous *de facto* marriage was an impediment to registration of a marriage. See Volume I, Chapter 4, I, p. 116.

6[1]. Marriages between aliens and soviet nationals shall be prohibited (enacted April 2, 1947, Vedomosti 1947, No. 13).

CHAPTER III. RIGHTS AND DUTIES OF HUSBAND AND WIFE

7. On registering a marriage, the spouses may declare their desire to use a common surname, that either of the husband or of the wife, or to retain their antenuptial surnames.

8. [Repealed April 2, 1947, Vedomosti 1947, No. 13.]

Comment

(1) The repealed section reads:

Upon the registration of a marriage between a person who is a national of the R.S.F.S.R.[7] and a person who is a foreign national, each party shall retain his or her respective nationality.

The repeal was caused by the prohibition of marriages between soviet nationals and aliens, enacted on February 15, 1947.

(2) When marriages of soviet nationals and aliens were allowed, the nationality of husband and wife was not affected by marriage under the Law on Nationality of August 19, 1938,

[7] Since 1931 there has been no R.S.F.S.R. nationality, only U.S.S.R. nationality. See Vol. I, Chapter 10, p. 354 *et seq.* and Vol. II, No. 4.

Section 5. See Volume I, pp. 116 and 357; Volume II, No. 4.

9. Both husband and wife shall enjoy full liberty in the choice of occupation or profession. The manner in which their joint household is conducted shall be determined by mutual agreement of the spouses. A change of residence by either husband or wife shall not oblige the other spouse to follow.

10. Property which belonged to either the husband or the wife prior to their marriage shall remain the separate property of each of them. Property earned by the husband and wife during the continuance of their marriage shall be regarded as their common property. The share belonging to either husband or wife shall, in case of dispute, be determined by the court.

Note: The rights of either husband or wife with respect to land tenure and property used in common by them as members of a peasant household are defined by Sections 66 and 67 of the Land Code and by the enactments published to supplement the same.

Comment

Community property of husband and wife common to Western Europe was unknown to the imperial law. There was complete separation of property with no right of the husband to the property of the wife or to its management.[8]

The first soviet Code on Marriage, Etc., of 1918 did not provide for community property of spouses, their property remaining separate (Section 105). Community property was first introduced by the R.S.F.S.R. Code of 1926. The Armenian and Azerbaijan Codes follow the text of Section 10 of the R.S.F.S.R. Code, the Ukrainian (Section 125), Byelorussian (Section 21), Georgian (Section 17), and the Uzbek

[8] Civil Laws (1914 ed.), Sections 109–118, Vol. X, Svod Zakonov, Part 1. Some very limited exceptions regarding dowry were made for two Ukrainian provinces (Poltava and Chernigov) where up to 1842 the Lithuanian Code was in force.

(Section 9) define more precisely property earned by husband and wife during the marriage as earned by "common labor of the spouses." The Ukrainian, Byelorussian and Georgian Codes expressly provide for equal shares of both spouses in the common property.

The novelty of the institution of marital community property explains why many pertinent problems, especially the extent of limitations imposed upon one spouse in disposition of property during the marriage, have not yet been settled. Only a few rules are available in this respect. Thus, under the Instruction for Notarial Offices of November 17, 1939,[9] Section 31, consent of the marital partner is required for alienation by a married person of a house acquired by him or her after the consummation of the marriage, unless the house was inherited. However, no such consent is required for alienation of building tenancy or for mortgage. Several decisions of the U.S.S.R. and the R.S.F.S.R. Supreme Courts have held that articles of personal use of each spouse, such as clothes and articles needed for the exercise of a profession or trade, unless they are articles of luxury or of special value, do not belong to the marital community. Articles of personal use remain separate property.[10] According to a statute of November 3, 1934, sums adjudicated from one of the spouses in compensation for embezzlement, breach of trust, larceny, and similar crimes committed by the spouse against government, co-operative or public organizations may be collected from the marital community property, provided, however, such property was augmented by the crime committed and not more than two years have elapsed

[9] Instruction of the R.S.F.S.R. People's Commissar for Justice of November 17, 1939, Concerning Notarial Offices, Section 55, Notarial Offices (in Russian 1942) 26.

[10] R.S.F.S.R. Supreme Court, Civil Appellate Division, Judicial Practice (in Russian 1928) No. 23; (1930) *id.* No. 9, abstract in Code of Laws on Marriage, Family, and Guardianship (in Russian 1938) 43; U.S.S.R. Supreme Court, Civil Appellate Division, Decision of December 23, 1939, No. 837; December 10, 1939, No. 89; February 4, 1940, No. 118, digested in Reikhel, Marital Community Property of Spouses in the Soviet Law (in Russian 1940) Soviet State No. 8/9, 114, 115.

between the time when the crime was committed and the prosecution was instituted.[11] For debts made either jointly or individually by either, the spouses are liable with their community property.[12] See also Volume I, Chapter 4, p. 132 *et seq.* and Chapter 21, p. 775 *et seq.*

11. [Repealed April 16, 1945, Vedomosti 1945, No. 26.][13]

12. [Repealed April 16, 1945, *id.*][14]

13. The husband and wife may enter with each other into any contractual relations permitted by law regarding property. Agreements between husband and wife intended to restrict the property rights of the wife or of the husband shall be invalid and shall not be binding on third parties nor on the husband or wife, who may at any time refuse to carry them out.

14. If a spouse is unable to work and destitute, he or she is entitled to receive alimony from the other spouse, if the court finds that the latter is able to support the former (as amended April 16, 1945, Vedomosti No. 26).

Comment

In 1945 the following clause was omitted:

A husband or wife in need of support but able to work shall be likewise entitled to alimony during the period of his or her unemployment.

15. The right of a spouse who is unable to work and destitute to receive alimony from the other spouse continues even after the dissolution of the marriage, until there has been a change in the conditions which, according to Section 14 of the present Code, serve as a basis for the receipt of alimony, but not in excess of one year

[11] R.S.F.S.R. Laws 1934, text 243.

[12] R.S.F.S.R. Supreme Court Decision, (1927) Judicial Practice No. 12; Code of Laws on Marriage, Etc. (1938) 43.

[13] See Vol. I, Chapter 4, p. 115.

[14] *Ibid.*

from the time of dissolution of the marriage (as amended April 16, 1926, Vedomosti 1945, No. 26).

Comment

(1) In 1945 the following clause was omitted:

The amount of alimony to be paid to a destitute unemployed spouse in case of dissolution of the marriage shall be fixed by the court for a period not exceeding six months and shall not exceed the corresponding amount of social insurance relief.

(2) For provisions of the codes of other soviet republics, see Volume I, Chapter 4, p. 113, note 10.

16. The amount of support to a needy disabled spouse shall be determined by the court in a regular lawsuit (as amended April 16, 1945, Vedomosti 1945, No. 26).

Chapter IV. Dissolution of Marriage

17. A marriage shall terminate whenever one of the spouses dies or is declared dead by a notary public or court (as amended May 27, 1929, R.S.F.S.R. Laws, text 422).

Comment

Concerning declaration of death, see Section 12 of the Civil Code.

18. During the lifetime of both spouses, the marriage may be dissolved only by means of a divorce granted by the court upon petition of one or both spouses. The divorce shall be heard in public. On request of the parties, the divorce case, by order of the court, may be heard if necessary in a closed session (as amended April 16, 1945, Vedomosti 1945, No. 26).[15]

19. The following requirements must be satisfied for the institution of divorce proceedings:

[15] See Vol. I, Chapter 4, p. 122 *et seq.*

(a) A petition for dissolution of the marriage shall be filed with the people's court and shall indicate the reasons for divorce, as well as the surname, the first name, the patronymic (*otchestvo*),[16] the year of birth, and the residence of the other spouse; upon the filing of the petition for divorce, a fee of 100 rubles shall be collected;

(b) The spouse must be summoned to court in order to be acquainted with the petition filed by the other spouse and for preliminary clarification of the reasons for divorce, as well as in order to ascertain the witnesses to be summoned for the hearing;

(c) Publication must be made in the local newspaper concerning the institution of judicial proceedings for divorce, the cost of which publication shall be borne by the petitioner (as amended, *id.*).

Comment

Divorce proceedings are regulated in more detail by the Directive of the People's Commissar for Justice, approved by the Council of People's Commissars on November 27, 1944, No. 1622. See Code of Laws on Marriage, Etc. (1947) 81.

20. It is the duty of the people's judge to ascertain the reasons for filing of the petition for dissolution of the marriage and to take steps to reconcile the spouses, for which purpose both spouses in any event and the witnesses if necessary must be summoned.

If no reconciliation is effected in the people's court, the plaintiff may file a petition for dissolution of the marriage in the next higher court (as amended, *id.*).

[16] It is customary to use in Russian not only the first name and surname but also a name derived from the first name of the father. It consists of his first name and an ending *ovich* or *ich* for the son and *ovna* for the daughter, being equivalent to son of John or daughter of John. This type of name is called *otchestvo*.

21. The regional, provincial, circuit, or city courts and the supreme courts of the autonomous republics shall be competent to decree dissolution of the marriage (as amended, *id.*).

22. In case the regional, provincial, circuit, or city court, or the supreme court of an autonomous republic deems it necessary to dissolve the marriage, the court shall:

(a) Determine who of the children shall remain with one or the other spouse, and which of the parents shall bear the expense of maintenance of the children, and to what extent;

(b) Determine the method of partition of the property between the divorced spouses, in kind or indicating the share of each;

(c) Grant to each spouse, if he so desires, his prenuptial surname;

(d) Determine the sum to be paid by one or both spouses upon issuance of the certificate of divorce (as amended, *id.*).

23–24. [Repealed April 16, 1945, Vedomosti 1945, No. 26.][17]

Part Two. Mutual Relations of Children and Parents and Other Persons Related by Blood

Chapter I. General Provisions

25. Entry of birth in the Civil Registry Record shall be proof of the origin of the child as of the parents indicated in the entry and may be contested only in a

[17] These sections dealt with the maintenance and support of children born out of wedlock. See Vol. I, Chapter 4, p. 121.

judicial proceeding (as amended April 16, 1945, Vedomosti No. 26).

26. The father and mother shall be entered in the record book of births.

27. Whenever the Civil Registry Offices enter the birth of a child of a mother who has not entered into registered marriage, the child shall be registered under the name of the mother and the patronymic [18] indicated by the mother shall be given to him (as amended April 16, 1945, Vedomosti No. 26).[19]

28. In the event that the mother enters into registered marriage with the person by whom she has given birth to the child, and this person acknowledges that he is the father of the child, the child shall be considered in all respects on an equal footing with children born in a registered marriage; the child shall use the patronymic [20] derived from the name of the father and, by consent of both parents, the last name of the father (as amended April 16, 1945, Vedomosti No. 26).

29. The mother shall have no right to sue in court a person with whom she has not contracted a registered marriage for establishment of fatherhood and payment of alimony for support and maintenance of a child by such person (as amended April 16, 1945, Vedomosti 1945, No. 26).[21]

Note: The claim of the mother of a child born before the Edict of the Presidium of the U.S.S.R. Supreme Soviet of July 8, 1944, by a person with whom she has not entered into a registered marriage, [filed against such person] for alimony for support and maintenance

[18] See note 16, *supra*.
[19] See Vol. I, Chapter 4, p. 121.
[20] See note 16, *supra*.
[21] See Vol. I, Chapter 4, p. 121.

of such child, shall be entertained by the courts provided the plaintiff is entered as the father of the child in the Civil Status Record (as enacted April 16, 1945, Vedomosti 1945, No. 26).

30. Children born before the enactment of the Edict of the Presidium of the U.S.S.R. Supreme Soviet of July 8, 1944, of parents who have not entered into a registered marriage, shall enjoy equally with children born in a registered marriage succession rights to their father (who has been duly entered in the Civil Status Record) and the right to pensions and government aid established for military servicemen (as amended April 16, 1945, Vedomosti 1945, No. 26).

31–32. [Repealed April 16, 1945, Vedomosti 1945, No. 26.]

Comment

For the text of repealed Section 32, see Volume I, p. 129, note 77.

CHAPTER II. RIGHTS AND DUTIES OF RELATIVES

33. Parental rights must be exercised exclusively in the interests of the children, and, in case they are improperly exercised, the court shall have the power to deprive the parents of their rights.

Comment

This section states the principle announced in the following decision of the imperial Supreme Court:

The lawgiver has established the paternal power not in the interest of parents solely but primarily in the interests of the children (Ruling Senate, Civil Division, Decision No. 46 of 1900).

34. If the parents have a common surname, that surname shall be given also to the children. If the parents

do not use a common surname, the surname of the children shall be determined by agreement between the parents. In the absence of agreement between the parents on the question of the surname of their children, the surname of the children shall be decided upon by the guardianship and curatorship agency.

In case of dissolution of the marriage, the children retain the surname given them at birth.

In the event that the parent who obtained the custody of the child after the divorce wishes to give the child his name, the guardianship and curatorship agency shall decide this matter in the interest of the child (as amended May 10, 1937, R.S.F.S.R. Laws, text 40; and April 16, 1945, Vedomosti 1945, No. 26).

35. If the nationality of the parents is not the same, but at least one of them at the time of the birth of the child was a national of the R.S.F.S.R., and at least one of the parents at the time of the birth of the child was living on U.S.S.R. territory, the child shall be deemed a national of the R.S.F.S.R.[22] If one of the parents was a national of the R.S.F.S.R. at the time of the child's birth, but at that time both parents lived outside the territory of the U.S.S.R., the nationality of the child shall be determined by agreement of the parents.

36. A change in the nationality of either husband or wife, where both are nationals of the R.S.F.S.R. and living on U.S.S.R. territory, shall not affect the nationality of their children. The nationality of children in cases where one of the parents, who is a national of the R.S.F.S.R.[23] but lives outside the territory of the

[22] Under the Law on Nationality of 1938, there is one single federal U.S.S.R. nationality. See Vol. I, Chapter 10, p. 354 *et seq.;* also Vol. II, No. 4.

[23] See note 22, *supra.*

U.S.S.R., loses his R.S.F.S.R. nationality, shall be determined by agreement of the parents.

37. Agreement between the parents that their children shall adhere to any particular religion shall have no legal effect.

38. All steps affecting children shall be taken by both parents jointly.

39. In cases where a difference of opinion arises between the parents, the point of dispute shall be decided by the guardianship and curatorship agency with the participation of the parents.

40. If the parents live apart, the residence of their minor children shall be determined by agreement of the parents; in the absence of such agreement between the parents, this question shall be settled in ordinary course by a lawsuit in a people's court.

Comment

When deciding the question with which of the parents the child should remain, the court shall be guided exclusively by the interests of the child.[24]

In safeguarding the interests of the child when deciding the question of the parent who is to have custody, the court must take into consideration not only the financial position of the contending parties, but also where the child can obtain the proper education and the child's sympathies.[25]

41. Upon the parents shall rest the duty of caring for their minor children, in particular, of raising them and preparing them for socially useful activity.

[24] R.S.F.S.R. Supreme Court, Civil Appellate Division, Decision in Case No. 31238, (1929) Judicial Practice No. 18, 6; also Resolution of the Union-wide Conference on Civil Cases, Code of Laws on Marriage, Etc. (1937) 57.

[25] R.S.F.S.R. Supreme Court, Civil Appellate Division, Decision of February 6, 1930, (1930) Judicial Practice No. 7, 13; U.S.S.R. Supreme Court, Civil Appellate Division, Rulings of 1939 and 1940 abstracted in Code of Laws on Marriage, Etc. (1944) 68, 69, *id.* (1947) 87, 88.

42. Parents must provide maintenance for their minor children, as well as for children who are destitute and unable to work.

Comment

Failure on the part of the parents to provide any support for their young children (under sixteen) entails punishment under Section 158 of the Criminal Code.

Malicious nonpayment of maintenance for children is punishable under Section 158 of the Criminal Code by imprisonment up to two years.

42 [1]. The duty of providing for minor children and for those who are destitute and unable to work also extends to the stepfather and stepmother; (a) if the parents of these children are dead; (b) if the parents do not possess sufficient means to provide for the children.

These duties are imposed on the stepfather or stepmother, provided the child was dependent upon or was raised by either one of them prior to the death of the father or of the mother, or prior to the occurrence of the contingency set forth in clause (b) of the present section.

Stepsons and stepdaughters must provide for a stepfather or stepmother who is destitute and unable to work if such stepchildren have been dependent upon such stepparents for not less than ten years (as amended November 29, 1928, R.S.F.S.R. Laws, text 233).

42 [2]. Whoever has received any inheritance from a person who has been supporting children, or from a person who was liable under the law to support them, must support the minor children, or those who are destitute and unable to work, to the extent of the value of the property inherited.

In the event that the inheritance is shared by several

persons, the duty provided for in the present section shall bind them jointly and severally in proportion to the value of the shares inherited by each of them (enacted November 29, 1928, R.S.F.S.R. Laws 1929, text 233).

Note: The obligation to support children mentioned in the present section shall arise: (a) if the parents of these children are dead; (b) if the parents do not have sufficient means to support the children.

42[3]. Persons who have undertaken permanently to rear children and to support them are, in case of their refusal to do so, obliged to pay alimony to minor children or to those destitute and unable to work: (a) if the parents of these children are dead; or (b) if the parents do not possess sufficient means to support the children.

The duty set forth in the present section shall not extend to guardians or curators nor to persons who have undertaken to rear a child under a contract made with the Department for Public Education, the Department of Public Health, or some other government agency (as enacted *id.*).

43. The protection of the interests of minors, whether pertaining to their persons or to their property, is incumbent upon the parents, who shall represent the children in courts and other institutions.

44. The parents may sue in court for the return of their children from any person detaining the children without warrant of law and not in pursuance of any court decree; in such case, the court is not bound by the formal rights of the parents but shall decide each case on the merits with due regard only for the welfare of the children.

45. Parents are granted the right to entrust their children to other persons to be reared and educated. They

also enjoy the right, with the consent of the children, to make contracts of apprenticeship and of employment for wages in the cases and in the manner permitted by the labor legislation in force at the time.

Children may not be entrusted for the purpose of being reared and educated to persons who, under Section 77 of the present Code, may not act as guardians and curators (as amended April 10, 1930, R.S.F.S.R. Laws, text 241).

46. In the event that the parents fail to fulfill their duties or unlawfully exercise their rights with respect to their children, or treat their children cruelly, the court shall order the children to be taken from the parents and turned over to the care of a guardianship and curatorship agency and may adjudicate both parents liable for support of the child.

Note: The guardianship and curatorship agencies may, pending the decision of the court, order the removal of children from their parents or other persons entrusted with their custody, if the continuance of their stay with such persons endangers them.

47. When the court issues a decree depriving parents of their parental rights, the guardianship and curatorship agency shall allow parents to see their children, except in cases where such visits may prove injurious to the children.

48. The duty to support children rests with both parents; the extent of their contributions towards their support shall depend upon their respective means.

49. Children shall support their parents if they are destitute and unable to work.

50. When parents are unwilling to support their children or children their parents, in the cases provided for

in Sections 42 and 49 of the present Code, the persons entitled to support may sue for the same in court.

In all instances of suits filed against parents for maintenance and support of children (alimony) in which the marriage has been registered or the defendant is entered as parent in the Civil Status Record, the court shall issue, upon the filing of the complaint, an order determining the extent to which the defendant *lite pendente* must carry the cost of maintenance and support of children (as amended May 10, 1937, R.S.F.S.R. Laws, text 40).

Note: In case of any change in the financial position of the parents or children, the court decree may be modified by the court upon the institution of an ordinary lawsuit.

51. Deprivation of parental rights shall not relieve parents of the duty to support their children.

51*a*. If alimony for the maintenance of one child is awarded, one quarter of the defendant's pay may be attached; for the maintenance of two children, one third, and for the maintenance of three or more children, one half of the defendant's pay may be attached.

Where alimony is awarded against members of collective farms, it is computed in labor days according to the same ratio.

If the mother is also a collective farmer working at the same collective farm as the defendant, the management of the collective farm shall credit directly to the account of the mother the number of labor days earned by the father and due to her (according to the number of children). If the mother works at another collective farm, the transfer to her account of the labor days earned by the father shall be made by the management of the collective farm where he works, on the occasion

of the final computation of the credits in labor days [at the end of each year] (enacted May 10, 1937, R.S.F.S.R. Laws, text 40).

52. Persons who are jointly liable to contribute support shall be liable in equal shares, except where the court, in view of the unequal means of the persons liable to contribute or in view of the absence of one of them, or for some other cogent reason, finds it necessary to fix other ratios for the discharge of this duty.

53. The rights of parents and children with regard to the property of a peasant household are determined by the relevant sections of the Land Code.[26]

54. Destitute minor brothers and sisters are entitled to obtain support from their brothers and sisters who possess sufficient means, if the aforesaid brothers and sisters are unable to obtain alimony from their parents, either because there are no parents or because the parents are impecunious.

55. A grandfather or grandmother who is destitute and unable to work shall be entitled to obtain support from his grandchildren who possess sufficient means, if such grandparent cannot obtain support from his spouse or his children. Likewise, destitute minor grandchildren or those unable to work shall be entitled to obtain support from their grandfather or grandmother who possesses sufficient means, if the grandchildren cannot obtain such support from their parents.

56. Children born of members of a peasant household shall be considered members of the household to which their father and mother belong.

Where parents belong to different peasant households, their children may be registered as members of one of

[26] See Vol. I, Chapter 17, V, 2 and Chapter 21, 3; also *infra* No. 31.

the households at the option of the parent with whom the children are living.

A dispute concerning registration of a child with one or another household shall be decided by the court, which shall be guided in this respect by the interests of the child (as amended April 16, 1945, Vedomosti 1945, No. 26).

Comment

See Volume I, Chapter 17, V, 2, and Chapter 21, 3.

56[1]. Children born of a member of a peasant household (Section 56) shall also retain, irrespective of their rights as members of the peasant household, the right to support from the personal means of the father or the personal means of the mother, in accordance with the general rules established in Sections 48 and 50 of the present Code (as amended January 25, 1930, R.S.F.S.R. Laws, text 53, and April 16, 1945, Vedomosti No. 26).

CHAPTER III. ADOPTION

57. Adoption shall be allowed only of minors and juveniles under age, and exclusively in the interests of the children.

Comment

(1) "Minors and juveniles under age" means under the age of eighteen. See Civil Code, Sections 7, 8, and 9 and comments.

(2) This entire chapter as well as Chapters I–III of Part Three, Guardianship and Curatorship, were indirectly amended by the R.S.F.S.R. Law on Patronage, Guardianship, and Adoption of Children Who Have Lost Their Parents (R.S.F.S.R. Laws 1943, text 24), Sections 13–22 dealing with adoption. Only the provisions different from those of the Code are

translated in the subsequent comments. Section 13 of the Law and Section 57 of the Code are identical.

58. Persons deprived of the right to act as guardians under Section 77 of the present Code shall have no right to adopt children.

Comment

R.S.F.S.R. Laws 1943, text 24:

18. Persons deprived by court decision of the right to vote, persons deprived of parental rights, persons who are mentally deranged or under age, and persons whose interests are opposed to those of the child chosen for adoption may not become parents by adoption.

59. Adoption shall be effected by resolution of a guardianship and curatorship agency and shall be registered in a regular procedure by the Civil Registry Office.

Note: Adoption of children of soviet nationals by foreign nationals (subjects) residing in U.S.S.R. territory shall be permitted, provided that the rules laid down in the present chapter are observed, and provided further that special permission is obtained in each individual case from the regional (provincial) executive committee (as amended September 3, 1928, R.S.F.S.R. Laws, text 375, and indirectly *id.* 1931, text 143).

Comment

(1) R.S.F.S.R. Laws 1943, text 24:

15. Adoption shall be effected by resolution of the executive committee of the city or district where the adopted person resides, upon the filing of a petition by the adopting parent with such executive committee. . . .

17. The adoption shall be granted if the condition of the family of the adopting parent is normal for rearing the child. . . .

20. An investigation of the social and living conditions of the adopted child and the prospective parent by adoption shall be conducted, if the child chosen for adoption is at least three

years old, by workers of the local office of education or by a social worker under the authority of such office, and if the child is under three years of age, by the agencies of the local public health service. A record of the results of the investigation shall be drawn up and signed by the person who has conducted the investigation.

(2) See also Nationality Law of 1938, *infra* No. 4; and Volume I, Chapter 10, p. 354 *et seq.*

60. [Replaced by the following provisions of the Edict of the U.S.S.R. Presidium of September 8, 1943: [27]

On the request of the parent by adoption, the adopted child may be given the parent's surname and a patronymic derived from his first name, and the parents by adoption may on their petition be recorded as the parents of the adopted child in the Civil Registry book of births.]

61. If the parents of the adopted child are living, or if the child is under guardianship or curatorship, the consent of the parents, if they have not been deprived of parental rights, or of the guardian or curator is required for validity of the adoption.

Comment

R.S.F.S.R. Laws 1943, text 24:

14. [Provides as Section 61 above.]

16. When the declaration of adoption of an orphan is filed with the district (city) executive committee, a document attesting the death of both parents or a certificate declaring them dead shall be required.

62. Where the parent by adoption is married, the consent of the other spouse shall be required.

63. Adoption of children above the age of ten without their consent shall not be permitted.

[27] Vedomosti 1943, No. 34. By the Edict of the R.S.F.S.R. Presidium of October 11, 1943, these provisions were substituted for Section 63.

Comment

(1) The Edict of September 8, 1943,[28] provides:

Adoption of children who have reached the age of ten years, and the giving to them of the surname and a patronymic of the father by adoption, as well as entry of the adopted parents as their parents in the [Civil Status] Record, without the consent of the adopted children, shall not be permitted.

(2) R.S.F.S.R. Laws 1943, text 24, Section 19, repeats the provisions of Section 63 of the Code and adds:

The consent should not be in the nature of the mere formal subscription of the adopted child.

64. Adopted children and their offspring shall have toward parents by adoption, and these shall have toward adopted children and their offspring, the same personal and property rights and duties as have the corresponding relatives by blood.

65. An adoption effected in the absence of or without the consent of the parents of the adopted child may be cancelled by the guardianship and curatorship agency on petition of the parents, if the child's return to them is in the interest of the child. For cancellation of the adoption of a minor over ten years of age, his personal consent shall be required.

Comment

R.S.F.S.R. Laws 1943, text 24, Section 21, contains identical provisions and states also that the decision of the agency in such matters must recite the reasons therefor.

66. Any person and any institution may bring a court action for cancellation of an adoption, if such is required in the interest of the adopted child.

Comment

R.S.F.S.R. Laws 1943, text 22, contains identical provisions but also requires that in such suits the joinder of the district

[28] *Ibid.*

(city) department of education or public health on the side of the child shall be mandatory.

67. If the adoption is cancelled, the court shall enter a decree taking the child from the adoptive parent and entrusting it to the guardianship and curatorship agency, and may impose upon the adoptive parent the duty of supporting the child.

Part Three. Guardianship and Curatorship

Chapter I. General Provisions on Guardianship and Curatorship

Comment

See comment 2 to Section 57.

68. Guardianship or curatorship shall be instituted to protect a person incapable of entering into legal transactions, his lawful rights and interests, as well as to safeguard his property in cases provided for by law.

Comment

(1) For the explanation of the phrase "persons incapable of entering into legal transactions," see Civil Code, Sections 7, 8, 9, and comments to these sections.

(2) In addition to guardianship and curatorship, the soviet law provides also for a particular form of trusteeship called "patronage." See comment 2 to Section 9 of the Civil Code.

69. Guardians shall be appointed for minors who have not reached the age of fourteen years and for persons duly declared feeble-minded or mentally deranged. Guardians also shall be appointed in cases provided by law over the property of absentees or dead persons. A guardian, in the name and interests of the ward, exercises the rights of and fulfills the obligations of the latter.

Comment

Law Concerning Guardianship and Patronage of Children Who Have Lost Their Parents, R.S.F.S.R. Laws 1943, text 24:

23. Guardianship shall be instituted for the upbringing of children, the protection of their rights and interests, as well as for the safeguarding of their property.

24. Every child who is not in the custody of his parents or a proper children's institution shall be placed under guardianship. In the event of the death of both parents, the institution of guardianship shall be mandatory; in particular cases, guardianship may be instituted although the parents of the child are alive:

(a) If the parents have been deprived by a court of their parental rights and the custody of their child, and if the child has been brought up in another family; in such cases, guardianship shall be instituted for the same period as that for which the parents are deprived of their parental rights;

(b) If the parents are not able to attend to the unbringing of their child for a considerable period of time (e.g., are in a hospital, in confinement, on the road for a long period of time, etc.);

(c) If the parents are feeble-minded and have been placed under guardianship or in an appropriate medical institution.

When appointing a guardian for children who have parents, the guardianship agency shall have an official document certifying that the parents are not able to attend to the upbringing of their child (the judgment of a court in a civil or criminal case, the certificate of a psychiatric hospital, etc.).

25. The upbringing under guardianship shall last until the child reaches the age of fourteen years. Upon reaching this age, a curatorship shall be established, which shall continue until majority is reached. . . .

41. In order to institute a guardianship over the property of a minor, the guardianship agency shall obtain from the notarial office a certificate attesting the right of the child to inherit the estate. . . .

49. Upon the minor's reaching the age of fourteen years, the guardianship shall be abolished.

In the event of special merits of the guardian, the guardianship agency shall confer a citation for his work.

The guardian's certificate shall be returned upon the abolition of guardianship.

Upon the abolition of guardianship, the guardianship agency shall examine the guardian's general account of his activities.

70. Curators shall be appointed over minors who are between the ages of fourteen and eighteen years; also over adults who by reason of their physical condition are incapable themselves of protecting their rights. A curator assists the person under his authority, in appropriate cases, in the exercise of his rights and the fulfillment of obligations, and protects such person as well against abuse by a third party.

Comment

(1) See Section 90, and *supra*, Section 25 of the Law of 1943 in the comment to Section 23.

(2) See comment to Section 9 of the Civil Code.

71. Parents, natural or by adoption, are deemed guardians and curators [of their minor children] without any special appointment.

72. The following shall function as guardianship and curatorship agencies: [presidia of] the regional and provincial executive committees, the circuit, district, county, and city executive committees and the village soviets.

The afore-mentioned guardianship and curatorship agencies shall proceed on the basis of the special Statute Concerning Guardianship and Curatorship Agencies (as amended September 26, 1927, R.S.F.S.R. Laws 1927, text 705; September 24, 1928, *id.* 1928, text 789).

Note: [The presidia of] the executive committees shall delegate the performance of functions specified in the present section to the corresponding departments of the executive committees, in particular, those functions regarding minors to the departments of education, those regarding the feeble-minded and mentally deranged to

the departments of health, and those regarding all others to the departments of social security.

In cities, [the presidia of] the city soviets shall delegate these functions to the city sections of the corresponding executive committees (as amended September 24, 1928, R.S.F.S.R. Laws, text 789).

Comment

(1) The words [the presidia of] have become obsolete because, under the present system, there are no presidia of the administrative subdivisions mentioned above. Mention of various other subdivisions now abolished has been omitted from the text. Counties now exist only in Latvia, Estonia, and Lithuania.

(2) R.S.F.S.R. Laws 1943, text 24:

27. Guardianship shall be instituted by decree of the district or city executive committee on the ground of the following documents:

(a) A copy of the birth certificate of the child or another document attesting his age, and documents attesting that the child cannot be raised by the parents;

(b) A declaration by the guardian giving his consent to undertake the duty of a guardian;

(c) A brief autobiography of the prospective guardian;

(d) Information regarding the place of residence of the guardian and the ward;

(e) A character reference of the prospective guardian from his place of work;

(f) A record of the investigation of the family.

28. The guardianship agency shall, prior to the appointment of a guardian, take the necessary steps for the protection of the minor's property, and make an inventory and appraisal of such property. The inventory of the property shall be made by the agents of the guardianship office in the presence of representatives of the community. Three copies of the inventory shall be made, of which two shall be kept on file and one handed over to the guardian.

If children placed for education in a children's home possess valuable property, it shall be deposited with a savings bank or a branch of the State Bank. Deposit receipts or savings deposit books shall be kept by the guardianship agency. The

report of such agency shall be placed in the record of the case of the child.

73. Supervision of the activities of the guardianship and curatorship agencies and direction of the same shall be exercised by the [presidia of the] regional or provincial executive committees, the decisions of which in matters of guardianship and curatorship shall be final.

Comment

Compare Section 94 and comment.

74. For the immediate exercise of guardianship or curatorship, the guardianship and curatorship agency shall appoint a guardian or curator from among the persons close to the ward, or from persons suggested by a public organization (trade-union, mutual society of farmers, etc.), or, if there are no such persons, from among any other persons.

Note: In rural localities, guardianship and curatorship shall be instituted by the village soviet, which shall also take an inventory of the property of persons under guardianship or curatorship, appoint guardians and curators, announce the institution of guardianships or curatorships, issue certificates to guardians, supervise the activities of guardians or curators, and check periodically the property of persons placed under guardianship or curatorship (as amended September 26, 1927, R.S.F.S.R. Laws, text 705).

Comment

R.S.F.S.R. Laws 1943, text 24:

30. Not only close relatives of the child but also persons who are not relatives may be appointed as guardians. The district and city departments of education shall appoint guardians on the petition of relatives or strangers who wish to undertake the duties of a guardian of children or upon notice by the managements of apartment houses, house owners or tenants,

civil status registry offices, marshals of the court, police, and other persons and institutions that report children who need guardians.

Guardianship agencies may also institute guardianships on their own initiative.

75. Guardianship or curatorship shall be instituted at the place of residence of the person under guardianship or curatorship, or at the place where the property over which guardianship is instituted is located.

Comment

R.S.F.S.R. Laws 1943, text 24:

29. Guardianship shall be instituted at the place of residence of the ward.

Should the ward possess property outside his place of residence, a separate guardianship shall be instituted over the property at the place where it is located: one guardian shall be appointed to take care of the person of the child and another, of his property. In the event of discord between the guardians, the questions under dispute shall be decided by the guardianship agency at the place of residence of the ward.

76. In selecting the guardian or curator, the personal qualities of the candidate, his ability to discharge the appertaining duties, the relationship between him and the prospective ward, and, whenever possible, the wishes of the ward shall be taken into consideration.

Comment

(1) R.S.F.S.R. Laws 1943, text 24, Section 31, carries the same provision except that the phrase "and, whenever possible, the wishes of the ward" is omitted.

(2) R.S.F.S.R. Laws 1943, text 24:

32. Upon the filing of each petition, the guardianship agency shall order an investigation with the collaboration of the community and shall take steps to protect the person and the property of the child who needs a guardian.

77. The following may not be appointed as guardians or curators:

(a) Persons deprived by the court of the right to vote (as amended April 10, 1930, R.S.F.S.R. Laws, text 246; indirectly, R.S.F.S.R. Constitution, Section 139);

(b) Persons deprived by the court of parental rights;

(c) Persons whose interests are opposed to those of the prospective ward, as well as persons who are on inimical terms with him; and

(d) Persons under age.

Note: The restrictions stated in subsections (a) and (d) of the present section shall not apply to parents, unless they are mentally infirm.

Comment

(1) The text of subsection (a) still reads, "persons deprived of the right to vote under Section 69 of the R.S.F.S.R. Constitution," although this constitution has been repealed. In translation, the text has been brought into accord with Section 139 of the new 1937 Constitution, as suggested by the 1947 edition of the Code.

(2) R.S.F.S.R. Laws 1943, text 24:

34. The following persons may not be appointed as guardians: feeble-minded persons, persons deprived by the court of the right to vote or of parental rights, persons convicted for crimes involving moral turpitude until the consequences of conviction are removed by the court, persons whose interests are contrary to those of the prospective ward, and minors.

78. Refusal of the appointment of guardian or curator shall not be permitted, except in cases provided for by the present section. The following may decline to accept appointment as guardian or curator:

(a) Persons who have reached the age of sixty;

(b) Persons who by reason of illness, physical infirmity, economic status, or the nature of their occupation or office, are unable to discharge such duties;

(c) Persons bringing up two or more children who live with them;

(d) A mother nursing a child at the breast or having a child under eight years of age living with her;

(e) Persons performing the duties of guardian or curator.

Comment

R.S.F.S.R. Laws 1943, text 24, Section 33, recites the same reasons as those given in (a), (b), and (e), and instead of those under (c) and (d), authorizes "mothers who take care of children under eight years of age" to decline appointment.

79. It is the duty of the guardian of a minor to attend to his upbringing, education, and training for socially useful activity. It is the duty of the guardian of a mentally deranged or feeble-minded person to see that he receives medical treatment and is placed under conditions suitable to his state of health.

Comment

(1) R.S.F.S.R. Laws 1943, text 24:

26. A guardian is appointed to perform the duties of parents. The guardian shall be obliged to attend to the maintenance of the ward, to his health and physical development, and to his upbringing in a manner corresponding to the aims and objectives of a communist upbringing; if the minor owns property, the guardian shall manage it.

In all instances, the guardian shall appear as the legal representative of his ward.

(2) See also Section 91 of the Code.

80. In instances where the guardian or curator was suggested under Section 74 of the present Code by a public organization, this organization shall supervise his activities and the proper discharge of his duties as guardian or curator, shall render him full assistance in

this respect, and shall submit its opinions to the guardianship and curatorship agency.

81. Duties incident to guardianship or curatorship shall be performed gratuitously. Should there be income-bearing property of the ward under the authority of the guardianship and curatorship agency, such agency may allow remuneration to the guardian or curator not to exceed 10 per cent of the income derived from such property.

82. The expenses incurred for maintenance of the ward, deemed necessary and useful by the guardianship and curatorship agency, shall be paid out of the income derived from his property or, if such income is insufficient or is altogether lacking, out of the ward's property itself, which may be alienated by permission of the guardianship and curatorship agency.

Note: If the ward has no property, the guardianship and curatorship agency shall petition the department of social security to grant funds to the guardian for maintenance of the ward.

Comment

Identical provisions are contained in R.S.F.S.R. Laws 1943, text 24, Section 42.

83. The guardian shall have the right to recover the custody of his ward from any person who detains the ward without legal ground.

Comment

(1) R.S.F.S.R. Laws 1943, text 24, Section 39, emphasizes that the guardian may obtain the custody of the ward through administrative agencies or the court.

(2) R.S.F.S.R. Laws 1943, text 24:

38. The ward shall not be permitted to live separately from the guardian.

The child may be temporarily placed by the guardian in a children's home or dormitory only with the permission of the guardianship agency; a special order shall be issued in such case and a copy thereof handed over to the guardian and the institution concerned.

40. The guardian shall report to the guardianship agency each change in the ward's residence. The agency shall send the records of the ward's case to the guardianship agency of the new place of residence.

(3) See also Section 89.

84. Guardianship and curatorship agencies shall report each case of the institution of guardianship over a feeble-minded person to the public health agencies concerned to secure for the ward constant medical observation, which shall be performed according to an instruction to be issued by the Ministry of Public Health.

85. Representatives of the U.S.S.R. abroad shall attend to matters involving guardianship and curatorship regarding U.S.S.R. citizens residing or possessing property outside the U.S.S.R.

The procedure for the institution of guardianship over property left abroad after the death of U.S.S.R. citizens shall be determined by special rules.

Comment

(1) The text of the Code was adopted before the present nationality law and thus speaks of "R.S.F.S.R. citizens." In translation, "U.S.S.R. citizens" are mentioned instead in view of the provisions of said law.

(2) Special rules concerning guardianship over property left by soviet nationals abroad are to be found in the Resolutions of March 13, 1930 (U.S.S.R. Laws 1930, text 194) and of June 20, 1930 (R.S.F.S.R. Laws 1930, text 391), still referred to in the 1947 edition of the present Code (p. 23).

CHAPTER II. RIGHTS AND DUTIES OF GUARDIANS AND CURATORS

86. The guardian may enter into any legal transaction into which the ward himself or the owner of the property under guardianship would enter if he were capable of entering into legal transactions, except the following: (a) alienation of property; (b) mortgage of the same; (c) issuance of bills and notes and other instruments of indebtedness; (d) refusal to accept an estate under a will or by intestacy; (e) leasing of property for a long term (for over one year); (f) closing of an enterprise belonging to the ward; (g) contract of partnership. For the consummation of these transactions, the consent of the guardianship and curatorship agency is required. No gift whatsoever of property belonging to the ward nor the undertaking of any suretyship in his name shall be permitted.

Note: Property liable to rapid deterioration or intended by nature for sale, or property unfit for use, if its value does not exceed fifty rubles, may be sold without authorization by the guardianship and curatorship agency.

Comment

(1) R.S.F.S.R. Laws 1943, text 24:

43. Only with the permission of the guardianship agency may the guardian enter into legal transactions disposing of property as well as perform acts beyond the limits of usual transactions incident to housekeeping and management of property, in particular, execute contracts requiring notarial certification or registration with the village soviet, renounce property rights belonging to the ward, perform voluntary partition of property, issue obligations in writing, and the like.

44. The guardian has no right to make gifts in the name of the ward nor to undertake suretyship in his name.

(2) See also Section 90.

87. In authorizing the alienation or the mortgage of property, the guardianship and curatorship agency may indicate the purpose for which the guardian shall apply the sums obtained.

88. The guardian may not enter into any legal transaction with his ward, nor represent him in any legal transaction or lawsuit between the ward and the guardian's spouse or the guardian's next of kin, nor may he acquire instruments of indebtedness under which the ward is liable; the debts of the ward to the guardian, the guardian's spouse, or the guardian's relatives which were incurred before the appointment of such person as guardian shall be paid by permission of the guardianship and curatorship agency.

89. The guardian shall obtain the permission of the guardianship and curatorship agency to entrust the ward to another person for upbringing or education, or a feeble-minded ward, for maintenance.

Comment

See R.S.F.S.R. Laws 1943, text 24, Section 38, quoted in the comment to Section 83.

90. A person placed under curatorship under Section 70 of the present Code may enter into legal transactions, but the consent of his curator shall be mandatory. The limitations enumerated in Section 86 of the present Code shall also apply to curators. No consent of the guardianship and curatorship agency shall be required for transactions involving articles and sums of money acquired by the personal labor of the person under curatorship.

91. The guardian or curator shall act to protect the rights and interests of his ward or the person under his

curatorship before all institutions, including courts, as well as in making contracts involving property.

92. Should a guardian or curator neglect or abuse his powers, he may be removed from office by the guardianship and curatorship agency on the petition of the person under guardianship or curatorship himself, governmental institutions, public organizations, or individual citizens, or on the motion of the guardianship and curatorship agency.

Comment

R.S.F.S.R. Laws 1943, text 24:

49. [See this text in the comment to Section 69.]

50. Should the guardian abuse his guardianship for selfish purposes or leave the ward without surveillance or the necessary material support, the guardianship agency shall remove the guardian from office and hand the records over to the government attorney (public prosecutor) for the institution of criminal proceedings.

93. Appeals from the acts of guardians and curators may be brought to the guardianship and curatorship office concerned by wards, governmental or public institutions, and third parties.

Comment

R.S.F.S.R. Laws 1943, text 24, Section 47, is identical.

94. Appeals from the decisions and orders of guardianship and curatorship agencies shall be filed with the respective executive committee, and the decisions of the regional and provincial committees shall be deemed final determinations of the matter in question.

Comment

R.S.F.S.R. Laws 1943, text 24:

48. Appeals from the orders of district and city departments of education in matters of guardianship shall be filed with the

executive committees of the district or city soviets. Their decisions shall be final.

CHAPTER III. PROCEDURE IN MATTERS INVOLVING GUARDIANSHIP AND CURATORSHIP

95. In considering matters pertaining to guardianship and curatorship, the guardianship and curatorship agency shall summon the petitioners, appellants, guardians and curators, persons concerned with the matter, witnesses, experts, and, if necessary, the persons placed or to be placed under guardianship or curatorship. Nonappearance of the petitioners, appellants, and other persons shall not obstruct the examination of the case, unless the agency which issued the summons deems their appearance necessary.

96. In matters pertaining to the institution of guardianship or curatorship, the appointment and dismissal of guardians and curators, permission to alienate property, mortgage of the same, and waiver of rights [of the ward], as well as those pertaining to consideration of appeals filed, accounts, and matters involving the education of a child, the guardianship and curatorship agency shall enter a formal decision and announce it to the persons concerned.

Comment

R.S.F.S.R. Laws 1943, text 24:

36. Proceedings instituting guardianship shall be accomplished within seven days. In exceptional cases, the institution of guardianship may be postponed for up to one month. Upon the institution of guardianship, the guardianship agency shall issue to the guardian an official certificate for the receipt of which he shall sign.

37. For the purpose of exercising supervision over the ward, the guardianship agencies shall study at first hand the living conditions of the ward.

97. If the person who has been placed under guardianship or curatorship owns property in the territory under the jurisdiction of another guardianship and curatorship agency, the latter may be entrusted with the management of the property, its sale, and the performance of any other act relating to the property rights and interests of the person under guardianship or curatorship.

98. The following persons and bodies must notify [the guardianship and curatorship agencies] within three days from the date on which the necessity for the institution of guardianship over a minor arises (Section 69 of the present Code):

(a) House managers, owners, and leaseholders of houses, if there are in these houses children in need of guardianship;

(b) Village soviets;

(c) Civil Registry Offices (agencies), when upon registration of a death it comes to their knowledge that minor orphans are left without care, as well as when they learn of foundlings or orphans;

(d) Marshals of the court, when on taking an inventory of attached property they discover minors needing guardianship;

(e) Judicial bodies and the police, when arresting or sentencing to confinement persons who have taken care of minors, so that the minors are left as a consequence without proper attention;

(f) Citizens related by blood to or of the same household as persons who are to be placed under guardianship or curatorship.

Note: The guardianship and curatorship agency shall

also institute guardianship over a minor on its own motion, if it is deemed necessary.

99. By decision of the guardianship and curatorship agency, sale of the property of wards shall be made at public auction or at an agreed price which, if necessary, may be established by experts. Sale at public auction requires subsequent ratification by the guardianship and curatorship office.

Note: In rural localities, the village soviets shall be authorized to hold, if necessary, upon recommendation of guardians or curators in matters of guardianship and curatorship, public sales of the property of wards not to exceed the sum of fifteen rubles. The district executive committee shall be authorized to exercise the general direction of matters of guardianship and curatorship and, if necessary, the holding of public sales of the property of wards for sums in excess of fifteen rubles (as amended September 26, 1927, R.S.F.S.R. Laws, text 705).

Comment

For individual village soviets, the limit of fifteen rubles may be raised to fifty rubles. See R.S.F.S.R. Laws 1928, text 828, Sections 11 and 23.

100. Sums of money and securities of the ward, except money necessary for maintenance of the ward and the management of his property, shall be deposited with a government institution (a branch of the State Bank, a savings bank, et cetera) and may not be kept by the guardian himself.

Comment

R.S.F.S.R. Laws 1943, text 24, Section 45, is identical.

101. Guardians and curators shall submit annually

to the guardianship and curatorship agency concerned, on or before February 1, a report and account in writing covering the past year. The report of a guardian or curator shall contain not only information concerning the management of the property, the income of the ward or person under curatorship, and the expenses incurred, but shall also contain information indicating what has been done for the personal welfare of a minor ward, his health, upbringing, education, training for useful activities, et cetera.

Upon the termination of guardianship or curatorship, the guardian or the curator must submit a general report concerning his management of the property.

Comment

R.S.F.S.R. Laws 1943, text 24, Section 46, contains similar provisions and states in addition that "the guardian shall also submit accounts of other duties as requested by the guardianship agency."

102. The reports shall be examined on their merits and, if considered correct, shall be approved; otherwise, the guardian or curator may be requested to submit explanations, documents attesting to expenses incurred, et cetera.

CHAPTER IV. EXAMINATION OF MENTALLY DERANGED AND FEEBLE-MINDED PERSONS

103. The regional, provincial, city, and district guardianship and curatorship agencies, on presentation of sufficient proof of the necessity of instituting guardianship over persons mentally deranged or feeble-minded, shall appoint a special examining board, under the chairmanship of the chief of the department of public health of the regional, provincial, or district executive

committee, or of a person empowered by him; such board shall include no fewer than two doctors, one of whom must be a psychiatrist.

104. Persons and institutions which petition for the examination for lunacy shall be informed of the time and place at which the meeting of the board will take place.

105. The board provided for in Section 103 of the present Code may order the placing of the examinee in a special medical establishment for a period not exceeding two months, or keeping him under observation at home. The board shall, if necessary, question the doctor who treated the patient, and persons to whom the patient may refer.

106. A detailed official report shall be drawn up embodying the results of the examination, which report shall be signed by all persons who took part in the examination. The report shall state whether the examinee is mentally deranged or feeble-minded and whether he requires a guardian.

107. Petitions to declare sane a person mentally deranged, or to revoke a guardianship, may be filed by the persons and institutions enumerated in Section 98 of the present Code, as well as by the medical institution in which the patient has been placed for treatment, or by the patient himself.

108. The examination of a person mentally deranged for the purpose of declaring him sane or revoking guardianship over him shall follow the procedure outlined in Sections 103–106 of the present Code.

109. The expenses incurred in connection with the examination shall be defrayed out of the property of the examinee, and in the absence of any such property, shall be borne by the State.

Note: Expenses incurred in connection with the examination of a person found to be of sound mind shall be borne by the persons who petitioned for the examination.

110. The findings of a medical board declaring a person mentally deranged or feeble-minded may be appealed from within one month to the [presidium of the] respective executive committee by any person or institution interested.

Comment

Words in square brackets are obsolete.

Part Four. Records of Acts of Civil Status

Chapter I. General Provisions

111. The recording of acts of civil status (births, deaths, marriages, divorces, and adoptions) shall be performed:

In cities and districts, by the city and district Civil Registry Offices (ZAGS), and in rural localities, by the village and settlement soviets.

The changing of their surnames and names by R.S.F.S.R. citizens shall be permitted upon their reaching the age of eighteen.

Recording of changes of names and surnames shall be performed:

(a) In an autonomous republic, by permission of the civil status divisions of the Ministry of the Interior of the autonomous republic;

(b) In regions and provinces, by permission of the civil status divisions of the regional or provincial offices of the Ministry of the Interior.

The said divisions shall either register the changes of the surname or the name or refuse to do so (as amended by the R.S.F.S.R. Supreme Soviet June 2, 1940, Izvestiia 1940, No. 127).

Note: The making of records specified in the present section shall be performed abroad by the diplomatic representatives and consuls of the U.S.S.R. (as amended September 26, 1927, R.S.F.S.R. Laws 1927, text 705; July 20, 1933, *id.* 1933, text 159).

Comment

(1) At present, the direction of the activities of the Civil Status Record agencies is performed by the Civil Status Division of the Ministry of the Interior (abridged Russian symbol for this, OAGS MVD) (U.S.S.R. Laws 1934, text 283; *id.* 1935, text 432; *id.* 1936, texts 309, 369; *id.* 1937, text 145; *id.* 1940, text 156).

(2) Edict of the U.S.S.R. of March 31, 1940 (Vedomosti 1940, No. 11):

1. Be it enacted that changes of surnames and names by U.S.S.R. citizens shall be permitted upon their reaching the age of eighteen.

2. Changes of surnames and names shall be made in republics not subdivided into regions by permission of the Civil Status Division of the People's Commissariat for (now Ministry of) the Interior of the republic, by similar offices of the autonomous republics, and by the regional and provincial offices of the U.S.S.R. People's Commissariat for (now Ministry of) the Interior in all other places.

The said Divisions shall either register the changes or refuse to do so.

(3) Instruction of the U.S.S.R. People's Commissariat for the Interior, approved by the U.S.S.R. Council of People's Commissars, of April 7, 1940, U.S.S.R. Laws 1940, text 224 (excerpts):

3. Petitions for changes of surnames or names shall be filed with the Civil Registry Office at the place of residence of the petitioner.

4. The following information shall be given in the petition:

(a) Surname, first name, and patronymic of the petitioner;

(b) Number of the passport, by whom and where issued; in rural localities where passports have not yet been issued, a certificate from the village soviet shall be presented;

(c) Family status;

(d) Place and date of birth;

(e) Military service status;

(f) Information concerning the children of the petitioner; surname and name, date and place of birth, residence;

(g) Precise enumeration of places where the petitioner has resided;

(h) Reason for the change of surname and name;

(i) Surname and name selected;

(j) Precise address.

5. The Civil Status Division [of the region, province, or republic] shall verify the correctness of the information submitted and whether the petition is justified.

6. No change of surname or name shall be permitted:

(a) If the petitioner is under criminal investigation or has been convicted;

(b) If the agencies of government authority protest the change.

9. Refusal to record a change of surname or name may be appealed from by the petitioner to the next higher agency of the U.S.S.R. People's Commissariat for (now Ministry of) the Interior within one month from the date on which the refusal is received by the petitioner.

10. A change of surname of a married person shall not affect the surname of the spouse. A change of surname of parents or of one parent shall not affect the surname of their children who have reached majority. The surname of minor children shall be changed only by a change of surname of both parents. If only one of the parents has changed his surname, the change of the surname of minor children shall be decided by agreement of both parents and, in the absence of such agreement, by the guardianship and curatorship agency.

112. Entries concerning birth, death, and adoption, as well as the issuance of first certificates thereof, shall be free of charge and exempt from any fees or dues.

Established fees shall be collected for registration of marriages and changes of first name and surname (as amended April 16, 1945, Vedomosti 1945, No. 26).

Comment

For fees see No. 49.

113. The books of the Civil Status Record shall be kept in duplicate.

114. Each entry made in the proper book of records shall be read to the applicant, shall be signed by him or, if he is illiterate, by two literate witnesses, and in either case, shall be signed by the official who performs the act.

115. Should the necessity for correction of the record arise where there is no dispute involved, such correction shall be entered upon decision of the next superior agency of Civil Status Records.

116. Entries made in the record may be contested by the persons in interest in a lawsuit.

117. The keeping of the books of the Civil Status Record shall be governed by an instruction issued by the People's Commissar for (at present Minister of) the Interior with the consent of the People's Commissar for Justice.

Comment

At present, the keeping of the record is regulated by the instruction issued in 1937, by the People's Commissariat for the Interior.

117*a*. Officials who refuse without good reason to register an act of civil status, who fail to register in time a birth or death, or who fail to submit in due time information concerning natural movement of population (vital statistics), or who submit false information on the subject shall be prosecuted in court under Section 111 of the Criminal Code.

In cities, the directors of the district and city bureaus of ZAGS (Civil Registry Offices), and in rural localities, the secretaries of the respective village and settlement soviets, shall be personally responsible for the securing of timely and correct registration of births and deaths (keeping the population posted on the time and procedure of registration, detecting cases of evasion of registration, keeping correctly the record books, and the like) (as amended September 20, 1936, R.S.F.S.R. Laws 1936, text 132).

CHAPTER II.

(a) RECORD OF BIRTHS

118. A declaration of birth shall be made within one month from the date of birth, and in case of a stillborn child, within twenty-four hours of delivery (as amended September 20, 1936, R.S.F.S.R. Laws, text 132).

Note: Evasion of registration as well as failure to register within the prescribed period of time on the part of a person whose duty it is to make such declaration shall be punished by a fine of from 25 to 100 rubles, which shall be imposed by resolution of the district or city executive committee or the village or settlement soviet (as amended *id.*).

Comment

(1) Under the Instruction of 1937, children born dead after six months of pregnancy must be recorded. Embryos expelled before the sixth month of pregnancy shall be considered abortions not subject to record.

(2) Under the same instruction, the following reasons shall excuse failure to make proper declaration: (a) illness of parents or relatives which prevents leaving the house; (b) death

of parents or relatives, and natural disasters interrupting communication between the ZAGS bureau and the place of residence.

119. The declaration of birth shall be made either orally or in writing to the Civil Registry Office at the place of the birth or at the place of residence of one of the parents, by the parents, or, in the event of their illness or death as well as when they are unable to have the record made for any other reason, the declaration may be made by relatives or very close neighbors or by the administrators of the maternity hospital where the mother gave birth to the child.

120. The record of birth shall indicate: the date and place of birth, the sex of the child, and the name and surname given to him, as well as the names, patronymics, and surnames, the permanent residence, and the occupations and the ages of the parents.

121. [Repealed April 16, 1945, Vedomosti 1945, No. 26.]

122. In the case of a stillborn child, a notation shall be entered in a special column of the register of births (as amended September 20, 1936, R.S.F.S.R. Laws 1936, text 132).

123. A foundling shall be recorded upon the declaration of the person who finds him, the administration of a children's home (crèche), or a police agency made within three days from the date of finding; to the declaration shall be appended a record made by the police or, in their absence, by the village soviet, stating the date, place, and circumstances under which the child was found (as amended September 20, 1936, R.S.F.S.R. Laws 1936, text 132).

(b) RECORD OF DEATHS

124. All cases of death and of declaration as dead issued by a notary public or court shall be entered in the record of deaths (as amended May 27, 1929, R.S.F.S.R. Laws 1929, text 422).

125. A death must be reported within three days, and, in the event of violent death, suicide, death by accident, or discovery of a corpse, within twenty-four hours from the moment death occurs or the corpse is discovered; for registration of the latter, a doctor's certificate is required (as amended September 20, 1936, R.S.F.S.R. Laws 1936, text 132).

Note: Whoever is obliged to make such report and evades registration without a justifiable reason, or fails to make such report within the established period of time, shall be punished by a fine of from 25 to 100 rubles, which shall be imposed by resolution of the district or city executive committee, or the village or settlement soviet (as amended *id.*).

Comment

See comment to Section 118.

126. A death must be reported either orally or in writing by persons who lived with the deceased or, in the absence of such persons, by the house management, neighbors, or the administration of the institution in which the death occurred (hospital, prison, and the like), or by the police who found the corpse.

127. In the report of death, all information concerning the deceased known to the declarant shall be indicated, particularly the name, patronymic, and surname, the year of birth and last residence of the deceased, his

family status, the year, month, and date of his death, the cause of death, as well as the name, patronymic, surname, and residence of the declarant.

128. The fact of death shall be attested by a medical certificate or, where this is impossible, by two witnesses.

129. A police record shall be appended to the declaration of discovery of a corpse.

130. The decision of the court declaring a person dead, rendered in instances in which the fact of death has been established in a judicial procedure, shall be registered at the place of the last-known residence of the person declared dead, with the indication of the court and the date on which the decision was rendered.

(c) MARRIAGE AND DIVORCE RECORDS

131. Persons desiring to register their marriage shall make a declaration to that effect at the Civil Registry Office of the place of residence of one of the declarants.

132. Those who register a marriage shall produce with the declaration their identification papers and sign a statement that none of the legal impediments to marriage specified in Part One, Chapter II, of the present Code exist, and that they are mutually informed as to the state of health of one another, in particular with regard to venereal and mental diseases and tuberculosis, and they shall also state how many marriages each of them has previously contracted and how many children each of them has (as amended April 16, 1945, Vedomosti 1945, No. 26).

Comment

(1) The diseases mentioned in this section are not an impediment to marriage under the soviet law with the possible exception of the law of the Azerbaijan Republic.[29]

[29] 2 Civil Law Textbook (1938) 425.

(2) Prior to April 16, 1945, those registering a marriage were also obliged to declare previous unregistered (*de facto*) marriages.

133. The executive official who registers the marriage shall read to those contracting the marriage Sections 4, 5, and 6 of the present Code and warn them of criminal responsibility for false testimony. Thereupon, the record entered shall be read, signed by them, and countersigned by the official.

133[1]. Notification of a registered marriage shall be made in the passport and shall indicate the surname, first name, patronymic, and the year of birth of the spouse, as well as the place and date of registration of the marriage (as enacted April 16, 1945, Vedomosti 1945, No. 26).

134. Entry of a marriage in the record may also be made in the presence of witnesses if the bride and groom so desire.

Comment

A recent law seeks to add more solemnity to the registration of marriage. See Volume I, Chapter 4, p. 130.

135. If, before the entry in the record is signed, a declaration of the existence of legal impediments to the marriage is received, then the official shall suspend the entry and request the declarant to produce proper documentary proof within a period of time to be fixed by the official in charge of the Civil Registry Office.

136. Marriages between aliens contracted within the territory of the R.S.F.S.R. shall be registered in accordance with the general rules (as amended April 2, 1947, Vedomosti No. 13).

Note: On the basis of reciprocity, registration of

marriages between aliens by the consular offices and diplomatic missions of the countries concerned acting within the territory of the U.S.S.R. shall be permitted with observance of the conditions provided for in Part One, Chapter II of the present Code.

Comment

(1) By the Edict of April 2, 1947, the following opening phrase was deleted from Section 136: "Marriages between aliens and soviet nationals as well as" . . . The amendment was caused by the prohibition of marriages between soviet nationals and aliens.

(2) The Ukrainian Code, Section 107, and the Byelorussian Code, Section 110, use more definite language, viz., instead of "general rules" they state "soviet law."

(3) Marriages of aliens in the Soviet Union are discussed in Vol. I, Chapter 10, pp. 361, 365.

137. Marriages of aliens contracted outside the confines of the U.S.S.R. under the laws of the countries concerned shall be considered duly legalized in the territory of the U.S.S.R. within the meaning of Part One, Chapter I of the present Code.

138. The Civil Registry Offices shall enter in the official records decisions of the court ordering divorce and shall issue divorce certificates, upon the issuance of which notification of divorce shall be written on the passport of each spouse and a sum of from 500 to 2000 rubles, depending upon the order of the court, shall be collected from one or both spouses (as amended April 16, 1945, Vedomosti 1945, No. 26).

139, 140, 140[1], 140[2]. [Repealed March 14 and April 16, 1945, Vedomosti 1945, No. 26.]

Comment

Sections 139, 140, 140[1], and 140[2] dealt with divorce as a

free unilateral declaration of either spouse and were repealed April 16, 1945, Vedomosti No. 26. See Volume I, Chapter 4, p. 122 *et seq.*

141. Documents issued to aliens certifying to divorce obtained under the law of the country concerned shall have equal validity with excerpts from the record registering the dissolution of a marriage.

142. [Repealed April 16, 1945, Vedomosti 1945, No. 26.]

143. [Repealed July 20, 1933, R.S.F.S.R. Laws 1933, text 159.]

PART THREE

SOVIET NATIONALITY

4

Soviet Nationality Law of August 19, 1938[1]

1. In conformity with Section 1 of the Constitution (Fundamental Law) of the Union of Socialist Soviet Republics, a single union nationality shall be established for the nationals of the U.S.S.R.

Each national of a constituent republic shall be also a national of the U.S.S.R.

2. The following shall be nationals of the U.S.S.R.:

(a) All those who on November 7, 1917, were nationals of the former Russian Empire and who have not lost their soviet nationality;

(b) Persons who have acquired soviet nationality in a manner established by law.

3. Upon their petition, aliens, irrespective of their nationality or race, shall be admitted to the nationality of the U.S.S.R. by the Presidium of the Supreme Council of the U.S.S.R. or the presidium of the Supreme council of the constituent republic in which they reside.

4. Release from U.S.S.R. nationality may take place by permission of the Presidium of the Supreme Council of the U.S.S.R.

5. The nationality of a man or woman who is a national of the U.S.S.R. shall not be affected by his or her marriage to a person who is not a national of the U.S.S.R.

Comment

Marriages between soviet nationals and aliens have been for-

[1] Vedomosti 1938, No. 11.

bidden since February 15, 1947. Therefore Section 5 of the present law was repealed on February 4, 1948 (Vedomosti No. 6). See also *supra* p. 242, Section 6 and Volume I, p. 116.

See also *supra* No. 3, Section 6[1].

6. In case of a change of nationality by both parents, when both of them become nationals of the U.S.S.R., or when both of them cease to be such, the nationality of their children under fourteen shall change correspondingly. The change of nationality of such children over fourteen but under eighteen may take place only with their consent.

In all other cases, the change of nationality of children under eighteen may take place in the usual manner.

7. Deprivation of nationality of the U.S.S.R. may take place:

(a) Upon the decree of a court of law in instances prescribed by law;

(b) Upon a special order of the Presidium of the Supreme Council of the U.S.S.R. in a special case.[2]

8. Persons residing within the territory of the U.S.S.R., who under the provisions of the present law are not nationals of the U.S.S.R. and who possess no proof of foreign nationality, shall be considered as persons without nationality.

Comment

The soviet law of nationality is discussed in Volume I, pp. 20–21, 51, 144, 355–357. See also *supra* p. 242 and *infra* p. 289.

[2] Lists of persons so deprived of nationality were printed in Vedomosti 1938, No. 12; *id.* 1939, No. 9.

5

Decree of December 15, 1921, on Forfeiture of Soviet Citizenship by Certain Categories of Persons Residing Abroad[1]

The All-Russian Central Executive Committee and the Council of People's Commissars decree:

1. Persons of the following categories residing abroad after the promulgation of this decree shall lose their rights of Russian citizenship:

(a) Persons who have resided abroad uninterruptedly over five years, and who fail to take out before June 1, 1922, their passports or corresponding identification papers from soviet representatives;

Note: This term shall not apply to the countries where there is no representation of the R.S.F.S.R. In those countries the term will be decided upon the establishment of such representations.

(b) Persons who left Russia after November 7, 1917, without the permission of the soviet authorities;

(c) Persons who voluntarily served in the armies which fought against the soviets or who have participated in any kind of counter-revolutionary organizations;

(d) Persons who had the right of option for Russian citizenship and failed to avail themselves of this right within the time allowed;

[1] R.S.F.S.R. Laws 1922, text 11.

(e) Persons who do not fall within the group of persons mentioned in clause (a) of the present section, but who reside abroad and who have not registered their names with the representatives of the R.S.F.S.R. within the time indicated in that clause and in the Note thereto.

2. The persons enumerated in clauses (b) and (c) of Section 1 may file through the respective [soviet] representatives their applications addressed to the All-Russian Central Executive Committee asking for restitution of their rights [of soviet Russian citizenship].

Comment

A similar law was enacted in the Ukrainian Soviet Republic on March 28, 1922.[2]

[2] Ukrainian Laws 1922, text 237, Section 38.

6

Decree of the U. S. S. R. Central Executive Committee and the Council of People's Commissars of November 13, 1925[1]

1. Former war prisoners or interned servicemen of the imperial or the Red Army as well as persons who have served in the white armies and participated in the counterrevolutionary rebellions and have received amnesty shall be considered as having lost U.S.S.R. nationality if they reside abroad and have failed to register within the periods of time prescribed by the legislation of the soviet republics.

2. Persons specified in Section 1 may apply for U.S.S.R. nationality on equal footing with aliens.

3. Section 1 of the present resolution shall not apply:

(a) To persons who failed to register in time because of absence of a soviet diplomatic or consular representative in the country of their residence, if they register within six months after the establishment of such representatives;

(b) To persons who shall prove that they failed to register in time because of circumstances beyond their control (confinement, serious illness, staying in a remote locality).

[1] U.S.S.R. Laws 1925, text 581.

7

Edict Concerning Acquisition of U. S. S. R. Nationality

Edict of the U.S.S.R. Presidium of September 7, 1940, Concerning the Acquisition of U.S.S.R. Nationality by Nationals of the Lithuanian, Latvian and Estonian Soviet Socialist Republics.[1]

1. In accordance with Section 1 of the Law Concerning Nationality of the U.S.S.R. of August 19, 1938, it is hereby established that nationals of the Lithuanian, Latvian and Estonian Soviet Socialist Republics shall be U.S.S.R. nationals from the day when these republics are received into the U.S.S.R.

2. Nationals of the Lithuanian, Latvian and Estonian Soviet Socialist Republics who at the time of the promulgation of the present edict are outside of the confines of the U.S.S.R. and were not deprived of nationality by the soviet governments of these republics must register on or before November 1, 1940, as soviet nationals at diplomatic missions and consulates of the U.S.S.R. by means of a personal appearance or by mailing a special application with their passports.

Such persons who failed to register as soviet nationals at diplomatic missions or consulates of the U.S.S.R. before November 1, 1940, may obtain the nationality of the U.S.S.R. under general rules in accordance with

[1] Vedomosti 1940, No. 31.

Section 3 of the Law Concerning the Nationality of the U.S.S.R.

3. Persons without nationality who belong to national minorities which, under the condition of political regimes existing in the Lithuanian, Latvian and Estonian Soviet Socialist Republics prior to the establishment of soviet power there, could not have acquired Lithuanian, Latvian or Estonian nationality, shall acquire U.S.S.R. nationality by the procedure provided for in Sections 1 and 2 of the present edict.

All other persons without nationality who continuously resided in the territory of the Lithuanian, Latvian, and Estonian Soviet Socialist Republics may acquire U.S.S.R. nationality under the general rules in accordance with Section 3 of the Law Concerning Nationality of the U.S.S.R.

4. Persons deprived of soviet nationality on the basis of the Decree of the All-Russian Central Committee and the R.S.F.S.R. Council of People's Commissars of December 15, 1921, and who are at the present time in the territory of the Lithuanian, Latvian, and Estonian Soviet Socialist Republics shall be treated equally with persons without nationality mentioned in the second paragraph of Section 3 of the present edict.

8

Edict Concerning Restoration of U. S. S. R. Nationality

Edict of March 8, 1941, of the U.S.S.R. Presidium Concerning Restoration of U.S.S.R. Nationality to the Inhabitants of Bessarabia and Acquisition of Soviet Nationality by the Inhabitants of Northern Bukovina.[1]

Section 1. All persons who, on November 7, 1917, were subjects of the former Russian Empire and resided in the territory of Bessarabia on June 28, 1940, (as well as their children) shall be considered restored to their nationality rights of soviet citizens as of June 28, 1940 on, whether they were Rumanian subjects or not.

Section 2. Persons from among the permanent inhabitants of Bessarabia who on November 7, 1917, were subjects of the former Russian Empire but did not reside on June 28, 1940, in the territory of Bessarabia and stayed temporarily outside of the confines of the U.S.S.R. must, prior to May 1, 1941, register with diplomatic missions and consulates of the U.S.S.R. as soviet nationals by means of personal appearance or by mailing passports or documents identifying the applicant and attesting to the fact of permanent abode in Bessarabia.

Section 3. The present edict shall not apply to persons mentioned in Sections 1 and 2 of the present edict

[1] Vedomosti 1941, No. 13.

who, prior to June 28, 1940, acquired some other foreign nationality nor to persons deprived of soviet nationality by the Decree of the All-Russian Central Executive Committee and the R.S.F.S.R. Council of People's Commissars of December 15, 1921.

Section 4. All persons who, on June 28, 1940, resided in the territory of Northern Bukovina, with the exception of aliens and persons evacuated after June 28, 1940 to Rumania, as well as persons deprived of soviet nationality by the Decree of the All-Russian Central Executive Committee and the R.S.F.S.R. Council of People's Commissars of December 15, 1921, shall be considered nationals of the U.S.S.R. from June 28, 1940 on.

Section 5. Persons who return to Bessarabia and Northern Bukovina from Rumania after June 28, 1940, in a manner agreed upon by the soviet and Rumanian authorities shall acquire soviet nationality upon return.

9

Edict Concerning Choice of Polish Nationality

Edict of June 22, 1944, of the U.S.S.R. Presidium Concerning the Right of Servicemen in the Polish Army in the U.S.S.R. and Persons Assisting It in the Fight for the Liberation of Poland, As Well as Members of Their Families, to Change Their Nationality to Polish Nationality.[1]

Section 1. As a special exemption from the effect of the Edict of the Presidium of the U.S.S.R. Supreme Council Concerning the Acquisition of U.S.S.R. Nationality by the Inhabitants of the Western Regions of the Ukrainian and Byelorussian Soviet Socialist Republics of November 29, 1939,[2] as well as with regard to soviet nationals of Polish extraction in other regions of the U.S.S.R., it is hereby decreed that such of them as are in the service of the Polish army in the U.S.S.R. or previously served in the ranks of that army, as well as persons who are rendering active assistance to the Polish army in its fight for the liberation of Poland from the German Fascist aggressors shall have the right to change their nationality to Polish nationality. The same right shall be granted also to the members of the families of the men in the service of the Polish army in the U.S.S.R. and to the above-mentioned persons rendering assistance to the Polish army in the U.S.S.R.

[1] Vedomosti, June 30, 1944, No. 35.
[2] This edict was not located by the author.

Section 2. Choice of nationality by the parents shall determine respectively the nationality of children who have not reached the age of 14 years. All children between the ages of 14 and 18 shall have the right to choose their nationality independently. Should the parents select various nationalities, the nationality of children who have not reached the age of 14 shall be determined by agreement of the parents, and in the absence of such an agreement it shall depend upon the country to which the territory wherein the minor children will reside belongs.

Section 3. The declaration of the desire to choose Polish nationality shall be filed with the Committee of the Presidium of the U.S.S.R. Supreme Council established for decisions in the matters of reception into, release of, and deprivation of U.S.S.R. nationality directly or through the headquarters of the Polish army in the U.S.S.R.; the representative of the Union of Polish Patriots in the U.S.S.R. shall be included in this committee.

10

Edict Extending Choice of Nationality to Inhabitants of District Transferred to Lithuania

Edict of the U.S.S.R. Presidium Extending the Effect of the Edict of June 22, 1944, to the Inhabitants of the District Transferred by the Soviet Union to the Lithuanian Soviet Socialist Republic of July 14, 1944.[1]

The effect of the Decree of the Presidium of the U.S.S.R. Supreme Soviet of June 22, 1944, Concerning the Right of Men in the Polish Army in the U.S.S.R., et cetera, to Choose Polish Nationality shall be extended to the inhabitants of districts transferred by the Soviet Union to the Lithuanian Soviet Socialist Republic who have acquired U.S.S.R. nationality according to the Edict of the Presidium of the Supreme Soviet of September 7, 1940, Concerning the Acquisition of U.S.S.R. Nationality by Nationals of the Lithuanian, Latvian, and Estonian Soviet Socialist Republics.

Soviet nationals who are Polish and live in other districts of the Lithuanian Soviet Socialist Republic shall acquire the right to choose Polish nationality under the general rules established by the Edict of the Presidium of the U.S.S.R. Supreme Council of June 22, 1944, for all soviet nationals who are Polish.

[1] Vedomosti 1944, No. 38.

11

Restitution of Nationality to Former Subjects

Edict of the Presidium of the U.S.S.R. Supreme Soviet of November 10, 1945, Concerning Restitution of U.S.S.R. Nationality to Subjects of the Former Russian Empire As Well As to Persons Who Lost Soviet Nationality and Reside in the Territory of Manchuria.[1]

1. Be it enacted that persons residing in the territory of Manchuria who were subjects of the former Russian Empire on November 7, 1917, as well as persons who were soviet nationals and lost this nationality, as well as their children, may recover the nationality of the U.S.S.R.

2. Nationality of the U.S.S.R. may be restored to persons specified in Section One of the present edict who express the desire to recover such nationality, provided they file, prior to February 1, 1946, with the U.S.S.R. consulates in the territory of Manchuria a corresponding application to which documents must be appended identifying the person of the applicant and his having been in the past among the subjects of the former Russian Empire or soviet nationals.

3. Petitions for restoration of soviet nationality shall be considered by the U.S.S.R. consulates in Manchuria. Should the consulate deem the documents submitted by the applicant as satisfying the requirements of the pres-

[1] Vedomosti 1945, No. 78.

ent edict, then the consulate shall issue a soviet passport to the applicant.

4. Persons who fail to file petitions for restoration of U.S.S.R. nationality within the period specified in Section 2 of the present edict may be admitted to the nationality of the U.S.S.R. under the general rules of admittance to nationality.

Comment

(1) The period of time provided for registration in Section 2 was extended to April 1, 1946, by the Edict of January 22, 1946.[2] The Edict of January 20, 1946, extended the rules for restoration of soviet nationality to former citizens of the Russian Empire residing in the province of Siantsian and the cities of Shanghai and Tientsin.[3] Applications were to be filed on or before April 1, 1946, but by the Edicts of February 16 and September 19, 1946, the final date for filing in the province of Siantsian was extended to December 31 and for Shanghai and Tientsin to July 1, 1946.[4]

(2) Edicts similar to that translated under No. 11 were also enacted for former Russian citizens and their children residing in some other countries, viz., France, Bulgaria, and Yugoslavia (Edict of June 14, 1946); Japan (September 26, 1946); Czechoslovakia (October 5, 1946); and Belgium (May 28, 1947). The last date for filing petitions in France was November 1, 1946; in Yugoslavia, December 31, 1946; in Bulgaria, December 31, 1946; in Japan, December 1, 1946; in Czechoslovakia, January 1, 1947; and in Belgium, January 1, 1948.[5] Repatriation of Armenians is separately regulated by the Edict of October 19, 1946 (Vedomosti No. 39).

(3) The Act of October 31, 1946 (Vedomosti No. 40) governs nationality in connection with the incorporation of sub-Carpathian provinces of Czechoslovakia into the U.S.S.R.

[2] Vedomosti 1946, No. 2.
[3] *Ibid.*
[4] Vedomosti 1946, Nos. 7, 13, 35.
[5] Vedomosti 1946, Nos. 21, 36, 37, 39; *id.* 1947, No. 18.

PART FOUR

GOVERNMENTAL QUASI CORPORATIONS

Basic Statutory Provisions on Quasi Corporations Managing Governmental Industry and Commerce. The status of these quasi corporations is regulated by the Civil Code only to a limited extent by scattered provisions (e.g., 19, 22, 60, 322, 418). The basic law regulating their status, first issued in 1923, was completely revised and repromulgated on June 29, 1927, as a statute concerning governmental industrial trusts, which with some amendments is still in force. A similar statute concerning governmental commercial enterprises (*torgs*) was enacted on August 17, 1927, and is also still in force. The term "trust" is applied to industrial governmental enterprises acting as legal entities, the term *torg* to such enterprises engaged in commerce. The specific provisions governing their organization and activities are to be found in the charters of individual trusts and *torgs*. For a discussion of corporations in soviet law, see Volume I, Chapter 11.

12

Statute on Governmental Industrial Trusts (Excerpts)[1]

. . . 2. A governmental industrial trust is a governmental industrial enterprise that is organized under a separate charter as an independent business unit enjoying the rights of a legal entity, having a capital, indivisible into shares, and subject to the authority of a governmental institution indicated in the charter, and is doing business on a commercial basis in accordance with the planned assignments approved by the above-mentioned institution.

In accordance with the present statute and the charter, the trust shall be granted independence in the conduct of business operations.

3. The rights of a legal entity shall be granted to the trust on the day of its proper registration.

4. The trust shall be liable for its obligations only with such property as is subject to execution according to the existing legislation. The central government treasury and the local soviets shall not be liable for the debts of the trust. The trust shall not be liable for the debts of the State and the local soviets.

Comment

See Civil Code, Section 22.

5. The trust shall conduct business in accordance with

[1] Resolution of the Central Executive Committee and the Council of People's Commissars of June 29, 1927, U.S.S.R. Laws, text 392.

its charter within the entire territory of the U.S.S.R., shall possess, use, and dispose of property, and shall be assessed for central and local taxes in accordance with the general rules and the exceptions stated in the present statute and special laws. . . .

10. Upon approval of the organization of the trust, the institution which is responsible for its organization shall compile an inventory list and inventory balance of property assigned to the trust, as well as the charter of the trust, which must recite:

(a) The name of the institution under whose jurisdiction the trust exists;

(b) The name (firm name) of the trust and the location of its executive office;

(c) The amount of the charter capital assigned to the trust;

(d) The number of directors and their powers.

Other provisions not contrary to law may also be included in the charter.

11. The charter of a trust operating on a nationwide or republic-wide scale shall be approved by the institution of the U.S.S.R. or of a republic organizing the trust, provided matters related to capital are agreed upon with the competent People's Commissariat for Finance of the U.S.S.R. or of the republic, as the case may be, and matters concerning the possession of seagoing vessels by the trust are agreed upon by the People's Commissariat for Maritime Transport (as amended June 14, 1929, U.S.S.R. Laws, text 365 and March 28, 1932, *id.* 1932, text 149).

12. Upon approval of the charter, the institution under whose authority the trust exists shall appoint the management of the trust and transfer to it under a

special instrument all the property of the trust on the inventory list (Section 10). . . .

18. A board of directors shall be appointed for a period of time specified in the charter, not to exceed three years, numbering from three to five members including the president and his deputy. In addition, not more than two deputy members of the board may be appointed. Instead of a board of directors, it is permissible to appoint one director who shall manage the trust alone, and a deputy. . . . The president of the board, his deputy, and the members of the board, as well as the single managing director and his deputy, may be discharged before the expiration of their term of office by the institution under whose authority the trust is established only in case it is disclosed that they are unfit for the discharge of their duties.

Note 1: All provisions regarding the board of directors shall apply also to the director who manages the trust alone.

Comment

In contrast to earlier practice, the appointment of a board of directors has been abandoned, and the appointment of a single director for each trust is now the rule.

19. The board of directors shall discharge independently, under the general supervision of the institution under whose authority the trust is placed, all operative and administrative agenda of the trust, shall manage its business and the property at its disposal, shall make collective contracts, conducting all transactions and operations within the competence of the trust (including contracts of independent contractors and those concerning delivery), and shall procure permission from the

institution under whose authority the trust is placed only in cases expressly specified by law.

The duties and powers of the board of directors shall be more precisely defined in the charter of the trust (as amended February 15, 1936, U.S.S.R. Laws, text 93). . . .

24. The immediate management of individual production units belonging to the trust shall be entrusted to directors (managers, administrators) who shall be appointed and dismissed by the board of directors and who shall act independently, discharging their duties individually within the limits defined by the board. . . .

37. The trust shall have the authority to transact all the business operations necessary for the achievement of its purposes specified in its charter.

38. Goods the prices of which are not fixed shall be sold and purchased by the trust at prices determined by the sellers and purchasers.

Selling prices binding upon the trust shall be established by the institution under whose authority the trust is placed, in accordance with the laws in force. . . .

43. Besides the charter capital, the following capital funds shall be established: (a) amortization capital and (b) capital for the development of the enterprise (as amended December 16, 1929, U.S.S.R. Laws 1929, text 729; April 19, 1936, *id.* 1936, text 109). . . .

46. The amount of profit and loss of a trust for the past fiscal year shall be computed annually when the annual balance sheet is approved, in a manner prescribed by a separate law.[2]

[2] Statute of July 29, 1936, U.S.S.R. Laws, text 359. According to this statute, the monthly and annual reports and balance sheets shall be submitted by the trusts to the institution under whose authority they are placed and in a copy to the Commissariat for Finance and certain banks (Section 1). Approval of the annual balances and distribution of profit is within the

From the profits of a trust, the income tax shall first be deducted. If the balance shows losses carried over from the previous year, the remainder of the profit shall be first assigned to cover such losses.

The portion of the profit still remaining shall be distributed as follows:

(a) 47.5 per cent for the benefit of the treasury, to enter into the federal, state, or local administrative budget in accordance with the legislation in force;

(b) 3.5 per cent for the higher and secondary vocational schools in accordance with special laws;

(c) 11.25 per cent for the improvement of the living conditions of salaried and wage earning employees;

(d) 25 per cent to build up a special government fund for long-term credit in accordance with special laws;

(e) 12.5 per cent for the fund for expansion of the enterprise;

(f) .25 per cent for a fund for bonuses (as amended December 16, 1929, U.S.S.R. Laws 1929, text 729).

Comment

The percentage of profits assigned to one purpose or another has been changed. The so-called "director's fund" was established to cover the purposes mentioned in Section 46, subsections (c) and (f). It amounts to 4 per cent of the planned profit and 50 per cent of the profit obtained in excess of the plan (see *infra*). Enterprises which do not cover by their savings the planned increase in turnover funds and the fund for expansion must pay to the treasury at least 10 per cent of their profits and to the banks 50 per cent of their profits under the Statute of September 3, 1931.[3]

competence of the institution under whose authority the trust is functioning (Section 5). The financial authorities may interfere and move for correction of the balance sheet (Sections 6 and 7).

[3] U.S.S.R. Laws 1931, text 367, Sections 2, 4.

For later rates see Nos. 16, 17.

A turnover tax is at present substituted for the income tax in the case of government enterprises.

. . . 49. If the balance sheet shows a loss at the end of the fiscal year, the loss shall be carried over to the balance of the following year and is to be covered by the profits of the succeeding years. . . .

55. Trusts shall discontinue their activities: (a) by liquidation; (b) by joining, fusion, or division.

56. A trust shall be liquidated:

(a) If the trust is declared insolvent;

(b) If further existence of the trust is considered useless;

(c) If the trust loses two fifths of its charter capital, unless reduction of the amount of the charter capital is duly approved or an appropriation is granted bringing the capital to three fifths of its original amount.

57. Liquidation in the case provided for in Section 56, subsection (a) shall be made in accordance with a special federal law.

58. Liquidation in cases provided for in Section 56, subsections (b) and (c) shall be initiated by the decision of the institution under whose authority the trust is placed, approved in accordance with Section 9.

13

Statute Concerning Governmental Trading Enterprises (*Torgs*) of August 17, 1927 (Excerpts)[1]

. . . 2. A governmental trading enterprise organized under a separate charter as an independent business unit which enjoys the rights of a legal entity, has a capital indivisible into shares, is under the authority of a governmental institution specified in its charter, and operates on a commercial (business) basis in accordance with planned assignments approved by said institution, shall be considered a governmental *torg*.

The *torg* shall enjoy independence in the conduct of its operations in accordance with the present statute and its charter. . . .

4. Each *torg* may conduct only such operations and, in particular, may trade only in such kinds of goods, as are specified in its charter.

[1] U.S.S.R. Laws 1927, text 502.

14

Statute Concerning the Director's Fund Derived from the Profits of the Enterprise, April 19, 1936[1]

Comment

Superseded by acts translated *infra* Nos. 16, 17.

1. On and after January 1, 1936, a single fund entitled "director's fund" shall be established in every industrial enterprise (factory, plant, mine, and the like)[2] and derived from its profits, instead of funds and levies hitherto in existence for the purpose of granting bonuses and improving living conditions of the employees; it shall amount to:

(a) Four per cent of the net profits earned by the enterprise within the approved plan;

(b) Fifty per cent of the profits earned in excess of the planned profit.

Comment

The Instruction of the Commissariat for Finance of December 31, 1936,[3] defined the two kinds of profits as follows:

2. Planned profit for the purpose of annual levies for the

[1] U.S.S.R. Laws 1936, text 169. During the war levies for this fund were suspended.

[2] This provision was extended to building and installation offices (U.S.S.R. Laws 1936, text 438), water transportation enterprises (*id.*, text 467), railroads, air transport, governmental farms, machine-tractor stations, public utilities, trucking businesses, restaurants, etc. (*id.* 1937, text 35).

[3] U.S.S.R. Laws 1937, text 5.

director's fund shall be considered profit provided for in the annual plan duly approved (with all duly approved amendments).

3. Profit in excess of the plan for the purpose of annual levies for the director's fund shall be considered the difference between the actual profits (according to the balance sheet) and the planned profits.

Compare also *infra,* No. 17, Section 4 *et seq.*

2. The money in the director's fund shall be used, subject to approval by the People's Commissar or in other duly prescribed manner, at the order of the director for the following measures beyond the approved government plan:

(a) For housing of the wage earning employees, engineering and technical personnel, and salaried employees of the enterprise, not less than 50 per cent of the entire fund;

(b) For the improvement of other agencies serving the cultural and daily needs of wage earning employees, engineering and technical personnel, and salaried employees of the enterprise (crèches, kindergartens, clubs, canteens, et cetera);

(c) For individual bonuses for employees of the enterprise who have particularly distinguished themselves;

(d) For additional capital construction works;

(e) For additional rationalization and technical propaganda measures.

The plan for expenditure of the fund shall be established by the director in agreement with the factory committee of the trade-union.

3. The levies for the director's fund shall be made once a quarter from the profits earned within and above the planned profits, to the extent of one half of the rate specified in Section 1. The final settlement of accounts

shall be made after the annual accounts and balance sheet of the enterprise have been duly approved.

4. On and after the date of the promulgation of this decree, directors shall be prohibited from creating out of the profits of enterprises any other funds for improvement of living conditions, bonuses and the like, as well as from spending funds other than the director's fund for these purposes.

15

Statute Concerning Nonprofit Director's Fund

Statute Concerning the Director's Fund in Enterprises in Which the Governmental Plan Does Not Provide for the Making of a Profit, April 19, 1936.[1]

1. In enterprises whose plan does not provide for the making of a profit, levies for the director's fund may be made in 1936 at the rate of 3 per cent of the savings obtained by the enterprise through the planned reduction of the cost of production, plus 50 per cent of the savings obtained through the reduction of production cost beyond the plan.

[1] U.S.S.R. Laws 1936, text 170. The application of this decree was extended to various branches of national economy by the decrees cited in note 2 to No. 14. It is at present superseded by Nos. 16 and 17.

16

Resolution of Council of Ministers Concerning Director's Fund

Concerning the Fund of the Director of the Industrial Establishments (Resolution of the Council of Ministers of December 5, 1946, No. 2607) U.S.S.R. Laws, 1946, text 272.

Comment

This resolution and the Instruction below (No. 17) are discussed in Volume I, pp. 387, 810, and 811.

For strengthening the initiative and responsibility of the directors of the industrial enterprises in the matters involving the execution of the production plan, the reduction of the cost of production and the achievement of the planned profit, the U.S.S.R. Council of Ministers has enacted as follows:

1. Beginning with July 1, 1946, a director's fund shall be established in the government industrial enterprises to be derived from the profit of the enterprise or, in enterprises for which the plan does not provide a profit, from the savings obtained through reduction of costs.

2. The director's fund shall be established in all governmental industrial enterprises of federal, republican, or local rank operating on a commercial basis and having an independent balance sheet, which enterprises fulfilled or exceeded the governmental plan for the output of merchandise of the established assortment, for the

reduction of costs and for profit to be obtained from the marketing of production.

No director's fund shall be established in auxiliary industrial establishments which are attached to government offices whose receipts and expenditures are entered in the government budget or to scientific research institutions.

3. Levies for the director's fund from the planned profits and savings obtained through the reduction of costs shall be made in the following percentages:

(a) Four per cent in the industrial establishment of the ministries of: nonferrous metals (except for mining of ores); chemical industry (except enterprises engaged in mining chemistry, in the production of nitrate fertilizers and superphosphates); aviation industry; shipbuilding industry; armament industry; automobile industry; heavy machine building industry; agricultural machine building industry; tool machine industry; machine and device making industry; industry for the manufacture of transport machinery; industry producing machinery for construction and road building; electric power plants; electric appliances industry; radio, telegraph, and telephone industry; rubber industry; paper and pulpwood industry; timber industry; building material industry (except cement, asbestos, and quartz industries); means of transportation industry (locomotive and car repair and machine making plants) and textile industry.

As an exception, it shall be permitted to levy 10 per cent for the director's fund in the enterprises under the control of the ministries: of ferrous metals; of the coal industry of the Western and Eastern regions; of the oil industry of the Eastern, Western, and Southern re-

gions, and in the metallurgical plants of all the ministries, in the mines of the ministry of nonferrous metals, in the enterprises of the ministry of chemical industry engaged in mining chemistry and in the production of nitrate fertilizers and superphosphates, and in the enterprises of the cement, asbestos, quartz, and peat industries;

(b) Two per cent in the industrial establishments of the ministries: of food; of confectionery and spice industry; of meat and dairy industry; of fishery of the Eastern and Western regions; of light industry; of local industry and local fuel industry, as well as in industrial establishments under the control of the city and district authorities and industrial establishments of other ministries and central offices not mentioned in the present section, including the establishments under the control of the authorities of the republics and minor territorial subdivisions.

4. If the enterprise exceeds the planned profit or the planned reduction of costs, an additional levy to the director's fund shall be made from the amount exceeding the planned profit or the planned reduction of costs to the extent of 50 per cent in the establishments of the ministries specified in subsection (a) of Section 3 and of 25 per cent in the establishments enumerated in subsection (b) of Section 3 of the present resolution, while in the establishments under the control of the ministries of ferrous metals, of coal industry of the Eastern and Western regions, and of the oil industries of the Eastern, Western, and Southern regions, as well as in metallurgical plants of all ministries, in the mines of the ministry of nonferrous metals, in the establishments of the ministry of chemical industry engaged in mining

chemistry, in production of nitrate fertilizers and superphosphates, in the cement, asbestos, quartz, and peat industries the levies to the director's fund shall, as an exception, be made to the extent of 75 per cent.

5. The total annual amount of the levy to the director's fund from the profit or savings by reduction of costs obtained as planned or in excess of the plan shall not exceed 5 per cent for the year 1947 of the annual amount of wages and salaries assigned for the personnel employed in production which amount should be calculated in terms of actual output of merchandise produced.

6. In determining the amount of profit in excess of plan or of the saving obtained through reduction of costs, the ministries, their bureaus, and the directors of the establishments must take into account changes occurring due to causes independent of the production activities of the establishment.

7. The directors of the establishments shall be permitted to make advance levies for the director's fund after the end of each quarter of the year on the basis of the balance sheet and to the extent of 50 per cent of sums due under the provisions of Sections 3, 4, and 6 of the present resolution. The final levy to the director's fund shall be made in accordance with the annual accounts.

8. The directors of the establishments shall have the right to spend the director's fund for the following:

(a) For expansion of production, for construction and repair of residences for the employees above the planned investment, to the amount of 50 per cent of the fund;

(b) For the improvement of living conditions of the employees (for expansion of auxiliary husbandries, for institutions for care of the children, for establishment of

rest homes and sanatoria, cafeterias and clubs, and for acquisition of properties for these as well as for physical culture projects) as well as for issuance of individual bonuses to wage earning and salaried employees and engineering and technical personnel, for paying traveling and maintenance expenses of staying in rest homes and sanatoria, and for lump sum aids to employees.

Estimates for spending of the director's fund must be coordinated by the director with the shop committee of the trade-union.

9. Expenditures from the director's fund may be made only within the limits of sums actually present in the account of the fund; it shall be prohibited to make expenditures on account of levies to this fund expected in the future.

10. The instruction of the U.S.S.R. Ministry of Finance concerning the application of the present resolution is hereby approved.

11. [This section enumerates laws, rules, and regulations repealed. Among these, the following were printed in the official periodical collection (*Sobranie postanovlenii*—U.S.S.R. Laws): Acts of April 19, October 26, December 8, and 31, 1936, U.S.S.R. Laws 1936, texts 169, 170, 171, 438, 457, *id.* 1937, text 5; Act of February 7, 1937, *id.* text 35. Others deal chiefly with some specific industries.]

17

Instruction of Ministry of Finance Concerning Director's Fund

Instruction of the U.S.S.R. Ministry of Finance Concerning the Application of the Resolution of the Council of Ministers of December 5, 1946 "Concerning the Director's Fund of Industrial Establishments" (Excerpts).

. . .

4. For the purpose of levies for the director's fund, planned profit means profit provided for in the annual and quarterly plan approved in a procedure established by law and in all the amendments and detail established in the same manner.

5. An establishment shall be deemed to have fulfilled the assignment for reduction of costs of production, if it achieved, as provided for in the plan, (a) the amount of saving through reduction of costs, and (b) the percentage of reduction of costs of production as compared with the production for the preceding year.

6. For the purpose of levy for the director's fund, profit in excess of that planned shall be taken in the amount of the difference between the actual profit according to the approved balance sheet and the planned profit, but from both must be deducted the profit assigned to the fund for supplies and commodities of general consumption.

7. In establishments for which no profit is provided by the plan, the savings in excess of the plan obtained through reduction of costs shall be defined for the levy for the director's fund as the difference between the actual and the planned costs of all merchandise produced (whether it can or can not be compared with production for the preceding year).

8. In determining the amount of profit or of savings through reduction of costs obtained in excess of the plan, such changes shall be taken into account for the levy to the director's fund as are independent of the production activities of the establishment, namely:

(a) Changes in prices on raw materials, semi-finished products, fuel, and other materials, as well as changes in railway and other rates;

(b) Substitution, according to the changes in the plan, of the basic raw materials and fuel;

(c) Changes in rates of wages and salaries and additions to them, in mandatory standards of output, in rates of taxes and interests payable to banks, in rates for the use of public utilities and standards of amortization;

(d) Changes in the wholesale prices for the goods produced;

(e) Debts to creditors, accounted for as profit because of the lapse of the period of limitation.

PART FIVE

CIVIL STATUS OF CHURCHES

18

Decree of January 23, 1918, on the Separation of the Church from the State[1]

. . . 12. No ecclesiastical or religious society whatsoever shall have the right to own property. Such societies shall not enjoy the rights of a legal entity.

13. All the property of the existing ecclesiastical and religious societies in Russia becomes public property.

Comment

An instruction issued in implementation of the decree by the Commissar for Justice on August 24, 1918 (R.S.F.S.R. Laws 1917–1918, text 685) made plain that the above provisions concerning "ecclesiastical and religious societies" apply to all officially established churches of any denomination whatsoever, to private reigious societies "organized for exercise of worship," and to societies which under the cover of charity render aid and support to some religious cult.

[1] R.S.F.S.R. Laws 1917–1918, text 263.

The status of the church in the Soviet Union is discussed in Vol. I, pp. 10–11, 18–19, 68, 145–148, 411.

19

R. S. F. S. R. Law of April 8, 1929[1]

1. Churches, religious groups, sects, religious movements, and other cult associations of any denomination come under the Decree of January 23, 1918, on the Separation of the Church from the State and the School from the Church (R.S.F.S.R. Laws, text 263).

2. Religious associations of believers of all denominations shall be registered as religious societies or groups of believers.

3. A religious society is a local association of no fewer than twenty believers over eighteen years of age who belong to the same cult, faith, or sect and are united for the common satisfaction of their religious needs. Believers who are not numerous enough to organize a religious society may form a group of believers.

Religious societies and groups do not enjoy the rights of a legal entity. . . .

10. For the satisfaction of their religious needs, the believers who have formed a religious society may receive from the city or district soviet by contract, free of charge, special edifices to be used for prayer and objects intended exclusively for the cult. . . .

11. Transactions for the management and use of religious property, such as hiring of watchmen, buying of fuel, repair of the building and objects destined for the rite, purchase of products or property necessary for a

[1] R.S.F.S.R. Laws 1929, text 353.

religious rite or ceremony and closely and directly connected with the observances and services of the cult, and for the renting of premises may be made by citizens who are members of the executive body of religious associations or are representatives of groups of believers.

No contract embodying such arrangements may contain in its text any reference to commercial or industrial transactions, even if these are of a kind directly connected with the affairs of the cult, such as the renting of a candle factory or of a printing works for the purpose of printing religious books, et cetera. . . .

17. Religious associations may not: (a) Create mutual credit societies, co-operative or commercial undertakings, or in general use the property at their disposal for other than religious purposes; (b) give material assistance to their members; (c) organize for children, young people, and women special prayer or other meetings, or generally meetings, circles, groups, or departments for biblical or literary study, sewing, working or the teaching of religion, et cetera, or organize excursions, children's playgrounds, public libraries, or reading rooms, or organize sanatoria and medical assistance.

Only books necessary for the purpose of the cult may be kept in the buildings and premises of worship. . . .

22. Religious congresses and executive bodies elected by them do not possess the rights of a legal entity and, in addition, may not:

(a) Form any kind of central fund for the collection of voluntary gifts from believers;

(b) Make any form of obligatory collection;

(c) Own religious property, receive the same by con-

tract, obtain the same by purchase, or hire premises for religious meetings;

(d) Conclude any kind of contract or legal transaction. . . .

25. Property necessary for the rites of the cult, whether handed over under contract to the believers forming the religious society or newly acquired by them, or given to them for the purposes of the cult, is nationalized and shall be under the control of the city or district board of religious affairs. . . .

54. Members of a group of believers or a religious society may pool money together and collect voluntary donations in the building of the church or outside of it, but only among the members of their religious association and only for the purposes connected with the upkeep of the church building and property incidental to the cult and with hiring of the clergy and maintenance of the executive board.

Any form of obligatory contribution in aid of religious associations is punishable under the Criminal Code of the R.S.F.S.R.

20

Statute on Administration of Russian Orthodox Church

Comment

Although the soviet government has shown a more tolerant attitude toward the Russian Orthodox Church since 1941, the above quoted statutory provisions were never repealed. Nevertheless, the soviet government permitted a *sobor* (church council) of the Russian Church to be convoked for the election of the Patriarch Sergius and, after his death, for the election of his successor Patriarch Alexis and for the passing on January 31, 1945, of a "Statute on Administration of the Russian Orthodox Church." It was printed only in the publications of the Patriarchy without any clause indicating the approval of soviet authorities. Thus it has no official binding force upon the soviet authorities but obviously could not have been adopted without their approval. It mainly deals with the internal organization of the Church. But Sections 32, 37, 38, 39, 41, 43 and 44 contain provisions on the general status of the Church. These imply in part that parishes continue to be deprived of the right to own any ecclesiastic property, in particular church buildings and church furniture, and may obtain such property only for use from the soviet authorities under a contract. Full responsibility for such property is placed upon the signatories of the contract (Sections 38, 39). The Church still may not enjoy the right of a corporation (legal entity). No regular membership fees are permitted—only irregular donations and plate collection (Section 43). The church funds must be deposited with a bank "in the name of

the church building" (Section 44). On the other hand the statute provides for an ecclesiastic hierarchy and gives bishops distinct powers in the distribution of churches. Moreover, by a special permit of soviet authorities the manufacturing of candles and some of the articles needed for the service may be organized for a diocese (Section 33) which is expressly forbidden by Section 11 of the Law of 1929. The pertinent provisions of the statute are as follows:

Statute on the Administration of the Russian Orthodox Church Passed by the *Sobor* of the Church in Moscow on January 1, 1945.

. . . 33. To furnish the churches of the diocese with articles needed for church service, such as candles, incense, and the like, a candle shop as well as manufacturing of corolas to be placed over the forehead of the deceased, pectoral crosses, absolving prayers, and similar objects, may be established in the diocese upon permission by civil authorities.

. . . 37. A parish may be organized, upon registration by civil authorities, by a voluntary consent of the faithful on the basis of a petition filed by them.

38. A church or a house of prayer is placed for the use of a parish community of the faithful by competent government agencies in response to an application of the faithful, upon agreement with the diocesan bishop who shall supervise the expedient distribution of churches and parishes in the territory of his diocese.

39. The Orthodox Parish Community, as represented by a group of the faithful (not less than twenty persons) shall receive the church building and the church furniture placed at their disposal by the local civil authority, for gratuitous use, under a special contract and shall confer the care and custody of the ecclesiastical property thus received, upon an Executive Board con-

sisting of the parish priest and three members elected from among the parishoners by the parish, which board shall be liable before the civil authorities for the preservation of [such] property, jointly with the signatories of the contract.

. . . 43. Church funds shall come from voluntary contributions given at the plate collection during the service, similar contributions for the consecrated bread, candles and the like, [and] contributions for general needs of the church building.

44. Church funds shall be deposited for keeping in a bank or savings bank in the name of a given church building and may be withdrawn over the signature of the parish priest and the treasurer of the parish. The church sums shall be accounted for by means of the keeping of books of receipts and expenditures.

21

Violation of Rules Concerning Separation of Church and State

R.S.F.S.R. Criminal Code Special Part (Excerpts)

Comment

Several sections of the R.S.F.S.R. Criminal Code deal with offenses against the separation of the Church and the State (Sections 122–127). However, in compilations of laws and decrees on the status of the Church printed in the Soviet Union, Sections 58^{1}, 58^{10}, and 59^{7} are also referred to as being used for prosecution of such offenses.[1] Therefore, all these sections are translated.

58^{1}. As counterrevolutionary shall be considered any act intended to overthrow, to undermine, or to weaken the power of workers' and peasants' soviets, and of the workers' and peasants' governments of the U.S.S.R., the constituent and autonomous republics elected by the soviets in accordance with the constitutions of the U.S.S.R. and the constituent republics, or to undermine or weaken the external safety of the U.S.S.R. or the basic economic, political and national conquests of the proletarian revolution.

In view of the international solidarity of the interests of all the toilers, similar acts shall also be considered counterrevolutionary when they are directed against any

[1] Orleansky, The Law Concerning Religious Associations in the R.S.F.S.R. (in Russian 1930) 177.

other state of toilers, even if it is not incorporated in the U.S.S.R. (as amended June 6, 1927, R.S.F.S.R. Laws, text 330).

58[10]. Propaganda or incitement containing an appeal to overthrow, undermine, or weaken the soviet government, or commit individual counterrevolutionary crimes provided for in the present Code (Sections 58[2] through 58[9]), as well as dissemination, preparation, or keeping of literature containing any such matter, shall be punished by:

Imprisonment for a period not less than six months.

The same acts if committed during mass disturbances or by utilizing religious or racial prejudices of the masses, or under war conditions, or in localities placed under martial law, shall be punished by:

The measures of social defense specified in Section 58[2] (as amended June 6, 1927, *id.*).

Comment

Section 58[2] specifies the following "measures of social defense":

The supreme measure of social defense—death by shooting or a sentence declaring that the accused is an enemy of the toilers, confiscating all his property, depriving him of nationality of the constituent republic and thereby of nationality of the U.S.S.R. and expelling him from the confines of the U.S.S.R. forever; under extenuating circumstances the sentence may be reduced to confinement for not less than three years with confiscation of property in whole or in part (as amended June 6, 1927, R.S.F.S.R. Laws, text 330).

Under the Edict of May 26, 1947, the death penalty in peacetime was replaced by confinement in a camp of correctional labor for twenty-five years.

59[7]. Propaganda or incitement directed to arousing racial or religious enmity or discord as well as dissemi-

nation, preparation, or keeping of literature of such a character, shall be punished by:

Imprisonment for a period up to two years.

The same acts committed under war conditions or on the occasion of mass disturbances, shall be punished by:

Imprisonment for not less than two years and confiscation of property in whole or in part, provided that the penalty shall be increased under especially aggravating circumstances up to the supreme measure of social defense—death by shooting and confiscation of property (as amended June 6, 1927, R.S.F.S.R. Laws, text 330).

122. Any teaching of a religious belief to children or persons under age, done in governmental or private teaching establishments or schools, or in violation of rules issued concerning this matter, shall be punished by:

Forced labor for a period up to one year.

123. The commission of acts of deceit for the purpose of arousing superstition in the masses of the population with the object of obtaining thereby any advantage whatsoever, shall be punished by:

Forced labor for a period up to one year and confiscation of property in part or a fine.

124. Compulsory collection of funds for the benefit of ecclesiastical or religious groups shall be punished by:

Forced labor for a period up to six months, or a fine up to 300 rubles.

Comment

This section is applied if a regular membership fee in a religious group is established. See Instruction of the R.S.F.S.R. People's Commissariat for the Interior of October 1, 1929, No.

328, Section 9, Orleansky, The Law Concerning Religious Associations in the R.S.F.S.R. (in Russian 1930) 28.

125. The assumption by religious or ecclesiastical organizations of administrative, judicial, or any other functions pertaining to public law, or of the rights of a legal entity, shall be punished by:

Forced labor for a period up to six months or a fine not exceeding 300 rubles.

126. The performance of any religious rite in any governmental or public institution or business establishment, as well as the placing in any such institution or establishment of any kind of religious images, shall be punished by:

Forced labor for a period up to three months or a fine up to 300 rubles.

127. Obstructing the performance of religious rites insofar as such rites do not disturb public order or are not accompanied by any infringement of the rights of citizens, shall be punished by:

Forced labor for a period up to six months.

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PART SIX

ADMISSION OF FOREIGN FIRMS; TRADE MISSIONS; STANDARD SALVAGE AGREEMENT

*

22

Resolution Concerning Admission of Foreign Firms

Resolution of the Central Executive Committee and Council of People's Commissars of the U.S.S.R. of March 11, 1931, Concerning the Admission of Foreign Firms to Conduct Trade Operations Within the Territory of the U.S.S.R.[1]

Comment

Admission of foreign firms is discussed in Volume I, p. 373 *et seq.*, contracts in foreign trade, p. 469 *et seq.*

1. Foreign commercial, industrial and other business organizations (companies, partnerships, et cetera) as well as individual citizens who own commercial, industrial, and other business enterprises abroad shall be admitted to conduct commercial operations within the territory of the Soviet Union and to open for this purpose agencies, branches, and the like only by special permit of the People's Commissar for Foreign Trade.

2. Governmental, co-operative, public, and private institutions, enterprises, and organizations, as well as individual citizens, shall be prohibited to conclude in the territory of the Soviet Union commercial transactions with such foreign organizations and individual foreigners as do not possess the permit provided for in Section

[1] U.S.S.R. Laws 1931, text 197; also (1931) Bulletin of Financial and Economic Legislation Nos. 15 and 29.

1. Commercial transactions with foreign organizations and individual foreigners possessing such permits shall be allowed only in compliance with the laws concerning foreign trade.

3. Persons employed in the institutions, enterprises, and organizations of the socialized sector of the national economy shall be prohibited from representing any foreign organization or person whatsoever.

4. Citizens who are not employed in the socialized sector of the soviet national economy may undertake to represent in the conduct of commercial transactions within the territory of the Soviet Union only such foreign organizations or individual foreigners as possess the permits specified in Section 1.

5. A violation of Sections 1, 2, and 4 of the present resolution shall be prosecuted under the penal law providing for the violations of monopoly of foreign trade. The violation of Section 3 shall be prosecuted as a crime of breach of official duty.

6. Transactions made within the territory of the Soviet Union by such organizations or individuals, specified in Section 1, as do not possess a permit from the People's Commissar for Foreign Trade for the conduct of commercial operations in the Soviet Union shall be null and void.

7. Organizations and persons specified in Section 1, when filing with the People's Commissariat for Foreign Trade their applications for admission to commercial transactions within the territory of the Soviet Union, shall submit necessary information and material in accordance with the special instruction of the said Commissar.

8. The following shall be indicated in the permit issued by the People's Commissar for Foreign Trade:

(a) Conditions under which the organization or person is admitted for the conduct of commercial transactions within the territory of the U.S.S.R.;

(b) The scope of operations permitted;

(c) The period of time for which the permit is issued.

9. The organizations and persons admitted to commercial operations shall be subject, with regard to their activities within the territory of the U.S.S.R., to all laws in force in the U.S.S.R. and orders issued by governmental agencies.

10. Organizations and persons admitted to do business within the territory of the U.S.S.R. shall be liable under the obligations incurred through their activities in the U.S.S.R. with all their property irrespective of its location.

11. The conduct of commercial operations by the organizations and persons specified in Section 1 shall be discontinued within the territory of the U.S.S.R.:

(a) Upon the expiration of the period of time for which the permit is issued;

(b) In case the foreign enterprise belonging to the organization or person admitted to conduct commercial operations within the territory of the U.S.S.R. has discontinued its activities abroad;

(c) By the decision of the People's Commissar for Foreign Trade, in case the organization or person has violated the terms under which he was admitted to conduct commercial operations within the territory of the U.S.S.R. or in case his activities are recognized as inconsistent with the interests of the U.S.S.R.

12. Organizations and persons specified in Section 1 shall not be required to obtain the permits provided for

in that section in cases where their activities within the territory of the U.S.S.R. are limited to negotiating and contracting individual transactions with the unionwide concerns and independent agencies engaged in foreign trade and do not have the character of a permanent commercial activity.

23

Statute Concerning Trade Missions and Trade Agencies of the U. S. S. R. Abroad, September 13, 1933[1]

Comment

For discussion, see Volume I, pp. 402 *et seq.*, 472 *et seq.*

1. Trade missions (*Torgpredstvo*) of the U.S.S.R. abroad shall be the agencies of the U.S.S.R. exercising abroad the rights of the Union of the Soviet Socialist Republics pertaining to the monopoly of foreign trade enjoyed by the Union.

In accordance with the above, the trade missions shall perform the following tasks:

(a) They shall represent the interests of the U.S.S.R. insofar as foreign trade is concerned and shall promote the development of trade and other business relations of the U.S.S.R. with the countries in which the trade missions are located;

(b) They shall regulate the foreign trade of the U.S.S.R. with the countries in which the trade missions are located;

(c) They shall transact the foreign trade of the U.S.S.R. with the countries in which the trade missions are located.

Note: In individual instances the People's Commissariat for Foreign Trade may entrust a trade mission with the exercise of the above functions outside the con-

[1] U.S.S.R. Laws 1933, text 354.

fines of the country in which the trade mission is located.

2. A trade mission shall be a component part of the corresponding diplomatic mission of the U.S.S.R. abroad and shall enjoy all the privileges of that mission but shall be simultaneously subordinate to the People's Commissariat for Foreign Trade.

3. The trade missions shall conduct the foreign trade policy of the U.S.S.R. in accordance with the tasks delegated them, in particular:

(a) They shall perform, on the basis of the government monopoly of foreign trade, business operations relating to foreign trade for organizations, enterprises, institutions and citizens participating in the foreign trade of the U.S.S.R.;

(b) They shall regulate and supervise, on the basis of the government monopoly of foreign trade, the commercial activities of the organizations of the U.S.S.R. duly permitted to appear independently on the foreign market, as well as all such business operations pertaining to the foreign trade of the U.S.S.R. as have been duly permitted to organizations and citizens;

(c) They shall issue to organizations and citizens participating in the foreign trade of the U.S.S.R. licenses for the performance, in the countries in which the trade missions are located, of activities relating to the foreign trade of the U.S.S.R. and shall ratify transactions relating to the foreign trade of the U.S.S.R. and made in the country in which the trade missions are located by such organizations and such persons as have been duly permitted thus to act;

(d) They shall issue licenses for importation into the U.S.S.R. of merchandise, certificates of origin of merchandise, permits for transit of merchandise through

the U.S.S.R., as well as any other appropriate documents relating to the foreign trade of the U.S.S.R.;

(e) They shall ensure that the organizations and citizens participating in the foreign trade of the U.S.S.R. observe in the country in which the trade missions are located, the laws and decrees of the government of the U.S.S.R. concerning foreign trade;

(f) They shall study from the point of view of the interests of the foreign trade of the U.S.S.R. the general economic and business conditions of the countries in which the trade missions are located and shall supply appropriate information to the People's Commissariat for Foreign Trade, the People's Commissariat for Foreign Affairs, the other government departments concerned and the economic organizations of the U.S.S.R., as well as inform the organizations, institutions, and enterprises of the countries in which the trade missions are located of the economic and commercial conditions of the U.S.S.R.;

(g) They shall carry on negotiations concerning participation of foreign capital in industrial, commercial, and other economic activities within the U.S.S.R.

4. The trade missions shall be authorized in their capacity as agencies of the U.S.S.R. to enjoy in the conduct of business operations in foreign trade all rights necessary thereto and, in particular, may conclude in the name of the U.S.S.R. all kinds of contracts and legal transactions, may incur liabilities including the execution of bills and notes and the undertaking of suretyship, may make agreements submitting disputes to arbitration, may settle cases and, in general, may perform all legal acts necessary for the discharge of duties assigned to the trade missions by the laws of the U.S.S.R., which duties include appearance in foreign

courts in the capacity of plaintiff; the trade missions may appear in foreign courts in the capacity of defendant only in legal disputes arising from commercial transactions of the trade missions in the countries in which they are located, provided they are countries regarding which the government of the U.S.S.R. has declared, by means of an international treaty or a unilateral declaration which has been transmitted to the government of each country, its consent to the submission of the trade missions in such disputes to the local courts.

Note: The government of the U.S.S.R. may insert in the credentials issued to the trade representative an authorization to include in contracts made by him the clause providing for submission of disputes arising from such contracts to the local court.

5. The procedure for the signing, by the trade representatives, of contracts, bills and notes and all kinds of financial obligations, as well as powers of attorney for the execution of contracts and for the issuance of bills and notes and financial obligations, shall be determined by a separate resolution of the U.S.S.R. Central Executive Committee and the Council of People's Commissars.

6. The Treasury of the U.S.S.R. shall be liable for obligations incurred by the trade missions.

A license for or ratification of transactions in foreign trade made by other organizations or persons (Section 3, subsection (c)), granted by a trade mission in the exercise of supervisory power, shall in no way be construed as the undertaking by the trade mission of any liability whatsoever for such transactions.

7. At the head of a trade mission shall be the trade representative of the U.S.S.R., who shall be appointed

and recalled by the Council of People's Commissars upon the recommendation of the People's Commissar for Foreign Trade, with the consent of the People's Commissar for Foreign Affairs. The same procedure shall apply to the appointment and recall of the deputies of the trade representatives abroad.

The trade representative shall be given credentials which shall be issued to him by the Council of People's Commissars.

8. The internal structure of trade missions in individual countries shall be defined by the People's Commissariat for Foreign Trade in agreement with the People's Commissariat for Foreign Affairs and shall be approved in accordance with the proper procedure.

9. By order of the People's Commissariat for Foreign Trade, a council of the trade mission may be established in an advisory capacity in each individual trade mission.

The People's Commissariat for Foreign Trade shall determine the composition and competence of such council.

10. By agreement of the People's Commissariat for Foreign Trade with the corresponding government departments, representatives of such departments may be included in the staff of a trade mission for the purpose of co-ordinating the interests of these departments with the operations of the trade mission.

Representatives of the departments shall carry on their work under the general direction of the trade missions and may have contacts with a foreign firm only by permission of the trade mission.

11. The trade missions of the U.S.S.R. abroad may open branches for individual districts within the territory of their activities, by permission of the People's

Commissariat for Foreign Trade in agreement with the People's Commissariat for Foreign Affairs.

At the head of a branch, there shall be an agent of the trade representative who is appointed by the People's Commissariat for Foreign Trade and is acting under a power of attorney issued by the corresponding trade mission of the U.S.S.R. abroad.

Note: [This has become inoperative because it deals with the trade mission for Germany.]

12. The People's Commissar for Foreign Trade, in agreement with the People's Commissar for Foreign Affairs, may establish, if necessary, independent trade agencies of the U.S.S.R. for the countries in which there are no trade missions of the U.S.S.R. or for individual districts within the countries in which trade missions are located, which trade agencies shall be directly subordinate to the People's Commissariat for Foreign Trade.

13. At the head of a trade agency shall be a trade agent of the U.S.S.R., who shall be appointed and recalled by the People's Commissar for Foreign Trade and shall act under an authorization issued to him by the People's Commissariat for Foreign Trade.

14. The purpose of trade agencies shall consist in performing individual tasks assigned by the present statute to the trade missions. The functions, territorial confines, and method of procedure of trade agencies, shall be determined in each case by the People's Commissariat for Foreign Trade in agreement with the People's Commissariat for Foreign Affairs.

15. The provisions of Sections 1–6 of the present statute shall apply to trade agencies within the confines of their jurisdiction.

24

Standard Salvage Agreement

Comment

The following is the English text of a standard salvage agreement under the soviet law published by the U.S.S.R. Chamber of Commerce Maritime Arbitration Commission.[1] For characteristics of the soviet maritime law, see Volume I, p. 469.

For translation of the statutes governing the Maritime Arbitration Commission referred to in the text of the Standard Salvage Agreement, see *infra* Nos. 45, 46.

1. The Salvor undertakes to carry out salvage operations to salve the steamship ————, her cargo and other property on the ship and bring them in to ———— or other place, by agreement between the Salvor and the Captain.

2. The Salvor may make reasonable use of the salvaged vessel's gear, anchors, chains and other appurtenances during and for the purpose of the operations free of cost, but shall not unnecessarily damage, abandon, or sacrifice the same or any other of the property.

3. For the performance of operations indicated in No. 1, the Salvor, in case favorable results are attained, shall be remunerated to the amount of ————, determined by the Maritime Arbitration Commission.

If, in spite of the operations undertaken by the Salvor

[1] Collection of Decisions of the Maritime Arbitration Commission attached to the U.S.S.R. Chamber of Commerce for 1932 and 1933 (in Russian 1934) 155–156.

in accordance with the present agreement, the operations shall only be partially successful, the Salvor is entitled to a reasonable amount according to the results achieved.

Each party may object to the sum of remuneration to the Maritime Arbitration Commission. The Maritime Arbitration Commission decides also all other disputes arising out of the present agreement.

The provisions of the present agreement shall be applicable to cases brought up before the Maritime Arbitration Commission.

4. In case the Salvor wishes to secure his right of claim under the present agreement, he must, immediately after the termination of the salving operations, or sooner, notify the Maritime Arbitration Commission of the amount for which he requires security to be given.

Failing any notification by him during 48 hours after the termination of the salving operations, the Maritime Arbitration Commission fixes the amount of security according to the sum mentioned in No. 3, and in case no fixed sum is provided for in No. 3, to the amount appropriate to the circumstances as determined by the Maritime Arbitration Commission. In this connection, neither the Maritime Arbitration Commission nor its members bear any responsibility either for the amount or the form or the effectiveness of the security.

5. Pending the completion of the security the Salvor shall have a maritime lien on the property salved which shall not, without his consent in writing, be removed from one place to another.

A ten days' period from the date of the completion of the salving operations is granted for the presentment of security, during which period the Salvor agrees not to

arrest or detain by injunction the property salved, unless the Salvor has good reasons to believe that the removal of the property salved is contemplated contrary to the agreement.

6. In case no security is presented within the above stated period, to the amount and in the form required by the Maritime Arbitration Commission, the Salvor has the right to arrest and detain by injunction the property salved by him and the expenses incidental thereto may at the discretion of the arbitrators, according to the circumstances of the case, be reimbursed to the Salvor.

7. Within thirty days after the date of the termination of salving operations, each party to the present agreement, as well as persons indicated in No. 12, has a right to demand arbitration.

In case no such demand is presented to the Maritime Arbitration Commission, the Maritime Arbitration Commission, in as far as that body itself does not consider arbitration necessary, orders the security to be realized and the corresponding sum to be paid out to the Salvor.

Demands presented to the Maritime Arbitration Commission after the expiration of thirty days from the date of the termination of the salving operations are left unconsidered by the Maritime Arbitration Commission and neither the Maritime Arbitration Commission nor its members bear any responsibility for the realization and the delivery of the security.

8. The application demanding arbitration must state the arbitrator chosen by the party from among the members of the Maritime Arbitration Commission.

On receipt of the said application, the Maritime Arbitration Commission informs the other party within two

days of having received the application and allows them thirty days to indicate the arbitrator they desire, who must be one of the members of the Maritime Arbitration Commission.

If, within the period stated, one of the parties does not name its arbitrator, the Maritime Arbitration Commission, at the request of the other party, appoints an arbitrator from among its members at its own discretion.

The selection of arbitrators may by mutual consent of the parties to the present agreement be left to the Maritime Arbitration Commission. In such a case, the Maritime Arbitration Commission may nominate one of the members of the Maritime Arbitration Commission to act as sole arbitrator in deciding the dispute.

9. The procedure of arbitration is determined by the Maritime Arbitration Commission Procedure Instructions confirmed by the Presidium of the U.S.S.R. Chamber of Commerce. The Chairman of the Maritime Arbitration Commission may oblige the parties to submit to the Maritime Arbitration Commission necessary documents prior to the consideration of the dispute.

10. At the request of the Salvor, the Maritime Arbitration Commission has the right, pending an award of the arbitrators, to order the payment to the Salvor of all or part of the expenses that he actually incurred, realizing for the said purpose a corresponding part of the security given.

11. The Captain enters into this agreement as Agent for the vessel and cargo and the respective owners thereof and binds each (but not the one for the other or himself personally) to the due performance of this agreement.

12. The following persons have a right to demand

arbitration: (1) shipowners, (2) salvors, (3) other persons interested as cargo owners or insurers in the salved property, provided their total interest amounts to not less than one fourth of the cost of the salved property as evaluated by the Maritime Arbitration Commission. Moreover, the Maritime Arbitration Commission may institute arbitration proceedings at its own initiative.

13. Persons desiring to take part in arbitration procedure either personally or through their representatives must inform the Maritime Arbitration Commission of their legal addresses in the U.S.S.R. and state at the same time to whom notices, summonses, et cetera, should be addressed. In case the legal addresses of the parties in the U.S.S.R. are not communicated, the notices, summonses, et cetera, will remain in the office of the Maritime Arbitration Commission and be deemed delivered to the parties.

14. All the awards, orders and actions on the part of the Maritime Arbitration Commission, as provided by the present agreement, including also the settlement of disputes between the shipowners and cargo owners, shall be made or given by the Chairman or Vice-Chairman of the Maritime Arbitration Commission and are deemed as having been made or given on behalf of the Maritime Arbitration Commission.

PART SEVEN

PATENT AND COPYRIGHT

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25

Statute Concerning Inventions and Technical Improvements Enacted by the Soviet Council of People's Commissars March 5, 1941[1]

Comment

For discussion of patent law, see Volume I, pp. 592–606.

Title I. General Provisions

1. In the U.S.S.R. the right of authorship to an invention shall be protected through the issuance in the established procedure of either a certificate of authorship or a patent.

The inventor may, in his discretion, request either mere recognition of his discovery or recognition also of his exclusive right to the invention.

In the first instance, a certificate of authorship is issued for the invention, in the second instance, a patent.

2. Certificates of authorship and patents shall be issued only for such inventions as may be utilized in industry. No certificate of authorship or patent shall be issued for substances chemically obtained; these may be issued only for new methods of preparing such substances.

For medical, tasty, and food substances obtained by

[1] U.S.S.R. Laws 1941, text 150.

nonchemical processes, only certificates of authorship shall be issued. Patents may be issued only for methods of preparation of such substances. Only certificates of authorship, but not patents, may be issued for methods of treating diseases, tested in practice and approved by the proper authorities.

Certificates of authorship for new sorts of seeds shall be issued to selectors and selection stations in accordance with the Resolution of the U.S.S.R. Council of People's Commissars of June 29, 1937, Concerning Measures to Improve Seeds and Grain Cultures (U.S.S.R. Laws 1937, text 168).

3. In case a certificate of authorship is issued, the right to use the invention belongs to the government, which shall provide for the utilization of the invention.

Co-operative and public organizations shall use the inventions relating to their jurisdiction on equal terms with government agencies.

The inventor shall have the right to remuneration and the privileges stated in Title VII of the present statute.

The amount of remuneration to inventors, the procedure and terms of its payment shall be established by a special instruction[2] to be approved by the U.S.S.R. Council of Ministers.[3] By request of the inventor approved by the ministry which issued the certificate of authorship, the invention may be given the name of the inventor or any special name, which shall be indicated upon the products and their containers.

4. In cases where a patent is issued for the invention, the following rules shall apply:

[2] See *infra*, p. 389.

[3] Prior to March, 1946, the Ministers were called People's Commissars, and the Council of Ministers was called Council of People's Commissars.

(a) No one may use the invention without the consent of the owner of the patent. The person to whom the patent belongs (patent owner) may issue permits (licenses) for the use of his invention to any organization or individual;

(b) Patents shall be issued for fifteen years from the date of filing of the application; from the same date the rights of the patent owner shall be protected;

(c) Institutions, enterprises, and persons who used the invention in question within the confines of the U.S.S.R. prior to the filing of the patent and independently of the inventor, or made all necessary preparation for such use, shall retain the right of further use of this invention (right of prior use);

(d) In cases where an invention is of special importance to the State, but no agreement is reached between the ministry and the patent owner concerning the transfer of the right to the invention, the U.S.S.R. Council of Ministers may decree a mandatory alienation of the patent or the issue of a license (permit to use the invention) for the benefit of the agency concerned and establish the amount of remuneration to the inventor;

(e) An inventor to whom a patent is issued shall not enjoy the privileges accorded under the present statute to those who obtain certificates of authorship;

(f) In cases involving the issuance of patents, and for the issuance of patents, special fees shall be collected in an amount and procedure to be established by the U.S.S.R. Council of Ministers.

Note: Contracts and other documents concerning the transfer of a patent and the issuance of a license must be registered with the ministry which issued the patent and with the Bureau for Test and Registration of Inventions (Bureau of Inventions) of *Gosplan* (State

Planning Committee) attached to the U.S.S.R. Council of Ministers; otherwise these documents shall be invalid.

5. No patent, but a certificate of authorship shall be issued in the following instances:

(a) If the invention is made in connection with the work of the inventor in a scientific research institution, in a construction bureau, in an experimental shop, laboratory, or other institution or enterprise;

(b) If the invention is made by commission of a government agency, a co-operative or public organization;

(c) If the inventor has received pecuniary or other material aid from the government, or a co-operative or public organization, for the purpose of the development of the invention.

6. The right to obtain a certificate of authorship or a patent as well as the certificates and patents already issued shall descend by inheritance. However, upon the person to whom the certificate of authorship descends, only the right to remuneration devolves.

In a patent the name of the inventor must be stated, even if it is issued to persons other than the inventor himself.

7. An inventor who has obtained a patent for his invention, or his heirs, may file a petition for an exchange of the patent for a certificate of authorship if he has not transferred the patent to anyone nor granted a license.

8. An inventor who possesses certificates of authorship for some of his inventions and patents for others may not enjoy privileges under the certificates of authorship (Title VII).

9. Technical improvements accepted for use shall be utilized in the same way as inventions, and their authors shall enjoy the right to remuneration, under a special

schedule in accordance with the instruction contemplated by Section 3, and the right to privileges established by the present statute.

The ministry, organization, or enterprise which uses the technical improvements shall issue to their authors corresponding certificates.

10. It is the duty of the inventor to co-operate actively in the realization and further development of his invention. In particular, he is obliged to supply the agencies that develop and realize the invention, with his suggestions, all available material, all possible and necessary explanations and advice, and he shall not divulge information concerning any invention to the prejudice of the interests of the State.

11. Aliens shall enjoy the rights provided in the present statute on an equal footing with nationals of the U.S.S.R. on a reciprocity basis.

12. Appropriation of someone's invention, divulging the essence of the invention prior to its filing, divulging information concerning the invention by the author himself or other persons, as well as by organizations, in violation of the procedure established by Title V of the present statute, as well as unlawful use of the invention, the right to the use of which belongs to the State, shall entail responsibility under criminal law and liability for damages.

Comment

See No. 51 and comment to Section 67, p. 383.

13. Those guilty of bureaucratic attitudes and red tape in the examination, development, and introduction of inventions and technical improvements and of delay in the payment of remuneration to the inventors shall be

held responsible up to removal from the job and prosecution in court.

Title II. Guidance of Activities in the Field of Inventions and the Utilization of Inventions

14. It shall be the duty of the ministries of the U.S.S.R. and of the constituent republics, as well as the central bureaus and committees attached to the Council of Ministers of the U.S.S.R. and the central managements of the co-operative organizations:

(a) To organize inventors' activities, to guide the recording, development, and introduction of inventions and technical improvements in the fields of national economy under their jurisdiction;

(b) To select important inventions and technical improvements, to take care of or direct the organization of their development, to establish plans for their use, as well as to submit plans for use of the most important inventions to the U.S.S.R. Council of Ministers for approval (the ministers of the constituent republics shall submit such plans for approval by the councils of ministers of their constituent republics);

(c) To organize experimental bases for the development of inventions;

(d) To organize exchange of experience in the field of inventions and technical improvements;

(e) To direct, in accordance with a plan, the activities of inventors by means of preparing plans for current and future projects and the organization of contests for the solution of the most important tasks, et cetera, as well as by means of the organization of broad technical information concerning inventions;

(f) To submit to the People's Commissariat for For-

eign Trade inventions which must be patented and realized abroad;

(g) To submit without fail to the Bureau for Test and Registration of Inventions (Bureau of Inventions) of the *Gosplan* attached to the U.S.S.R. Council of Ministers all important suggestions applicable in a given branch of economy for which the authors did not take certificates of authorship.

15. Certificates of authorship and patents shall be issued by the U.S.S.R. Ministries, by central bureaus and committees attached to the U.S.S.R. Council of Ministers and the Central Council of Co-operative Societies, as well as by the ministries of local industries, of municipal economy, and of education of the constituent republics.

16. Expert examination and the keeping on file of applications concerning inventions shall take place in accordance with the procedure established for documents not to be made public.

17. The ministers (chairmen of the central bureaus and committees attached to the U.S.S.R. Council of Ministers and the President of the Presidium of the Central Council of Co-operative Societies) shall be responsible for the fulfillment of the tasks set forth in Sections 14 and 15. Invention bureaus shall be established at ministries and at the Central Council of Co-operative Societies.

18. It is the duty of the managers of establishments (factories, plants, mines, soviet government farms, machine-tractor stations, railroad repair shops and roundhouses, railroad districts, et cetera) and of scientific research institutes:

(a) To organize the invention activities of the establishments (institutes) and to direct inventive initiative

to the solution of the most important technical problems of a given production:

(b) To develop, test, and examine the usefulness of inventions and improvements offered directly to such establishment (institute), as well as those transferred for this purpose by the superior authorities to such establishment (institute), and to organize experimental bases required for this purpose;

(c) In the process of production, to utilize to the utmost inventions and improvements which are recognized as useful;

(d) To assist inventors in their work and in the protection of their rights to their inventions, to increase their technical knowledge, and to give them technical advice;

(e) To determine the effectiveness of the invention and to pay the inventor's remuneration for inventions and technical improvements accepted for use in accordance with the instruction [4] approved by the U.S.S.R. Council of Ministers;

(f) To communicate to superior agencies all the inventions and technical improvements which may have a branchwide importance.

Note 1: The duties and rights of the chiefs of shops and other production sections shall be established by the ministries.

Note 2: It shall be the duty of the machine-tractor stations to guide the inventor's activities in the collective farms in accordance with instructions to be issued by the U.S.S.R. Ministry of Agriculture.

19. Offers of inventions and technical improvements received by an enterprise, trust, or ministry, and relat-

[4] See *infra*, p. 385.

ing to their activities, must be examined by an enterprise not later than within ten days; by a trust, not later than within twenty days; by a ministry not later than within two months, from the date of receipt.

Within this period of time, the organization which received the offer must either accept this offer for use, or reject it, or else accept it for test and experimentation.

The decision, as the case may be, must be immediately communicated to the inventor and, in case of rejection, the inventor must be informed of the reasons therefor.

Suggestions which can be usefully applied shall be assigned for further development and use, if no patent is sought for them.

An organization which has recognized the usefulness of the further development of a suggestion shall secure its development and necessary tests and shall chart a time schedule for such development, the preparation of a test sample, and the test of the invention, indicating the persons who shall be responsible for fulfillment of the plan.

20. If the development and test of the invention are made at the enterprise or institution where the inventor is employed, he may be relieved whenever necessary from his basic duties, but with payment to him of the regular wages to the extent of his average earnings.

21. In large-scale enterprises, there shall be established by the order of the ministers or their deputies, experimental sections especially for the carrying out of experimental work and producing of experimental samples related to inventions and technical improvements.

22. Engineering and technical personnel and laborers, as well as the executives of enterprises and workshops may be awarded bonuses from the appropriations as-

signed for the financing of inventions, to gratify their efficiency in expediting the development, construction, and application of inventions and technical improvements, as well as for co-operation in communication thereof to other interested enterprises by way of exchange of experiences.

Such bonuses may not be paid to the above-mentioned persons before compensation has been paid to the inventor. The procedure for issuance of bonuses and the determination of the amount thereof to persons promoting the realization of inventions shall be established by the Instruction Concerning Compensation for Inventions or Technical Improvements [5] (Section 3).

23. Disputes concerning the amount of compensation for an invention or technical improvement shall be decided by the executive of the superior economic organization in an administrative procedure. The decisions of the minister (the executive of the central institution) shall be deemed final.

24. Claims involving questions concerning nonobservance of the procedure or periods of time for payment of compensation for inventions and technical improvements shall be filed in accordance with the general rules of court procedure.

Title III. Recognition of Rights of Invention

1. Certificates of Authorship

25. Application for the issuance of certificates of authorship shall be filed with the competent ministry (Section 15) by the inventor personally, his heirs, or beneficiaries, or by an enterprise or institution authorized by the inventor.

[5] See *infra*, p. 385.

The application must include the name of the inventor, the nature of the improvement, and the place of his work (his address, for foreigners, nationality) and the name of the invention.

A description of the invention with the necessary drawings must also be appended to the application.

The essential elements of the invention must be stated in the description with such precision, clarity, and completeness as to show the novelty of the invention and, in addition, to make possible realization of the invention on the basis of the description.

Three copies of the application with description and drawings shall be filed; one of these shall be transmitted by the ministry to the Bureau for Test and Registration of Inventions (Bureau of Inventions) of the *Gosplan* attached to the U.S.S.R. Council of Ministers for determination of novelty and a second, for the determination of usefulness; the third shall be kept in the inventions bureau of the ministry concerned.

If the application does not fulfill the requirements stated in the present section, the ministry shall send to the applicant, within ten days, a request to supplement the application with the missing information, for which purpose a period of one month shall be fixed.

26. The date as of which priority (seniority) of application begins shall be considered the date when the application is received by the ministry, and, in case of a dispute, the date when the application is handed over to the post office or, in cases provided for in Section 64, to other [proper] government institutions.

If no description and necessary drawings are appended to the application, the date of application is considered to be the date when the description and drawings were filed.

27. Within one month after the filing of the application with the competent ministry, the applicant may supplement and correct the submitted description and drawings without making any substantial changes in the application.

Three copies of each supplement or correction must be filed.

By request of the applicant, the ministry may extend to three months the period for filing such supplement or correction.

28. Correspondence between institutions and enterprises, as well as between the latter and inventors, relating to cases involving inventions for which certificates of authorship have not yet been published shall be carried on in accordance with the procedure established for matters not to be made public.

Correspondence relating to secret inventions shall be carried on in accordance with the procedures provided for in Title V of the present statute.

29. Each application filed with the ministry shall be examined for the purpose of ascertaining the presence of indicia of substantial novelty and usefulness.

30. As a basis of the test of novelty, previously issued certificates of authorship and soviet, pre-soviet, and foreign patents, previously made applications, literature issued within the Soviet Union and foreign literature, shall be used, as well as information concerning the application of inventions.

31. Upon filing of application, the ministry shall issue to the applicant an acknowledgment of the acceptance of the application for examination, indicating the inventor, the applicant, the kind of invention, and the date of filing the application.

The acknowledgment of the acceptance of the appli-

cation for examination must be mailed to the applicant within ten days after the receipt of the application.

32. The decisions of the ministry by which the certificate of authorship is issued or denied must be made not later than within two months from the date of receipt of the opinion of the Bureau for Test and Registration of Inventions (Bureau of Inventions) of the *Gosplan* attached to the U.S.S.R. Council of Ministers.

33. Expert tests concerning novelty shall be performed by the Bureau for Test and Registration of Inventions (Bureau of Inventions) of the *Gosplan* attached to the U.S.S.R. Council of Ministers in the order of priority of filing application and must be finished not later than within two months after receipt of the application from the competent ministry.

34. The applicant may examine the materials upon which the conclusions of the expert opinion are based (with the exception of secret ones and those not to be made public), and may also require that a copy of the materials which are adverse to his application be sent to him free of charge.

35. The decision of the ministry concerning the issuance of the certificate of authorship with the proposed formulation of the essence of the invention (invention formula), must be communicated to the applicant within the period of time specified in Section 32. If the applicant does not agree with the proposed invention formula, he may submit his objections within one month. His objections must be examined by the ministry also within a month. The decisions of the ministry in this matter approved by the respective minister, shall be deemed final.

36. Refusal to issue a certificate of authorship may be appealed from by the applicant to the respective min-

ister within one month after the date of the receipt of the communication of refusal.

37. If several persons made the invention jointly (co-inventors), each of them shall be authorized to obtain a certificate of authorship indicating the last and first name and the patronymic of each of the co-inventors.

Persons who gave technical aid to the inventor shall not be considered co-inventors.

If the invention is made in an enterprise, institution, or organization for scientific research and was developed by the author by assignment of such body, the certificate of authorship shall be issued in the name of the actual inventor with the indication of the enterprise or organization in which the invention was developed.

Note: For inventions which resulted from collective experiences and practice, and not from the personal initiative of the inventor or a group of inventors, a certificate of authorship but not a patent may be issued in the name of the bureau, laboratory, institution, or enterprise.

38. Governmental, co-operative, and public organizations and private persons may contest the propriety of the issuance of a certificate of authorship for an invention within one year from the date of publication of the issuance of the certificate of authorship (and in cases where no publication is required, within one year from the date of issuance of the certificate), if they prove:

(a) That the invention is not new, or,

(b) That another person is the actual author of the invention.

Disputes concerning lack of novelty (subsection (a)) shall be finally decided by the Bureau for Test and Regis-

tration of Inventions (Bureau of Inventions) of the *Gosplan* attached to the U.S.S.R. Council of Ministers.

If a certificate of authorship is annulled, a publication thereof shall be inserted in the "Bulletin of the Bureau of Invention" of the *Gosplan* attached to the U.S.S.R. Council of Ministers. Claims with regard to authorship (subsection (b)) shall be filed in accordance with the general rules of court procedure, and the organization which issued the certificate of authorship shall be simultaneously advised thereof.

The authorship of technical improvements shall be decided according to the same procedure.

39. If disputes concerning authorship are filed before a certificate of authorship is issued, the ministry shall proceed to take all steps necessary to insure issuance of a certificate of authorship but shall suspend the issuance until the court decides the case.

If the claim in a dispute over authorship is filed after the certificate of authorship is issued, and the court establishes that the person indicated in the application is not the inventor, the certificate issued shall be declared null and void. A certificate of authorship shall be issued to the person whom the court has recognized as the true author of the invention with priority from the date of the original application. An advertisement thereof shall be published in the "Bulletin of the Bureau of Invention" of the *Gosplan* attached to the U.S.S.R. Council of Ministers.

40. The certificate of authorship shall be issued by the ministry (Section 15) in accordance with the form, uniform for the entire U.S.S.R., approved by the U.S.S.R. Council of Ministers.

41. All applications and documents filed in the cases

concerned with the issuance of certificates of authorship shall be free from any fees and dues.

2. Patents

42. The procedure laid down in Sections 25–40 shall by analogy also apply to applications for issuance of patents and their test, subject to special rules hereinafter prescribed.

43. The application for issuance of patents may be made by the inventor himself and by his legal successor.

44. Persons who continuously reside abroad shall apply for granting patents through the U.S.S.R. Chamber of Commerce.

45. For reasons stated in Section 5 of the present statute, as well as for lack of novelty, an issued patent may be contested on the initiative of the governmental agencies, public organizations, and private individuals concerned and shall be subject to contest during the entire period of time when the patent is in effect.

46. Each application must relate to one invention only.

47. If an applicant who has disagreed with the patent formula or has been denied the issuance of a patent, requests copies of materials on the basis of which the denial was made, the respective ministry shall place the copies of materials (Section 34) at his disposal, provided the applicant compensates the expenses involved.

48. If the ministry recognizes that a patent will possibly be issued, a preliminary publication thereof shall be made in the "Bulletin of the Bureau of Invention of the *Gosplan* attached to the U.S.S.R. Council of Ministers," reciting the name of the applicant, the invention, and the patent formula.

Within three months after the date of the preliminary

publication of the patent formula, government agencies, co-operatives and other organizations, as well as private individuals, may present their objections to the patent, contesting the invention formula.

The objections must be submitted with indication in detail of the motives, and all necessary material must be appended to them.

The objections received shall be decided upon by the ministry within two months after the date of their receipt.

49. Failure to pay dues and fees for a patent issued shall discontinue the effect of the patent.

3. Registration and Publication

50. It shall be the duty of the Bureau for Test and Registration of Inventions (Bureau of Inventions) of the *Gosplan* attached to the U.S.S.R. Council of Ministers:

(a) To examine the novelty of the applications for the issuance of the certificates of authorship or patents received from the ministries;

(b) To register all certificates of authorship and patents issued by the ministries;

(c) To publish the "Bulletin of the Bureau of Inventions of the *Gosplan* attached to the U.S.S.R. Council of Ministers" and pamphlets describing the inventions for which certificates of authorship or patents were issued, the sum total of which pamphlets constitute the "Code of Inventions of the U.S.S.R." (*Svod Izobretenii*);

(d) To publish in the "Bulletin of the Bureau of Invention of the *Gosplan* attached to the U.S.S.R. Council of Ministers" data on applications received, the

certificates of authorship and patents issued, with the exception of the certificates of authorship and patents mentioned in Title V;

(e) To carry out the international exchange of patent materials, to complete and manage the All-Union Patent Technical Library;

(f) To give technical information concerning new inventions, soviet and foreign, derived from materials in technical patent literature, as well as to publish literature concerning the invention movement.

51. When the ministry has decided to issue a certificate of authorship and has established the invention formula (Section 35) and, in instances of patents, upon the expiration of the period of time specified in Section 48, the ministry shall forward a copy of its decision issuing the certificate of authorship or patent to the Bureau for Test and Registration of Inventions (Bureau of Inventions) of the *Gosplan* attached to the U.S.S.R. Council of Ministers for final revision, registration, and publication, in the "Bulletin," of issuance of the certificate of authorship or patent.

Certificates of authorship and patents shall be issued to applicants after registration and shall be signed by the minister or his deputy.

52. In case the Bureau for Test and Registration of Inventions (Bureau of Inventions) of the *Gosplan* attached to the U.S.S.R. Council of Ministers refuses registration of a certificate of authorship or of a patent, it must, within one month, communicate to the corresponding ministry and the inventor the reasons therefor and attach thereto the supporting material.

53. While making preliminary examination of the material of the application, the ministry shall consider

the question whether publication of information concerning the invention is permissible. If publication of such information concerning the invention is not deemed appropriate, the invention shall be declared not subject to publication, or secret, which decision shall be brought to the attention of the applicant, the author, and the agencies concerned.

Such decision may be made, if necessary, at a later stage of the proceedings concerning invention, in particular, upon the suggestion of the Bureau for Test and Registration of Inventions (Bureau of Invention) of the *Gosplan* attached to the U.S.S.R. Council of Ministers.

The ministry as well as the said bureau may ex officio postpone or suppress altogether publication concerning the filing of an application, the issuance of a certificate of authorship or a patent, as well as publication of the documents or drawings.

Title IV. Supplementary Inventions

54. An invention is considered supplementary if it is an improvement of another (basic invention) for which a certificate of authorship or patent has been issued, and cannot be independently utilized without the use of the basic invention.

55. If a certificate of authorship has been issued for the basic invention, a dependent certificate of authorship may be issued for an invention supplementing it, in case not more than fifteen years have expired since the date of the issuance of the basic certificate of authorship; otherwise the invention shall be considered independent.

A declaration of the supplementary invention filed

by the author of the basic invention within four months from the date of issuance of the basic certificate of authorship, shall enjoy priority over the declaration for the same invention made within this time by any other person.

56. If the basic invention for which a certificate of authorship has been issued has not been accepted for utilization by itself but is accepted for utilization together with the supplementary invention, then remuneration shall be given to the authors of both inventions in accordance with the instruction [6] approved by the U.S.S.R. Council of Ministers.

57. If a patent has been issued for the basic invention, then either a dependent patent or dependent certificate of authorship shall be issued according to the choice of the applicant for the supplementary invention. Utilization of the supplementary invention shall be permissible only by agreement with the owner of the patent for the basic invention; otherwise, the question shall be settled according to the procedure provided for in Section 4.

The remuneration of a person who received a dependent certificate of authorship shall be paid according to the general rules but not before the right to utilize the basic invention is passed to the State.

A dependent patent shall be issued for the effective period of the basic patent.

58. If, by reasons not affecting the supplementary invention, the effect of the basic certificate of authorship or basic patent has expired, the dependent certificates of authorship or patents shall therefore become independent. In such cases, the dependent patent shall con-

[6] See *infra*, p. 385.

tinue in effect only for the period of time for which the basic patent was issued.

In all other respects, a dependent patent is equivalent to an independent one.

Title V. Secret Inventions and Technical Improvements

59. Inventions and technical improvements relating to national defense shall be considered secret.

Moreover, the ministry, and with the subsequent approval of the minister, every agency to which the invention or improvement is suggested, may declare it secret if its secrecy is in the interests of the State.

60. The declaration of an invention or technical improvement as secret shall be communicated immediately to the applicant, author, and agency concerned.

61. The secrecy of an invention or technical improvement may be removed in the same manner in which it was established.

62. Publication in the press of information concerning a secret invention or improvement and divulgence of its essence by any means whatsoever shall be prohibited under penalty of law.

Comment

See Edict of June 9, 1947, *infra* Nos. 51, 52 and comment to Section 67.

63. In case the inventor deems his invention or technical improvement of a secret character, it is his duty to take all possible precaution to protect his invention or technical improvement from being divulged and to transmit it to the U.S.S.R. government agency concerned.

64. The author of an invention which may be of importance for national defense must either file his application personally with the Ministry of Armed Forces, or respectively with the Ministry of Aviation Industry, Shipbuilding Industry, or Armaments and Ammunition, or forward the application secretly through the local agency of the U.S.S.R. Ministry of State Security to the corresponding ministry. If the author works in an enterprise or a scientific research institute immediately concerned with the subject matter of the invention, he may file his application with the secret division of the enterprise (institute) to be transmitted secretly to the competent authority.

65. For the development of secret inventions, the institution concerned must place at the disposal of the inventor special premises and forbid him to work at home on such invention.

66. The procedure for selecting inventions and technical improvements relating to national defense, the procedure for testing, correspondence with the inventors, development (of the invention), removal of secrecy, and settlement of disputes concerning such matters shall be established by special instruction approved by the U.S.S.R. Council of Ministers upon the suggestion of the U.S.S.R. Committee of National Defense.[7]

Title VI. Patenting and Utilization of Inventions Abroad

67. Inventions made within the boundaries of the U.S.S.R., as well as inventions which were made abroad by soviet citizens dispatched by their government, may

[7] This committee was abolished after the conclusion of World War II. No instruction mentioned in this section is available.

be obtained, protected, or utilized abroad only upon permission granted by the U.S.S.R. Council of Ministers in accordance with the procedure established by law.

Comment

(1) Violation of this rule entails penalty under the following provisions of the Criminal Code of the R.S.F.S.R.:

84*a*. The filing abroad without a proper permit of an invention made within the boundaries of the U.S.S.R., as well as filing of inventions made abroad by the citizens of the U.S.S.R. dispatched by the State, shall be punished by correctional labor without confinement not to exceed one year or a fine not to exceed 1,000 rubles.

Transmittal abroad without proper permit of an invention as defined in paragraph 1 of the present section shall be punished by confinement not to exceed ten years and confiscation of the whole or part of the property.

84*b*. The filing of an application abroad for an invention or for an improvement relating to national defense, as well as inventions and improvements recognized in a procedure established by law as being subject to secrecy (secret), or their transmittal abroad and the divulgence of their meaning in any manner whatsoever shall be punished under Section 58 [6] of the present Code (as enacted August 30, 1931).

Section 58 [6] of the Code deals with espionage and provides for penalties of confinement for not less than three years, with confiscation of property to the maximum measure of social defense, execution by shooting, declaration as an enemy of the toiling people, and deprivation of citizenship and banishment.

(2) See Section 6 of the Edict of June 9, 1947, *infra* Nos. 51, 52.

68. With regard to protection of the rights of the inventor abroad, a certificate of authorship shall be considered equivalent to a patent.

TITLE VII. REMUNERATIONS AND PRIVILEGES OF INVENTORS WHO HAVE RECEIVED CERTIFICATES OF AUTHORSHIP AND OF PERSONS WHO HAVE PROPOSED TECHNICAL IMPROVEMENTS

69. If an invention or technical improvement is accepted for utilization, the inventor or the person who suggested the technical improvement shall receive a remuneration which shall depend on its technical importance, the savings or other results of the invention, or the technical improvement for the national economy, and the degree of development of the invention, and shall be defined in accordance with the instruction [8] approved by the U.S.S.R. Council of Ministers.

70. No income tax shall be assessed on remuneration for an invention or technical improvement not exceeding 10,000 rubles and, if the remuneration exceeds 10,000 rubles, such tax shall be assessed upon the amount of remuneration after the 10,000 rubles are deducted.

71. In the labor book of the inventor or the person who suggested the technical improvement, a record shall be entered concerning all his utilized inventions and technical improvements and remunerations paid therefor.

72. Inventors shall have the right of priority under otherwise equal conditions for appointment to positions as scientific research workers in corresponding scientific research experiment institutions and enterprises.

[8] See *infra*, p. 385.

26

Instruction Regarding Remuneration for Inventions

Instruction Regarding Remuneration for Inventions, Technical Improvements, and Suggestions for Rationalization of Procedures, Approved by the U.S.S.R. Council of People's Commissars on November 27, 1942.[1]

I. General Provisions

1. Remuneration to authors of inventions, technical improvements, and suggestions for rationalization of procedures shall be paid in accordance with the present instruction.

2. The present instruction shall apply only to inventions for which certificates of authorship were issued in a procedure provided for in the Statute Regarding Inventions and Technical Improvements approved by the Resolution of the U.S.S.R. Council of People's Commissars of March 5, 1941 (U.S.S.R. Laws 1941, text 150).

Suggestions which improve construction or technological processes used in a given enterprise or production unit and for which certificates of authorship were issued under Section 9 of the above-mentioned statute, shall be considered technical improvements within the meaning of the present instruction.

Suggestions which affect production technique or di-

[1] U.S.S.R. Laws 1942, text 178.

rectly improve production processes by means of more effective use of equipment, materials, or manpower, without essential change in the construction or technological process of production, shall be considered suggestions for rationalization of procedures within the meaning of the present instruction.

The present instruction shall not apply to suggestions for improvement of the organization and management of business, for instance, suggestions for simplification, supplies, merchandising, and the like. Rewards for such suggestions shall be made at the discretion of the head of the enterprise, institution, or organization by way of bonuses.

3. Remuneration shall be paid for suggestions which have been accepted for use.

When the suggestion needs further development and test in order to be used, the remuneration shall be paid after termination of the development or test.

4. The amount of remuneration shall be determined according to the technical significance of the suggestion, its economic significance, and other effects rendering adoption of the suggestion desirable for the national economy, and upon the degree of completeness to which the suggestion was developed by the author.

5. The determination of the amount and the payment of the remuneration shall be made by the head of the economic organization which accepted the suggestion for use, to wit:

(a) If the suggestion is used by several establishments under the same central bureau of a ministry, the remuneration to the author shall be determined and paid by such central bureau;

(b) If the suggestion is used by enterprises under

several central bureaus belonging to the system of the same ministry, the remuneration shall be determined and paid by such ministry;

Note: Whenever the remuneration is paid by a central bureau or a ministry, the amount of remuneration received by the author for the same suggestion from an enterprise shall be deducted.

(c) If the suggestion is used by several ministries, it shall be the duty of the ministry which was the first in accepting the suggestion to determine the saving to the national economy from the use of the suggestion and the amount of remuneration due to the author, as well as to fix the shares of the other ministries which made use of the suggestion. The payment of the remuneration shall be made by the ministry which was the first in accepting the suggestion; the other ministries shall reimburse the corresponding sums subsequently.

6. The remuneration for a suggestion made by several persons jointly shall be distributed among them according to their agreement.

7. If the basic suggestion was not by itself accepted for utilization, but was accepted for utilization in conjunction with a supplementary suggestion, remuneration shall be paid for both suggestions. If in such instance the supplementary suggestion was not made by the author of the basic suggestion but by another person, the distribution of remuneration between both authors shall be made by their agreement.

8. The right to remuneration shall expire if the author does not make use of it within a three-year period of time from the date when the right for remuneration originated, provided that the author knew that his suggestion was utilized.

II. Amount and Terms of Payment of Authors' Remuneration

9. The amount of remuneration to an author of an invention, technical improvement, or suggestion for rationalization of procedures shall be determined, depending upon the amount of annual saving obtained as a result of the application of the suggestion, in accordance with the following schedule:

Amount of Annual Saving (in rubles)	*Rate of Author's Remuneration for:* *Invention*	*Technical Improvement*	*Rationalization of Procedures*
Up to 1,000	30% of the saving, but not less than 200 rubles	25% of the saving, but not less than 150 rubles	12.5% of the saving, but not less than 100 rubles
1,000–5,000	15% of the saving plus 100 rubles	12% of the saving plus 130 rubles	6% of the saving plus 65 rubles
5,000–10,000	12% of the saving plus 250 rubles	8% of the saving plus 330 rubles	4% of the saving plus 170 rubles
10,000–50,000	10% of the saving plus 450 rubles	5% of the saving plus 650 rubles	2.5% of the saving plus 350 rubles
50,000–100,000	6% of the saving plus 2,500 rubles	3% of the saving plus 1,650 rubles	1.5% of the saving plus 850 rubles
100,000–250,000	5% of the saving plus 3,500 rubles	2.5% of the saving plus 2,200 rubles	1.25% of the saving plus 1,100 rubles
250,000–500,000	4% of the saving plus 6,000 rubles	2% of the saving plus 3,400 rubles	1% of the saving plus 1,700 rubles
500,000–1,000,000	3% of the saving plus 11,000 rubles	1.5% of the saving plus 6,000 rubles	0.75% of the saving plus 3,000 rubles
Over 1,000,000	2% of the saving plus 21,000 rubles (but not more than 200,000 rubles)	1% of the saving plus 11,000 rubles (but not more than 100,000 rubles)	0.5% of the saving plus 5,500 rubles (but not more than 25,000 rubles)

10. In cases where the invention was accepted for utilization before the issuance of the certificate of authorship, the remuneration shall be computed as if it were for a technical improvement. After the issuance of the certificate of authorship, a new computation of the remuneration shall be made.

11. If the application of the suggestion does not produce a saving, but its significance consists in improvement of labor conditions and safety technique, or in improvement of the quality of production, the amount of remuneration shall be determined by the head of the enterprise, organization, or institution which accepted the suggestion for utilization, in accordance with the real value of the suggestion.

12. The remuneration of an inventor for an invention opening new branches of production or creating new kinds of precious materials, substitutes for nonferrous metals, for machines and manufactured goods, hitherto not produced in the U.S.S.R., may be increased by the minister or the head of the central government department, depending upon the significance of the invention, up to 100 per cent of the rates established by Section 9 of the present instruction.

13. The remuneration of an inventor whose suggestions cannot be utilized in the national economy on a mass scale but are used on a small scale or for individual issuance of goods, may be increased by the minister or the head of a central government department up to 300 per cent above the rates established by Section 9 of the present instruction.

14. Depending upon the degree of technical development of complex and technical improvements, the remuneration of the inventor shall be increased at the

following rate (in percentage of the remuneration provided for by the present instruction):

(a) For submission simultaneously with the suggestion of a technical draft, up to 10 per cent;

(b) For submission of working drawings (blueprints), up to 20 per cent;

(c) For submission of a model, up to 30 per cent.

Note: The present section shall not apply, if the suggestion was developed by the author in execution of an official assignment or a contract.

15. The amount of remuneration for new methods of curing diseases shall be established by the U.S.S.R. Minister of Public Health and, whenever these methods concern veterinary science, either by the U.S.S.R. Minister of Agriculture or by the U.S.S.R. Minister of Grain and Animal Husbandry Governmental Farms, as the case may be.

16. The payment of remuneration to authors of inventions, technical improvements, and proposals for the rationalization of processes shall be made within the following periods of time:

(a) Remuneration up to 1,500 rubles shall be paid to the author within one month's period from the date when the plan for utilization of the suggestion is approved;

(b) Remuneration in excess of 1,500 rubles shall be paid to the author to the extent of 25 per cent (but not less than 1,500 rubles) within one month's period after the expiration of six months' utilization of the accepted suggestion, and the balance of the remuneration shall be paid in proportion to the actual extent of utilization of the suggestion not later than within two months from

the termination of the first year during which the suggestion was used;

(c) In cases where the saving from the application of the invention is larger during subsequent years than during the first year, the supplementary payment of remuneration shall be made not later than within two months from the expiration of each year.

The final settlement of accounts shall be made on the basis of the maximum annual saving during one of the first five years when the invention was used (released).

17. The amount of remuneration and the terms of its payment to authors who made such broad suggestions, solving large-scale technical problems, as cannot be used before the necessary conditions are created in the national economy, shall be established by the ministries concerned in agreement with the State Planning Committee of the U.S.S.R.

18. Remuneration for inventions shall be paid regardless of the office held by the author.

19. Remuneration for technical improvements or suggestions for rationalization of procedures relating directly to the working assignment of the author shall be paid:

(a) To engineers, technicians, foremen, laborers, workers of scientific research institutes, constructors, technologists, et cetera, for such technical improvements and such suggestions for rationalization of procedures as are original in character with some element of technical creation;

(b) To directors, chief engineers, chief technologists, chief metallurgists, chief constructors, chief mechanics, chief specialists in power generation, and the chiefs of workshops and sections, for original technical improvements.

Note: Matters concerning the remuneration of directors of enterprises and their deputies shall be decided by their superior agencies.

20. Remuneration for inventions for which certificates of authorship were issued in the name of an institute, enterprise, construction bureau, or other organization, shall be paid to the head of the organization to be distributed as bonuses to persons who participated in the invention

III. Bonuses for Aid in Utilization of Suggestions

21. Bonuses to wage earning and salaried employees and technical personnel, as well as to heads of enterprises and workshops, for their aid in the realization of suggestions shall be paid quarterly for each individual suggestion utilized in production, in accordance with the result for a given quarter of the year.

22. The amount of expenditure for bonuses shall be determined by 25 per cent of the amount of remuneration paid to the author of the suggestion (however, not at the expense of the author's remuneration, but from the sources from which the author's remuneration is paid).

23. Bonuses for suggestions which are financed through the budget estimates of expenditures for exploitation and of expenditures for production shall be approved by the head of the enterprise.

Bonuses for suggestions which are financed from the budget appropriations shall be approved by a central bureau of the ministry or by the ministry itself.

24. Distribution of the amount of bonuses among employees shall be made by the head of the enterprise, the

central bureau of a ministry, or the ministry, according to the degree of aid, initiative, and energy shown by the employees in the realization of suggestions and also upon the accomplishments by the employees in other tasks assigned to them in connection with invention and rationalization activities.

The amount of bonus paid to one employee shall not exceed his two months' wages.

25. Grievances lodged for nonpayment or incorrect payment of bonuses under the present chapter of the instruction shall be decided by an administrative procedure.

IV. Computation of Savings Obtained Through Application of the Suggestion

26. Savings shall be determined on the basis of realization of the suggestion during the twelve months since the beginning of its industrial utilization.

In cases where the application of suggestions began in the middle of the year, the savings shall be computed for the remaining part of the year in accordance with the technical, industrial, and financial plan for the given year and for the time necessary to make a full twelve months; the savings shall be computed on the basis of the technical, industrial, and financial plan for the coming year if it is known, and if it is not known, according to a similar plan for the current year.

In seasonal branches of the national economy, the savings shall be determined for the present period of a season.

27. The computation of savings due to a suggestion which was used for less than one year shall be made on the basis of the actual period of time when it was util-

ized. Savings resulting from suggestions relating to individual orders to be filled only once, shall be made on the basis of the program for the particular order or part of the order.

28. If the realization of a suggestion requires a period of time for adaptation (finish or change of drawings, et cetera), the savings shall be computed after the changes are executed and the industrial manufacturing of the product begun.

29. Savings due to technical improvements and proposals for rationalization of procedures shall be computed for only one year (the first one) of the utilization. Annual savings due to an invention shall be also computed for one (first) year of utilization and, in case the utilization is extended during the subsequent four years, a new computation of savings shall be made annually according to the dates of actual utilization.

30. When the realization of a suggestion results in the reduction of expenses in a given narrow field of production but simultaneously increases the expenses in other fields of production, such increase of expenses must be taken into account in the computation of the savings.

31. Expenses connected with the development of suggestions (preparation of drawings, models, experimental samples, et cetera) shall not be taken into account in computation of the savings.

32. The computation of savings due to suggestions whose utilization reduces the cost of production, shall be made by comparison of the planned calculation of the cost of production made before the application of the suggestion with the planned calculation of the cost of production as made taking into account the application of the suggestion.

33. If the suggestion refers to a separate product, a component part, or a detail, the computation of savings shall be made on the basis of calculations provided for the corresponding product, component part, or detail.

34. If the accepted suggestion changes technical standards and rates of wages, the organization which accepted the suggestion shall be liable to introduce new standards and rates simultaneously with the application of the suggestion.

35. The computation of annual savings due to the suggestion related to the production as a whole (increase of the coefficient of useful action of equipment, *cosinus phi,* change of procedures and methods in repair of the equipment) shall be made by comparison of the approved annual budget estimate of expenses of production with the annual budget estimate drawn up taking into account utilization of the suggestion.

36. The annual savings due to suggestions reducing or eliminating defects of production shall be determined by the amount of difference in the cost of the discarded products before and after application of the suggestion. The value of the discarded products shall be determined on the basis of the losses due to discarded products for the last six months before application of the suggestion. Only such defective products shall be taken into account as were discarded due to causes eliminated by the suggestion of the author.

37. Annual savings due to a suggestion reducing the cost of a single definite article of construction shall be considered as being equal to 30 per cent of the total reduction of the cost of this article.

If the suggestion of the author has not been applied to one definite article of construction [but to several], the sum total of the reduction of the cost of all articles

with regard to which the suggestion is used shall be taken into account in computing the annual saving.

38. The computation of savings shall be made within a twenty days' period from the day when the plan for utilization of the accepted suggestion was approved.

Within the same period of time, a certificate shall be issued to the author attesting the fact that his suggestion was accepted for utilization together with a copy of a computation of the savings received through the application of his suggestion.

39. A new computation of savings established by the present instruction may be made only in cases where the scope of the utilization of a suggestion is changed or the necessity for making the technical standards more precise becomes evident.

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U.S.S.R. Copyright Law

Basic Principles of Copyright, Joint Resolution of the U.S.S.R. Central Executive Committee and the Council of People's Commissars of May 16, 1928.[1]

Comment

For discussion of the soviet copyright law, see Volume I, pp. 606–617.

1. Copyright to a work published (Section 14) within the territory of the U.S.S.R., or located within the U.S.S.R. as a manuscript, sketch, or in any other presentable form, shall be recognized as belonging to the author of the work and his successors in law, regardless of their nationality.

Comment

(1) Act of April 10, 1929, U.S.S.R. Laws 1929, text 230 (excerpt):

The right to transmit by radio and wire musical, dramatic, or musicodramatic works, lectures, reports, et cetera, performed in theaters, concert halls, auditoriums, and other public places, shall belong to the People's Commissariat for Post and Telegraph, to its local offices and trade-unions, without any special

[1] U.S.S.R. Laws 1928, text 246. Still in force, 2 Civil Law (1944) 229; Zimeleva, Civil Law (1945) 273. A compilation edited by Fogelevich, Basic Directives and Legislation Concerning the Press (in Russian 4th ed. 1937) is still referred to in 2 Civil Law (1944) 237, as containing effective material. See also Decisions of the Party Concerning the Press (in Russian 1941).

remuneration, either to the authors and performers, or to the theaters, producers, et cetera.

(2) Act of November 23, 1930, U.S.S.R. Laws 1930, text 613:

According to contracts placing with authors orders for any kind of compositions, architectural, engineering, and other technical plans, drawings, and designs, the parties ordering shall have the right, unless the contract provides otherwise, to utilize such projects, plans, drawings, and designs without restriction for their own needs, and likewise to transfer them to third persons and to reproduce them in print, without any additional royalties.

(3) See also Section 3 of the R.S.F.S.R. Laws on Copyright.

(4) It was held by the R.S.F.S.R. Supreme Court that photo studies by an artist photographer of dolls made by another artist are subject to the former's copyright.[2] An artist who designed stage settings (theatrical decoration) has copyright of the same.[3]

2. Copyright to a work published abroad or located abroad as a manuscript, sketch, or in any other presentable form, shall be recognized only if the U.S.S.R. has a special agreement to this effect with the country concerned, and only within the limitations of such agreement.

Comment

No such agreements have been thus far entered into.

3. An author who is a national of the U.S.S.R., and his heirs or testamentary beneficiaries, shall enjoy within the territory of the U.S.S.R. protection of the copyright to his work published or located abroad as a manuscript, sketch, or in any other presentable form,

[2] (1937) Soviet Justice No. 4, 59; 2 Civil Law (1944) 232.
[3] *Ibid;* also 2 Civil Law (1944) 233.

regardless of whether the U.S.S.R. has with the country concerned any such agreement as is specified in Section 2.

4. The copyright shall apply to any literary, scientific, or artistic work, regardless of the manner and form of its reproduction or the value and purpose of the work—namely, to oral works (speeches, lectures, reports, et cetera); written works (books, articles, symposia, et cetera); dramatic and musicodramatic works; translations; choreographic works and pantomimes for the production of which there are directions in writing or otherwise expressed; motion-picture scripts; musical works with or without a text; designs, paintings, sculptures, architectural and graphic art works, illustrations; geographic maps; plans, sketches, and plastic works related to science, technology, or to the staging of a dramatic or musicodramatic work; films; and photographic works or works executed by processes analogous to photography.

5. The copyright to a work composed by the collaboration of two or more authors shall belong to all joint authors, regardless of whether such collective work forms an indivisible unit or consists of parts which retain their independent scientific, literary, or artistic value. The mutual relations of the joint authors in such cases shall be determined by their agreement.

Each joint author of a collective work shall retain the copyright to his part of the work, if such part has an independent scientific, literary, or artistic value, unless the agreement with the other joint authors provides otherwise.

6. The author of a compilation of works which are not subject to any copyright (works for which the copyright has expired; various kinds of official documents,

such as laws, court decisions, and the like; folklore, and the like) shall have the copyright to such compilation, provided that he has subjected these works to his own independent rewriting. The same rights shall belong to editors of separate works of the categories indicated above.

This right, however, shall not preclude publication of the same works by other persons who subject them to independent rewriting.

The copyright to a compilation of works subject to the copyright of another shall belong to the author of the compilation, provided that such work has been compiled with observance of the rights of the authors. The authors of works included in such compilation shall retain the right to publish these works in other editions, unless their contract with the author of the compilation provides otherwise.

7. An author shall have the exclusive right to publish his work under his own name, or under an assumed name (pseudonym), or without indicating his name (anonymously), and to reproduce and circulate his work by any legal means within the period of time fixed by law, and likewise to derive profits from such right in any lawful manner.

Comment

The "legal means" by which the author may publish, reproduce or circulate his work and the "legal manner to derive benefit" from it are at the present time considerably limited because any private publishing activity is barred. Therefore, the soviet jurists consider that the definition of an author's right as given in the above section has become obsolete. See Volume I, pp. 613–617.

8. The exclusive right to public representation of an

unpublished dramatic, musical, musicodramatic, pantomimic, choreographic, or motion-picture work shall belong to the author of such work.

Should an unpublished work in one of the categories enumerated above have been publicly performed at least once, the ministry of education of the republic concerned shall be entitled to authorize public performance of the work, even without the author's consent, upon payment of royalties in a manner provided for by the legislation of the republic concerned.

The author of a published work in one of the above-mentioned categories may not forbid its public performance but shall be entitled, except in cases provided for by Section 9, subsection (i), to author's royalties.

Comment

See Section 4 of the R.S.F.S.R. Law on Copyright.

9. The following shall not be considered infringements of copyright:

(a) Translation of another's work into a different language;

Comment

Although a translation is not considered an infringement of copyright of the author, a recent soviet statute provides for an honorarium to be paid to the author in some specific instances. Thus, the Act of July 15, 1947 (R.S.F.S.R. Laws 1947, text 31) provides as follows:

Art. VII. Be it enacted that if a literary work which originally appeared in one of the languages of the people of the U.S.S.R. is translated into Russian literary language as well as in instances of translation from the language of one racial minority into that of another, the author of the translated work shall be paid 60 per cent of the rate established for the particular kind of work.

For translation of literary works from Russian into the lan-

guages of racial minorities of the U.S.S.R. no remuneration shall be paid to the author of the translated work.

(b) Using the work of another for the creation of a new and essentially different work, provided the rewriting of a story in dramatic form or in a motion-picture script and vice versa, is done with the permission of the author or his successors in rights;

(c) Inserting short separate fragments in scientific or politico-educational symposia, symposia for schoolwork, and other scholarly collections, or even reprinting therein short literary and other works in full, as well as photographs, X-ray pictures, et cetera, in small numbers, provided that the author and the source from which they are derived are indicated.

Comment

See Section 5 of the R.S.F.S.R. Law on Copyright.

(d) Printing reports on oral and written works which have appeared in the fields of literature, science, and art, if such reports transmit the essence of the work in an independent form, or, if necessary, quote from the original;

(e) Printing reports in periodicals of speeches made in public meetings;

(f) Reprinting by periodicals of information published in newspapers and nonfictional articles after one day has elapsed, provided that the source of the reprinted article and the name of the author are indicated;

(g) Reprinting by periodicals of reproductions of works of the fine arts, drawings, illustrations, photographs, scale drawings, et cetera, with observance of the same conditions and procedure as prescribed for the reprinting of articles (subsection (f) of this section);

(h) The use made by a composer for his musical work of a text borrowed from the literary work of another, unless prohibited by the author of the latter by a declaration printed on each copy of his work;

(i) Public performance in cultural-educational institutions of such works of another as are indicated in Section 8, provided that no admission fee is charged;

(k) Reproduction of paintings in sculpture, and, conversely, of sculptures in paintings;

(l) Reproduction of works of art displayed on streets or in public squares, with the exception of the copying of sculptural works by mechanical contact methods;

(m) Placing of any kind of works in a public exhibition, with the exception of works whose public exhibition is forbidden by the author;

(n) Erection of buildings and constructions according to architectural, engineering, and other technical plans, drawings, and designs published by the author, unless the author has reserved such right for himself exclusively upon publishing the same;

(o) Copying the work of another exclusively for personal use, without placing on an artistic or photographic work the signature or monogram of the author of the original; however, the making of such copies of sculptural works by mechanical contact methods shall not be allowed;

(p) Making use of works of art or photography in the manufacture of articles in factories, homes, or handicraft industries, provided that royalty is paid to the author in the amount and in the procedure prescribed by the legislation of the constituent republic concerned.

Comment

See Section 6 of the R.S.F.S.R. Law on Copyright.

Note 1: In exceptional cases, where the authorization of the author for the rewriting of a story in dramatic form or a motion-picture script and vice versa, or of a dramatic work into a motion-picture script and vice versa (subsection (b) of this section), cannot be obtained, permission for rewriting may be granted by the ministry of education of the republic in whose territory the rewritten work is to be made public. The manner of payment of royalty in such cases shall be determined by the legislation of the constituent republic concerned.

Comment

See Section 4 of the R.S.F.S.R. Law on Copyright.

Note 2: The legislation of the constituent republics shall determine the maximum sizes of passages and works whose reprinting is authorized according to subsection (c) of this section.

Comment

See Section 5 of the R.S.F.S.R. Law on Copyright.

10. Except in cases provided for in Sections 11, 12, and 13, the author shall enjoy the copyright for life, and his heirs for the periods of time provided for in Section 15.

11. Copyright to choreographic works, pantomimes, motion-picture scripts, and films shall be enjoyed for a period of ten years.

Comment

See Section 7 of the R.S.F.S.R. Law on Copyright.

12. Copyright to photographic works and works executed by methods analogous to photography shall be

enjoyed for a period of five years for individual pictures and ten years for collections of pictures.

To maintain his copyright to photographs, the photographer shall mark each copy with the firm name or the personal name and address of the photographer, as well as with the year of publication of the photographic work.

13. Copyright of the publishers to reviews and other periodical publications, as well as to encyclopedias shall be recognized for these publications in their entirety, for ten years from the time of their publication.

Collaborators on such publications shall retain copyright to their individual works, unless the contract provides otherwise.

Comment

See Section 8 of the R.S.F.S.R. Law on Copyright.

14. Any work shall be considered published on January 1 of the year within which it has been initially and legally published by an appropriate technical method.

The public performance of a dramatic or musicodramatic work, the public presentation of a musical work, the public exhibition of works of fine art, of photographs, and likewise of works executed by methods analogous to photography, and the construction of an architectural work, shall be considered, for purposes of the running of the period of limitation, to have the same effect as publication.

Note: The time of publication of a work may be registered by the author in accordance with the procedure established by the legislation of the different constituent republics.

Comment

See Sections 7 and 9 of the R.S.F.S.R. Law on Copyright.

15. After the death of the author, the copyright shall pass to his heirs and testamentary beneficiaries for fifteen years from January 1 of the year of the death of the author, except in cases provided for in Sections 11, 12, and 13, when the copyright shall pass to the heirs and testamentary beneficiaries only for the remainder of the established term still running on the day of the author's death.

[The value in money of a copyright devolving upon the author's heirs shall not be included in the general appraisal of the estate for calculation of the inheritance tax.]

Comment

(1) Paragraph 2 became inoperative with the abolition of the inheritance tax on January 9, 1943.

(2) Under the Ukrainian Law (Section 14, Note) the duration of the copyright may be extended in each case by a special act of the government.

(3) The copyright inherited by heirs of the author does not devolve upon their heirs. Therefore, upon the death of the immediate heirs of the author, the copyright expires, even if the term of the copyright is still running (1 Civil Law Textbook (1938) 266).

16. The copyright may be alienated in its entirety or in part by a publishing contract, a will, or in some other legal manner.

A contract of assignment of copyright shall be executed in writing and shall contain a precise indication of the character and conditions of use of the copyright.

Failure to observe the written form prescribed for the

contract shall, in case of a contest, deprive the parties of the right to prove the contract by witnesses, but shall not deprive them of the right to produce other written proofs.

Note: The contract assigning a copyright to works intended to be printed in periodical publications or encyclopedias need not be made in writing.

Comment

Under the segregation of all publishing business in the Soviet Union in the socialized branch of economy, only governmental, public, and co-operative publishing houses may be publishers (2 Civil Law (1944) 240).

See also Vol. I, pp. 614–617.

17. The following shall be established by the legislation of the constituent republics:

(a) Rules governing publishing contracts for literary works, indicating in particular the provisions which every publishing contract must contain, the maximum time limit of its validity, the minimum amount of royalty for a definite number of copies printed, and, likewise, the ultimate term within which the whole edition stipulated in the contract must be published (at once or in installments);

(b) Provisions which every publishing contract must contain if it deals with musical works as well as works of fine arts, photography, and works executed by methods analogous to photography;

(c) Rules governing contracts of assignment of rights for public performance of a work, in particular provisions which every such contract must contain, the maximum time limit of the validity of the contract of assignment of rights for public performance of a dra-

matic or musicodramatic work, the maximum number of public performances allowed under one such contract, and the ultimate term within which the production must be accomplished.

Comment

The mandatory provisions of publishing contracts are stated in Sections 17–29 of the R.S.F.S.R. Law on Copyright, those concerning works of music and art in Sections 18 and 25, and those governing production in Sections 30 *et seq.* of the same law.

See also *infra,* No. 29.

18. During the lifetime of the author, the publisher or the theatrical enterprise shall not have the right to make at his discretion, without the author's consent, any additions, abridgments, or in general any changes in the work itself, in its title, or in the designation of the author's name. Likewise, the publisher shall have no right during the lifetime of the author to supply his work with illustrations without his consent.

19. Damages caused by infringements of copyright shall be subject to recovery in accordance with the legislation of the constituent republic.

Comment

See Section 10 of the R.S.F.S.R. Law *infra,* No. 28.

20. The copyright to any work may be compulsorily purchased by the government of the U.S.S.R., or by the government of the constituent republic in whose territory the work was first published or is located as a manuscript, sketch, or in any other presentable form.

28

R. S. F. S. R. Law on Copyright

Joint Resolution Concerning Copyright of the All-Russian Central Executive Committee and of the Council of People's Commissars of the R.S.F.S.R. of October 8, 1928.[1]

In accordance with the Joint Resolution of the Central Executive Committee and the U.S.S.R. Council of People's Commissars of May 16, 1928, enacting a new version of the Basic Principles of Copyright (U.S.S.R. Laws 1928, text 245), and in order to repeal hereby the Joint Resolution on Copyright of the All-Russian Central Executive Committee and the R.S.F.S.R. Council of People's Commissars of October 11, 1926, with the amending Resolution of January 23, 1928 (R.S.F.S.R. Laws 1926, text 567, and *id.* 1928, text 112), the All-Russian Central Executive Committee and the R.S.F.S.R. Council of People's Commissars have resolved:

1. All relations, pertaining to copyright, in particular relations arising under a publishing or production contract, shall be governed from January 1, 1929, by the present resolution.

2. Questions pertaining to royalties as well as to all

[1] R.S.F.S.R. Laws 1928, text 861. Still in force, 2 Civil Law (1944) 229; Zimeleva, Civil Law (1945) 273. For a similar Ukrainian Law of February 6, 1929, see Ukrainian Laws 1929, text 55, Byelorussian Law of January 14, 1929, Byelorussian Laws 1929, text 8.

other legal relations and disputes connected with copyright that arose before the present resolution has taken effect, shall be decided in accordance with the laws previously enacted.

Note: The Resolution of the Central Executive Committee and the U.S.S.R. Council of People's Commissars of May 16, 1928, on the Basic Principles of Copyright, and the present resolution shall apply to publishing and production contracts concluded after July 17, 1928.

3. The copyright to a motion picture shall be recognized as belonging to the motion-picture production studio which issued the film. The author of the script shall retain the right to compensation for public showing of the motion picture.

4. Royalties due to the author in the cases mentioned in Section 8, paragraphs 2 and 3, as well as in Note 1 to Section 9 of the Basic Principles of Copyright of May 16, 1928, as well as the manner of payment of royalties in such cases, shall be determined by the R.S.F.S.R. Minister of Education and by the ministers of education of the autonomous republics within their respective jurisdictions.

Comment

For presentation of musical works at concerts, 3 per cent from the receipt for the whole program was established by the Circular Letter of the R.S.F.S.R. People's Commissar for Education of February 2, 1924, 2 Civil Law (1944) 236, Fogelevich, *op. cit.* 804.

5. Only such fragments shall be recognized as short passages the reprinting of which does not constitute, under the Basic Principles of Copyright, any infringement of the exclusive rights of the author, as include,

in a work under one title, quotations from the work of one author not exceeding a total of 10,000 printed characters of prose or 40 lines of poetry.

The reprinting of up to 40,000 printed characters from fundamental scientific works shall be allowed. Works comprising at least thirty signatures in printed form shall be considered fundamental scientific works within the meaning of this section.

In cases when the reprinting exceeds the limits set forth in this resolution, the author shall in any event be entitled to a royalty for the whole quotation, and if the quotation is made without his consent, shall also retain the right to recover damages under the general rules.

Comment

See Note 2 to Section 9 of the U.S.S.R. Copyright Law.

6. Authors of art works as well as of photographic and other similar works, who have not registered them under the Law on Industrial Samples and do not enjoy the exclusive right to their works under said law, shall enjoy under subsection (p) of Section 9 of the Basic Principles of Copyright the right to remuneration for the reproduction of their works in articles manufactured in factories and plants, as well as in home and handicraft industries.

The rate of remuneration due to authors of such works shall be determined by a separate resolution of the R.S.F.S.R. Council of Ministers.

[Last paragraph not translated because obsolete.]

Comment

For such rates, see Order of the Supreme Economic Council of February 12, 1929, (1928/1929) Bulletin of the Council No. 10; Fogelevich, *op. cit.*

7. The period of duration of the copyright to a motion-picture script, specified in Section 14 of the Basic Principles of Copyright, shall begin on the day of the first public showing of the film made according to the script.

The day of the first public showing of a film shall be considered the day of publication of the script and of the film within the meaning of Section 14 of the Basic Principles of Copyright of May 16, 1928; however, in case the script has been previously published in print, the day of its publishing shall be considered the day of its publication within the meaning of the same section.

So-called social previews of films shall not be considered public showings, provided no admission fee is charged.

Comment

The copyright to a motion-picture film belongs to the studio. The remuneration of authors of scripts, producers, operators, et cetera, is regulated by the Acts of March 23, 1938, U.S.S.R. Laws 1938, text 82, and Acts of December 10 and 23, 2 Civil Law (1944) 245, also The Soviet Cinema (in Russian 1940) 294. The monopoly for lending out soviet films belongs to a central bureau within the Ministry of Moving Picture Industry (U.S.S.R. Laws 1940, text 26).

8. The period of duration of the copyright to encyclopedias published in separate volumes shall begin from the day of publication of the last volume, if between the publication of individual volumes not more than six months elapse. In cases where this time period exceeds six months, the copyright shall begin from the day of publication of each individual volume.

The duration of the copyright to periodical publications published in separate issues or numbers shall begin

in accordance with the general rules, i.e., separately for each issue or number.

9. The author as well as his heirs and testamentary beneficiaries shall have the right to register the time of publication of a work, or of its first public performance, or of the first exhibit of the work in a public exhibition, by filing an appropriate declaration and entering it in a register kept by agencies of the R.S.F.S.R. Ministry of Education or of the similar ministries of the corresponding autonomous republics, within their respective jurisdictions, in accordance with the procedure established by a special instruction to be issued by the R.S.F.S.R. Ministry of Education in agreement with the R.S.F.S.R. Ministry of Finance and the R.S.F.S.R. Ministry of Soviet Control.

The refusal of the registering agency to register a work shall not deprive the parties concerned of the right to establish, if necessary, the time of publication of the work in any other manner.

Until the contrary is proved in court, the registration of a work according to the present section shall serve as proof of the initial moment of the running of the duration of the copyright, but shall not prevent third parties from contesting the copyright to the registered work.

Comment

The procedure of registration is governed by the Instruction of the R.S.F.S.R. People's Commissariat for Education of August 8, 1929, (1929) Weekly of the Narkompross (in Russian) No. 43; Fogelevich, *op. cit.* 76. For translation, see Vol. I, p. 617.

10. Damages caused by infringements of copyright shall be recovered under the provisions of Chapter XIII

of the Law of Obligations of the R.S.F.S.R. Civil Code.

However, the author shall be entitled to claim, instead of recovery of damages sustained, the payment of royalty according to the rates established in a procedure specified in Section 4 of the present resolution. In particular, this right shall belong to the author in cases where the damages sustained from infringement of the copyright cannot be proved.

11. The copyright shall also be protected from infringement in cases where infringement involves no definite property interests.

Regardless of the recovery of damages, the author shall have the right to claim performance of such acts as are necessary for the satisfaction of the legitimate interests of the author which have been violated.

12. After the death of the author, in case of absence of heirs by operation of law or of testamentary beneficiaries, the copyright shall expire.

Comment

Copyright does not devolve after the immediate heirs of the author upon their heirs. See comment to Section 15 *supra* No. 27.

13. The copyright to any work may be compulsorily purchased by virtue of a special resolution of the R.S.F.S.R. Council of Ministers, if the work in question was originally published within the territory of the R.S.F.S.R. or is located within such territory as a manuscript, sketch, or in any other presentable form. The amount of royalty which must be paid to the author or to his successors in rights in such cases shall be determined by the R.S.F.S.R. Ministry of Education, or by the ministry of education of the autonomous republic

concerned, in agreement with the R.S.F.S.R. Ministry of Finance.

14. Works to which the copyright has expired, except works declared to be the property of the State by special resolutions of legislative bodies, may be reproduced, published, circulated, and performed by any person, without limitation, in accordance with the U.S.S.R. Basic Principles of Copyright of May 16, 1928, and the present resolution.

Comment

(1) The works of the following Russian composers have been declared on August 16, 1919, the property of the R.S.F.S.R. government: Borodin, Tchaikovsky, Balakirev, Qui, Moussorgsky, Rimsky-Korsakov, Taneev, Liadov, Arensky, Skriabin, Laroche, A. Rubinstein, Serov, Stasov, S. Smolensky, Sakketi, and V. Kalinnikov (R.S.F.S.R. Laws 1919, text 414).

(2) Any translation of works of Upton Sinclair into Russian was declared on May 14, 1925, to belong to the R.S.F.S.R. (R.S.F.S.R. Laws 1925, text 336).

(3) For the names of fifty prerevolutionary Russian authors whose works are under government monopoly, see the Act of January 18, 1923, R.S.F.S.R. Laws 1923, text 213, and *id.* 1925, text 309.

15. Public performance of works, the copyright to which has been purchased by the government of the R.S.F.S.R. in accordance with Section 13 of this resolution, shall be allowed only by special permission of the R.S.F.S.R. Ministry of Education or the ministry of education of the particular autonomous republic, regardless of whether these works have been previously published or publicly performed (Section 8 of the Basic Principles of Copyright), and payment of the established

royalty shall be collected for their performance, for the duration of the copyright.

Sums collected under the present section shall be entered as State revenue in the State budget of the R.S.F.S.R.

16. The right to make translations, and likewise the translations into Russian themselves, of literary works published in foreign languages within the borders of the R.S.F.S.R., as well as beyond its limits, may be declared a monopoly of the republic by resolution of the R.S.F.S.R. Council of Ministers.

Comment

See comment 2 to Section 14.

17. Assignment to publishers of powers embraced in a copyright shall be effected only under a publishing contract.

A publishing contract is defined as a contract by virtue of which the author assigns for a definite period of time the exclusive right of publication of a work that is in presentable form, and by which the publisher undertakes the obligation to publish such work and to take all the necessary steps within his power for its distribution.

A publishing contract may be made for a work which has not yet been rendered in proper presentable form at the moment of execution of the contract (literary order).

The author shall be entitled to include in an edition of his collected works also works the publication rights to which he has assigned to another person.

Comment

The Central Committee of the Communist Party resolved on July 14, 1940, to discontinue making publishers' contracts

for future work and ordered that "while making such contracts the publishing house must have a finished and corrected manuscript of the author." In fact, literary orders are used at present only in exceptional cases primarily for textbooks and similar publications, according to the textbook of 1944.[2]

18. The nature and conditions of use of the assigned copyright shall be precisely defined in the publishing contract and, in particular, the following shall be indicated there: the number of copies of the first edition and of subsequent editions, if several editions are provided for, the time at which the work must be published, the amount of royalties, and the duration of the publishing contract, with observance of the limitations set forth in the subsequent sections of the present resolution.

If the right to a new edition of the work is not provided in the publishing contract, the publisher may make such new edition only with the written consent of the author to each current new edition.

19. A publishing contract may be made for a period of time not to exceed four years.

The running of this period of time shall begin from the date of execution of the contract or of acceptance of the manuscript, if this took place later, or from the date of expiration of the period of time stipulated for acceptance of the manuscript, if such acceptance occurred after the expiration of the stipulated period.

The running of this period of time for works consisting of two or more volumes shall begin from the date of delivery to the publisher, of the manuscript of the last volume.

The period of duration of the publishing contract

[2] Decisions of the Party Concerning the Press (in Russian 1941) 191; 2 Civil Law (1944) 240.

specified in the present section shall not apply to contracts made for editions of musical and musicodramatic works, works of fine art, or photographic and photographlike works.

Comment

Under the Ukrainian Law (Section 18), a government publishing house may make a publishing contract for the entire duration of the copyright. This provision is criticized by some soviet jurists as contrary to Section 17 of the federal law. See 2 Civil Law (1944) 241.

20. The amount of compensation paid to the author for assignment to the publisher of the right of publication and distribution of works of literary prose, poetry, drama, children's literature, criticism, and translations of foreign literature (prose, poetry, and drama) must not be below the rates established by the R.S.F.S.R. Council of Ministers.

Comment

The latest schedules of such rates were enacted on July 12, 1944, R.S.F.S.R. Laws 1944, text 43, and on July 15, 1947, *id.* 1947, text 31. See also comment to Section 27.

21. The maximum number of copies (*tirage*) of one edition used for the calculation of royalties may not exceed the standards established in the manner specified in the preceding section of the present resolution.

Provisions of the present section shall not prevent the publisher from issuing several editions simultaneously.

Comment

The standard number of copies in an edition is defined in R.S.F.S.R. Laws 1944, text 43.

22. The publisher must publish the work within the

period of time stipulated by the contract, provided that this period does not in any event exceed the following limits:

(a) Six months for periodical publications as well as for books not exceeding five printed folios (signatures);[3]

(b) One year for all other literary works not exceeding ten printed folios (signatures);

(c) Two years for literary works which do not come under the provisions of clauses (a) and (b) of the present section.

The running of these periods of time shall begin from the date of execution of the contract or of acceptance of the manuscript, if this occurred later, or from the date of expiration of the period of time stipulated for acceptance of the manuscript, if such acceptance occurred after the expiration of the stipulated period.

The period of time provided for in the present section may be prolonged, but not beyond one year, for periodical publications and books under five folios published by publishing offices of national minorities, by an agreement included in the contract.

23. If publication is not effected within the period of time established by contract or law, the publisher must immediately pay the author royalties in full (100 per cent) according to the size of the manuscript approved by the publisher for printing. After the expiration of the period of time specified in the preceding section (Section 22), the publisher shall be granted an extension equal to one half of each of the periods of time specified in that section for publication of the work, provided

[3] The Standard Contract, Section 1 (*infra*), defines a printed folio (signature) as comprising 40,000 printed characters. This was also a customary unit for computation of royalty and printing costs in imperial Russia.

that, upon the expiration of such extension, in the event of nonappearance of the work, the contract shall be rescinded upon the unilateral declaration of the author, and the manuscript shall be returned to him.

24. Reassignment by the publisher of the right of publication of a work to another person shall be permitted only with the written consent of the author, or, in the event of the author's death, of his successors in rights.

25. Sections 18, 23, and 24 of the present resolution shall apply to publishing contracts involving not only literary works but also musical and musicodramatic works, works of the fine arts, as well as photographs and photographlike works.

26. The Standard Publishing Contract for literary works shall be approved by the R.S.F.S.R. Ministry of Education with the consent of the R.S.F.S.R. Ministry of Commerce. This Standard Contract shall apply to scientific-journalistic works in particular.

The publishing contract may contain terms not provided for in or departing from the Standard Contract. However, terms and clauses likely to place the author in a position less advantageous than those accorded by the terms of the Standard Contract shall be considered invalid, and the rights and duties of the parties stipulated under such terms and clauses shall be determined in such cases according to the corresponding sections of the Standard Contract.

Comment

In accordance with this section, a Standard Publishing Contract was approved by the R.S.F.S.R. People's Commissariats for Education and for Commerce in 1929, (1929) People's Commissariat for Education Weekly No. 16/17. For translation see *infra*, No. 29.

27. Provisions which must be contained in the publishing contract for a musical work shall be determined on the basis of the present law by an instruction to be issued by the R.S.F.S.R. Minister of Education, jointly with the R.S.F.S.R. Minister of Commerce and the All-Union Central Council of Trade-Unions.

Comment

A schedule of remuneration for musical works and works on the theory of music was issued by RABIS (union of artists) on December 8, 1934. Fogelevich, *op. cit.* 86; 2 Civil Law (1944) 237.

28. After the death of the author, the publisher shall have for the duration of the copyright no right to make in his own discretion, without the consent of the author's heirs or beneficiaries, any addition, abridgement, or other change in the work itself, its title, or the designation of the name of the author, or to supply the work with illustrations.

If no agreement with the author's heirs or beneficiaries is reached in this matter, the publisher may apply for corresponding permission to the Minister of Education of the R.S.F.S.R. or to ministers of the autonomous republics concerned, within their respective jurisdictions.

29. Upon the expiration of the duration of the copyright, the changes mentioned in the preceding section (Section 28) may be made by permission of the Minister of Education of the R.S.F.S.R. or of the autonomous republic concerned, within their respective jurisdictions.

30. Assignment of the copyright for production and public performance of an unpublished dramatic, musico-dramatic, musical, pantomimic, choreographic, or mo-

tion-picture work shall be permitted only under a production contract.

A production contract is defined as a contract by virtue of which the author assigns the right of public performance of his work and the producer (theatrical enterprise) undertakes to give a public performance of the work within a definite period of time.

Contracts shall be permitted for production of a work not yet rendered in presentable form on the date of conclusion of the contract.

31. Assignment by the author to a theater of the exclusive right of production of an unpublished work does not deprive the author of the right to assign production of the same work to workers' and soldiers' clubs, even in the same city in which production is assigned to a theater or similar enterprise.

32. The character, scope, and conditions of use of the assigned right must be precisely stipulated in the production contract; in particular, there shall be indicated: the territorial boundaries within which it may be used, the duration of the contract, the period of time within which the first public performance shall be given, the amount of royalties, and the number of public performances (shows or concerts), with observance of the limitations specified in the following sections of the present resolution.

33. A production contract may be made for the duration of not more than three years from the date of the first public performance of the work.

34. The theatrical enterprise shall be obligated to present the production within the following periods of time, which shall run from the date of delivery of the manuscript of the work by the author:

Within two years, for production of musicodramatic works (operas, operettas, [musical comedies]) and choreographic works;

Within one year, for all other works.

35. Under a single production contract, public performances may be given only within the limits of one city and not more than 150 times. If the author of an unpublished work has a production contract with a theatrical enterprise, such contract shall not deprive him of the right to make contracts for the production of the same work with other stage enterprises, if such production is to be performed in other cities.

Public dress rehearsals and so-called social previews given without the collecting of entrance fees from the audience shall not be included in the maximum number of performances provided for in the present section.

36. The theatrical enterprise shall be entitled to give fewer performances of the work than are stipulated in the contract, as well as to close the show altogether, provided that the rules governing payment of royalties are observed (Section 39).

37. By exception to the provisions of Section 30 of the present resolution, the assignee of a motion-picture script shall not be obligated to produce the picture, unless the contract provides otherwise.

The provisions of Section 32 of the present resolution, requiring the number of public performances to be indicated in the contract, as well as the limitations set forth in Sections 33, 34, and 35, shall not apply to production contracts concerning motion-picture scripts.

38. The amount of royalties to the author stipulated in the contract for public performance of his work may not be less than the amount of royalties determined by

the rates for public performance of published works (Section 4).

39. If the production and public performance are not effected within the period of time stipulated in the production contract or established by law, the production contract shall be rescinded upon the declaration of the author, and the theatrical enterprise shall be under obligation to pay to the author the stipulated royalties in full.

In cases where the production contract provides for royalties payable per performance, the theatrical enterprise shall be obligated under the present section to pay royalties to the author according to the number of performances defined by the R.S.F.S.R. People's Commissariat for Education as a guaranteed minimum for the computation of royalties for assignment of the right of public performance.

40. If no start is made on the production of a motion-picture script within the period of time stipulated in the contract, which period may not exceed two years from the date of submittance of the script, then, upon the declaration of the author, the contract shall be rescinded and the author shall be entitled to receive the royalties stipulated in a lump sum but may not claim royalties stipulated per performance.

41. In case the author of a dramatic or other literary work assigns to a motion-picture studio the right to convert his work into a script, the right to use such literary (dramatic) work may not be assigned to the studio for more than three years.

In such conversion, the motion-picture studio may not make such modifications or changes in the plot of the work used as are objectionable to the author.

Comment

Concerning motion pictures, see comment to Section 7.

42. The author of a motion-picture script, the production of which has been assigned to a motion-picture studio, shall have the right to rewrite the work in another motion-picture script and the right to publish such script, but only after publication of the corresponding film within the period of time stipulated in the contract.

43. Observance of the provisions of Sections 30 through 42 shall be mandatory for the production of published works only in cases where the contract so provides.

Unpublished works may be performed at cultural-educational institutions (Section 9, subsection (i), of the Basic Principles of Copyright of May 16, 1928) only under a production contract, to which the provisions of Sections 30 through 42 shall apply.

44. A theatrical enterprise may not assign powers arising under the production contract to other enterprises, unless the author gives his consent in writing.

29

Standard Publishing Contract[1]

City ..... 19..... Month .....Day.

We the undersigned publisher ....., hereinafter called the publisher ..... represented by ..... on the one side, and ....., hereinafter called the author, have hereby executed the following contract:

1. The author assigns to the publisher the exclusive right to the publication and republication of his work under the title ..... containing ..... signatures (or lines of poetry), each signature containing 40,000 printed characters, for the term of ..... year ..... from the date of acceptance of the manuscript by the publisher, or from the date of signing of this contract (in case the contract is executed for a completed work).

Note: The computation of printed characters shall be done by the method adopted for typographical works. So-called "key words," "half-titles," "column titles," and "columns of figures" shall not be taken into consideration. Lines of poetry shall be counted by the author's lines, including headings.

[1] (1929) People's Commissariat for Education Weekly (in Russian) No. 16/17. Still referred to in 2 Civil Law (1944) 240; Zimeleva, Civil Law (1945) 279.

2. The contents of the work shall comply with the following conditions .....

3. The author undertakes to deliver to the publisher the work mentioned in Section 1 in the form of a typed or readily legible handwritten copy not later than . . .

Note 1: The typing of a readily legible manuscript shall be done by the publisher at his own expense.

Note 2: Delivery of a manuscript ready for printing comprises also the delivery of illustrative materials related to the work (in cases where, according to the contract, the author shall undertake the obligation to supply the illustrative materials).

4. In exchange for assignment of the exclusive right indicated in Section 1, the publisher undertakes the obligation to pay to the author royalties to the amount of ..... rubles per signature (or line of poetry), which royalties are payable to the author at the following periods:

(a) Upon the signing of this contract, an advance of 25 per cent of the royalties corresponding to the stipulated size of the work;

(b) Upon the approval of the manuscript by the publisher, 35 per cent of the royalties corresponding to the preliminary estimate of the actual size of the work;

(c) The remainder after the signing by the author of the proof of the last signature, and, in case no such proof is made, not later than within two weeks from the date on which the printer makes up the composition into pages. (Or, upon the signing of this contract, 60 per cent of the royalties corresponding to the preliminary estimate of the actual size of the work, the remainder after the signing by the author of the proof of the last signature, and, in case no such proof is made, not later than two weeks

from the date of completion by the printer of the making up of the composition into pages.)

Note 1: Fourteen days of grace from the time at which payment is due shall be allowed to the publisher for making payment.

Note 2: In case the publisher expects that work submitted will not be approved for printing by the censorship, and the author does not agree to make the necessary changes in the passages which give rise to such expectations, the publisher has the right to postpone the payment provided for in paragraph (b) of this section until the approval of the Chief Administration of Literary and Publishing Affairs (*Glavlit*) is obtained.

5. For each new edition, the author shall be paid the amount of ..... rubles.

Royalties for each new edition shall be paid according to the following terms: 50 per cent of the royalties within seven days of the receipt by the publisher of notification from the author that he does not object to a new edition of his work, and 50 per cent not later than upon the release of the work for circulation, if this has occurred before the expiration of the time limit stipulated in the contract, or not later than the expiration of this period, if the work was not released for circulation within this term.

6. A delay of more than one month in one of the first two payments (or in case of the acceptance of a completed work, of the first payment) shall give the author the right to rescind this contract by a unilateral declaration, upon which the publisher shall return the manuscript to him; a similar delay in the last payment, though it does not constitute a reason for rescinding the con-

tract, shall entitle the author to damages in the amount of one half of the delayed payment.

7. [2] The manuscript shall be considered accepted (approved) by the publisher on the date of its delivery to the publisher in a form ready for printing, if, within the period of time indicated in the notes to the present section, the publisher fails to issue:

(a) A motivated written refusal to accept the manuscript, giving reasons for its rejection based on the merits of the work itself; or,

(b) A written proposal to the author to make corrections or to rewrite the work indicating precisely the essence of the corrections required, within the terms of the contract.

Note 1: The written notifications specified in this section shall be made within fourteen days, with three additional days for each printed signature (40,000 printed characters), or, for poetical works, within thirty days regardless of length. These periods shall run from the date of delivery of the manuscript to the publisher.

Note 2: The submission of the manuscript for examination to the State Scientific Council (G.U.S.) and to the Chief Repertory Committee (*Glavrepertkom*), in cases when this is required by the laws in force, shall defer the moment of acceptance of the manuscript by the publisher, indicated in Section 7, and the running of the time limit for notification to the author, indicated in Note 1, during the entire time of examination of the manuscript and for two additional weeks.

Note 3: In case the manuscript is submitted in a form not ready to print, the publisher shall return it to

[2] Sections 7, 8, and 9 are included only in contracts involving a work to be prepared (literary order).

the author within a period of time computed on the basis of one day for each signature of the work, and, accordingly, the time limit established for delivery of the manuscript (Section 3) shall be appropriately extended; a manuscript not returned within this period of time shall be considered accepted by the publisher.

8. The publisher shall allow the author sufficient time for the corrections and changes provided for in paragraph (b) of Section 7 and for the second delivery of the manuscript. The corrected manuscript shall be considered accepted (approved) by the publisher if, within one half of the period indicated in Note 1 to Section 7, the publisher does not ask in writing for new corrections or does not refuse in writing to accept the manuscript, where the corrections have not been made in accordance with the suggestions of the publisher (Section 7).

9. In case the manuscript is rejected by the publisher as unsuitable (Section 7, paragraph (a), and Section 8), the publisher has the right to rescind the contract, but without the author's returning the advance paid to him.

Note: In cases where the court deems that the author has acted in bad faith in the execution of his work, the advance shall be returned.

10. The publisher undertakes the obligation to publish the work specified in Section 1 in a number of copies not to exceed ..... for the first edition (and not to exceed ..... copies for each following edition).

Note 1: Within the period of time fixed for its publication, each edition may be issued piecemeal and at various dates.

Note 2: The publisher has the right to publish with each edition 150 copies in excess of the stipulated num-

ber (for compulsory deposits and for publicity purposes).

11. The publisher undertakes the obligation to issue the first edition not later than within ..... months from the date of acceptance of the manuscript, and each of the following editions not later than within one year from the date on which the fact that the preceding edition has been sold out is established.

In case the size of the manuscript is greater than has been provided for in the contract, the time limit for the publication of the edition shall be extended proportionally.

The publisher may not exercise his right to another edition granted by the contract, if the author prohibits such edition in writing within five days from receipt of notification by the publisher of his intention to publish a new edition. In such case, the author does not have the right to assign the edition of the same work to any other publisher; the publisher, however, despite the author's prohibition, has the right to issue a second edition in identical form by special permission of the Ministry of Education.

Note 1: The publisher has the right to publish a new edition without changes, if the author does not submit to the publisher the contemplated changes before the expiration of two months from the date on which he was notified by the publisher of the projected new edition; in addition, the author shall notify the publisher in writing that he intends to make changes, within two weeks from receipt of notification concerning the projected new edition.

Note 2: In cases where the author requests that addi-

tions or changes be made on the new edition or accepts similar suggestions from the publisher, the provisions of Sections 7, 8, and 9 of this contract shall apply.

Note 3: In the cases provided for in Note 2 to the present section, and in Section 17, the time limit for new editions shall be appropriately extended.

12. The publisher shall have the right to refuse a new edition. If the publisher refuses a new edition, the author shall be entitled to dispose of such work at his discretion, even before the expiration of the term of the contract.

13. Within three months from the date on which the fact is established that the previous edition has been sold out, the publisher shall notify the author in writing of his intention to publish a new edition or to refuse further editions.

If the publisher fails to give such notification within the specified time, or if a written inquiry by the author concerning the further plans of the publisher for a new edition are not answered by the publisher within two weeks, or are answered in an indefinite manner, the author shall have the right to dispose of the work at his discretion, even before the expiration of the term of this contract.

14. Within one month from the date on which it is established that the edition is out-of-print, the publisher shall notify the author to this effect. An edition is deemed out-of-print when not more than 10 per cent of the actual number of copies printed remains in the stock room and stores of the publisher out of the first edition or subsequent editions published within the period stipulated for the first edition or subsequent editions, un-

less the publisher proves that not less than 15 per cent of the copies printed remain in the stock rooms and stores of the publisher and booksellers.

Upon the completion of the taking of the inventory, the publisher shall, at the request of the author, give to him a written report on the number of unsold copies. In addition, the publisher shall upon the author's request, ascertain once between inventories the number of unsold copies, after the expiration of one-half year from the general inventory.

15. From the moment of execution of the contract and for its duration, the author undertakes not to publish, either personally or through another person, the work in whole or in part, even under another title, without the written consent of the publisher, for the duration of this contract. In case of violation of this provision, the publisher shall have the right to rescind this contract and to recover from the author the damages caused by such violation, the amount of which shall be determined by the court.

Note: Prior to the publication of the work by the publisher, the author shall have the right to publish it in periodicals, and likewise in compilations and symposia, but such publication of the work in a periodical shall be allowed in installments not exceeding two and one-half signatures in each issue of the periodical or symposium.

16. If the author fails to deliver the manuscript to the publisher within a month (if the size of the work according to the contract does not exceed ten signatures), or within two months (for works of more than ten signatures), from the date of expiration of the term stipulated in Section 3 of this contract, or refuses to

make the corrections in his work under Section 7 of this contract, then the publisher shall have the right to rescind this contract and to recover from the author the sums paid in advance.

17. At the publisher's request, the author shall do without special remuneration the (author's) proofreading of the work designated in Section 1. The publisher in turn shall, upon the request of the author, allow him to do the author's proofreading.

The author shall be allowed one day per signature for proofreading, except in cases provided for in the note to this section; the time needed to forward the proof sheets shall not be included in the time for proofreading. A delay in the return of the proofs by the author (in excess of the specified limit) without justifiable reason, or likewise his avoidance of returning the proof sheets, shall give the publisher the right to print the work without the author's proof corrections or to delay its publication for the time of the delay of the proofs by the author.

The expenses incurred for the stoppage of printing caused by delay in the return of the proofs by the author without justifiable reason, shall, upon the request of the publisher, be charged to the author by the court and deducted from the amount due the author, within, however, the limits of 20 per cent of the royalties.

Note: A two-day limit per signature is established for the reading of the proof of a nonesthetic work by the author.

18. When the costs of typesetting caused by the author's corrections (except corrections of typographical errors and corrections caused by changes and insertions which could not be foreseen at the time of delivery of

the manuscript) exceed 10 per cent of the total cost of typesetting, the publisher may charge the expense incurred for such excess to the author, not, however, in excess of 20 per cent of the royalties.

19. The publisher undertakes to deliver to the author free of charge twenty-five copies out of the number printed in the first edition, and besides, upon the author's request, fifty additional copies at cost, and five copies out of each subsequent edition free of charge. However, the total number of free copies out of the first edition and all subsequent editions published for the duration of this contract shall not exceed fifty copies (as amended August 15, 1930, 1930 Bulletin of Narkompross No. 25).

Note: Execution of the author's request shall be compulsory, if made before the corresponding edition is sold out.

20. Should the work specified in Section 1 of this contract not be published (or republished) by the publisher within the term specified above (Section 11), the author shall be entitled to receive his fee and to rescind the contract in accordance with the Resolution of the All-Russian Central Executive Committee and the R.S.F.S.R. Council of People's Commissars of October 8, 1928, Concerning Copyright.

21. Should the work specified in Section 1 of this contract not be published on account of a veto by agencies of the Chief Administration of Literary and Publishing Affairs (*Glavlit*), the publisher shall return the manuscript to the author, and the contract shall become void, the publisher having no right to recover sums already paid by him to the author.

22. In case works intended for use in schools or belonging to the category of children's literature do not receive the approval or permission of the State Scientific Council (G.U.S.), the contract shall be considered rescinded and the author shall receive 50 per cent of the stipulated royalties, the advance included.

23. By request of the author, the publisher shall record on the author's copy of this contract all payments of royalties and all dates of delivery of the manuscript by the author.

24. The publisher has the right to assign, in whole or in part, the rights and obligations arising under this contract to other governmental or public publishing enterprises, in case of changes in its editorial plan caused by arrangements or decisions of government authorities controlling or regulating publishing activities (such as specialization of the publishing offices, merger, et cetera).

25. Address of the publisher .....
Address of the author .....

The parties shall notify each other in writing of changes of addresses.

The city of ..... shall be considered the place of performance of this contract.

*

PART EIGHT

AGRARIAN LEGISLATION

*

30

Standard Charter of an Agricultural Artel

Standard Charter of an Agricultural Artel Approved by the Second Convention of Shock Workers of the Collective Farms and Confirmed by the Council of People's Commissars of the U.S.S.R. and by the Central Committee of the All-Union Communist Party (*Bolsheviki*) on February 17, 1935.[1]

Comment

See Volume I, Chapter 19, pp. 699–701 and 716–719, also Chapter 22, pp. 723–725.

I. Aims and Purposes

1. The toiling peasants of the village (settlement, hamlet, *khutor, kishlak, aul*) of ..... in the district of ..... voluntarily band together into an agricultural artel in order to establish, with common means of production and with organized common labor, a collective, i.e., a joint farm, to insure complete victory over the kulaki, over all the exploiters and enemies of the toilers, over want and ignorance, over the backwardness of small individual farming, to create high productivity of labor and, by this means, to insure the well-being of the members.

The path of collective farming, the path of socialism, is the only right path for the toiling peasants. The

[1] U.S.S.R. Laws 1935, text 82. See Volume I, Chapters 20 and 21.

members of the artel take upon themselves the obligation to strengthen their artel, to work honestly, to distribute the collective farm income according to the amount of work done, to guard the common property, to take care of the collective farm property, to keep the tractors and machinery in good order, to tend the horses carefully, to execute the tasks imposed by the workers' and peasants' government in order to make theirs a bolshevist collective farm and all its members prosperous.

II. The Land

2. All bounds that have hitherto divided the land allotments of the members of the artel shall be abolished, and all individual allotments in the fields shall be converted into one great solid piece of land, which shall be in the collective use of the artel.

Land occupied by the artel (like any other land in the U.S.S.R.) is governmental property of all the people. Under the laws of the workers' and peasants' State, the use of the land shall be secured to the artel for an indefinite period, that is to say, forever, and may be neither sold nor bought nor let by the artel.

The executive committees of the district soviets shall issue to each collective farm a government title deed securing the use of the land for an indefinite period and fixing the size and exact boundaries of the land used by the artel; this land may not be decreased, but may be increased, either out of the free government land reserve or the extra land occupied by independent peasants, always, however, preserving the land of the collective farm in one block.

A small tract of land shall be allocated from the collectivized landholdings for the personal use of each

household in the collective farm in the form of a house-and-garden plot (vegetable garden, garden, orchard).

The size of plots assigned for individual use by households (exclusive of the site of the house) may vary from one-quarter hectare [0.62 acres] to one-half hectare [1.24 acres], and, in certain districts, to one hectare [2.47 acres], depending upon regional and district conditions, as determined by the people's commissariats for agriculture of the constituent republics on the basis of directions issued by the U.S.S.R. People's Commissariat for Agriculture.

Comment

The provisions of this section are discussed in Volume I, Chapter 20, pp. 726–728 and 731–733, and Chapter 21, pp. 768–772.

3. The land enclosure of the artel may in no case be diminished. It is forbidden to parcel allotments out of the artel's land enclosure to such members as leave the artel. Departing members may receive allotments only out of the free lands of the government land fund.

The land of the artel shall be divided into separate fields to correspond with the established system of crop rotation. Each field brigade is to work on the same portion of land during an established period of crop rotation.

Collective farms which possess large stockbreeding farms may, in case of need, and if they have a sufficient amount of land, parcel out certain tracts of land to be attached to the stockbreeding farms and used for the cultivation of fodder for the animals.

Comment

See U.S.S.R. Laws 1939, text 235, translated *infra* No. 33, and 1946, text 254, *infra* No. 35.

See also Vol. I, pp. 712–713.

III. Means of Production

Comment

For discussion of the provisions of Sections 4–5, see Volume I, Chapter 16, p. 568, Chapter 19, pp. 712–715, Chapter 20, pp. 735–737, and Chapter 21, pp. 768–772, and 781–789.

4. The following objects shall be owned only collectively: all draught animals, agricultural implements (ploughs, sowing machines, harrows, threshing machines, mowing machines, et cetera) seed reserves, forage necessary for collectively owned livestock, buildings needed for collective farming, and all establishments processing agricultural products.

The following objects shall not be pooled in the collective capital and shall remain in the personal use of the household of a collective farmer: dwellings, personal cattle, and poultry, as well as buildings necessary for keeping such cattle.

When farming implements are pooled, minor implements needed for tilling the house-and-garden plots shall be left to the individual households.

The management of the artel may, if necessary, allot a few horses out of the total number of collectively owned draught animals to serve the personal needs of the members, but on the condition that these services are to be paid for. The artel shall organize a mixed stockbreeding farm or, if there are a large number of animals, several specialized stockbreeding farms.

5. In the regions of cultivation of grain, sugar beets,

cotton, flax, hemp, potatoes and vegetables, tea and tobacco, each household in the collective farm may have in its individual possession one cow, not more than two calves, one sow with sucklings or, if the management of the collective farm should think it advisable, two sows with sucklings, not more than ten sheep and goats together, an unlimited number of fowl and rabbits, and not more than twenty beehives.

In agricultural regions with developed stockbreeding, each household in the collective farm may have in its individual possession two or three cows with their calves, two or three sows with sucklings, twenty or twenty-five sheep and goats altogether, an unlimited number of fowl and rabbits, and not more than twenty beehives. Such districts are, for instance, the agricultural districts of Kazakstan not bordering on nomadic districts, forest districts of White Russia, the Chernigov and Kiev provinces of the Ukraine, the districts of the Baraba Steppes and Altai districts of Western Siberia, the Ishim and Tobolsk groups of districts of the Omsk province, the hilly part of Bashkiria, the eastern part of Eastern Siberia, the agricultural districts of the Far Eastern area, and the Vologda and Holmogory groups of districts in the northern area.

In nonnomadic or seminomadic stockbreeding regions, where agriculture is of small significance and stockbreeding plays the leading part in agriculture, each household in the collective farm may have in its individual possession four or five cows with their calves, thirty or forty sheep and goats in all, two or three sows with sucklings, an unlimited number of fowl and rabbits, not more than twenty beehives, and also one horse or one milking mare or two camels or donkeys or two mules. Such, for instance, are the following districts:

the stockbreeding districts of Kazakstan bordering on nomadic districts, the stockbreeding districts of Turkomanistan, Tadjikistan, Kara-Kalpakia, Kirghizia, Oirotia, Khakassia, the western part of Buryato-Mongolia, the Kalmyk autonomous region, the hilly districts of the Daghestan autonomous republic, the Checheno-Ingush, Kabarda-Balkarsk, Karachaevsk and Ossetin autonomous provinces of the Northern Caucasus, and also the hilly parts of the Azerbaijan, Armenian, and Georgian soviet socialist republics.

In the districts of nomadic stockbreeding, where agriculture has almost no significance and where stockbreeding is the all-embracing branch of farming, each household in the collective farm may have in its individual possession eight or ten cows with their calves, 100 to 150 sheep and goats in all, an unlimited number of fowl, up to ten horses, five or eight camels. Such districts, for instance, are the nomadic districts of Kazakstan, the Nogai district, and the nomadic districts of Buryato-Mongolia.

IV. The Work of the Artel and Its Management

6. The artel binds itself to conduct its collective farming according to plan, observing exactly the plans of agricultural production drawn up by the agencies of the workers' and peasants' government and the duties of the artel towards the government.

The artel shall accept for precise execution the programs of sowing, fallow ploughing, weeding, harvesting, threshing, and autumn ploughing prescribed in consideration of the condition and peculiarities of collective farms, and also the government plan for the development of stockbreeding.

The management and all the members of the artel bind themselves:

(a) To increase the fertility of the fields of the collective farm by the introduction and observance of correct rotation of crops, deep ploughing, extermination of weeds, increasing and improving the fallow and autumn ploughing, timely and careful hoeing of cotton plantations, putting in manure taken from the stockbreeding farms and from households belonging to the collective farms, putting in mineral fertilizers, extermination of pests, timely and careful harvesting without losses, tending and cleaning the irrigation constructions, safeguarding the forests, planting trees to shelter the fields, and the strictest observance of all agricultural and technical regulations established by the local land authorities;

(b) To select the best seeds for sowing, to purify them from any admixture, to keep them safe from damage and pilfering, to store them in clean, well-ventilated premises, to increase the sowing of purebred seeds;

(c) To increase the area sown by utilization of all land at the disposal of the artel, by improvement and cultivation of waste lands, by ploughing up virgin land, and by introduction of effective land distribution within the collective farm;

(d) To make full use, on a collective basis, of all draught animals and traction engines, of all implements and agricultural machinery, of seeds, and of all other means of production which the artel possesses, and also of all tractors, motors, threshers, combines, and other machinery which the workers' and peasants' government supplies to the collective farms through the machine-tractor stations, to tend livestock and machinery correctly, and to make every endeavor to keep animals and ma-

chinery in the collective farm in good order and condition;

(e) To organize stockbreeding farms and, in those localities where conditions are favorable, horsebreeding farms, to increase the number of animals, to improve the breeds and the fecundity of animals, to help members who work honestly on the collective farm, in purchasing cows and small cattle, to mate cows, mares, et cetera, with improved and purebred bulls, stallions, et cetera, not only those collectively owned, but also those cows, mares, et cetera, which are individually owned by members, and to observe the established zoological, technical, and veterinary regulations with respect to stockbreeding;

(f) To increase the production of fodder, to improve meadows and pastures, to render assistance to members who conscientiously work in common production, and to ensure for them, so far as possible, the use of the pastures of the collective farm, and also to give them, so far as possible, fodder for the cattle owned by them individually, on account of labor days credited to them;

(g) To develop all other branches of agricultural production in correspondence with local natural conditions, and also to develop home industries in correspondence with the conditions prevailing in the district, to take care of ponds and keep them clean, to dig new ponds and stock them with fish;

(h) To organize the construction of communal farm buildings by common labor;

(i) To improve the labor qualifications of the members, to assist the members in training for such duties as brigadiers, tractor drivers, combine operators, drivers, veterinary surgeons and sanitary experts, stable-

men, sow herders, cowmen, shepherds, field laboratory assistants;

(j) To raise the cultural standard of the members, to introduce newspapers, books, radios, to establish clubs, lending libraries, and reading rooms, to build public baths and hairdressing shops, to construct clean and airy field-camps, to keep the village streets in good order, to plant various trees, especially fruit-bearing trees, to assist the members in improving and decorating their houses;

(k) To draw the women into the work of the collective farm and the social life of the artel, to appoint capable and experienced women members to managerial posts, so far as possible to free women from domestic work by establishing crèches, playgrounds for children, and so forth.

Comment

The so-called machine-tractor stations are devices of governmental control of the efficiency of the collective farms. See Vol. I, Chapter 20, pp. 748–754.

V. Membership

Comment

Sections 7–8 are discussed in Volume I, Chapter 20, pp. 747–748 and 759–765.

7. Admission to membership shall be granted by the general meeting of the members, which confirms the lists of new members submitted by the management.

All toilers, women as well as men, who have attained the age of sixteen, may join the artel.

No kulaki nor persons deprived of the franchise shall be admitted to the artel.

Note: From this rule shall be exempt:

(a) Children of the disfranchised who, for a number of years, have been engaged in publicly useful work and who are working conscientiously;

(b) Former kulaki and members of their families who, having been deported for their anti-soviet and anti-collectivist activities, have proved at the place of their deportation for a period of three years, by their honest work and by their support of the measures passed by the soviet government, that they have reformed.

Independent peasants who have sold their horses in the two years preceding their entering the artel, or who have no seed, shall be admitted to the artel on the condition that they bind themselves to refund the cost of a horse by installments out of their income over a period of six years and to surrender the required quantity of seed in kind.

8. Members may be expelled from the artel only by a resolution of the general meeting at which not less than two thirds of the total number of the members are present. The number of members present at the general meeting and the number of votes cast for expulsion should be explicitly stated in the minutes of the meeting. If an expelled member appeals his expulsion to the District Executive Committee, the case shall be decided finally by the presidium of the District Executive Committee of Soviets in the presence of the chairman of the artel and the appellant.

Comment

Concerning expulsion see also *infra,* Nos. 32–35.

VI. Funds of the Artel

Comment

See Volume I, Chapter 19, pp. 712–715 and Chapter 20, pp. 735–741.

9. A member admitted to the artel shall pay an entrance fee of from twenty to forty rubles according to his economic capacity. The entrance fee shall go to the indivisible fund of the artel.

10. From one quarter to one half of the value of the collectively owned property of the members (draught animals, machinery, farm buildings, et cetera) shall go into the indivisible fund of the artel; the more well-to-do the member, the larger the proportion of his property which shall go into the indivisible fund. The remaining portion of the property shall be considered the share of the member.

When the relationship of a member with the collective farm is severed, the management shall settle accounts with the departing member and shall return to him his share in money; the departing member may obtain a land allotment only outside the land enclosure belonging to the artel. As a rule, the settlement of accounts is effected at the end of the agricultural season.

11. Out of the crops gathered and the animal products raised, the artel shall:

(a) Fulfill its obligations towards the State with respect to deliveries of products and the return of seed loans; pay the machine-tractor station in kind for the work done by the station, in accordance with the contract, which has the force of the law, and fulfill other contracts entered into;

(b) Store seed for the next year's sowing and fodder for animals for the whole year, and create permanent,

annually renewed seed and fodder funds of from 10 to 15 per cent of the annual needs, in order to insure itself against failure of crops or a shortage of fodder;

(c) In accordance with the decision of the general meeting, create funds to assist disabled, old, or sick people and poor families of Red Army soldiers, and to support crèches and waifs; all these funds should not exceed 2 per cent of the total annual production;

(d) Fix the proportion of the products which, in accordance with the decision of the general meeting, are to be sold to the government or on the free market;

(e) Distribute all the remaining portion of the crops and animal products produced by the artel among its members according to the number of labor days credited to each member.

Comment

For discussion, see Volume I, Chapter 20, pp. 737–741.

12. From its cash proceeds, the artel shall:

(a) Pay to the government taxes established by law and insurance premiums, and repay money loans of preferential status;

(b) Defray expenses necessary to cover the current needs of production, such as current repairs of agricultural machinery and implements, medical treatment of animals, the combating of pests, et cetera.

(c) Defray administrative expenses of the artel to the extent of not more than 2 per cent of the total income in money;

(d) Assign money for cultural needs, such as training personnel of the collective farms, organizing crèches and children's playgrounds, purchasing radios, et cetera;

(e) Replenish the indivisible funds of the artel for the purchase of cattle, agricultural machinery, and build-

ing materials, and for paying wages to workers hired for building operations;

The total sum assigned for replenishing the indivisible fund in grain regions shall be not less than 12 per cent and not more than 15 per cent of the total cash income of the artel and in regions of industrial crops and animal husbandry shall be not less than 15 per cent and not more than 20 per cent of such income;

(f) The remaining cash proceeds of the artel shall be distributed among the members in accordance with the number of labor days credited to each member.

All sums received by the artel shall be entered in the books on the day when the money is received.

The management shall prepare an estimate of revenue and expenditures for the ensuing year, which estimate shall become effective only upon approval by the general meeting.

The management may make expenditures only in accordance with the appropriations provided for in the estimate; arbitrary shifting of appropriations from one item of the expenditure estimate to another shall not be permitted, and the management shall obtain the consent of the general meeting to transfer appropriations from one item to another.

Before the final outlook for the crops is ascertained, the management may spend for the production needs of the artel not more than 70 per cent of the appropriations provided for in the annual estimate of expenditures approved by the general meeting of members of the collective farm. The other 30 per cent shall remain in reserve and shall be spent only after the final ascertaining of the outlook for crops and the decision of the general meeting of members of the collective farm.

The artel shall keep its money in current account with a bank or a savings bank. Debits in the current account shall be made only by order of the management, which order is valid when signed by the chairman and by the accountant (as amended December 4, 1938, U.S.S.R. Laws, text 308).

Comment

The provisions of Section 12 are discussed in Volume I, Chapter 20, pp. 737–748. See also Nos. 34, 35 *infra*.

VII. Organization and Remuneration of Labor and Labor Discipline

Comment

The provisions of Sections 13–16 are discussed in Volume I, Chapter 20, pp. 741–747 and 759–765. See also Nos. 32–35 *infra*.

13. All operations in connection with the running of the business of the artel shall be performed by the personal labor of its members in accordance with the rules of internal organization approved by the general meeting. Nonmembers may be engaged for agricultural operations only when they possess special knowledge and training (agronomists, engineers, technicians, and so forth).

The hiring of outside casual labor shall be permitted only under exceptional circumstances, when urgent operations cannot be performed in time by the members working at full speed, and also for building and construction operations.

14. The management shall create production brigades from the members of the artel.

Members of field brigades shall be assigned for a full period of crop rotation.

A field brigade shall work the same plot for a full period of crop rotation. The management shall, under a special instrument, secure to each field brigade all necessary machinery, draught animals, and farm buildings.

Members of stockbreeding brigades shall be assigned for a period of not less than three years.

The management shall secure to each stockbreeding brigade productive cattle, as well as implements, draught animals, and buildings necessary for carrying on animal husbandry.

Work shall be distributed among the members of the brigade by the brigadier, who must make the best possible use of each member of his brigade, not permitting himself to be influenced by family or other personal considerations in distributing tasks, and taking into account the qualifications, experience, and physical fitness of each member, and, in cases of pregnant or nursing women, the necessity of alleviating their work; a woman shall be free from all work for a period of one month before and one month after giving birth, and during these two months shall receive remuneration equal to one half of the average number of labor days she normally earns.

15. Agricultural operations shall be performed on the basis of piecework remuneration.

The management shall work out and the general meeting shall confirm the required standard of output and the rates of remuneration in terms of labor days for each separate job for all agricultural operations.

Such standard of output shall be fixed for each operation according to what a conscientious collective farmer can produce with the draught animals, machinery, and soil at hand. Each operation, as, for instance, to plough

one hectare, to sow one hectare, to hoe one hectare of a cotton plantation, to thresh one ton of grain, to dig out two hundredweight of sugar beets, to gather one hectare of flax, to moisten one hectare of flax, to milk one litre of milk, and so on, is to be valued in fractions of a labor day in accordance with the qualifications required of the laborer and the complexity, difficulty, and importance of the operation for the artel.

The brigadier shall, not less than once a week, compute all the work which has been done by a member and, in accordance with the established remuneration, enter the number of credited labor days in the labor book of the member.

The management shall display every month a list of the members showing the number of labor days credited to each member during the preceding month.

The annual amount of work and the income earned by each member shall be certified by the brigadier and the chairman of the artel in addition to the accountant. The list showing the number of labor days earned by each member shall be publicly displayed not later than a fortnight before the date of the general meeting which is to confirm the distribution of the income earned by the artel.

Should a field brigade, by its good work, harvest crops from its plot exceeding the average crops obtained by the artel, or should a stockbreeding brigade, by its good work, show an increased output of milk per cow, fatten cattle more successfully, or more fully ensure the preservation of young animals, the management shall increase the remuneration of the members of such brigades to the extent of 10 per cent of the total labor days credited to them; the best shock workers in the brigade are en-

titled to a 15 per cent increase, and brigadiers of stockbreeding farms to a 20 per cent increase.

Should an agricultural brigade, as a result of bad work, gather crops from its plot below the average yield obtained by the artel, or should a stockbreeding brigade, as a result of bad work, show a poorer output of milk per cow, poorer fattening of cattle, or greater mortality among young animals, the management shall reduce the credit in labor days of the members of such brigades to the extent of 10 per cent of the number credited to them.

The distribution of income among the members shall be made exclusively according to the number of labor days credited to each member.

16. Money may be advanced to a member during the year in an amount not to exceed 50 per cent of the sum credited to him for his work.

Advances in kind shall be made to the members of the artel by the management after the threshing is begun, and from 10 to 15 per cent of the threshed grain left for the needs of the artel may be used for this purpose.

An artel cultivating industrial crops shall not have to wait for the completion of delivery to the government of cotton, flax, sugar, tea, tobacco, et cetera, but may make money advances to its members not less than once a week in the course of delivery to the extent of 60 per cent of the money received for the delivered products.

17. All members of the artel shall assume the obligation to take good care of the property of the artel and the government-owned machinery used in the fields of the artel, to work honestly, to observe the provisions of the charter, to carry out the resolutions of the general meeting and the orders of the management, to follow the rules of internal organization of the artel, to execute

conscientiously the tasks and social duties imposed upon them by the management and brigadiers, and to observe strictly labor discipline.

Members who fail to take good care of or who neglect the collective property, who fail to report for work without a justifiable reason, who work badly, or who violate labor discipline or the charter, shall be punished by the management in accordance with the rules of internal organization. For example, such member may be ordered to do the poor work over again without any credit in labor days, he may be warned, reprimanded, or reproved at the general meeting, or his name may be put on the blackboard, he may be fined up to five labor days, he may be demoted to a lower paid job or suspended from work.

In cases where all measures of an educational and penal nature applied by the artel have failed, the management shall bring before the general meeting a motion for expulsion of the incorrigible member.

Expulsion shall be carried out in accordance with the procedure provided for in Section 8 of the present Charter.

18. Any dissipation of collective and government property as well as reckless handling of the property and livestock of the collective farm and the machines of machine-tractor stations shall be deemed by the artel a betrayal of the common cause of the collective farm and aid to enemies of the people.

Persons guilty of such criminal undermining of the mainstays of collective farming shall be delivered to the court to be punished in accordance with all the severity of the laws of the workers' and peasants' State.

Comment

The provisions of Sections 17–18 are discussed in Volume I, Chapter 20, pp. 728–731, and 759–765.

VIII. Management of the Artel

Comment

The provisions of Sections 19–25 are discussed in Volume I, Chapter 20, pp. 754–759 and 748–754. See also Nos. 32–35 *infra*.

19. The business of the artel shall be managed by the general meeting of the members, and, in the intervals between the meetings, by the board of managers elected by the general meeting.

20. The general meeting shall be the highest authority in the management of the artel. The general meeting shall:

(a) Elect the chairman and the members of the board of managers of the artel and also the auditing committee of the artel; the auditing committee shall be confirmed by the District Executive Committee of Soviets;

(b) Admit new members to and expel members from the artel;

(c) Confirm the program of annual production, the estimate of revenue and expenditures, the building program, the standards of normal output, and the remuneration rates in terms of labor days;

(d) Confirm the contract with the machine-tractor station;

(e) Confirm the annual account of the management, which shall be accompanied by the opinion of the auditing committee, and also the reports of the management on the most important agricultural undertakings;

(f) Confirm the size of various funds to be put aside and the amount of produce and money to be distributed per labor day;

(g) Confirm the rules of internal organization governing the conduct of the business of the artel.

The decisions of the board of managers affecting the matters enumerated in the present section of the Charter shall be null and void if not confirmed by the general meeting.

A quorum for the general meeting shall be not less than one half of the membership of the artel; this quorum may decide all matters except the election of a chairman and members of the board of managers, the expulsion of members, and the size of various funds; for resolutions upon these matters, the presence at the general meeting of not less than two thirds of the membership shall be required.

Resolutions at the general meeting shall be made by a majority of votes, and the voting shall be effected by show of hands.

21. To run the business of the artel, the general meeting shall elect for a period of two years a board of from five to nine managers, depending upon the size of the artel.

The board of managers shall function as the executive committee of the artel and shall be responsible to the general meeting for the work of the artel and for the fulfillment of its obligations to the government.

22. For the discharge of the day-to-day direction of the work of the artel and its brigades, and for day-to-day checking on the execution of the decisions of the board of managers, the general meeting shall elect a chairman of the artel, who shall also be chairman of the board of managers.

The chairman shall convoke the board of managers not less than twice a month to discuss the current business and to make the necessary decisions.

Upon the recommendation of the chairman, and to assist him, the board of managers shall elect a vice-chairman from among the members of the board.

The vice-chairman in all his work shall follow the directives of the chairman.

23. Brigadiers and managers of stockbreeding farms shall be appointed by the board of managers for a period of not less than two years.

24. To keep accounts and records of property, the board of managers shall appoint from among the members of the artel, or shall hire from outside an accountant. The accountant shall keep the accounts and records in accordance with the prescribed forms and shall be absolutely subordinate to the board of managers and to the chairman of the artel.

The accountant shall have no right to dispose of the funds of the artel independently, to make advance payments, or to expend the stocks of produce. Such right shall belong only to the board of managers and the chairman of the artel. All orders for payment must be signed by the chairman or the vice-chairman of the artel in addition to the accountant.

25. The auditing committee shall verify all the economic and financial activities of the board of managers, i.e., shall ascertain whether all revenues in money and in kind are duly credited to the artel on the books, whether the procedure prescribed by the Charter of the artel for expenditures is followed, whether the property of the artel is kept adequately safe, whether there has been any misappropriation of property or embezzlement of funds of the artel, whether the artel meets its obli-

gations to the government, whether the artel pays its debts and collects from its debtors.

In addition, the auditing committee shall carefully ascertain how the artel settles its accounts with its members and shall bring to light any case of fraudulent accounting, inaccurate credit of labor days, delay in distribution of income for labor days, or any other violation of the interests of the artel and its members.

The auditing committee shall audit the accounts four times a year. The auditing committee shall report to the general meeting its opinion on the annual accounts submitted by the board of managers, which opinion shall be heard by the general meeting immediately after the accounts of the board of managers.

The auditing committee shall be responsible for its activities to the general meeting of the members of the artel.

31

The R.S.F.S.R. Land Code of October 30, 1922, in Force Since December 1, 1922 (excerpts)[1]

Basic Provisions

1. The right of private ownership of land, subsoil, waters, and forests within the R.S.F.S.R. is forever abolished by the decisions of the All-Russian Congresses of the Soviets of Workers', Peasants', and Red Army Soldiers' Deputies based upon the clearly expressed will of the workers and peasants.

2. All lands within the R.S.F.S.R. shall form the property of the workers' and peasants' State regardless of who has control of the land.

3. All agricultural land, as well as land which may be used for agriculture, shall form a single State reserve land which shall be under the control of the People's Commissariat for Agriculture and its local agencies.

4. The right of immediate use of agricultural lands belonging to the single State land reserve shall be granted on the grounds established by law: (a) to toiling farmers and their groups; (b) to urban settlements; (c) to governmental institutions and enterprises. Land

[1] R.S.F.S.R. Laws 1922, text 901. Sections 4, 9, 10, 11, 12, 18, 58, have become inoperative. See Volume I, Chapters 19 and 20, especially pp. 698, 702–705 and 710–717.

not in the immediate use of the land tenants specified above shall remain under the immediate control of the People's Commissariat for Agriculture and shall be assigned by the State under separate acts and on special terms to institutions, societies, organizations, and individuals.

. . .

8. Rights and duties of land tenants and their groups pertaining to land tenure shall be determined by the general laws of the R.S.F.S.R., the present Code, enactments and decrees issued in its amendment and for the land communities also by their charters (decisions of general meetings) and local customs where their application is not contrary to law.

Part One. Toil Tenure

Division One. The Right of Toil Tenure of Land

9. All citizens of the R.S.F.S.R. (without distinction as to sex, religion, and race) who desire to till the land with personal labor shall have the right to the use thereof for farming. Citizens who wish to obtain land in toil tenure shall be allotted land either by the village communes to which they belong or by land offices if these have reserve land at their disposition intended for toil tenure. . . .

Note 2: Alien toilers who reside in the territory of the R.S.F.S.R. and enjoy under the R.S.F.S.R. constitution political rights shall have the right of toil tenure on equal footing with R.S.F.S.R. nationals (as amended, September 28, 1925, R.S.F.S.R. Laws 1925, texts 537, 648).

Comment

Note 2 is obsolete because aliens do not enjoy political rights under the constitution presently in force.

10. The right to use the land may be exercised by the toil tenant (a) in the capacity of a member of a land community under the observance of the manner of toil tenure established, or (b) independently without joining the membership of a land community.

11. The right to use the land which is given in toil tenure shall have no time limit and may be terminated only for reasons specified by law.

12. The right of toil tenure of land shall be recognized in one of the following forms: (a) as a right to a tract of land in one or several places (*hutor*—enclosure with residence, *otrub*—enclosure without residence, scattered strips); (b) the right to an allotment from the land of a land commune; (c) the right to participate in joint exploitation of lands of a village community. . . .

17. In case individual members of a household join military service, are called to colors by mobilization, or are elected to a soviet or public office, the household shall retain land allotted on their behalf. If, however, a member leaves for outside work, the land is allotted on his behalf to the household to which he belongs for two crop rotation periods and, if there is no regular crop rotation, then for a period of six years following his departure; should he return after the expiration of this period, land shall be allotted to him from the land reserve, and if no such reserve is available, the land shall be allotted to him equally with other members of the village commune at the next redistribution. Should a member of the household stay in a school, the land on

his behalf shall be retained by the household for the whole period of time that he is in school (as amended March, 1923, R.S.F.S.R. Laws, text 304, and October 4, 1926, *id.* 1926, text 511).

Note: Illness of a member of the household, even if it is followed by his absence, shall not furnish in itself a ground for withdrawing from the household the land allotted on his behalf.

18. The right to land granted to a toil tenant shall be discontinued in the following cases:

(a) If all the members of the household voluntarily renounce the land;

(b) If the household completely discontinues independent farming;

(c) In case of escheat of the household;

(d) In case of definite migration of the household to another place and discontinuance of farming at the old place;

(e) In the event of deprivation of the right to use the land pronounced by a court;

(f) If the land is taken in a manner prescribed by law for governmental or public purposes (road construction, mining of valuable deposits, and the like);

(g) If the toil tenant is absent from the farm for not less than six consecutive years, provided the land offices find that he is really absent and that for all the time of his absence there was no credible information concerning his whereabouts, particularly, if such information were furnished neither by the absentee nor by the household to which he belongs (as amended December 20, 1927, R.S.F.S.R. Laws 1927, text 20).

. . .

24. The toil tenant shall have, in accordance with the laws in force, the right on the land allotted to him:

(a) To carry on economic exploitation of the land by methods at his discretion subject to limitations stated hereinbelow; and

(b) To construct, arrange, and use on the land buildings and installations for business and housing purposes. The land tenant shall not have the right to act or to construct installations on the land allotted to him in a manner violating essential interests of the neighbors and tenants.

25. All constructions, buildings, crops, and plants, and in general all that is connected with the plot of land in the use of the toil tenant, shall belong to him.

DIVISION FOUR. LAND COMMUNITY

. . .

55. In deciding matters pertaining to land, the general meeting and other agencies of the land community shall be guided by the present Code and other laws in force, as well as by the charter adopted by the community or decisions passed by the general meeting and by such local customs as are not contrary to law.

. . .

58. Any land community has the right to maintain the existing form of land tenure or to select any other, by a resolution made by a majority of the full rights members (in accordance with Sections 53–54).

DIVISION FIVE. THE FARMING HOUSEHOLD (TOIL FARM)

I. Membership in a Farming Household

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Comment

For discussion see Volume I, Chapter 18, pp. 673–678, Chapter 19, pp. 703–704 and Chapter 21, p. 773 *et seq.*

65. A farming household shall be defined as a union based on family ties and common labor of persons who farm jointly. A household may also consist of a single person (of either sex) who has no family.

66. Not only members present (including minors and aged persons), but also those who have gone away temporarily to work and have not withdrawn from the household in a procedure established by law, shall be considered members of the household. The membership of a household shall increase in the event of marriage and quasi adoption (admittance of new members to the household) and shall decrease by withdrawal or death of members.

Note 1: Persons who join the household by marriage or quasi adoption shall acquire on general grounds the right to use the land and property held in common by the household which they join, and shall lose the right to use land as a member of another household.

Note 2: In the event that one of the members of the household is convicted of bigamy or of contracting marriage with a person who has not reached sexual maturity or a marriageable age, a woman injured by such crimes (Sections 198 and 199 of Chapter X of the R.S.F.S.R. Criminal Code) shall enjoy all rights of persons joining the household by marriage, in accordance with the laws

in force (as amended April 6, 1928, R.S.F.S.R. Laws, text 357).

67. The right to toil tenure of the land of the household (farm) as well as to the buildings and agricultural implements shall belong to all members of the household as a whole, regardless of sex or age.

68. The head of the household (man or woman) shall be considered the representative of the household in business matters.

69. In the event that the head of the household carelessly conducts the business of the household to an extent likely to ruin it financially, he may be replaced by another person from among the members of the same household, by decision of the district executive committee made upon the petition of the members of the household and the recommendation of the village soviet.

70. Should the membership of a household consist of minors only, the village soviet shall appoint for them a guardian or a tutor in accordance with the Law on Guardianship and Tutorship (as amended December 20, 1927, R.S.F.S.R. Laws, text 35).

71. Property of the household may not be attached in payment of the debts of individual members (including the head of the household) contracted by them for their personal needs.

72. Each household and all changes in membership shall be entered by the village soviet in the Household Record, where the names of all the members of the household and of its head shall be indicated. Appeal from refusal to make the entry may be made to the district land committee within fourteen days.

II. Partition of Households

73. Partition of a toiling agricultural farm (household) shall consist in the distribution among the members of the household (irrespective of sex and age) . . . of property used in common by the household as a whole. . . .

75. Members of the household who have not reached eighteen years of age, as well as those who have not participated with their labor or money in the conduct of the common business of the household for two consecutive crop rotation periods, and in absence of a regular crop rotation for six consecutive years, shall have no right to demand partition of the household (as amended March 29, 1923, R.S.F.S.R. Laws, text 304). . . .

77. Only property used in common shall be subject to distribution, and, upon the request of individual members of the household, property in their personal use which can be proved to have been acquired by them personally, as well as property which local custom recognizes as the personal belongings of individual members of the household, shall be exempt from distribution.

DIVISION EIGHT. HOUSE-AND-GARDEN PLOTS AND FIELDS

. . .

125. Each household is entitled to obtain a house-and-garden plot from the lots within the site of a settlement.

126. Rules concerning the redistribution of land and the units by which it is redistributed shall not apply to the house-and-garden plots of toil tenants, and such plots shall not be subject, without the consent of the holders, to any redistribution for equalization purposes, diminishment, or shifting.

32

Resolution Concerning Expulsion from Collective Farms

Joint Resolution of the U.S.S.R. Council of People's Commissars and the Central Committee of the Communist Party of April 19, 1938, Prohibiting Expulsion of Members from Collective Farms.[1]

The U.S.S.R. Council of People's Commissars and the Central Committee of the Party have several times warned the Party and the soviet organizations of the harm caused by unfounded expulsion from the collective farms. The Council and the Committee have pointed out several times that such policy is anti-Party and anti-government. Nevertheless, in many regions, provinces, and republics, unfounded expulsion has in fact taken place. . . .[2] Experience shows that the managements and the chairmen of collective farms, instead of observing the Charter of an Agricultural Artel and barring any arbitrary treatment of the collective farmers, are themselves the perpetrators of unlawful acts. A checkup has established that, in the overwhelming majority of cases, expulsion from a collective farm is devoid of any grounds whatsoever and is undertaken without any serious causes for most unimportant rea-

[1] U.S.S.R. Laws 1938, text 115.

[2] The passage omitted describes many instances of such expulsion.

sons. The most frequent type of expulsion is expulsion of members of families of which the father has left for temporary or permanent work in government enterprises. Such expulsion on the basis of family ties is contrary to the very principles of the Charter of an Agricultural Artel. . . .

The Party and the soviet district leaders, instead of moderating and correcting such a harmful policy of expulsion from collective farms, fail to take decisive steps to preclude arbitrary treatment of collective farmers, show a heartless and bureaucratic attitude toward the fate of collective farmers and their appeals from unlawful expulsions from collective farms, let persons who arbitrarily mistreat collective farmers go unpunished, and often reduce their own role to mere recording of the facts of expulsion and submittance to superior soviet agencies of statistical reports on these matters. Moreover, these leaders themselves often induce the chairmen and the managements of collective farms to enter on the path of unlawful expulsion under the banner of purging the collective farms of socially foreign and "class enemy" elements.

The U.S.S.R. Council of People's Commissars and the Central Executive Committee of the Communist Party consider that such practice is based upon the formalistic and heartlessly bureaucratic attitude of many leaders of the collective farms, as well as of local officials of the Communist Party and government agencies, toward the fate of living human beings, the individual members of collective farms. Such leaders fail to realize that expulsion from a collective farm means to the one expelled deprivation of his source of subsistance; it means not only exposure to disgrace in public opinion but also

condemnation to starvation. They fail to understand that expulsion from collective farms breeds artificial discontent and bad feelings among those expelled, creates among many collective farmers a sense of insecurity in their status within the collective farm, and can only play into the hands of the enemies of the people.

The U.S.S.R. Council of People's Commissars and the Central Committee of the Communist Party have therefore resolved:

1. All purges in collective farms under any pretext whatsoever shall be prohibited.

2. Expulsion from collective farms of members of those families one member of which has gone away to work temporarily or permanently in a governmental enterprise shall be prohibited.

3. Expulsion for violation of internal shop rules shall be prohibited.

4. It shall be established that, in the future, expulsion of a member of a collective farm may be applied only as an extreme measure to members who have proved themselves incorrigible, subversive, and disruptive to the collective farm, and only after all preventive and educational measures provided for in the Charter have been exhausted, and in strict observance of the procedure of expulsion provided for in the Charter, i.e., by decision of a general meeting of the members with a two-thirds majority present.

However, even in such cases, the most attentive attitude must be secured to the appeal of the expelled member.

5. It shall be established that the decision of the general meeting of the members ordering expulsion shall not take legal effect, and the expelled member shall retain all the rights of a member, until the district execu-

tive committee has made the final determination on the decision.

6. Chairmen and members of the managements of collective farms, as well as district officials of the Party and government agencies, are hereby warned that those guilty of violation of the present resolution shall be prosecuted in court as felons.

33

Resolution Concerning Restriction of Private Farming

Joint Resolution of the Central Committee of the Communist Party and the U.S.S.R. Council of People's Commissars of May 27, 1939, Concerning Measures to Protect the Collectively Held Fields of the Collective Farms from Diversion.[1]

The Central Committee of the Communist Party and the U.S.S.R. Council of People's Commissars have established the occurrence of serious distortions of the policy of the Party in the sphere of land tenure of collective farms. These distortions are in violation of the clause of Section 2 of the Charter relating to the standard size of the house-and-garden plots assigned for individual use by the households, and tend to their expansion through squandering and dissipation of the collectively held fields in behalf of the individual farming of the members.

The diversion and dissipation of the collectively held fields of collective farms for the benefit of the individual farming of the members comprehends various kinds of unlawful additions to house-and-garden plots which increase them beyond the size provided for in the Charter, either on the pretext of feigned separations of families,

[1] U.S.S.R. Laws 1939, text 235.

where a household fraudulently obtains an additional house-and-garden plot for members of the family who pretend to be separated, or by direct allocation of house-and-garden plots to the collective farmers at the expense of the collectively held fields of the collective farms.

As a result of such anticollectivization and antigovernmental practice, the interests of collective farming are sacrificed to the elements of private ownership and avarice which abuse the collective farms for the purpose of speculation and personal profit.

In a number of collective farms, the practice is in reality to transform the house-and-garden plot into the private property of the household, so that not the collective farm but the individual member of the collective farm disposes of it at his own discretion, i.e., rents it or retains the plot for his own use, although he himself does not work in the collective farm.

Squandering and dissipation of the collectively held fields of the collective farms is fostered by the confusion and disorder reigning in the land economy of the collective fields under which the house-and-garden plots are interspersed with the collective fields in such manner that the plots are not adjacent to the houses but are located amidst the fields of the collective farms or are not hedged from the fields, or that there is no record of the areas of the fields and the house-and-garden plots.

All these and other similar facts violating the Standard Charter of an Agricultural Artel and increasing the importance of the personal farming of collective farmers tend to deprive farming on house-and-garden plots of the character of an auxiliary source of income, and such farming is sometimes transformed into the main source of income of a collective farmer.

For this reason, there is a large number of pretended

collective farmers who either do not work at all in the collective farms or do only sham work and spend most of their time on their own personal farming. . . . A situation under which a number of the members of collective farms evade participation in the collective work results in an artificial shortage of labor on the collective farms, although in reality there is a surplus of labor in the majority of regions of the U.S.S.R. If this surplus were properly used in the collective farms, it would not only alleviate the false shortage of labor but would also make available a considerable aggregate of labor for industry and migration to the regions of the U.S.S.R. where there is an abundance of land and a real shortage of labor (the Volga, Omsk, Cheliabinsk, Novosibirsk, Chkalov, and Altai regions, the Far East, Kazakstan). . . .

Instead of guarding collective farming and protecting the main source of the force and strength of collectivization, the collectively held fields, from the encroachment of elements of private ownership, the local leaders of the Party and the governmental agencies have left the most important matters in the life of collective farms to drift and, often encouraged by avaricious elements among the collective farmers, have themselves initiated violations of the Charter. . . .

The Central Committee of the Communist Party and the U.S.S.R. Council of People's Commissars have resolved:

1. The practice of district and regional organizations of the Party and the government, of the managements of collective farms, and of the governmental land agencies, which allows such violations of the Standard Charter of an Agricultural Artel regulating the land tenure of collective farms as involve criminal squandering of

the collectively held fields in behalf of the individual farming of the members of collective farms, is hereby condemned as anti-Party and antigovernment.

2. The collectively held fields of the collective farms shall be inviolable, and their acreage shall under no circumstances be diminished without a special permit of the U.S.S.R. government, but may only be enlarged.

3. Any attempt to reduce the collectively used land for the benefit of individual husbandry, as well as any increase of a privately held plot in excess of the size provided for by the Standard Charter of an Agricultural Artel shall be prosecuted as a felony, and those guilty thereof shall be prosecuted in court.

4. Secretaries of the district Communist Party committees, presidents of the district executive committees, and other Party and government officers who tolerate the dissipation of collectively held land and the extension of privately held land, shall be dismissed, expelled from the Party, and indicted as transgressors of the law.

5. Members of collective farms who permit the lease or transfer to others of house-and-garden plots assigned for their personal use shall be expelled from the collective farms and deprived of such plots.

6. Presidents of collective farms who allow hay in the collectively held fields, meadows, and forests to be mowed privately by individual members of the collective farm or persons who are not members, shall be expelled from the collective farms and prosecuted in court for violation of the law.

7. The central committees of the Communist Party of the constituent and autonomous republics, regional committees of the Communist Party, and executive committees of the regions and provinces shall be under obligation to complete before August 15 of this year (1939)

a survey of the house-and-garden plots in the individual use of collective farmers, including such land individually held by collective farmers outside their house lots as is located in collectively held fields, and house-and-garden plots of the enclosure type (*khutor*) situated amidst collectively held fields. In this connection, the following measures shall be taken:

(a) In accordance with the results of the survey, all land surpluses shall be taken away from the house-and-garden plots of collective farmers and added to the collectively held fields; surplus land shall be considered land in excess of the standard size established by Section 2 of the Standard Charter which reads: [the clause of Section 2 is quoted, defining the size of a house-and-garden plot as from 0.62 to 1.24 acres and in certain regions 2.47 acres];

(b) All land in the personal use of collective farmers, apart from their house lots, situated within the collectively held fields (such as vegetable gardens, water melon patches, *levada,* and the like) shall be withdrawn from their personal use and joined to the collectively held land; should the house plot remaining to a farmer after such withdrawal be under established size, the collective farm shall supply him with the surface needed to meet this standard from the land reserve allocated for the assignment of new plots to new households;

(c) House-and-garden plots of the enclosure type located in the midst of collectively held fields, such as are to be found in certain districts of various regions, in particular, in the Byelorussian Soviet Republic and the Ukrainian Soviet Republic and in the Smolensk, Kalinin, and Leningrad regions, shall be liquidated, and their holders shall be moved to one place within the collective farm and supplied at the new location with house-

and-garden plots of the size provided for in the Charter. The work of this project is to be accomplished by September 1, 1940.

8. A field in the use of an independent household shall be restricted, in cotton growing regions where fields are irrigated, to 0.24 acres, and where they are not irrigated, to 1.24 acres, and in all other regions to 2.47 acres, and the house-and-garden plot in the use of an independent peasant household, including the site of the buildings, shall be restricted to 0.24 acres in the regions where land is irrigated, in all other regions to 0.48 acres.

All land in excess of these standards, fields as well as house-and-garden plots of independent households, shall be annexed to the land of the collective farms and used primarily to replenish the land reserve of collective farms assigned for house-and-garden plots.

Likewise to be used for the purpose of building up a reserve for house-and-garden plots in the collective farms are: (a) house-and-garden plots of pretended collective farmers who actually have long ago severed their ties with the life of the collective farm and in fact have given up their membership in the collective farm; (b) house-and-garden plots of collective farmers who do not earn the established minimum of labor days and are therefore considered to have left the collective farm; (c) house-and-garden plots of collective farmers who emigrate from regions with small landholdings to regions where land is abundant.

9. Execution of the measures specified in Section 7, subsections (a) and (b) is to be completed by November 15, 1939).

10. In each collective farm, a strict boundary line shall be drawn separating the house-and-garden plots

from the collectively held fields and indicated by pole markers.

11. In each collective farm, a mandatory recording of the collectively held land as well as the house-and-garden plot of each household of the farm shall be established and entered in a special land record book with page number certified.

12. A governmental land record shall be established in book form in each district land office for land registration, to keep a record (a) of the body of land in each collective farm as certified by the deed of tenure in perpetuity; (b) of land collectively held by the collective farm (separately); (c) of house-and-garden plots of the collective farmers (separately); (d) of land in the personal use of independent farmers and other persons who are not members of the collective farm.

13. The U.S.S.R. People's Commissar for Agriculture is hereby ordered to establish offices of inspector-surveyors in the people's commissariats for agriculture of the constituent and autonomous republics and the regional and provincial land offices for the purpose of checking periodically the actual size of the land collectively held by the collective farms and the actual size of the house-and-garden plots, to find whether these agree with the Charter of an Agricultural Artel and with the entries in the governmental land record, as well as the land used by independent households and other persons who are not members of collective farms.

14. Because there are in the collective farms not only honest workers who earn from 200 to 600 and more labor days annually and who constitute the overwhelming majority of collective farmers, representing the main force of the collective farming movement, but also a

number of able-bodied collective farmers who earn not more than 20–60 labor days during the year and who nevertheless continue to be counted among the collective farmers and to hamper the collective farm, it has been considered appropriate to establish, from the year 1939 on, a mandatory minimum of labor days per year for each collective farmer, man or woman:

(a) One hundred labor days in cotton-growing regions;

(b) Sixty labor days in the Moscow, Leningrad, Ivanovo, Yaroslav, Gorky, Kalinin, Vologda, Tula, Riazan, Smolensk, Archangel, Murman, Kirov, Perm, Sverdlov, and Chita regions, Khabarov and Primorsk provinces, and the Karelian, Komi, Mari, and Yakut autonomous republics, and in the highland grain-producing districts and the cattle-raising districts entered on a list by the U.S.S.R. People's Commissariat for Agriculture;

(c) Eighty labor days for all other districts of the U.S.S.R.

The collective farms are hereby advised to rule that able-bodied collective farmers, men or women, who during the year earn less than the afore-mentioned standard shall be considered to have left the collective farm and lost their right to membership in the collective farm.

15. Because the land used collectively by the collective farms should not be diminished when, in the case of collective farms whose landholdings are small, the reserves of land available for assignment of individual house-and-garden plots of statutory size are exhausted, emigration of collective farmers from such collective farms to regions with an abundance of land (the Volga, Omsk, and Cheliabinsk regions, Altai province, Kazakhstan, the Far East, et cetera), shall be deemed nec-

essary. A Colonization Office shall be established and attached to the U.S.S.R. Council of People's Commissars for guidance in matters involving the migration of superfluous collective farmers to regions abundant in land.

16. Families of wage earning and salaried employees who live permanently on and belong to collective farms shall retain house-and-garden plots of the established size only in the event that the able-bodied members of such families work in the collective farms and attain the required minimum credit of labor days.

17. [This section provided for convocation of a congress of collective farmers which did not materialize.]

34

Resolution on Obligatory Minimum of Labor Days

Joint Resolution of the U.S.S.R. Council of People's Commissars and the Central Committee of the Communist Party Ordering an Increase in the Obligatory Minimum of Labor Days for Collective Farmers, of April 13, 1942, No. 508.[1]

1. For the duration of the war, the obligatory annual minimum of labor days for each collective farmer, man or woman, shall be increased:

(a) Up to 150 labor days in cotton-growing regions;

(b) Up to 100 labor days . . . [there follows an enumeration of regions similar to that found in the Joint Resolution of 1939, text 235, Section 14, subsection (b)];

(c) Up to 120 labor days for all other districts of the U.S.S.R.

2. In order to secure the performance of all agricultural operations within the proper period, i.e., tilling, sowing, mowing, harvesting, and animal husbandry, it shall be established that, out of the mandatory minimum of labor days, each collective farmer, man or woman, must attain:

[1] U.S.S.R. Laws 1942, text 61.

(a) In collective farms of cotton-growing regions—before May 15, 30 labor days; from May 15 to September 1, 45 labor days; from September 1 to November 1, 45 labor days; the remaining labor days to be earned after November 1;

(b) In collective farms of the second group of regions—before June 1, 25 labor days; from June 1 to August 1, 25 labor days; from August 1 to October 1, 35 labor days; the remainder to be earned after October 1;

(c) In collective farms of the third group of regions, provinces, and republics—before June 15, 30 labor days; from June 15 to August 15, 30 labor days; from August 15 to October 15, 40 labor days; the remaining labor days to be earned after October 15.

3. The councils of people's commissars of the constituent and autonomous republics, and the provincial and regional executive committees, shall have authority to increase or decrease up to 20 per cent for individual districts (depending upon local conditions) the number of labor days to be earned in each season of agricultural operations.

4. An obligatory minimum of not less than fifty labor days annually shall be established for juvenile members of the families of collective farmers of from twelve to sixteen years of age. Collective farms are hereby requested to issue labor books to juveniles and to record separately the labor days credited to juveniles.

5. In accordance with the edict of the Presidium of the U.S.S.R. Supreme Soviet, be it enacted that able-bodied collective farmers who, without a justifiable reason, fail to attain the prescribed mandatory minimum of labor days, shall be prosecuted in court and shall be punished under a sentence of the people's court by

compulsory labor on the collective farm, without confinement, for a period of up to six months, with the deduction of 25 per cent of their credit in labor days for the benefit of the collective farm.

The collective farms are hereby requested to prescribe that able-bodied collective farmers, men and women, who, without a justifiable reason, fail to attain the mandatory minimum credit of labor days within the year, shall be considered severed from the collective farm, shall lose their rights as members of the collective farm, and shall be deprived of their house-and-garden plots.

6. The people's courts are directed to decide all cases specified in Section 5 within ten days and to carry out the sentences rendered at once.

7. Chairmen of collective farms and brigadiers who evade lodging accusations in court against able-bodied collective farmers who have failed to attain the minimum credit of labor days shall be prosecuted in court.

35

Concerning Charter Violations

Concerning Measures to Be Taken for Liquidation of Violations of the Charter of an Agricultural Artel in the Collective Farms, September 19, 1946.[1]

On the basis of the material received and the check-up made in several regions, the U.S.S.R. Council of Ministers and the Central Committee of the All-Union Communist Party (Bolsheviks) have established the fact that the Charter of an Agricultural Artel is seriously violated by the collective farms.

These violations consist of improper waste of "labor days," dissipation of the collectively held fields of the collective farms, spoliation of the property of the collective farms, abuses of power by the district and other party and soviet officials, violation of the democratic basis of management of the affairs of the collective farms, such as the principle that the managers and chairmen of the collective farms must be elected by and present the accounts to the general meetings of the collective farmers.

Improper Crediting of Labor Days

Improper crediting of labor days in the collective farms occurs along the line of undue increase of the executive and service personnel in the collective farms

[1] U.S.S.R. Laws 1946, text 254.

and exceedingly high waste of labor days and money for the cost of administration and management.

Improper utilization of labor, caused by unfounded and extravagant increase of administrative and managerial jobs, has resulted in many collective farms in the shortage of able-bodied collective farmers for the work in the fields and animal husbandry units, while many men employed for various services do nothing but receive a higher pay than those employed on productive jobs.

Grafters and parasites frequently hide themselves on useless, artificially invented jobs, avoiding productive work and thereby eating up the savings of the collective farms and live at the expense of the labor of those collective farmers who work in the fields and tend the cattle.

In consequence of improper settling of accounts of the collective farmers, the Charter of an Agricultural Artel is violated in many collective farms where one part of the members do not receive in full the products and money due to them in accordance with the labor days they have earned, while the other part receive more than is due to them in accordance with the labor days earned.

A harmful practice is widely spread in collective farms of issuing to individual collective farmers products, irrespective of the number of labor days earned, on simple written notes of the chairmen.

Along with these irregularities, in many collective farms persons who have no relations to the farms whatsoever, such as officers of the day, watchmen and messengers of the village soviets, chiefs of fire departments, various kinds of extra workers of the village soviets and district organizations, are kept at the expense of

the collective farms and are credited with labor days at the request of the local government agencies.

Moreover, barbers, shoemakers, tailors, and other workers, who render personal services to the collective farmers and must be, therefore, paid by these personally, are, nevertheless, very often credited in the collective farms with labor days.

The harmful practice also takes place of crediting labor days for work done for various village and district organizations and offices (erection and repair of buildings, procurement of firewood and building material, loading of cargoes and the like).

These facts of dissipation of labor days result in the depreciation of labor days and the diminution of income distributed for each labor day, and consequently they minimize the interest of the collective farmers in the collective work.

Dissipation of Collectively Held Fields of the Collective Farms

It is the duty of the soviet and party agencies and the land offices to protect the fields collectively held by the collective farms from dissipation, as the U.S.S.R. Council of People's Commissars and the Central Committee of the Communist Party have warned in the Resolution of May 27, 1939 (U.S.S.R. Laws 1939, text 235). However, the facts and the checkup on the spot show that this resolution was in fact forgotten by many officials and the facts of dissipation of collectively held fields of the collective farms have again acquired a mass character.

This squandering of collective fields occurs along the line of enlargement of the house-and-garden plots of collective farmers by means of unauthorized seizures or

illegal additions made by the management and the chairmen of collective farms to advance personal farming to the detriment of collective farming.

The squandering of the collective fields occurs also by means of illegal assignment by the local government and land authorities, and even by unauthorized seizure of the collectively held fields of the collective farms by all kinds of organizations and persons under the disguise of creating upon the collective fields various auxiliary businesses and individual vegetable gardens of wage earning and salaried employees. Such seizure of collective land frequently occurs through undue tolerance on the part of the management of the collective farms, presidents of the village soviets and the district soviets. It is understood that illegal seizure of collective land of collective farms for all kinds of auxiliary businesses diminishes the land fund of collective farms, undermines the collective farming and encourages seizure of collective lands in collective farms by various grafting elements.

Squandering of collectively held lands, as was stated in the above-mentioned Resolution of May 27, 1939, leads to the situation where *"the interests of the collective farming, the basis of which is the fields held by the collective farm, are sacrificed to the elements of private ownership and avarice, which abuse the collective farms for the purpose of speculation and personal profit."*

Spoliation of Property of Collective Farms

Facts of abuses were established, consisting of spoliation of property by district and other party and government officials. Spoliation of such property occurs in the form of taking from the collective farms, free of charge or at a low price, collective cattle, grain, seed,

fodder, meat, milk, butter, honey, vegetables, fruits and the like. Some district officials of the party and government and land offices, instead of strictly protecting the public property as the basis of collective farming, commit gross infractions of soviet law, and by abuse of their official status, dispose illegally of the property and income in produce and in money of the collective farms by forcing the management and the chairmen of the collective farms to issue them, free of charge or at a low price, property, cattle, and produce belonging to the collective farms.

These facts evidence that some officials holding responsible jobs have entered the path of arbitrary administration and lawlessness toward the collective farms and have begun shamelessly to dig into the property of collective farms as into their own pockets.

It is easy to realize that such abuses undermine the basis of the welfare of the collective farms, disintegrate the leading core of the collective farms and prompt them to all sorts of illegal acts.

In addition, an irresponsible attitude toward the settling of accounts with the collective farms takes place on the part of a number of governmental and other organizations which do not pay the collective farms money due on time for produce delivered or work done, which shakes the economy of the collective farms.

Violation of Democratic Basis of the Management of the Collective Farms

The Council of Ministers and the Central Committee of the Communist Party have established the presence of serious violations in the collective farms of the Charter of an Agricultural Artel regarding the election of the leading agencies of these farms—the boards of man-

agers, chairmen of the collective farms, auditing committees—and regarding regular convocation of general meetings, and the submission of accounts to the general meeting of the members by the chairmen and board of managers of the collective farms.

These violations are manifested in the fact that, in many collective farms, they have discontinued calling general meetings of members, who were thereby deprived of participation in the business of the collective farms; in fact, the whole business of the agricultural artel, including the distribution of income, business planning, and disposition of all material resources, is decided only by the board of managers and the chairmen of the collective farms, and these do not submit any accounts on their activities to the general meeting.

As a result of such violation of democratic principles, general meetings to elect the boards of managers, chairmen, and the auditing committee have not been called for several years, and the terms of office and conditions for election of chairmen and board of managers provided for in the Charter have not been observed. The matter has reached such a point of outrage that the chairmen are appointed and dismissed by the district Party and government organizations without any knowledge of the collective farmers. All this leads to a situation where the chairmen of the collective farms cease to feel themselves responsible to the collective farmers, find themselves independent of the collective farmers, and lose their connections with the collective farmers, which is a distortion of the fundamentals of the Charter of an Agricultural Artel and a violation of democratic relations between the leadership of the collective farms and the collective farmers that inflicts

thereby serious damage to the cause of the strengthening of the collective farms.

The U.S.S.R. Council of Ministers and the Central Committee of the Communist Party consider the abovementioned abuses and offenses extremely harmful for the cause of collective farming and extremely dangerous for the entire cause of building up socialism in our country.

The U.S.S.R. Council of Ministers and the Central Committee of the Communist Party consider that an end must be put resolutely and irrevocably to the harmful practices of the distortion of the policy of the Party and the government, which practices are alien to Leninism.

The U.S.S.R. Council of Ministers and the Central Committee of the Communist Party have resolved:

1. The distortions of the policy of the Party and the government in organization of collective farms and violations of the Charter of an Agricultural Artel mentioned in the present resolution are hereby condemned as anticollective farming and antigovernmental and those guilty of such distortions shall be prosecuted in courts as felonious criminals.

2. The leaders of the Party and government organizations in the constituent republics as well as the leaders of the regional and provincial organizations must liquidate in a short time the violations of the Charter of an Agricultural Artel, restore the full effect of the Charter, and ensure the collective farms against trespasses on their property.

3. An end shall be put to the practice of waste of labor days in the collective farms and improper distribution of income of such farms.

Within two months in all collective farms, the appropriations for administrative and service personnel in

the collective farms and spending of labor days for their remuneration must be revised, and the artificially boosted appropriations must be cut, while the expenses for business management must be brought into accord with the Charter of an Agricultural Artel.

Persons who are not connected with the collective farms shall be deprived of credit in labor days, and the district soviet and Party organizations are forbidden to ask the collective farms to pay such persons by giving them credit in labor days for work which does not pertain to such farms.

4. It shall be the duty of the leaders of the Party and soviet organizations, as well as of the leaders of the regional and provincial organizations, to restore the full effect of the Resolution of May 27, 1939 (U.S.S.R. Laws 1939, text 235).

Prior to November 15, 1946, in each collective farm, the size of the collectively held fields and house-and-garden plots must be checked up on the spot, and the data collated with the entries in the land record certified books; the land illegally seized by individual collective farmers or by organizations and offices for auxiliary business shall be taken away and restored to the collective farms.

Within the same period of time, complete documentation of the recording of the land of the collective farms (acts, record books, and the like) shall be restored.

Section 2 of the Resolution of the U.S.S.R. Council of People's Commissars and the Central Committee of the Communist Party of April 7, 1942, which was in effect during the war and permitted the councils of people's commissars of the constituent republics to allow various agencies to till the waste fields of collective farms is hereby repealed, and all land so used shall be

restored to the collective farms prior to November 15, 1946.

5. Be it enacted that the officials of the soviets, the Party, and the land offices and the chairmen of the collective farms who are guilty of dissipation or unlawful disposition of the property of collective farms, collectively held fields, and money, shall be dismissed and indicted for prosecution in court as transgressors of law and enemies of collective farming.

It shall be the duty of the councils of ministers of the republics, regional and provincial executive committees, central committees of the Communist Party in the soviet republics, and regional and provincial committees of the Party to secure within a period of two months the restoration to the collective farms of property, cattle, and money taken unlawfully and to report within a one month's period to the Council of Ministers and the Central Committee of the Communist Party concerning steps taken against those guilty of dissipation of the property of collective farms.

6. The district and other organizations and officials are hereby forbidden under penalty of law to ask from collective farms grain, produce, or money for the needs of all sorts of organizations, for conducting conventions, conferences, celebrations, and financing of district works.

7. It shall be the duty of the leaders of the party and soviet organizations of the republics as well as of the leaders of the regional and provincial organizations within a three months' period to put in order the settling of accounts of various organizations with the collective farms and to liquidate within a three months' period all debts of various organizations and offices to the collective farms and to establish for the future a method of

timely and honest payment to the collective farms for produce and work done.

8. The democratic procedure provided for in the Charter and requiring the calling of general meetings for discussion and decision of the matters of the collective farms, election of the board of managers and chairmen, submission of accounts to the general meeting by the management, chairmen and auditing committees, which procedures have been violated in many collective farms, shall be restored.

The district soviets and land offices are hereby forbidden to appoint and dismiss chairmen of the collective farms independently of the general meetings of such farms, and the district party committees shall be responsible for the carrying out of this directive.

Prior to February 15, 1947, in all collective farms, general meetings of members shall be held for the hearing of the reports of the economic activities for the year 1946 and to conduct at these meetings the elections of the boards of managers, chairmen, and auditing committees in all instances where the term of their office has expired or the general meeting resolves to do so prematurely.

9. It shall be the duty of the councils of ministers of the republics, regional and provincial executive committees, the central committees of the republics, and the regional and provincial party committees to submit before January 1, 1947, to the U.S.S.R. Council of Ministers and the Central Committee of the Communist Party a report on the execution of the present regulation.

10. In order to establish strict supervision of the observance of the Charter of an Agricultural Artel, protection of collective farmers from attempts to violate the Charter, as well as for the decision of questions

pertaining to the organization of collective farming, a Council on Affairs Pertaining to Collective Farming shall be created.

Comment

On October 8, 1946, the Council mentioned in Section 10 was appointed and directed to submit within one month a statute regulating its activities; the Council was allowed its own agents and inspectors in the republics and regions, independent of the local authorities. The members of the Council were personally appointed. They include at present the following officers: the chairman is Andreev, deputy president of the Council of Ministers; his deputies are Andreanov, member of the Organization Bureau of the Central Committee of the Party, and Patolichev, the secretary of this committee, and the secretary is Perov, member of the Committee of Party Control. The rest of the members include the deputy chairman of the State Planning Commission, the deputy chief of the Office of the Central Committee of the Party, the presidents of the Councils of Ministers of Uzbekistan and the Ukraine, the U.S.S.R. Minister of Agriculture, the secretary of the Central Committee of the Communist Party in Uzbekistan, nineteen chairmen of various collective farms, three secretaries of regional Party committees, one secretary of a Party district committee, two minor officials of collective farms, one director of M.T.S. and one president of a district executive committee (U.S.S.R. Laws 1946, text 255). It is interesting to note that all were appointed and not elected and represent not the collective farms but the administration.

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PART NINE
JUDICIARY

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36

Judiciary Act of 1938

Law on the Judiciary of the U.S.S.R. and the Constituent and Autonomous Republics of August 16, 1938.[1]

Comment

For discussion of the legislation translated in this part, see Volume I, Chapters 7 and 23, I.

I. General Provisions

1. In accordance with Section 102 of the U.S.S.R. Constitution, justice in the U.S.S.R. shall be administered by the U.S.S.R. Supreme Court, by the supreme courts of the constituent republics, by the regional and provincial courts, by the courts of the autonomous republics and autonomous regions, by the circuit courts, by U.S.S.R. special courts that shall be established by the resolutions of the U.S.S.R. Supreme Soviet, and by the people's courts.

2. The administration of justice in the U.S.S.R. has as its purpose to protect from any infringement:

(a) The social and political organization, established by the Constitution, of the U.S.S.R. and the constituent

[1] Vedomosti 1938, No. 11.

and autonomous republics, the socialist system of national economy, and socialist property;

(b) The political, personal, and property rights and interests of the citizens of the U.S.S.R., those rights pertaining to labor and housing, and such other rights as are guaranteed by the U.S.S.R. Constitution and the constitutions of the constituent and autonomous republics;

(c) The rights of governmental institutions and enterprises, collective farms, co-operative and other public organizations, and their interests guaranteed by law.

The administration of justice in the U.S.S.R. has as its purpose to secure precise and unswerving execution of the soviet laws by all institutions, organizations, officials, and citizens of the U.S.S.R.

Comment

Compare this text with Section 1 of the R.S.F.S.R. Judiciary Act of 1926:

1. The tasks of the court shall be:

(a) To safeguard the conquests of the proletarian revolution, the power of the workers and peasants, and the legal order established by this power;

(b) To protect the interests and rights of the toilers and their associations;

(c) To strengthen social and labor discipline and the solidarity of the toilers, and to educate them in law;

(d) To exercise revolutionary legality with regard to personal and property rights of citizens. . . .

See also Vol. I, p. 252 *et seq.*

3. In applying penal measures, the soviet court shall not only punish but also seek the reformation and re-education of criminals.

By all its activities, the court shall educate the citizens of the U.S.S.R. in the spirit of devotion to their

country and the cause of socialism, in the spirit of precise and unswerving execution of the soviet laws, of a watchful attitude toward socialist property, of labor discipline, of an honest attitude toward governmental and public duties, and of respect for the rules of socialist community life.

Comment

For legislation providing for imposition of punishment outside the court, see *supra* p. 23, also Vol. I, p. 233 *et seq.* For discussion of soviet penal law, see Vol. I, pp. 219 *et seq.* and 497 *et seq.*

4. The courts of the U.S.S.R. shall perform the tasks specified in Section 2 of the present law:

(a) By trying criminal cases in judicial hearings and applying penal measures established by statute to traitors of the country, wreckers, grafters of socialist property, and other enemies of the people, as well as to robbers, thieves, ruffians, and other criminals;

(b) By trying and determining in judicial hearings disputes involving rights and interests of citizens, governmental institutions and enterprises, collective farms, and other public organizations.

Comment

For civil disputes exempt from court jurisdiction, see *supra* p. 16 and Vol. I, p. 837.

5. Justice shall be administered in the U.S.S.R.:

(a) Upon the principle that there shall be one and the same court for all citizens equally, regardless of their social, property, or service status, their national and racial affiliations;

(b) Upon the principle that a single U.S.S.R. crim-

inal, civil, and procedural legislation shall be binding upon all courts.

Comment

The relation between federal and State civil legislation is discussed *supra* pp. 4–6, Vol. I, pp. 8, 86–90, *222 et seq.* The basic principles of criminal and procedural legislation were established by federal acts which were incorporated into the corresponding codes of the individual soviet republics. Thus, although there is no federal criminal code, or code of civil or criminal procedure, the individual republics do have such codes, which are practically uniform. The codes of the R.S.F.S.R. may be consulted to obtain a picture of the law of the entire Soviet Union.

6. Judges shall be independent and subject only to law (Section 112 of the U.S.S.R. Constitution).

Comment

See Volume I, Chapter 7, p. 250 *et seq.*

7. In accordance with Section 110 of the U.S.S.R. Constitution, judicial proceedings shall be conducted in the language of the constituent or autonomous republic or autonomous region, provided that persons unfamiliar with such language are secured the opportunity to learn through an interpreter the material of the case, and the right to proceed in court in their mother tongue.

8. In accordance with Section 103 of the U.S.S.R. Constitution, cases in all U.S.S.R. courts shall be heard in public, except as provided by law,[2] and the accused person shall be secured the right of defense.

9. In accordance with Section 103 of the U.S.S.R.

[2] Concerning the powers of the Ministry of the Interior, see Vol. I, Chapter 7, p. 233 *et seq.*, and Chapter 23, p. 845, also *supra* p. 23, and *infra* Nos. 38, 39.

Constitution, people's assessors (*zassedatel*) shall participate in the hearing of cases in all U.S.S.R. courts.

Comment

The term assessors and their role are discussed in Volume I, Chapter 23, p. 838. See also comment to Section 14.

10. In accordance with Sections 105, 106, 107, 108, and 109 of the U.S.S.R. Constitution, the U.S.S.R. courts shall be constituted on the basis of elections conducted according to the procedure established by the present law.

11. All citizens enjoying the right to vote may serve in the capacity of judge or people's assessor.

Comment

It may be noted that no particular educational qualifications are required from soviet judges. For their actual education, see Vol. I, pp. 242–244.

12. People's assessors shall be called upon to perform their judicial duties in the order in which they are listed on the rolls for not more than ten days annually, except where the prolongation of this period is caused by the necessity of an assessor's sitting in the case. While on duty in court, people's assessors shall enjoy all the rights of judges.

13. People's assessors who are wage earners or salaried employees shall be paid their wages or salaries at the place of employment for the whole time of performance of their judicial duties in court.

In all other instances, the payment of expenses incurred by people's assessors in connection with the performance of their judicial duties in court shall be made in accordance with the legislative provisions of the constituent republic concerned.

Comment

In the R.S.F.S.R., ten rubles per diem is established for people's assessors who are not employees (R.S.F.S.R. Laws 1940, text 57).

14. Cases in all courts shall be heard before a bench consisting of one judge and two people's assessors, except in instances especially provided for by law in which cases they shall be heard by three judges.

Comment

Appellate cases are tried by a court consisting of three judges. See Sections 35, 43, 50, and 68, paragraph 2.

15. In accordance with the procedure established by law, convicted persons, their counsels for defense, plaintiffs and defendants and their representatives in interest may bring to the superior court appeals, and the government attorneys, protests from civil and criminal judgments and interlocutory orders of any court except the U.S.S.R. Supreme Court and supreme courts of the constituent republics.

In reviewing cases on appeal or protest, the superior court shall ascertain, on the ground of the materials on record in the case and those submitted by the parties, whether the judgment rendered by the lower court in a criminal or civil case is legally correct and well founded.

Comment

For a general analysis of appeals under the soviet law, see Volume I, Chapter 24.

The term appeal is used in soviet law to denote an appeal by a litigant, while the remedy used by a government attorney (public prosecutor) is called a protest, in other words, an appeal filed by him.

16. A protest against such judgments and orders of the courts in criminal and civil cases as have become final may be filed only by the U.S.S.R. Attorney General or the attorney general of a constituent republic, the President of the U.S.S.R. Supreme Court or the president of the supreme court of a constituent republic, in accordance with Sections 51, 64, and 74 of the present statute.

Comment

A judgment which is not subject to appeal becomes final upon rendition. A judgment which is subject to appeal becomes final upon the expiration of the period of time fixed by law for the filing of the appeal without its being filed, or, if an appeal is filed, upon the rejection of the appeal or the affirmation of the judgment by the appellate court. Thus, the decisions of an appellate court are always final.

Section 16 deprives by implication private parties from appealing to the U.S.S.R. Supreme Court. See also Volume I, Chapter 24, p. 894 *et seq.*

17. A judge may be relieved of office and a people's assessor of his duties only upon recall by the constituents or upon a criminal sentence rendered by a court against him.

Comment

See Volume I, Chapter 7, pp. 243 *et seq.*, 248 *et seq.*, also *infra* No. 37.

18. Criminal prosecution shall be instituted against a judge, and in consequence thereof he shall be removed from office and indicted:

(a) Upon a resolution by the attorney general of a constituent republic sanctioned by the supreme soviet of the constituent republic, in the case of a people's

judge, a judge of the regional, provincial, or circuit courts, or the courts of autonomous regions, or a justice of the supreme court of a constituent or autonomous republic;

(b) Upon the resolution of the U.S.S.R. Attorney General sanctioned by the Presidium of the U.S.S.R. Supreme Soviet, in the case of a justice of the U.S.S.R. Supreme Court.

Comment

See Volume I, Chapter 7, pp. 243 *et seq.*, 248 *et seq.*, also *infra* No. 37.

19. In case of temporary absence of a people's judge (illness, vacation, et cetera), performance of his judicial duties for the duration of his absence shall be assigned by the district (rayon) council of deputies of the toilers to one of the people's assessors.

20. When the office of people's judge becomes vacant prior to the expiration of the term of office, the election of a new people's judge shall be held not later than within two months from the date on which the office becomes vacant.

The election of a new people's judge shall be organized by the ministry of justice of the constituent republic, and, in an autonomous republic, by the ministry of justice of that autonomous republic.

If the office of judge of a circuit, regional, or provincial court, or of the supreme court of a constituent or autonomous republic, or of the U.S.S.R. Supreme Court becomes vacant, the election of a new judge shall be held at the next regular session of the soviet of deputies of the region, province, or circuit, or at such session of the supreme soviet of a constituent republic or of the U.S.S.R. Supreme Soviet.

II. People's Courts

21. The people's court shall try:

(a) Criminal cases involving crimes against the life, health, liberty, and dignity of citizens, viz., homicide, infliction of bodily injury, performance of illegal abortions, false imprisonment, rape, malicious evasion of payment of alimony, insult, hooliganism, slander, and libel;

Involving crimes against property, viz., robbery, overt theft without use of force,[3] larceny, fraud, extortion;

Involving breach of official duty by an official, viz., abuse of authority, criminal excess of authority, nonfeasance, embezzlement, negligent business management, forgery, fraud in weighing and measuring, overcharging;

Involving crimes against public administration, viz., violation of electoral laws, malicious evasion of payment of taxes and fees established by law, refusal to perform deliveries and duties to the State, failure to appear for and evasion from performance of military service, violation of lawful regulations of public authorities;

(b) Civil cases involving property claims, claims connected with the violation of labor laws, claims for payment of alimony, claims involving succession rights, and other criminal and civil cases placed by law within the jurisdiction of the court.

Comment

The jurisdiction of the people's courts in civil cases is more closely defined in Section 21 of the Code of Civil Procedure.

[3] The soviet Criminal Code maintained the concept of larceny peculiar to the imperial law, defining it as a theft concealed from the holder of the property, and of robbery as taking of property by use of force (Sections 162 and 167). In between is overt theft without use of force, which is rather an aggravated larceny (Section 165). See also Vol. I, pp. 577–580.

22. By virtue of Section 109 of the U.S.S.R. Constitution, the people's courts shall be elected for a term of three years by the citizens living in the district (rayon) on the basis of universal, direct, and equal suffrage and secret ballot.

23. People's judges and people's assessors shall be elected by the citizens living in the district by electoral precincts; an electoral district for the election of a people's judge or people's assessor comprises the entire population residing within the territory of the activities of the respective people's court.

Comment

The law defining electoral procedure for the R.S.F.S.R. was enacted only on September 25, 1948, and the first elections took place in November 1948. Prior to that the people's judges were still elected by the soviets and not by the constituents.

24. The right to nominate the candidates for people's judges and people's assessors shall be secured to public organizations and societies of toilers: Communist Party organizations, trade-unions, co-operatives, youth organizations, and cultural societies, as well as to general meetings of wage earners and salaried employees convoked by enterprises and of military servicemen convoked in military units, and to general meetings of peasants convoked in collective farms, and of wage earners and salaried employers of soviet farms convoked in such farms.

25. The procedure to be followed in the registration of nominees and the publication of lists of candidates for people's judges and people's assessors, as well as the dates of elections and the electoral procedure shall be determined by the Statute on Elections of Judges and

People's Assessors to be approved by the supreme soviets of the constituent republics.

Comment

No such statute has been enacted thus far. See Vol. I, p. 839.

26. The number of people's courts for each district (rayon) shall be established by the council of ministers [4] of the constituent republic upon the recommendation of the minister of justice of the constituent republic. In autonomous republics, the number of people's courts for each district shall be determined by the councils of ministers of the autonomous republics upon the recommendation of the ministers of justice of the autonomous republics.

27. Prior to judicial hearing of the case, the people's court shall:

(a) Approve the suggestions for indictment submitted by the government attorney; if it fails to agree with the indictment, the people's court may return the case to the government attorney for additional investigation, or dismiss the proceedings where there are adequate grounds;

(b) Determine whether to place the accused in custody or to release him from custody;

(c) Determine the mandatory participation of the counsel for the defense and of the government attorney in the trial of the case.

28. The people's judge shall:

(a) With respect to complaints and declarations filed,

[4] Prior to March, 1946, the council of ministers was called council of people's commissars, the ministers were called people's commissars and the ministries people's commissariats.

enter an order for the institution of criminal proceedings or a nolle prosequi;

(b) If necessary, order the complaints or the declarations to be submitted to an investigating authority for investigation;

(c) Fix the date for the hearing of the case;

(d) Order the accused, the witnesses, and the experts to be summoned, and cause notice of the date set for the hearing to be served on the plaintiffs and defendants;

(e) Preside at sessions of the people's court.

29. People's judges shall report to their constituents on their own work and the work of the people's court.

III. Regional, Provincial, and Circuit Courts and Courts of Autonomous Regions [5]

30. In accordance with Section 108 of the U.S.S.R. Constitution, the regional, provincial, and circuit courts as well as the court of an autonomous region shall be elected for a term of five years by the respective regional, provincial, or circuit soviets of toilers or by the soviet of toilers of the autonomous region.

31. A regional, provincial, or circuit court or court of an autonomous region shall consist of a president, vice-presidents, judges, and people's assessors called to participate in the trial of judicial causes.

32. Regional, provincial, and circuit courts, or the courts of autonomous regions [as courts of original jurisdiction] shall try such criminal cases involving counterrevolutionary crimes, especially serious crimes against public administration, misappropriation of socialist property, especially serious crimes committed by officials in violation of their administrative duties, or of those involving management of economic matters, as

[5] Equivalent to these are the city courts in large cities.

are assigned by statute to their jurisdiction, and such civil cases arising between governmental and public institutions, enterprises, or organizations as are placed by statute under their jurisdiction.

Moreover, provincial, regional, and circuit courts or the courts of autonomous republics shall hear protests against or appeals from judgments and interlocutory orders made by the people's courts in criminal and civil cases.

33. A regional, provincial, or circuit court or the court of an autonomous region shall sit:

(a) As a criminal trial division to hear [as a court of original jurisdiction] criminal cases triable under statute by the regional, provincial, or circuit courts or the courts of autonomous regions, as well as to examine protests against and appeals from judgments and interlocutory orders rendered in criminal cases by the people's courts;

(b) As a civil trial division to hear [as a court of original jurisdiction] civil cases triable under statute by the regional, provincial, and circuit courts or the courts of autonomous regions, as well as to examine protests against and appeals from the judgments and interlocutory orders rendered in civil cases by the people's courts.

34. The trial division of a regional, provincial, or circuit court or court of an autonomous region shall hear cases [as a court of original jurisdiction] sitting as a body of three, viz., two people's assessors and a presiding judge, who shall be the president of the court or a judge of the court.

35. Protests against or appeals from judgments and interlocutory orders made in criminal and civil cases by the people's courts shall be heard by the trial divisions

of the regional, provincial, and circuit courts or the courts of autonomous regions, sitting as a body of three judges of the respective court.

36. In provinces which are included in a region, the circuit and provincial courts shall be constituted in the same manner as the regional court.

37. The president of a regional, provincial, or circuit court or the court of an autonomous region shall preside over hearings or appoint for this purpose one of the judges of the regional, provincial, or circuit court or court of the autonomous region, shall fix the date for a hearing, shall order the person accused, witnesses, and experts to be summoned and cause notice of the date of hearing to be served upon the plaintiffs and defendants.

IV. The Supreme Court of an Autonomous Republic

38. In accordance with Section 107 of the U.S.S.R. Constitution, the supreme court of an autonomous republic shall be elected by the supreme soviet of the autonomous republic for a term of five years.

39. The supreme court of an autonomous republic shall consist of a president, a vice-president, judges of the court, and people's assessors called to participate in the trial of judicial causes.

40. The supreme court of an autonomous republic [as a court of original jurisdiction] shall try such criminal cases involving counterrevolutionary crimes, especially serious crimes against public administration, misappropriation of socialist property, especially serious crimes committed by public officials in violation of their administrative duties, or those involving management of economic matters, as are assigned by statute to its

jurisdiction, and such civil cases arising between governmental and public institutions, enterprises, and organizations as are placed by statute under its jurisdiction.

Moreover, the supreme court of an autonomous republic shall hear protests against or appeals from judgments and interlocutory orders rendered by the people's courts in criminal and civil cases.

41. The supreme court of an autonomous republic shall sit:

(a) As a criminal trial division to hear [as a court of original jurisdiction] criminal cases assigned by statute to the jurisdiction of the supreme court of an autonomous republic, as well as to examine protests against and appeals from judgments and interlocutory orders rendered in criminal cases by the people's courts;

(b) As a civil trial division to hear [as a court of original jurisdiction] civil cases assigned by statute to the jurisdiction of the supreme court of an autonomous republic, as well as to examine protests against and appeals from the judgments and interlocutory orders rendered in civil cases by the people's courts.

42. The trial division of the supreme court of an autonomous republic shall hear cases [as a court of original jurisdiction] sitting as a body of three, viz., two people's assessors and a presiding judge, who shall be the president of the court or a judge of the court.

43. Protests against or appeals from judgments and interlocutory orders rendered in criminal and civil cases by the people's courts shall be heard by the trial division of the supreme court of an autonomous republic sitting in a body consisting of three justices of the supreme court of the autonomous republic.

44. The president of the supreme court of an auton-

omous republic shall preside over hearings or appoint for this purpose one of the justices of the supreme court of the autonomous republic, shall fix the date for hearings, shall order the persons accused, witnesses, and experts to be summoned and shall cause notice of the date of hearing to be served upon the plaintiffs and defendants.

V. The Supreme Court of a Constituent Republic

45. The supreme court of a constituent republic is the highest judicial authority of the constituent republic. The supreme court of a constituent republic shall be trusted with the supervision of the judicial activities of all the judicial authorities of the constituent republic and of the autonomous republics, regions, provinces, and circuits embraced in a given constituent republic.

46. In accordance with Section 106 of the U.S.S.R. Constitution, the supreme court of a constituent republic shall be elected for a term of five years by the supreme soviet of the republic.

47. The supreme court of a constituent republic consists of a president, vice-presidents, judges, and people's assessors who are called to participate in the trial of judicial causes.

48. The supreme court of a constituent republic shall sit:

(a) As a criminal trial division for determination [as a court of original jurisdiction] of criminal cases assigned by law to the jurisdiction of the supreme court of a constituent republic, as well as for the hearing of appeals from and protests against judgments and interlocutory orders of the regional, provincial, and other courts of the constituent republic;

(b) As a civil trial division for determination [as

a court of original jurisdiction] of cases assigned by law to the jurisdiction of the supreme court of a constituent republic, as well as for the hearing of appeals from and protests against judgments and interlocutory orders of the regional, provincial, and other courts of the constituent republic.

49. The trial division of the supreme court of a constituent republic [as a court of original jurisdiction] shall hear cases sitting as a body of three, viz., two people's assessors and a presiding judge, who shall be the president of the court or a judge of the court.

50. Protests against or appeals from judgments and interlocutory orders made in criminal and civil cases by the regional, provincial, and other courts of the constituent republic shall be heard by the trial division of the supreme court of the constituent republic, sitting as a body consisting of three justices of the supreme court of the constituent republic.

51. The supreme court of a constituent republic shall exercise supervision over the administration of justice by the courts of the republic:

(a) By the examination of protests filed by the U.S.S.R. Attorney General, the attorneys general of the constituent republics, the President of the U.S.S.R. Supreme Court, or the presidents of the supreme courts of the republics against such judgments and orders in criminal and civil cases as have become final;

(b) By the examination in judicial sessions of appeals and protests filed in cases decided by the courts of the constituent republic.

Comment

For explanation of the term "final," see comment to Section 16. See also Volume I, Chapter 24, pp. 833 and 876.

52. The president of the supreme court of a constituent republic shall preside over hearings or appoint for this purpose one of the justices of the supreme court of the constituent republic, shall fix the date for the hearing, shall order the persons accused, witnesses, and experts to be summoned, and shall cause notice concerning the date of hearing to be served upon the plaintiffs and defendants.

VI. Special Courts of the U.S.S.R.

53. By virtue of Section 102 of the U.S.S.R. Constitution, the following special courts shall function:

(a) Military tribunals;[6]

(b) Railway courts;

(c) Water transport line courts.

Comment

The most important legislation pertaining to special courts, and military tribunals in particular, is given in the comment to Section 62.

Special "camp courts" were established in 1944. See Vol. I, p. 843.

54. In accordance with Section 105 of the U.S.S.R. Constitution, the presidents, vice-presidents, and judges of the special courts of the U.S.S.R. shall be elected by the U.S.S.R. Supreme Soviet for a term of five years.

55. People's assessors elected by the regional and provincial soviets of deputies of the toilers and the supreme soviets of the constituent and autonomous republics shall participate in the trial sessions of the military tribunals, railway courts, and water transport line courts.

56. In the military tribunals, railway courts, and

[6] See *infra* Nos. 38 and 39, and the discussion in Vol. I, Chapter 23, I, 2.

water transport line courts, cases shall be tried before a bench sitting as a body of three, viz., two people's assessors and a presiding judge who shall be the president of the court or a judge of the court, except in cases triable under statute before a bench consisting of three judges of the respective court.

57. Military tribunals shall be:

(a) Attached to the headquarters of military areas, fronts, and naval fleets;

(b) Attached to the headquarters of armies, army corps, or other military organizations or militarized institutions.[7]

58. Military tribunals shall try cases involving military crimes as well as other crimes assigned by law to their jurisdiction.

59. Military tribunals attached to the headquarters of military areas, fronts, and naval fleets [as courts of original jurisdiction] shall try criminal cases placed by law under their jurisdiction and shall also hear appeals and protests filed in cases decided by the military tribunals attached to the headquarters of the armies, army corps, and other military organizations or militarized institutions.

60. Railway courts and water transport line courts shall try such cases as involve crimes intended to undermine labor discipline in transportation, and such other crimes violating the normal functioning of transportation as are placed by law under their jurisdiction.

61. Railway courts and water transport line courts shall be organized on the respective railways and waterways.

62. The president of a military tribunal, a railway

[7] See *infra* Nos. 38 and 39.

court, or a water transport line court shall preside over hearings or appoint for this purpose one of the judges of his military tribunal, railway court, or water transport line court, shall fix the dates for hearing of cases, and shall order the persons accused, witnesses, and experts to be summoned.

Comment

Military tribunals (courts-martial) are regulated by various provisions, depending upon whether or not the locality is under martial law. For localities which are not under martial law, the Statute on Military Tribunals of August 20, 1926, is in force as directly amended in 1927, 1928, 1929, 1930, 1934, and indirectly by the Judiciary Act of 1938 and the Edict of December, 1940.[8] For localities under martial law, a special statute was enacted on June 22, 1941, and certain provisions were also included in the Statute on Martial Law of the same date. Both are translated *infra* Nos. 38 and 39.

VII. The U.S.S.R. Supreme Court

63. In accordance with Sections 104 and 105 of the U.S.S.R. Constitution, the U.S.S.R. Supreme Court shall be the supreme judicial tribunal and shall be elected by the U.S.S.R. Supreme Soviet for a term of five years.

64. The U.S.S.R. Supreme Court shall superintend the administration of justice by all the judicial bodies of the U.S.S.R. and constituent republics:

(a) By the examination of protests filed by the U.S.S.R. Attorney General and the President of the U.S.S.R. Supreme Court against such judgments and orders in criminal and civil cases as have become final;

(b) By the examination of appeals and protests filed

[8] U.S.S.R. Laws 1926, text 413; *id.* 1927, text 505; *id.* 1928, text 291; *id.* 1929, text 336; *id.* 1930, text 509; *id.* 1934, text 78; Vedomosti 1940, No. 51. 4.

in cases decided by the military tribunals, railway courts, and water transport line courts.

Comment

The term "final" is explained in the comment to Section 16; see also Volume I, Chapter 24, pp. 883 *et seq.*, 886–887.

65. The U.S.S.R. Supreme Court shall consist of a President, vice-presidents, justices of the Supreme Court, and people's assessors called to participate in the hearing of judicial causes; it shall function sitting as a body as follows:

(a) As a Criminal Trial Division;
(b) As a Civil Trial Division;
(c) As a Court-Martial Division;
(d) As a Railways Division;
(e) As a Waterways Division.

66. The Criminal Trial Division of the U.S.S.R. Supreme Court [as a court of original jurisdiction] shall try criminal cases placed by law under its jurisdiction and shall also hear protests against judgments and interlocutory orders of the supreme courts of the constituent republics in criminal cases.

67. The Civil Trial Division of the U.S.S.R. Supreme Court [as a court of original jurisdiction] shall try civil cases placed by law under its jurisdiction and shall also hear protests against the judgments and interlocutory orders of the supreme courts of the constituent republics in civil cases.

68. The Civil and Criminal Trial Divisions of the U.S.S.R. Supreme Court shall try cases [as a court of original jurisdiction] sitting as a body of three, viz., two people's assessors and a presiding judge, who shall be the president of the court or a judge of the court.

Protests against judgments and interlocutory orders

rendered in criminal and civil cases by the supreme courts of the constituent republics shall be heard by the Criminal or the Civil Trial Division of the U.S.S.R. Supreme Court sitting as a body of three judges of the U.S.S.R. Supreme Court.

69. The Court-Martial Division of the U.S.S.R. Supreme Court [as a court of original jurisdiction] shall try cases placed by law under its jurisdiction and shall also hear protests against and appeals from the judgments and orders rendered by the military tribunals.

70. The Court-Martial Division of the U.S.S.R. Supreme Court shall try cases sitting as a body of three, viz., the president or a member of the Court-Martial Division of the U.S.S.R. Supreme Court, who shall preside, and two people's assessors, except in instances in which the Code of Criminal Procedure expressly provides for trial before a bench consisting of three members of the Court-Martial Division.

Protests against and appeals from the judgments and interlocutory orders of the military tribunals shall be tried by the Court-Martial Division of the U.S.S.R. Supreme Court sitting as a body of three members of the Court-Martial Division of the U.S.S.R. Supreme Court.

71. The Railways Division or the Waterways Division of the U.S.S.R. Supreme Court shall try [as a court of original jurisdiction] cases concerning crimes assigned by law to its jurisdiction and shall also review protests and appeals lodged from judgments and orders rendered by the railways courts and water transport line courts.

72. The Railways Division and Waterways Division of the U.S.S.R. Supreme Court [as a court of original jurisdiction] shall try cases sitting as a body of three,

viz., the president or a member of the Division, who shall preside, and two people's assessors.

73. Protests against and appeals from judgments and interlocutory orders of the railways courts and water transport line courts shall be tried by the Railways Division or the Waterways Division of the U.S.S.R. Supreme Court sitting as a body of three members of the respective division of the U.S.S.R. Supreme Court.

74. The President of the U.S.S.R. Supreme Court may preside over any case tried by any division of the U.S.S.R. Supreme Court.

The President of the U.S.S.R. Supreme Court and the U.S.S.R. Attorney General shall be authorized to obtain the record of any case from any court of the U.S.S.R. or a constituent republic and to file in such case a protest in the procedure established by law.

75. A Plenary Session of the U.S.S.R. Supreme Court shall convene for the examination of protests filed by the President of the U.S.S.R. Supreme Court or the U.S.S.R. Attorney General against judgments or interlocutory orders made in criminal and civil cases by the divisions of the U.S.S.R. Supreme Court; this Plenary Session shall also give directive instructions in matters of administration of justice on the basis of decisions rendered in judicial causes tried by the U.S.S.R. Supreme Court.

76. A Plenary Session of the U.S.S.R. Supreme Court shall consist of the President of the U.S.S.R. Supreme Court, his deputies, and all justices of the U.S.S.R. Supreme Court.

The participation of the U.S.S.R. Attorney General in the Plenary Session is mandatory.

The U.S.S.R. People's Commissar for Justice shall

participate in the Plenary Sessions of the U.S.S.R. Supreme Court.

77. A Plenary Session of the U.S.S.R. Supreme Court shall convene not less than once every two months.

VIII. Marshals of the Court

78. The execution of judgments and interlocutory orders in civil cases and the execution of the clauses concerned with collection of property in judgments in criminal cases shall be carried out by the marshal of the court.

79. Marshals of the court shall be attached to the people's courts, the circuit, regional, and provincial courts, the courts of autonomous regions, and the supreme courts of autonomous and constituent republics, and shall be appointed by the people's commissariat for justice of the constituent republic, or, in autonomous republics, by the people's commissariat for justice of the autonomous republic concerned.

80. Requests made by marshals of the courts concerned with the execution of judgments and orders in criminal and civil cases shall be binding upon all officials and citizens.

37

Edict of the U.S.S.R. Presidium Concerning the Responsibility of Judges of July 29, 1940[1]

1. People's judges, presidents, and members of the circuit, regional, and provincial courts, the supreme courts, and special U.S.S.R. courts for violation of labor discipline, may be subject to the following disciplinary penalties:

(a) Warning;

(b) Reprimand;

(c) Reprimand with the warning that proceedings for recall of the judge will be instituted in accordance with the Law on the Judiciary of the U.S.S.R. and the Constituent and Autonomous Republics.

2. The people's commissars for justice of the autonomous republics and the chiefs of bureaus of the people's commissariats for justice of the constituent republics attached to the regional and provincial soviets may issue warnings and reprimands to people's judges.

3. People's commissars for justice of the constituent republics may impose any of the penalties specified in Section 1 upon people's judges, as well as upon the presidents and members of the circuit, regional, and provincial courts, and the supreme courts of the constituent republics.

4. The presidents of the circuit, regional, and pro-

[1] Vedomosti 1940, No. 28, 4. This edict was repealed and replaced by the Statute of July 15, 1948 (Vedomosti 1948, No. 31) which is translated *infra* at page 838.

vincial courts and of the supreme courts of the constituent and autonomous republics, and the President of the U.S.S.R. Supreme Court, may issue warnings and reprimands to the members of their respective courts.

5. The U.S.S.R. People's Commissar for Justice may impose upon any judicial worker the disciplinary penalties specified in Section 1.

6. An order imposing a disciplinary penalty must be motivated and shall indicate the violation of labor discipline committed by the judge.

A disciplinary penalty may be imposed only after a written report from the judge who committed the violation has been requested.

7. A disciplinary penalty may be imposed not later than within one month after the discovery of the violation and within six months after its commission.

8. Orders imposing a disciplinary penalty may be appealed from in the following manner:

(a) From an order of the chiefs of bureaus of the People's Commissars for Justice of the constituent republics attached to the regional and provincial soviets, the commissars for justice of autonomous republics, the presidents of circuit, regional, and provincial courts and the supreme courts of autonomous republics, an appeal shall be filed with the Commissar for Justice of the constituent republic concerned;

(b) From the orders of people's commissars for justice of the constituent republics, presidents of the supreme courts of the republics, and of U.S.S.R. special courts, an appeal may be filed with the U.S.S.R. Commissar for Justice.

9. If within one year from the imposition of the penalty, no new penalty has been imposed upon the judge, he shall be considered as not having been penalized.

38

Statute on Military Tribunals in the Localities Under Martial Law and the Regions of Military Operations of June 22, 1941[1]

Comment

For a discussion of characteristic features of soviet military tribunals, see Vol. I, Chapter 23, pp. 841–843.

In localities under martial law and in regions of military operations, the following rules of organization and composition of the military tribunals and their trial and review procedure shall be established:

Organization and Composition

1. On the basis of Section 57 of the Judiciary Act of the Soviet Union, the Constituent and Autonomous Republics, military tribunals shall function:

(a) At the headquarters of military areas, fronts, and naval fleets;

(b) At the headquarters of armies, or corps, and of other military organizations and militarized institutions.

The existing special courts for railroad and water transport lines shall be reorganized by the federal People's Commissariat for Justice into military tribunals

[1] Vedomosti 1941, No. 29, 1–2.

attached to the respective railroads and water transport lines.

2. The number of judges and other personnel of individual military tribunals shall be approved by joint orders of the federal People's Commissar for Justice, and, respectively, the People's Commissar for National Defense or the People's Commissar for the Navy.

3. The vice-presidents and members of the military tribunals shall be detailed for the duration of the war from among the reserve military legal personnel, and the presidents of the tribunals shall be detailed from among the cadres of military tribunals.

4. Transfer of the presidents, vice-presidents, and members of the military tribunals shall be made:

(a) By the People's Commissar for Justice for the tribunals of military areas, fronts, and armies (fleets and flotillas);

(b) By the presidents of the military tribunals of fronts and fleets for the military tribunals of corps and other military organizations and militarized institutions.

5. Appointments of new judges to military tribunals and transfers of presidents and vice-presidents and members of the military tribunals (Section 4) shall be announced in joint orders of the People's Commissar for Justice and the People's Commissar for National Defense or for the Navy.

6. Presidents and vice-presidents and members of the tribunals may be suspended by the presidents of the military tribunals of areas, fronts, and fleets, but such suspension needs subsequent approval by the People's Commissar for Justice.

7. Supplies, technical and material equipment of the military tribunals, including the railroad and water

transport line tribunals, shall be provided by the supply offices of the People's Commissar for National Defense.

Jurisdiction

8. Military tribunals shall try cases assigned to their jurisdictions by Section 27 of the Code of Criminal Procedure of the R.S.F.S.R. and corresponding sections of the codes of penal procedure of other constituent republics (Section 8 of the Statute Concerning Military Tribunals and Military Prosecuting Attorneys of 1926, and Section 7 of the Decree of the Presidium of the Supreme Soviet of June 22, 1941, on Martial Law).[2]

9. Military tribunals of military areas, fronts, fleets, armies, and flotillas shall also try cases assigned to their jurisdiction by the Resolution of the Central Executive Committee of the Soviet Union of July 10, 1934 (U.S.S.R. Laws 1934, text 284).[3]

10. Cases specified in Sections 8 and 9 of the present statute shall be tried:

(a) By the divisional military tribunals, if the accused ranks no higher than company commander or has a corresponding position:

(b) By the corps tribunals, if the accused ranks no higher than battalion commander or has a corresponding position;

(c) By the military tribunal attached to an army (flotilla), if the accused ranks no higher than the commander of the regiment or has a corresponding position;

(d) By the tribunals attached to areas, fronts, and fleets, if the accused ranks no higher than commander of a brigade or has a corresponding position.

[2] Section 27 of the Code of Criminal Procedure refers to special laws, the two other provisions cited in parentheses.

[3] Espionage, sabotage, and other subversive activities.

Trial Procedure

11. Military tribunals have the right to try cases within twenty-four hours after the charge is served on the prisoner.

12. Military tribunals try cases as a body of three permanent members.

13. The presidents of the military tribunals shall periodically inform the military councils of the areas, fronts, and armies and the commanders of the corps and divisions concerning the work of the military units to which they are attached.

Remedies Against Sentences

14. No appeal (cassation appeal) may be taken from the sentences of military tribunals, and such sentences may be quashed or changed only by means of ex officio reopening of the case (Section 407 of the Code of Criminal Procedure of the R.S.F.S.R. and corresponding sections of the Code of Criminal Procedure of the other constituent republics).[4]

15. The military councils of the areas, fronts, and armies (fleets and flotillas), as well as the commanders of the fronts, armies, and areas (fleets and flotillas),

[4] The terms "cassation appeal" and "ex officio reopening of a case" are explained in Volume I, Chapter 24. In criminal cases, however, a cassation appeal can be made only "because of the formal violation of rights and interests of the party" and "may not relate to the merits of the case" (Code of Criminal Procedure, Section 349). The sentence may be reversed in a cassation procedure by the Court-Martial Division of the Supreme Court on the following grounds only:

(a) Insufficiency and incorrectness of the inquiry procedure;
(b) Fundamental errors in procedure;
(c) Violation of the law or error in its interpretation;
(d) Plain injustice of the sentence (*id.*, Section 413).

A criminal case may be reopened ex officio if there are "essential violations" (*id.*, Sections 428, 429). What is an essential violation is left entirely to the discretion of the court.

have the right to suspend the execution of sentences pronouncing the supreme penalty (shooting to death), in which case they must wire their opinion and suggestions as to further procedure to the President of the Court-Martial Division of the federal Supreme Court and to the Attorney General of the Army or the Attorney General of the Navy.

16. Military tribunals must wire to the President of the Court-Martial Division of the federal Supreme Court, and to the Attorney General of the Army or to the Attorney General of the Navy, each sentence pronouncing the death penalty.

In case no reply ordering the suspension of execution is received from the President of the Court-Martial Division of the federal Supreme Court or the Attorney General of the Army or the Attorney General of the Navy within seventy-two hours after the delivery of the telegram to them, the sentence must be executed.

All other sentences of military tribunals are final and executory as soon as pronounced and shall be executed at once.

39

Edict of the Presidium of the Supreme Council on Martial Law of June 22, 1941[1]

1. Martial law shall be declared in accordance with Section 49, subsection (p) of the U.S.S.R. Constitution, either for individual localities or for the entire area of the Union in the interest of the national defense of the U.S.S.R. and the security of the public order and safety of the State.

2. All functions of the organs of government power in the field of national defense, and the security of public order and public peace in localities in which martial law has been declared, shall pertain to the military councils (*voennyi sovet*) of the fronts, armies, military areas, and, where there are no military councils, to the high command of the military units.

3. Military authorities have the power, in localities under martial law (Section 2):

(a) In accordance with the existing laws and regulations of the government, to draft citizens for labor duty in order to execute defense projects, to protect roads, installations, means of communications, electric power plants, electrical networks, and any other important objects, and to combat fires, epidemics, and natural disasters;

[1] Vedomosti, 1941, No. 29, 1.

(b) To billet military units and institutions;

(c) To declare labor duty and commandeer men with animal-drawn or self-propelled vehicles for military purposes;

(d) To take away from governmental, public, and cooperative enterprises and private persons means of transportation and other property needed for defense;

(e) To regulate working hours of institutions and enterprises, including movies, theaters, et cetera, and organization of any kind of meetings, processions, et cetera; to introduce curfew; to restrict street traffic; to search houses whenever necessary; and to arrest all suspected persons;

(f) To regulate commerce and the work of commercial organizations (markets, shops, warehouses, public eating places), communal enterprises (baths, laundries, barbershops, et cetera), as well as to establish rationing of foods and manufactured goods;

(g) To prohibit arrival at or departure from localities declared to be under martial law;

(h) In an administrative procedure, to deport from the localities declared to be under martial law, or from individual places, persons who are considered socially dangerous because of their criminal activities or because of their connections with the criminal underworld.

4. In all fields provided for in Section 3 of the present edict the military authorities have the right:

(a) To issue ordinances binding upon the population and to establish for violation of these ordinances penalties of imprisonment not to exceed six months or fines not to exceed 3,000 rubles, which penalties shall be imposed in an administrative procedure;

(b) To issue orders to the local authorities, govern-

mental and public institutions and organizations, and to see that such orders are unconditionally and immediately enforced.

5. In localities where martial law is declared, it is the duty of all the local governmental authorities as well as governmental and public institutions, organizations, and enterprises to render complete assistance to the military command in the use of the forces and means of their locality for national defense and the security of public order and peace.

6. Those who disobey the orders and commands issued by military authorities, as well as those who commit crimes in the localities declared to be under martial law, shall be tried under wartime law.

7. Notwithstanding the hitherto existing rules concerning trial of criminal cases in localities under martial law, all cases involving crimes directed against the national defense, public order, and security of the State shall be tried by military tribunals, namely, cases involving the following crimes:

(a) Crimes against the State;

(b) Crimes provided for by the Law of August 7, 1932, on Protection of Public (Socialist) Property;

(c) All crimes committed by men in the service;

(d) Robbery (Section 167 of the R.S.F.S.R. Criminal Code and corresponding sections of the other criminal codes of the soviet republics);

(e) Premeditated murder (*id.*, Sections 136–138);

(f) Escape from custody by use of force (*id.*, Section 81);

(g) Evasion of military service (*id.*, Section 68) and opposition to the authorities (*id.*, Sections 73, 73 [1], 73 [2]);

(h) Unlawful purchase, possession, or sale of weapons and theft of weapons (*id.*, Sections 164*a*, 166*a*, 182).

Moreover, the military authorities have the right to submit for trial by military tribunals cases involving speculation, malicious hooliganism, and other crimes provided for in the penal codes of the constituent republics, if the commanding authorities deem it necessary.

8. Cases shall be tried in the military tribunals according to the rules established by the Statute on Military Tribunals in the Regions of Military Operations.

9. Sentences of the military tribunals may not be appealed and may be reversed only by means of an ex officio reopening of the case.[2]

10. The present edict shall also apply in an emergency in localities where the local and federal authorities of the U.S.S.R. are absent.

[2] See Vol. I, Chapter 24, II.

PART TEN
LABOR LAW

40

Standard Rules of Internal Labor Organization

Standard Rules of Internal Labor Organization for Employees of Governmental, Co-operative, and Public Establishments and Offices, enacted by the U.S.S.R. Council of People's Commissars on January 18, 1941 [1] (excerpts).

II. Employment and Dismissal

6. Wage earning and salaried employees shall be prohibited to leave their place of employment (establishment or office) without permission or to change from one place to another.

Only the director of an establishment (head of an office) may authorize an employee to leave the place of employment or to change from one place (establishment or office) to another.[2]

V. Penalties

19. Every violation of labor discipline shall entail either a disciplinary penalty or prosecution in court.

20. The following disciplinary penalties shall be imposed for violation of labor discipline:

[1] U.S.S.R. Laws 1941, text 63. For discussion see Vol. I, Chapter 22, IV.
[2] See Vol. I, Chapter 22, IX.

(a) Admonition;
(b) Reprimand;
(c) Severe reprimand;
(d) Transfer to other lower paid work for a period of up to three months, and demotion to a lower post.

21. A salaried or wage earning employee who comes late to work without a justifiable reason, goes out for lunch ahead of time, is late in returning from lunch, leaves work in an establishment (office) ahead of time, or loiters on the job during working hours, shall be penalized by the administration by the following means: admonition, reprimand, severe reprimand, transfer to lower paid work for a period of up to three months, or demotion to a lower post.

22. A penalty shall be imposed by the administration of the establishment (office) as soon as it becomes aware of the violation.

Before the penalty is imposed, the violator of labor discipline shall be requested to give an explanation.

No penalty may be imposed by the administration of the establishment (office) after the expiration of one month from the date on which the violation is ascertained.

23. Each penalty shall be cited in a general order and communicated to the salaried or wage earning employee, who must sign the receipt of communication.

24. If, within one year from the date of imposition of the penalty of admonition, reprimand, or severe reprimand, the salaried employee or wage earner does not commit another violation of labor discipline, the director of the establishment (head of the office) shall remove the penalty.

If the salaried or wage earning employee has not committed another violation of labor discipline and has

in addition proved himself a good and conscientious worker, the director of the establishment (head of the office) may remove the penalty imposed by him before the expiration of one year.

25. A salaried or wage earning employee who leaves the establishment (office) without permission shall be prosecuted in court under the Edict of the Presidium of June 26, 1940.[3]

26. For absenteeism without a justifiable reason, salaried and wage earning employees shall be prosecuted in court under the Edict of the Presidium of June 26, 1940.[4]

One who is late to work or from lunch, who leaves work before working hours are over, or who leaves before lunch time, provided such violation of labor discipline causes the loss of more than twenty minutes of working time, shall be considered an absentee.

The above-mentioned violations causing the loss of less than twenty minutes of working time shall be considered equal to absenteeism if they occur thrice within one month or four times within two consecutive months.

Likewise, a salaried or wage earning employee who appears at work in a state of intoxication shall be considered an absentee.

27. Larceny of materials, produce, instruments, or appliances, committed by salaried and wage earning employees in the establishment (office) in which they are employed, shall be prosecuted in court under the Edict

[3] The penalty is compulsory labor without confinement not to exceed six months at the usual place of work and forfeiture of up to 25 per cent of the pay. See Vol. I, Chapter 22, IV, note 87.

[4] The penalty is imprisonment for a period of from two to four months and in war industries and in related industries from five to eight years. See Vol. I, pp. 204, 828, and *infra* No. 42.

of the Presidium of August 10, 1940, and the Criminal Code.[5]

28. Acts of hooliganism committed by salaried or wage earning employees at the establishment (office) in which they are employed shall be prosecuted under the Edict of the Presidium of August 10, 1940, and the Criminal Code.[6]

29. For defective work, salaried and wage earning employees, besides undergoing the penalty imposed, shall be liable for reparation of damages in accordance with the legislation in force.

[5] See Vol. I, Chapter 22, IV.
[6] *Ibid.* p. 818.

41

R.S.F.S.R. Labor Code of 1922 as Amended[1] (Excerpts)

Chapter XXX. Guaranties and Compensations

Comment

A translation of Sections 47, 56, 57, 58, 68, and 176 of the Labor Code is given in Vol. I, pp. 94, 95, 544, 801, 802, 807, 814.

83. Wage earning and salaried employees shall be financially liable to their employer for any damage caused by them in the performance of the duties of their posts, namely, for the actual damage but not in excess of one third of their scheduled rate of pay, if such damage was caused by negligence in work or a breach of the law, the shop rules, or the employer's special instructions and orders. Wage earning and salaried employees shall be similarly liable: (a) in case of the injury, destruction, or loss of instruments of production (machines and appliances) or the injury of draught animals or other livestock; (b) in case of failure to collect full payments, loss of documents, total or partial loss of value of documents, or the employer's being forced to make unnecessary payments or to pay fines; (c) if articles of value entrusted to the employee for safekeeping or for other purposes depreciate below the prescribed standard; (d) in case of improper expenditure of

[1] For discussion see Vol. I, Chapter 22, VI.

moneys issued for business needs (as amended January 30, 1930, R.S.F.S.R. Laws 1930, text 83; September 1, 1932, *id.* 1932, text 324).

83 [1]. Wage earning and salaried employees shall be financially liable to their employer for any damage caused by them, up to the full amount of the damage, in the following cases: (a) when the damage was caused by actions of the employee constituting an offense which entails prosecution under the penal laws; (b) when financial liability in full or beyond the limit specified in Section 83 is imposed upon the employee by special laws with respect to damage caused to the employer by the employee in the performance of his duties; (c) when a special contract has been concluded in writing between the employee and the employer whereby the employee assumes financial liability either in full or beyond the limit specified in Section 83 for the depreciation below a prescribed standard of articles of value entrusted to the employee for safekeeping or for other purposes; (d) when the damage was not caused in the performance of the employee's duties (as amended January 30, 1930, R.S.F.S.R. Laws 1930, text 83).

83 [2]. In the cases specified in Section 83, compensation for the damage shall be paid by means of deductions made by the employer on his own authority from the amount of the employee's pay.

The employer may effect the deduction on his own authority not later than one month after the date on which he becomes aware of the damage done by the employee. The deduction shall not be made before seven days after the date on which the employee is notified of the employer's decision. If the employee, within the above-mentioned time limit, declares the deduction unlawful or the amount incorrect, such deduction shall not

be made, and the question shall be referred by the employer within fourteen days to the piece-rate and disputes board, or in appropriate cases, to the people's court.

In the cases specified in Section 83 [1], compensation for the damage shall be procured by the employer in case of dispute by bringing a suit in court against the employee.

Deductions by order of the employer may be made only in an amount which, together with all other deductions from an employee's pay by court order or an incontestable administrative procedure, does not exceed on each payday 50 per cent of the pay due to the employee (as amended January 30, 1930, R.S.F.S.R. Laws 1930, text 83).

83 [3]. The provisions of Sections 83–83 [2] shall not apply to cases where the damage caused by the employee to the employer is subject to compensation in the manner prescribed by the laws governing State financial control (as amended January 30, 1930, R.S.F.S.R. Laws 1930, text 83).

83 [4]. Wage earning and salaried employees shall be financially liable for materials and products and for the property of the establishment or office issued to them for their use (work clothes, tools, measuring appliances, et cetera), both in case of misappropriation or intentional injury and in case of loss or injury due to negligence.

The maximum amount of financial liability of employees shall be fixed for each kind of property by instructions issued by the Central Council of Trade-Unions.

In the assessment of the extent of liability for property issued for the use of an employee, the actual deterioration of the property shall be taken into account.

The sums which are to be recovered from the employee shall be deducted by order of the management directly from the wages or any other credits due to the employee from the establishment or office. The employee may appeal the deduction or the amount thereof to the piece-rates and disputes board.

Irrespective of his financial liability, the management may prosecute an employee in court in the event of misappropriation or intentional damage, or may impose a penalty upon him in accordance with the list of penalties (as amended September 1, 1932, *id.* 1932, text 324).[2]

Comment

Instructions issued under paragraph 2 of Section 83 [4] provide for liability in excess of actual damage, viz., tenfold or fivefold its amount. See Vol. I, pp. 822, 824.

83 [5]. The deduction to be made from the employee's pay under Section 83 [4] shall not exceed 25 per cent of all payments due to the employee on each payday. If other deductions are likewise being made from the employee's earnings, the total amount of all deductions shall not exceed 50 per cent of all credits due to the employee.

The deduction shall be made on each payday until the whole debt is paid. If the employee is dismissed before the whole debt has been paid by deductions at the above-mentioned rate, the remainder shall be collected from the other property of the employee or from his earnings at his new place of work, by means of an execution order issued by a notarial office (as amended September 10, 1931, R.S.F.S.R. Laws 1931, text 415; September 1, 1932, *id.* 1932, text 324).

[2] The list of penalties is contained in the Standard Rules of Internal Regulation of January 18, 1941, U.S.S.R. Laws 1941, text 63, quoted *supra*, No. 40. See also Law of August 7, 1932, quoted in Vol. I, Chapter 20, and Chapter 16, pp. 562, 728.

83 [6]. The judicial authorities, in the assessment of the amount of compensation due for damage, shall take into account not only the loss caused but also the actual circumstances under which it occurred, and likewise the financial situation of the employee. It shall not be admissible to hold an employee liable for damage which can be classed with normal industrial and business risks. In the assessment of the amount of the damage, only loss properly so-called shall be taken into account but not profits which the employer has failed to obtain (as amended January 30, 1930, R.S.F.S.R. Laws 1930, text 83).

42

Edict of December 26, 1941[1]

1. All laborers and office workers of both sexes employed in enterprises of war industry (aviation, tank, armament, munitions, naval shipbuilding, and war chemical industries), including evacuated enterprises and enterprises of other branches of industry serving war industries on the principle of co-operation, shall be considered mobilized for the duration of the war and assigned for permanent work at those enterprises where they are employed.

2. Unauthorized leaving of their place of work by laborers and office workers employed in the above-mentioned branches of industry, including those evacuated, shall be regarded as desertion, and those guilty of such unauthorized leaving of their place of employment (desertion) shall be liable to imprisonment for a period of from five to eight years.

3. Be it enacted that cases of persons guilty of unauthorized leaving of their place of employment (desertion) shall be tried by the courts-martial.

[1] Vedomosti 1942, No. 2. For discussion see Vol. I, Chapter 22, XI.

43

Edict Concerning Mobilization for War Work

Edict of February 13, 1942, Concerning the Mobilization for the Duration of the War of the Able-bodied Urban Population for Industrial and Construction Work.[1]

For the purpose of supplying man power to the most important enterprises and construction projects of war industries and other branches of the national economy working for national defense, the Presidium of the Supreme Soviet of the U.S.S.R. has passed the following resolution:

1. Be it enacted that, for the duration of the war, the able-bodied urban population shall be mobilized for employment at their place of residence in industries and construction projects, primarily in the aviation and tank industries, in the armament and munitions industries, and in the metallurgical, chemical, and fuel industries.

2. Be it enacted that the able-bodied urban population shall be subject to mobilization for work, to wit, men from sixteen to fifty-five years of age and women from sixteen to fifty years [2] of age from among those who do not work in government establishments or offices.

[1] Vedomosti 1942, No. 6. For citation of other laws and decrees drafting labor during the war, see Vol. I, Chapter 22, pp. 832–834.

[2] As amended September 19, 1942; the original text stated "45 years."

3. The following persons shall be exempt from mobilization:

(a) Men and women from sixteen to eighteen years of age who are subject to conscription for assignment to factory schools, trade schools, and railroad schools, according to the contingents established by the Council of People's Commissars of the U.S.S.R.;

(b) Nursing mothers and women who have children under four years of age, if there are no other members of the family who could take care of such children;

Mothers who have children under eight years may be mobilized and assigned to work on condition that the directors of the establishments or construction projects provide for placing their children in crèches or kindergartens, if there are no members of the family who can take care of the children.[3]

(c) Students of secondary schools and institutions of higher learning.

4. The procedure, terms, and scope of mobilization of able-bodied citizens for industrial and construction work shall be determined by the Council of People's Commissars of the U.S.S.R.[4]

5. Be it enacted that persons who try to avoid mobilization for industrial and construction work shall be liable to criminal prosecution and sentence by the people's courts to forced labor at their place of residence for a period of time not to exceed one year.

[3] Clause (b) is translated as amended by the Edict of August 7, 1943, Vedomosti 1943, No. 30.

[4] Payment was regulated by U.S.S.R. Laws 1943, text 209.

PART ELEVEN
CIVIL PROCEDURE

*

44

Code of Civil Procedure of the Russian Socialist Federated Soviet Republic, as Amended to July 1, 1947[1]

PART ONE

CHAPTER I. BASIC PROVISIONS[2]

1. The rules of civil procedure prescribed in the present Code shall be binding upon all institutions of the single judicial system of the R.S.F.S.R. (people's court, regional (provincial) court and the Supreme Court), and upon all institutions vested with judicial functions under special provisions, with such exceptions as may be fixed by said provisions (as amended March 20, 1930, R.S.F.S.R. Laws, text 163; January 15, 1931, *id.*, text 105).

2. Courts shall proceed in a case only upon declaration by a party in interest. Government attorneys (*prokuratura*) have the right both to commence and to

[1] Approved by the 2d Session of the 10th All-Russian Central Committee of July 7, 1923, took effect on September 1, 1923, by virtue of the Resolution of the All-Russian Central Executive Committee of July 10, 1923 (R.S.F.S.R. Laws 1923, text 478). The present translation is made from the latest edition Grazhdanskii Protsessual 'nyi Kodeks, (hereafter cited as Code of Civil Procedure (1948) ofitsial 'nyi tekst s izmeneniiami na 1 sentiabria 1947 g. (Moskva 1948), but all preliminary work was done using previous editions. References are principally to the 1943 edition, including only such information as also appears in the 1948 edition.

[2] For discussion, see Vol. I, Chapter 23, II.

become party to any action at any stage of the proceedings, if, in their opinion, the protection of the interests of the State, or of the toiling masses, thus require. A party may, at any stage of the case, change the cause of action and may increase or decrease the amount of claim. Where a party renounces his rights or his defense in court, the court shall decide in its own discretion whether such renunciation shall be accepted or not, and, if the court accepts it the party shall be deprived of the right again to file a suit based on the same cause of action.[3]

2*a*. Suits against parents for the maintenance and support of children (alimony) may be commenced by the courts upon complaint of the parents or the guardian, upon complaint of the offices of civil status records, as well as ex officio or upon complaint of the government attorney, of the agencies for protection of mothers and infants, of the orphans' courts and of the trade-unions (as amended April 16, 1945, Vedomosti 1945 No. 26).

The government attorney, on receipt of a petition or information indicating the nonpayment of alimony must institute proceedings and, in cases which require investigation, must secure the transfer of the case to the court within the period of time fixed by Section 53*b* (as amended May 10, 1937, R.S.F.S.R. Laws, text 40).

3. The court shall decide cases in conformity with legislative enactments and decrees of the workers' and peasants' government that are in force, as well as ordinances of the local authorities issued within their established jurisdictions.

[3] For discussion of the powers of government attorneys, see Vol. I, Chapter 23, pp. 846 *et seq.* and 865. The power of the court and the rights of parties are discussed *id.* p. 858 *et seq.*

Comment

(1) For the history of this provision, see Vol. I, Chapter 5, p. 155 *et seq.*, Chapter 6, p. 222 *et seq.*, Chapter 8, p. 273 *et seq.*, and Chapter 23, p. 866 *et seq.*

(2) U.S.S.R. Constitution 1936:

Section 19. The laws of the U.S.S.R. shall have the same force within the territory of every soviet constituent republic.

Section 26. In the event of a discrepancy between a law of a soviet constituent republic and the federal law, the federal law shall prevail.

R.S.F.S.R. Constitution 1937:

Section 17. The laws of the U.S.S.R. shall be binding in the territory of the R.S.F.S.R.

Section 21. The laws of the R.S.F.S.R. shall be binding on the territory of an autonomous republic (included in it). In case of discrepancy between the law of the autonomous republic and the law of the R.S.F.S.R., the law of the R.S.F.S.R. shall prevail.

(3) The R.S.F.S.R. Supreme Court has ruled:

Procedural rules in effect at the time of trial are binding upon the court regardless of the time when the legal relations in dispute originated.[4]

4. In the absence of a legislative enactment or a decree bearing upon the decision of a case, the court shall decide the case guided by the general principles of soviet legislation and general policies of the workers' and peasants' government.

Comment

(1) For the history and discussion of the provisions of this section see Volume I, Chapter 5, p. 153 *et seq.*, Chapter 6, pp. 217, 222 and Chapter 23, p. 866 *et seq.*

(2) The R.S.F.S.R. Supreme Court has ruled:

Section 4 of the Code of Civil Procedure does not give the

[4] R.S.F.S.R. Supreme Court, Plenary Session Resolution, January 17, 1927, Protocol 2, Code of Civil Procedure (1944) 152.

court the authority not to apply in a case indications and regulations of the workers' and peasants' government directly bearing upon a problem if such are available. Therefore, where the necessity arises to decide the disputed question under general principles of the soviet legislation and general policies of the workers' and peasants' government, the court must not confine itself to a mere reference to such principles but must state in detail in the judgment upon what general rules of legislation in particular or upon what particular policies of the government the judgment is based, because without such a specific statement the decision will be unfounded, i.e., groundless, and will make it impossible to check the correctness of a general reference (made in the decision). (Letter of Instruction No. 1 of 1926.)[5]

5. It is the duty of the court to strive in every way to clarify the actual rights and relationships of the litigants; for this purpose the court is not confined to pleadings and materials submitted by the litigants but must, by interrogation of the parties, see to it that all the essential facts of the case are clarified and supported by the evidence, thus rendering to toilers applying to the court active aid in the protection of their rights and lawful interests, so that their lack of legal information, low level of literacy, and similar circumstances may not be utilized to their disadvantage. The court shall explain to parties applying to it their rights and the necessary formalities in the required procedure and warn them of the consequences resulting from acts and omissions in this procedure.

6. Litigants must exercise all procedural rights belonging to them in good faith. The court shall immediately exclude all abuses and statements aiming to delay or obscure the proceedings.

7. The court, in examining contracts and documents

[5] R.S.F.S.R. Supreme Court, Civil Appellate Division, Letter of Instruction No. 1 of 1926, Code of Civil Procedure (in Russian 1944) 152; Kleinman, Civil Procedure (in Russian 1940) 219.

made abroad, shall take into consideration the laws effective at the place where the contract or the document was made, provided that said contracts or documents themselves were permitted by the laws of the R.S.F.S.R. or agreements between the R.S.F.S.R. and the country where they were made.[6]

8. In the event of difficulty in the application of foreign laws, the court may request the Ministry of Foreign Affairs[7] to communicate with the respective foreign government for the purpose of obtaining an opinion on the question involved. Such opinion shall be transmitted to the court by the Ministry of Foreign Affairs.

9. Proceedings shall be conducted in the language of the majority of the population of the given locality. Where the parties, witnesses or experts do not understand the language in which the procedure in the given case is conducted, the court must appoint interpreters and keep the interested parties informed through the interpreter concerning every act taken by the court.

10. A claim for damages caused by a criminal act, if not prosecuted and decided during the criminal proceeding, may be filed separately as a complaint under the rules of civil procedure.

Comment

Under soviet criminal procedure the person injured may sue for damages during the criminal proceedings. The pertinent provisions of the Code of Criminal Procedure are as follows:

13. In all cases in which the civil court has to render a decision on the civil consequences of a crime adjudicated by a criminal court, the final judgment of the criminal court shall be

[6] This section is discussed in Vol. I, Chapter 13, p. 471, Chapter 17, p. 646, Chapter 23, p. 868.

[7] Here as elsewhere the present appellations ministry and minister, are used instead of people's commissariat, people's commissar, as they were called before 1946.

binding on the civil court as respects the question whether the crime was committed and whether it was committed by the accused.

14. Any person who has suffered injury and damage as the result of a criminal act may sue the accused and persons who are financially liable for his acts in a civil action, which, regardless of the amount, shall be tried together with the criminal case by the court having jurisdiction over the latter (as amended June 6, 1927, R.S.F.S.R. Laws 1927, text 332).

15. The civil complaint may be filed either at the commencement of the criminal proceedings and in the course of the preliminary investigation or later, but prior to the hearing of evidence by the trial court. A person injured who has failed to bring the civil action in the course of the criminal proceedings shall have the right to file a civil suit according to the general rules of civil procedure.

Note: If the hearing of the case has begun but was adjourned, the person injured who failed to declare the civil claim at the first hearing may do so at the second hearing.

16. A civil action filed in the course of criminal proceedings shall be free of taxes and government fees.

17. In the event that the accused dies before the judgment and no decision is rendered in the civil action, the civil action shall be relegated to the ordinary civil procedure.

18. If the civil action is decided against the plaintiff in the course of criminal proceedings, it bars the person injured from bringing the same action again; likewise, if the civil action is decided against the plaintiff in the civil proceedings, the plaintiff is thereby barred from bringing the civil action in the course of criminal proceedings.

Note: If the case is dismissed on the grounds stated in the Notes to Sections 6 and 8 of the Criminal Code,[8] the person injured shall not thereby be deprived of the right to claim damages caused by the person against whom the criminal proceedings were instituted, and such person injured may file a civil suit under the rules of civil procedure.

. . . 54. Where a civil action is filed in the course of

[8] The passages of the Criminal Code referred to in the Note provide for the power of the criminal court to omit the imposition of punishment for an act which, though formally an offense, does not represent, at the time when adjudicated, any social danger in the opinion of the court.

criminal proceedings, the prosecuting attorney may, if he deems it necessary, support it at any stage of the proceedings. . . .

119. The judge-investigator having ascertained that injury or damage to a person was caused by the offense must explain to the latter his right to file a civil suit, which should be recorded.

120. If a civil suit is filed, the judge-investigator must examine the declaration of the person injured and enter a motivated decree, either admitting the person injured to participation in the criminal proceedings in the capacity of a civil plaintiff or denying such admittance.

121. The judge-investigator shall have authority to take, on his own initiative or on motion of the plaintiff, the steps necessary to secure execution of the judgment on the civil complaint, if he considers that the failure to take such steps may deprive the plaintiff of the possibility of obtaining damages.

Whenever the judge-investigator finds that the person injured suffered damage and there are reasons to believe that a civil action will be filed, he may take steps to secure a civil judgment before the civil action is filed. . . .

276. Before the court hears evidence, the presiding judge shall explain to the person injured his right to file a civil action, unless such action has already been filed. . . .

327. Regarding the civil action filed in the course of criminal proceedings, the court shall:

(1) Either refuse to entertain the action if the accused was acquitted because his act did not contain indicia of an offense; or,

(2) Enter a decision for the defendant, if the accused was acquitted because the commission of the act was not proved; or,

(3) Enter a decision for the plaintiff or for the defendant in all other instances depending upon whether the cause and amount of action are proved.

328. Whenever the criminal court refuses to entertain the civil action, the person injured may file his civil claim *de novo* according to the rules of civil procedure. If, during the trial of the criminal case, the civil claim is decided against the plaintiff, filing the same claim again under the rules of civil procedure shall be barred.

329. If the fixing of the amount of damages claimed requires postponement of the hearing in the criminal proceedings or obtaining additional material, the court may declare the right

of the person to satisfy his claim and relegate the matter to the competent court for determination under the rules of civil procedure of the amount of damages.

330. If no civil claim has been filed but the court finds that injury or damages were caused to a person, the court may take steps to secure the filing of a civil action in the future.

11. The parties, the government attorneys, and third parties admitted to join in the case, and their representatives, may, at any stage of the proceedings, examine the original court records, make excerpts therefrom, and obtain copies of briefs and documents which are part thereof.

For the issue of such copies (except copies of judgments and interlocutory orders) the litigants and third parties shall pay a single government fee of two rubles (as amended April 1, 1934, R.S.F.S.R. Laws, text 89; June 1, 1937, *id.*, 1937, text 90; Edict of the U.S.S.R. Presidium of April 10, 1942, Vedomosti 1942, No. 13; Edict of the R.S.F.S.R. Presidium of June 19, 1942 and April 29, 1942, U.S.S.R. Laws 1942, text 71).

Chapter II. Representation of Parties in Court

12. The parties may plead their cases in the courts either personally or through their attorneys. Whether the participation of the government attorney is necessary, rests with the court; if the court so rules, participation of the government attorney is obligatory.

13. In cases involving persons declared incapable of entering legal transactions or limited in such capacity (Sections 7, 8, and 9 of the Civil Code), the complaints on their behalf must be filed by their legal representatives. The complaints against such persons must be filed against their legal representatives.

Comment

Compare Code of Laws on Marriage, Etc., Section 74.

14. Corporate bodies (government institutions, government enterprises, co-operatives, partnerships, societies, unions, and other associations) may sue and be sued through organs specified by law or by their charters.

Comment

Compare Civil Code, Section 16.

15. Attorneys representing the parties in court may be of the following types: (a) those chosen by the parties; (b) legal representatives who act on behalf of persons incapable of entering into legal transactions; (c) persons under Section 74 of the Code of Laws on Marriage, Family and Guardianship; (d) persons appointed under Section 16 of the Civil Code to represent legal entities (as amended December 20, 1927, R.S.F.S.R. Laws 1928, text 39).

Comment

Section 74 of the Code of Laws on Marriage, Etc., provides for appointment of guardians and tutors for minors; Section 16 of the Civil Code deals with the representation of corporate bodies (legal entities).

16. The following persons may be attorneys representing parties:

(a) Members of the Bar and persons admitted by the Commissariat for Justice to the practice of law without being members of the Bar (Law on the U.S.S.R. Bar of 1939, U.S.S.R. Laws, text 394, Sections 4, 5);

(b) Persons representing trade-unions, on behalf of their members;

(c) Officers and permanent personnel of corporate bodies, on behalf of their respective bodies;

(d) Persons admitted by the trial court to represent the party in the case at trial.

17. Persons representing parties must be vested with proper authority which may be furnished by the party either orally in court, with appropriate entry made in the records, or by a separate, duly certified, power of attorney. Instead of a notarial certification, wage earning and salaried employees may have the authority to represent them in the case certified in the institution or enterprise employing them, while members of the Red Army [and Navy] may have the certification done in their military units, and farmers in the village soviets (as amended March 20, 1930, R.S.F.S.R. Laws, text 163).

18. The power gives the representatives the right to take any procedural steps, except to terminate the action by a settlement, to submit the dispute to arbitration, to make acknowledgments, to abandon claims in full or in part, to transfer the power to another person, to receive money or property. The afore-mentioned rights of the attorney must be specifically provided for in the power. Allegation that a document submitted by the adversary is forged may be pleaded only under a specific power issued for the given case.

Comment

See Sections 148–151, also Volume I, Chapter 23, pp. 863–864.

19. In cases specified in Section 13, powers shall be issued by legal representatives, while in cases specified in Section 14, by organs of the corporate bodies established by law or by the charter of the corporate body.

20. The following persons may not represent parties:

(a) Persons who have not reached the age of eighteen years;

(b) Persons deprived of personal and civic rights under a court sentence, during the entire period of such disability;

(c) Wards;

(d) Persons dropped from the rolls of the Bar (U.S.S.R. Laws 1939, text 394);

(e) People's judges, judges of the higher courts, judge-investigators and government attorneys; the last mentioned except for cases where their participation is authorized by Sections 2, 12, and 172 of the Code of Civil Procedure.

Chapter III. Jurisdiction

21. Except in cases specified in Sections 22 and 23, the people's courts [*Narodny Sud*] shall have jurisdiction over all the following cases arising out of civil relations:

(a) Disputes in which one or both parties are private persons (as amended January 10, 1934, R.S.F.S.R. Laws, text 31);

(b) Disputes between organizations, enterprises and organizations of the socialized sector of national economy arising out of:

Contracts concerning the use of public utilities, regardless of the value of the claim;

Contracts of shipping by rail, water, and air involving sums not to exceed 10,000 rubles, except disputes over "contracts-general" made between central government departments and determining planned shipment on a large scale;

With respect to all other property relationships, involving sums not to exceed 1,000 rubles (as amended *id.*).

(b^1) Disputes of collective farms with one another and disputes between collective farms and government organizations and co-operative organizations which arise out of contracts and other property relations, regardless of the sum involved, except for such disputes between collective farms regarding land, as are to be decided in a procedure established by special laws (as amended October 10, 1937, R.S.F.S.R. Laws, text 126);

Comment

For cases involving land tenure and exempt from the jurisdiction of courts, see Volume I, Chapter 20, p. 765 *et seq.*

(c) Disputes between institutions, enterprises and organizations of the socialized sector of national economy on the one hand and concession enterprises and foreign firms on the other, involving sums not to exceed 10,000 rubles (as amended January 10, 1934, R.S.F.S.R. Laws, text 31);

(d) Regardless of their value, claims based on documents subject to execution by means of an execution clause written on them by a notarial office, or any other agency vested with notarial functions, where the case must be tried under the general rules of civil procedure because of the expiration of the period of time fixed by law, or because the claim made executory by the aforementioned clause by a notarial agency is contested by the debtor (as amended October 1, 1936, R.S.F.S.R. Laws, text 136).

Note: The people's courts shall have jurisdiction over the following cases arising out of labor relations in con-

nection with the application of labor laws, collective bargaining and employment contracts, shop rules and penalty schedules:

(a) Where the dispute is not subject to the jurisdiction of the piece-rate and dispute board of the establishment;

(b) Where the piece-rate and dispute board fails to decide the submitted case;

(c) Where the decision of the piece-rate and dispute board has been overruled by a superior authority (as amended January 10, 1934, R.S.F.S.R. Laws, text 31; September 10, 1935, *id.*, text 205; October 1, 1936, *id.* text 136).

Comment

(1) The text of the Note to Section 21 assigned labor cases to the jurisdiction of special people's courts for industrial and labor cases. However, the new Judiciary Act of 1938 abolished these courts, and such cases are subject now to the jurisdiction of the ordinary people's courts.

(2) The people's courts are not the lowest courts in the soviet judicial system. For petty offenses and petty disputes, an attempt has been made to set up informal courts composed of the working colleagues of the litigants or their neighbors in an apartment house. These courts are: (a) village courts (*selskii obshestveny sud*) whose jurisdiction has been defined by several acts (R.S.F.S.R. Laws 1930, text 629; U.S.S.R. Laws 1932, texts 180, 355 and 503); (b) industrial comrades' courts (R.S.F.S.R. Laws 1931, text 160); and (c) comrades' courts as housing courts (R.S.F.S.R. Laws 1931, text 295). The jurisdiction of these courts is optional, and at present their role is negligible.

(3) See comment to Section 22.

(4) For the functions and jurisdiction of the piece-rate and dispute boards, see Volume I, Chapter 22, p. 803.

(5) For civil disputes exempt from the jurisdiction of courts, see Vol. I, pp. 765 *et seq.*, 804, 837.

22. The regional (provincial) court [*kraievoi* (*oblastnoi*) *sud*] shall have jurisdiction over:

(1) Disputes between institutions, enterprises and organizations of the socialized sector of national economy arising out of:

(a) Operations of the State Bank where it is a party to a dispute involving sums over 1,000 rubles;

(b) Contracts of shipment by rail, water, and air, involving sums over 10,000 rubles, except disputes over "contracts-general" made between central government departments and determining planned shipment on a large scale.

(2) Disputes between institutions, enterprises, and organizations of the socialized sector on the one hand and concession enterprises and foreign firms on the other, where the value of the claim is over 10,000 rubles (as amended January 10, 1934, R.S.F.S.R. Laws, text 31).

Note: The regional (provincial) court may remove any case from any court which is under its jurisdiction, and assume jurisdiction over the case. Depending upon the geographical location of the parties and upon other circumstances, the court may remand certain cases, or categories of cases, to any people's court for its determination (as amended, January 10, 1934, *id.*).

Comment

(1) The courts mentioned in this section correspond to provincial administrative subdivisions of Soviet Russia, regions (*krai*) and provinces (*oblast*). Both these terms designate virtually the same type of subdivision, viz., a provincial territory that is not organized on a racial basis, as distinguished

from an autonomous republic or autonomous region, each of which embraces some racial minority.

In the autonomous republics which are subdivisions of some of the constituent republics, viz., of the R.S.F.S.R., Georgian, Azerbaijan, and Uzbek republics, there are supreme courts which have the same jurisdiction as the regional (provincial) courts. In autonomous regions, there are regular regional courts. See Volume I, Chapter 23, p. 841. In large cities there are city courts equivalent to regional courts.

(2) The soviet judicial system is discussed in Volume I, Chapter 7, I and Chapter 23, I.

(3) Jurisdiction of the courts over disputes between government enterprises. Sections 21 and 22, assign to the jurisdiction of the people's courts and of the regional (provincial) courts only certain categories of disputes between "institutions, enterprises and organizations of the socialized sector." Thereby all other disputes between such organizations are by implication exempt from the jurisdiction of the regular courts. The term "the socialized sector" covers all the governmental agencies that manage industries and commerce in Soviet Russia. These agencies carry on trade as legal entities, i.e., as quasi corporations with a certain amount of independence in making contracts among themselves and with private persons. (For more details, see Volume I, Chapter 11.) In summarizing the provisions of Sections 21 and 22 of the Code of Civil Procedure, one arrives at the conclusion that only the following disputes between such governmental quasi corporations are cognizable by the ordinary courts:

(a) Disputes concerning the use of public utilities such as gas, electrical power, et cetera, regardless of the sum involved—these come under the jurisdiction of the people's courts;

(b) Disputes in which the U.S.S.R. State Bank is one of the parties—these are tried by the people's courts if the sum involved does not exceed 1,000 rubles; otherwise they come under the jurisdiction of the regional (provincial) courts;

(c) Disputes arising from contracts of shipping by rail,

water, and air, except special categories of the so-called "contracts-general" (*generalnye dogovory*) concerning shipping, which are no more than agreements between the departments of the central government concerning the general plan of transportation for the ensuing year. Disputes within the jurisdiction of the court in general come under the people's courts, if they do not involve more than 10,000 rubles; otherwise, they are determined by the regional (provincial) courts;

(d) All disputes involving less than 1,000 rubles, over which the people's courts have jurisdiction.

All other disputes are settled by special courts, which are given the misleading name of "Arbitration," discussed in Volume I, Chapter 23, p. 870 *et seq.*

23. The Maritime Arbitration Commission attached to the U.S.S.R. Chamber of Commerce, under a special statute governing that body,[9] shall hear the following disputes, whenever the parties agree to submit such disputes to arbitration: disputes over compensation for assistance rendered by seagoing vessels to each other, or assistance rendered by a seagoing vessel to a river craft or vice versa (salvage), as well as disputes arising out of collisions of seagoing vessels, or of seagoing vessels and river craft; or those arising out of circumstances in which seagoing vessels have caused damage to port structures; or those growing out of relations of affreightment of seagoing vessels, steamship agency service, and maritime shipping (by consignment); as well as disputes arising from marine insurance.

Disputes arising out of transactions in foreign trade and subject to arbitration, in particular, disputes between foreign firms and soviet trade organizations, shall be heard by the Foreign Trade Arbitration Commission

[9] See *infra* Nos. 38 and 39; also Vol. I, Chapter 23, p. 874.

attached to the U.S.S.R. Chamber of Commerce, under a special statute governing that body[10] (as amended January 10, 1934, R.S.F.S.R. Laws, text 31; June 10, 1936, R.S.F.S.R. Laws, text 94).

Comment

(1) For a concise resumé of the procedure of the arbitration commissions mentioned in Section 23, see Hazard, "Soviet Commercial Arbitration," (1945) 1 International Arbitration Journal 8 *et seq.* For a substantial analysis of the awards of the Foreign Trade Arbitration Commission in particular, see Rashba, "Settlement of Disputes in Commercial Dealings with the Soviet Union," (1945) Columbia Law Review 530. See also Foreign Trade Arbitration (in Russian 1941).

(2) Statutes governing procedure of the arbitration commissions mentioned in Section 23 are translated in Nos. 38–41.

24. The Supreme Court may remove any case from any court of the R.S.F.S.R. and assume jurisdiction over it, or may, depending on the residence of the parties and upon other circumstances, remand certain cases, or categories of cases, for the determination of any regional (provincial) court (as amended January 10, 1934, R.S.F.S.R. Laws, text 31).

24*a*. All civil cases, except those hereinbelow specified, shall be tried by a court composed of a presiding people's judge and two people's assessors (co-judges).[11]

The following cases shall be tried by a people's judge sitting alone:

(a) Claims for collection of rent, payment for public utilities service, and for the use of non-habitation premises, provided the dispute is not connected with dis-

[10] See *infra* Nos. 40 and 41; also Vol. I, Chapter 23, p. 875.

[11] The term and position of people's assessors are discussed in Vol. I, Chapter 23, p. 838.

possession or the determination of the amount of said payments;

(b) Disputes between institutions, enterprises, and organizations of the socialized sector [12] (subsection (b) of Section 21), except cases in which even one of the parties is a collective farm (subsection (b [1]) of Section 21) (as amended September 10, 1935, R.S.F.S.R. Laws, text 205);

(c) Claims based on documents, subject to execution by an execution clause written thereon by a notarial agency where the case is subject to trial under the general rules of civil procedure because of the expiration of the period of time specified by law, or because the debtor contests the claim made executory by such clause (subsection (d) of Section 21) (as amended October 1, 1936, R.S.F.S.R. Laws, text 136);

(d) Cases requiring special procedure, except cases specified in Chapter XXVI.

All rulings made by the court during the preliminary preparation of the case, during court proceedings and the execution proceedings, shall be made by the people's judge sitting alone, except rulings made during the trial of a case which, under the provisions of the first paragraph of the present section must be heard with the participation of people's assessors, as well as rulings concerning payment in installments or postponement of execution (Section 182) and rulings made in explanation and interpretation of decisions (Section 185), in which excepted cases the rulings shall be made by a court composed of a people's judge and two people's assessors.

If, during the trial of a case by a people's judge sitting alone, a dispute arises which is not triable by a people's

[12] See *supra*, comment 3 to Section 22.

judge sitting alone, the case shall be remanded for the determination of a people's court composed of a people's judge and two people's assessors [13] (as amended December 20, 1934, R.S.F.S.R. Laws 1935, text 9; September 10, 1935, *id.*, text 205; October 1, 1936, *id.*, text 136).

Comment

Order of the People's Commissar for Justice approved by the Council of People's Commissars on July 28, 1939:[14]

Sections 9 and 14 of the Judiciary Act of 1938 provided that trial in all courts be conducted with the participation of people's assessors except for cases for which the law expressly provides a trial by three judges.

From this it follows that the Judiciary Act does not provide for a trial of civil or criminal cases by a single judge without people's assessors.

Therefore . . . in people's courts all criminal and civil cases without exception must be tried by a bench consisting of a people's judge and two people's assessors.

An exception was established by the Edict of August 10, 1940, according to which criminal cases involving absenteeism are tried by a single people's judge.

25. Suits shall be filed with the court in whose district the defendant has his permanent residence or permanent employment.

Note 1: Actions for maintenance and support (alimony) and for recovery of damages caused by death, injury or any other bodily harm, may be filed also in the jurisdiction where the plaintiff has his residence (as amended November 20, 1929, R.S.F.S.R. Laws, text 851).

Note 2: Actions for recovery of damages caused by the collision of vessels may be filed also in the jurisdic-

[13] See Vol. I, Chapter 23, p. 838, and the Judiciary Act, *supra* No. 36, Sections 9 and 14.

[14] U.S.S.R. Laws 1939, text 381, Code of Civil Procedure (1944) 168.

tion where the vessel liable for the damage caused by the collision is located, or in the jurisdiction of the port of the vessel's registry (as amended January 16, 1928, R.S.F.S.R. Laws, text 93).

26. Actions against a defendant whose residence is unknown shall be filed in the jurisdiction where his property is located or in the jurisdiction of the last-known place of his permanent residence or employment; the last-known place of residence or employment of the defendant must, in any event, be definitely established.

Actions against a defendant who has no permanent or temporary residence in the U.S.S.R. may be filed in the jurisdiction where his property is located or in the jurisdiction of the place of his last-known residence or employment.

In cases for the collection of money from parents for support and maintenance of children (alimony), in which the whereabouts of the defendant is unknown, the government attorney's office, upon resolution of the court, shall issue an order to search for and find the defendant through the agencies of the Ministry of the Interior.[15]

The costs incurred in searching for the defendant shall be reimbursed by the defendant simultaneously with the entry of a judicial decision against him (as amended November 20, 1929, R.S.F.S.R. Laws, text 851; May 10, 1937, *id.*, text 40 and April 16, 1945, Vedomosti 1945, No. 26).

27. Actions against corporate bodies shall be filed in the jurisdiction where its executive organ (Section 14) is located or in the jurisdiction where its local organ is

[15] See note 7.

located, provided the claim arises out of a transaction concluded with this local organ.

28. Actions arising out of contracts in which the place of performance is specified, or which may, by their very nature, be performed in a definite place only, may be filed also with the court of the place of the performance of the contract.

Comment

The R.S.F.S.R. Supreme Court has ruled:

> . . . The Code of Civil Procedure does not prohibit a stipulation in a contract of territorial jurisdiction (venue) of disputes which may arise under the contract. Therefore the Plenary Session advises the courts . . . to take jurisdiction in disputes arising from such contracts in accordance with the contractual stipulations except where an exclusive jurisdiction is established by the law for a specified category of actions (e.g., actions against railroads or the State Bank).[16]

29. Actions concerning building tenancy rights, land lots, enterprises, actions for exemption of property from attachment and sale, and actions brought against the estate of a deceased owner, shall be filed in the jurisdiction in which the entire property, or its principal part, is located.

30. The choice of a court, from among the several courts which have jurisdiction over the case, shall rest with the plaintiff.

31. If the people's court rules that the case before it is outside its jurisdiction, the court shall return the complaint, together with the exhibits and a copy of its order, for submission to the proper court. An appeal shall lie from the court's order refusing to proceed in the case for want of jurisdiction (Section 249) (as amended March 20, 1930, R.S.F.S.R. Laws, text 163).

[16] R.S.F.S.R. Supreme Court, Plenary Session, Ruling of February 3, 1932, Protocol No. 1, Code of Civil Procedure (1943) 171.

31*a*. Where the court itself is a party to the suit, the case shall be remanded by the court for determination to the nearest proper court only if the other party petitions therefor not later than the first trial session of the court hearing the case (enacted November 20, 1929, R.S.F.S.R. Laws, text 851).

32. The supreme court and the regional provincial court may, depending on the special circumstances of the case, at the request of the parties or on its own initiative, make an order for change of venue of the case from one court within its jurisdiction to another court (as amended November 20, 1929, R.S.F.S.R. Laws, text 851; January 15, 1931, *id.*, text 105).

33. Jurisdictional disputes between courts shall not be permitted.

33*a*. A court, having once assumed jurisdiction in a case in keeping with jurisdictional rules, shall proceed to try the case on its merits in all instances, except those specified in Section 103, even though the case, in the course of the proceedings, becomes so altered as to fall properly within the jurisdiction of another court, in particular where the original amount of the claim has been raised beyond the jurisdictional limits of the given court or where the sum total of the counterclaim filed exceeds said limit (as amended November 29, 1929, R.S.F.S.R. Laws, text 851).

Chapter IV. Court Costs

34. Court costs in connection with the trial of a case shall consist of the single government fee and the costs incurred in the proceedings (as amended March 20, 1931, R.S.F.S.R. Laws, text 164).

Note: [Enacted April 1, 1934, R.S.F.S.R. Laws, text 89. This was repealed on June 1, 1937, *id.*, text 90.]

35. A single governmental fee shall be collected upon filing of every complaint or counterclaim as well as upon declaration of the third party joining the suit with independent claims according to the following rates:

(a) Where the amount of the claim is under 200 rubles, 3 rubles shall be collected for each complaint or declaration;

(b) Where the amount of the claim is 200 rubles or over but under 500 rubles, 5 rubles shall be collected for each declaration or complaint;

(c) Where the amount of the claim is 500 rubles and over but is under 5,000 rubles, 2 per cent of the amount of the claim shall be collected;

(d) Where the amount of the claim is 5,000 rubles or over, 6 per cent of the amount of the claim shall be collected;

(e) For complaints filed in disputes between collective farms and in disputes of collective farms with governmental and co-operative organizations, 1 per cent of the amount of the claim but not less than one ruble shall be collected;

(f) For complaints in nonproperty cases three rubles shall be collected upon filing of every complaint.

For filing of every cassation appeal from a court judgment a fee shall be collected equal to one half of the rate established by the present section for complaints and shall be computed from the amount which is disputed by the appeal (as amended June 1, 1937, R.S.F.S.R. Laws, 1937, text 90; June 19, 1942, Edict of the Presidium of the R.S.F.S.R. Supreme Soviet).

36. The amount of the claim shall be determined:

(a) In property suits and suits for the collection of money, by the sum of money or the value of the property sought, as originally stated by the plaintiff;

(b) In suits consisting of several independent prayers for relief, by the sum total of all claims;

(c) In suits for annuities and other periodical payments in money or in kind, by the sum total of all payments in money or in kind;

(d) In suits for payment of maintenance and support to destitute parents who are unable to work, to children and spouses, by the sum total of payments and disbursements for one year; in suits for payments and disbursements not determined by a period of time or for life, by the total for three years;

(e) In suits for the termination or extension of the effective period of a lease contract, by the sum total of the rent due for the remaining effective period of the contract.

37. The amount of claim shall be stated by the plaintiff. Where the asserted amount is obviously disproportionate to the actual value of the property sued for, the amount of claim shall be determined by the court.

38. Claims the evaluation of which is difficult at the time of the filing of the suit, shall be taxed tentatively by the court at not less than ten rubles, which fee shall be subsequently augmented to correspond with the amount as determined by the court in the judgment (as amended March 20, 1931, R.S.F.S.R. Laws, text 164; April 1, 1934, *id.* 1934, text 89).

39. Where the amount of the claim in the suit is decreased, the fee paid shall not be refunded. Where the amount of the claim is increased, the additional fee due is payable simultaneously with the declaration of the

increased claim but in case of government institutions, the court may defer such payment.

40–41. [Repealed on March 20, 1931, R.S.F.S.R. Laws, text 164.]

42. The earnings of the persons summoned to the court as witnesses shall be secured.

A witness who does not belong in the category of wage earning or salaried employees, claiming compensation for being called away from his work, must inform the court thereof after interrogation. The extent of compensation in this case shall be determined by the court but may not exceed the average wage prevailing in the given locality.

Witnesses summoned to the court who are in the category of wage earning or salaried employees shall have the right to receive their full wage or salary at the place of work or employment.

Witnesses residing outside the district (rayon) of the court, shall be entitled to travel expenses (as amended June 1, 1932, R.S.F.S.R. Laws, text 238).

42*a*. Sums necessary for payment of compensation to witnesses and payment for their travel shall be included in the list of court costs and collected from the parties to the suit in a manner provided for in Sections 45, 46, 47, and 47*a* of the present Code (enacted June 1, 1932, R.S.F.S.R. Laws, text 238).

43. Governmental fees and costs incurred in the proceeding shall not be collected:

(a) From plaintiffs who are wage earners or salaried employees and sue for wages, salaries, or for other claims growing out of the contract of employment;

(b) From plaintiffs who are members of producers' co-operatives (artels) for claims for remuneration for

work done in co-operative shops of such organizations;

(c) From plaintiffs who are members of collective farms in their disputes with the collective farms over the payment of labor days earned;

(d) From plaintiffs who sue for remuneration flowing from the right of an author or the right of an inventor;

(e) From any plaintiff who sues for maintenance and support or for compensation for maiming or other bodily injury;

(f) From plaintiff-agencies of social security claiming from persons or organizations the aid paid to the injured person;

(g) From plaintiffs and defendants in cases involving collection of arrears in taxes, in payments to the State and local budgets other than taxes, in assessed insurance, in mandatory deliveries in kind, in payments due in money or in kind to the machine-tractor stations for their services and in payments of fines;

(h) From toilers who are deemed by the trial court lacking in means to pay the fee;

(i) From plaintiffs who are excused from payment of the fee by the R.S.F.S.R. Minister of Finance, the minister of finance of an autonomous republic or by the regional or provincial tax collection office (as amended March 20, 1931, R.S.F.S.R. Laws, text 164; June 19, 1942, Edict of the Presidium of the R.S.F.S.R. Supreme Soviet).

44. The compensation of an expert shall be determined by the court at the time the expert is called.

45. The amount required for the compensation of experts and witnesses, the compensation of the costs of their travel, and payment of expenses connected with the

taking of a view of the premises shall be deposited in advance by the party who requested the call of the witness or expert or the taking of a view of the premises. Where the call or travel was ordered on the court's own initiative, the deposit to defray the costs shall be made, in advance, by both parties.

Where the witnesses summoned to testify in court are wage earning or salaried employees, the interested party shall pay what corresponds to an average wage in the given locality. This amount shall be collected directly for the benefit of the government treasury (as amended June 1, 1932, R.S.F.S.R. Laws, text 238).

45*a*. As an exception to the rule of the preceding Section (45), the court may, in view of the social and economic status of the parties, require a deposit of the amount necessary to defray the costs of the experts' testimony and compensation of witnesses, upon either one or both of the parties, regardless of who has moved to call for experts or witnesses.

If parties evade the deposit of these sums, their collection shall be enforced by an order of the court.

The court also may, taking into consideration the social and economic status of the parties, exempt them, fully or partially, from the payment of these sums.

In any event, the duty to deposit the expenses specified in Section 45 may not be imposed upon such institutions, enterprises, organizations and persons as are exempt from the single government fee (as amended June 1, 1932, R.S.F.S.R. Laws, text 238).

46. The single government fee and all other costs incurred by the plaintiff, and those from which he was exempt under Section 43 shall be collected from the defendant—if he is not exempt from such payment under Section 43—in proportion to the amount of the claim

allowed by the court's decision. The defendant also has the right to reimbursement of his costs in proportion to the part of the claim disallowed by the court (as amended November 20, 1929, R.S.F.S.R. Laws, text 851; March 20, 1931, *id.*, text 164).

Note 1: The party successful in the suit shall have the right to reimbursement, besides that for the amount of the single government fee paid by it, for counsel's fees, where counsel participated in the case, to the extent of 5 per cent of the part of the claim which by the decision was adjudicated in his favor (as amended March 20, 1931, R.S.F.S.R. Laws, text 164).

Note 2: A party who, in bad faith, has filed an unfounded claim or who, in bad faith, contests a claim, or who systematically obstructs the speedy and just determination of the case, may be ordered by the court to pay compensation to the other party for actual loss of working time in conformity with average earnings but not to exceed 5 per cent of the allowed or disallowed part of the claim. The payment of this compensation may, depending upon circumstances of the case, be imposed even upon the party in whose favor the decision was made, either in full or in part, regardless of the determination of the question concerning reimbursement for other court costs (as amended November 20, 1929, R.S.F.S.R. Laws, text 851).

47. Costs incurred by the court in trying civil cases, in particular in summoning witnesses and experts and the payment of their compensation, shall be collected for the benefit of the government treasury from each of the parties, in proportion to that part of the claim in which the decision went against the respective parties (as amended June 1, 1932, R.S.F.S.R. Laws, text 238).

47*a*. Where the amount of the single government fee collectible from one person for the benefit of the government treasury in a case where the plaintiff was exempt, under Section 43 of the present Code, from the payment of said fee and the costs incurred by the court in trying the case (Section 47), is less than one ruble, such collection shall not be made, and the costs incurred by the court shall be defrayed by the treasury (as amended November 18, 1926, R.S.F.S.R. Laws, text 666; March 20, 1931, *id.*, text 164).

48. A separate appeal (*chastnaia zhaloba*) (Section 249) will lie from an incorrect determination by the court of the amount of the claim and the calculation of fixed fees.

Chapter V. Fines

49. A witness summoned by the court and failing, for reasons deemed unjustifiable by the court, to appear on the first call shall be subject to a fine of from three to ten rubles, depending on his economic status. If the witness fails to appear on a second summons, he shall be brought to court forcibly and fined double.

50. A witness refusing to testify for a reason deemed unjustifiable by the court, shall be subject to a fine of from ten to fifty rubles.

51. An expert failing to appear or refusing to give expert opinion for reasons deemed unjustifiable by the court shall be subject to a fine of from three to ten rubles.

52. Third parties who are not parties to the case and who refuse, at the request of the court, to deliver documents in their possession, shall be subject to a fine of from ten to fifty rubles.

52*a*. Persons who have been fined may petition the

court imposing the fine to cancel the fine. The decision of the court relating to such petition is not subject to appeal (as amended November 20, 1929, R.S.F.S.R. Laws, text 851).

Chapter VI. Time Periods Governing the Procedure

53. Where periods of time applying in the proceedings are not fixed by law, they shall be determined by the court.

53*a*. Labor cases, both those pending in people's courts and in regional (provincial) courts must be heard not later than within five days from the date of their filing (as amended March 25, 1929, R.S.F.S.R. Laws, text 273; March 20, 1930, *id.*, text 163; January 15, 1931, *id.*, text 105).

53*b*. Cases involving maintenance and support shall be heard by the court, if the defendant resides in its district, not later than within ten days from the date of the filing of the suit, and in all other cases—not later than within a period of twenty days (as amended May 10, 1937, R.S.F.S.R. Laws, text 40; April 16, 1945, Vedomosti No. 26).

54. The periods of time fixed by law or determined by the court shall be calculated in months and days (as amended March 20, 1930, R.S.F.S.R. Laws, text 163).

55. A time period calculated in months expires on the corresponding date of the last month. Where the end of the time period calculated in months falls in a month which does not have a corresponding date, the last day of that month shall be deemed to be the end of the period.

56. Where the time period is calculated in days, the calculation commences on the day following that on

which the running of the time period commenced (as amended March 20, 1930, R.S.F.S.R. Laws, text 163).

57. If the termination of the time period falls on the 7th or 8th day of November, the 22d of January, May 1st or 2d, or December 5th, the last day of the period shall be deemed the first working day following any one of these dates.

In the case of institutions, enterprises and organizations that have not been placed on the continuous-production-week basis and, in the case of individual citizens, where the termination of the time period falls on revolutionary days, days of special rest (Sections 111 and 112 of the Code of Labor Laws), and days of weekly rest, the nearest working day shall be deemed the last day of the term (as amended October 30, 1930, R.S.F.S.R. Laws, text 670).

Comment

By the Decree of June 27, 1940 (U.S.S.R. Laws, text 385) days of special rest were abolished—and the normal seven-day week with Sundays as rest days was reintroduced.

Note to Section 57, now obsolete, is not included. Code of Civil Procedure (1948) 21.

58. The limit of the time period continues until 12 o'clock midnight, but where a certain act is to be performed within this period in a court whose office hours terminate earlier, the time period shall expire at the end of the office hours.

59. The time period shall not be deemed to have lapsed, if the complaint or paper required by the court has been mailed prior to the expiration of the time period.

60. When proceedings are suspended, all current and unexpired time periods shall be likewise suspended. The

running of the time period shall be suspended from the moment of the happening of the event by reason of which proceedings are being suspended.

61. The time periods subject to determination by the court may be extended at the request of an interested party.

62. If a party fails to observe the time period fixed by law or determined by the court, for reasons deemed justifiable by the court, the lapsed time period may be revived by the court.

63. The motion to revive the lapsed time period shall be, on notice to both parties, ruled on by the court in which the paper was to have been filed, or an act performed.

64. Simultaneously with the motion to revive the lapsed time period, the paper must be filed or the act performed, whichever is the subject matter of said motion.

65. Papers filed after the expiration of the time period fixed for them by law shall not be considered.

Chapter VII. Summons to Court and Other Court Notices

66. Court notices shall be delivered either by registered mail, return receipt required, or by messenger; they also may be transmitted through the appropriate village soviet. Moreover, the people's judge may issue a notice to the litigant at his request, for delivery thereof to the other party (as amended January 1, 1932, R.S.F.S.R. Laws, text 21).

67. All communications between the court and persons and institutions which are outside the territory of the U.S.S.R. shall be made through the Ministry of Foreign Affairs.[17]

[17] See note 7, *supra*.

68. Summons to appear in court must contain: (a) the name of the court; (b) an indication of the place and time of the court session, of the names of the parties and of the case in which the summons is made; (c) a request to submit all proofs relating to the cause; (d) a statement of the legal consequences of failure to appear.

69. Summons and court notices shall be delivered to the one summoned in person. The time of delivery shall be noted on the notice delivered and upon the receipt certifying delivery, which receipt must be returned to the court.

Note: Where the notice is issued to a litigant for delivery to the other party (Section 66), the signature of the person receiving it must be certified by the management of the house in which the person notified resides or of the institution where he is permanently employed, or by the village soviet, as the case may be (as amended January 1, 1932, R.S.F.S.R. Laws, text 21).

70. If the officer who delivers the notice fails to find the person summoned, he shall make delivery of the notice to any member of the family of the person summoned, residing jointly with him, or to the management of the house in which the notified person resides or of the institution where he is permanently employed, as the case may be.

71. If a person to whom the notice of the court is delivered refuses to accept the same, the person making delivery shall enter an appropriate notation of the fact upon the receipt.

72. If the actual whereabouts of the defendant is unknown, the court does not need to await the notification

of actual service of the summons upon him, but may mark the case for trial as soon as it receives a copy of the summons which bears thereon the statement of the receipt thereof by the management of the house in which the defendant was known last to reside.

73. Court notices shall be delivered to the person concerned at the address indicated by the party.

74. Litigants themselves must inform the court concerning change of address during the trial of the case. Where such information has not been filed, court notices shall be sent to the party's address last known to the court, at which address the previous notices have been served; and such service shall be deemed effected even though the addressee no longer resides at that address.

PART TWO. PROCEEDINGS IN SUITS UPON COMPLAINTS

CHAPTER VIII. FILING OF SUIT [18]

75. The court shall commence the trial of a civil case upon the filing of a written complaint; oral complaints shall be permitted only in cases within the jurisdiction of the people's court. The filing of a written complaint is not obligatory in labor cases (as amended March 25, 1929, R.S.F.S.R. Laws, text 273).

76. The complaint must contain:

(a) The exact name of the plaintiff, i.e., of the person who files the prayer for relief, as well as of his attorney if the complaint is filed by the latter;

(b) The exact name of the defendant, i.e., of the person who is cited as respondent in the claim;

(c) The exact permanent residence, or the place of

[18] For discussion, see Vol. I, Chapter 23, pp. 857–858

permanent occupation, of the plaintiff and of the defendant;

(d) The statement of the facts which serve as a basis for the claim, and indication of proof substantiating the claim;

(e) The plaintiff's prayer for relief and a statement of the amount of the claim.

Note 1: "Persons," as used in this section, comprise both physical persons and legal entities.

Note 2: Where complaints are filed by an attorney, a power of attorney or an authority shall be filed with them (Section 17).

77. An oral declaration [of a complaint] shall be reduced to writing by the people's judge, or on his instruction by the secretary, in the form of a protocol, which shall be read to the plaintiff and signed by the judge and by the declarant.

78. In cases which are to be tried by the Supreme Court or by the regional (provincial) courts, the complaints and all documents must be filed together with copies in number equal to that of the parties of the other part.

In cases which are to be tried in the people's court, the people's judge who receives the complaint may, depending on the complexity and the nature of the case, require the plaintiff to file copies of the complaint and of the documents thereto appertaining, in number equal to that of the parties of the other part (as amended November 20, 1929, R.S.F.S.R. Laws, text 851; January 15, 1931, *id.*, text 105).

79. An original document filed with the case may be withdrawn, provided a copy is substituted in the file,

certified by the party submitting the document, and, on the original document which serves as a basis of the claim, an inscription must be made stating that with respect to this document a suit is pending, but, if such document is withdrawn after the termination of the case, the inscription must recite also the decision made therein.

80. Prior to committing the case for trial and in order to expedite the determination of the case, the judge, sitting alone, shall take the following steps in the preliminary preparation of the case:

(a) Decide what witnesses shall be summoned for the trial session;

(b) Order a view of the premises and summon the parties to be present thereto;

(c) Obtain from the defendant, or from third parties, all documents and information, or issue to the party a certificate authorizing the procurement thereof;

(d) Ascertain by interrogation of the plaintiff, while he is filing the complaint, the probable defenses of the defendant and ask the plaintiff to submit proofs in support of the claim;

(e) In particularly complicated cases, summon the defendant for preliminary examination concerning the facts of the case, and such summons shall be served on the defendant simultaneously with the service of copies of the complaint and documents filed by the plaintiff;

(f) In exceptional cases, and only upon the consent of the parties, he may accept or demand a deposition of such witnesses as cannot appear in person at the trial session;

(g) Upon discovery that a government institution or enterprise or a co-operative or other public organization is interested in the outcome of the case, even though it has not been called to join in the case, the judge shall

give notice to such institution, enterprise or organization, as well as serve notice concerning the case on the government attorney, giving the date fixed for trial (as amended November 20, 1929, R.S.F.S.R. Laws, text 851).

80*a*. By way of preliminary preparation of the case, the judge, sitting alone, may also perform acts specified in Sections 31, 37, 43, 51, 52, 113, 114, 139, and 173 of the present Code (as amended November 20, 1929, *id.*).

80*b*. The judge, sitting alone, shall resolve without notice to the defendant concerning steps to be taken in the preliminary preparation of the case, and such resolutions may not be appealed separately from cassation appeal lodged from the judgment in the case (as amended *id.*).

Comment

See Section 249 and comment.

80*c*. Should the judge find the preliminary preparation of the case superfluous, he shall immediately fix the date for hearing the case in a trial session and, if the party is present, shall give notice thereof and make the party sign a receipt of notice (as amended *id.*).

81. A complaint filed without compliance with the requirements specified in Sections 76 and 78, or unaccompanied by the payment of the single government fee, shall be set aside, and the court shall inform the plaintiff thereof and grant him a time limit within which he may correct the defects. If said defects of the complaint are not rectified within the specified time limit, the complaint shall be deemed not to have been filed (as amended March 20, 1931, R.S.F.S.R. Laws, text 164).

Note: All defects in the counterclaim filed by the other party must be rectified not later than the date fixed for

the hearing of the case; otherwise, the counterclaim filed in the given case shall not be considered.

Chapter IX. Securing Collection of the Claim

82. At any stage of the proceedings until rendition of the judgment, the plaintiff may move that the collection of the claim be secured.

Note: Claims filed against all kinds of government institutions and government enterprises may not be secured except claims arising out of banking operations of credit institutions[19] (as amended July 25, 1927, R.S.F.S.R. Laws, text 521; July 9, 1928, *id.*, text 603).

83. Measures to secure the collection of claims shall be permitted:

(a) If the claim appears sufficiently supported by the documents filed;

(b) If failure to take measures to secure collection of the judgment may render it impossible for the plaintiff to obtain satisfaction of his claim or if, by the very nature of the claim, delay may make difficult or impossible the execution of the judgment.

83*a*. In suits for the collection of maintenance and support, the people's judge trying the case, or the government attorney investigating the case, shall take measures to secure collection of the claims, by attaching a portion of the defendant's wages and by levy and attachment of the defendant's property (as amended May 10, 1937, R.S.F.S.R. Laws, text 40).

84. The court, in allowing the motion to secure collection of claim, may require that the plaintiff, in his

[19] The words "as well as claims for collection of debts to co-operative banks" are deleted because all co-operative banks were liquidated.

turn, post security for damages which the defendant is likely to sustain.

85. The court may order the security to cover either the claim in full or only the part which it deems adequately founded.

86. Motions to secure the claim shall be decided by the people's judge or by the court hearing the case on the same day, without notice to the other party.

87. Security for the claim shall consist of attachment of property belonging to the defendant, which is either in his own possession or in that of third parties.

88. In granting the security for the claim in cases filed by government institutions or government enterprises against a private enterprise, the court may permit the appointment, by the plaintiff, of his representative to supervise the proper management of the enterprise.

89. On the motion of either party, the court, taking into consideration the objections of the other party, may allow the substitution of one form of security for another, or may allow several forms of security, provided their sum total shall not exceed that of the claim. For security of a money claim, the defendant may deposit the amount of the claim with the court, instead of effecting the security ordered by the court.

90. Orders concerning security for claims shall be executed in accordance with the procedure provided for the execution of court judgments.

91. The order of the court granting the security may be appealed separately from the appeal from the judgment rendered on the merits of the case (Section 249); if the order has been entered in the absence of the appellant, the running of the period specified by Section 249 commences on the date on which he has received notice from the marshal of the court.

Note: The filing of an appeal shall not affect the continuation of proceedings in the case.

92. The filing of an appeal shall not suspend the enforcement of the order granting security. An appeal from an order cancelling a measure taken to effect security shall suspend the execution of such order.

93. Where the case has been decided for the defendant, he may seek from the plaintiff damages caused by the securing of the collection of the claim.

Chapter X. Trial of Cases [20]

94. Cases shall be tried orally and in public.

95. If, under the circumstances of the case, a public trial appears undesirable from the viewpoint of safeguarding the public interest, or if the circumstances of the case concern the intimate life of a party, the court, in its own judgment or on the motion of the parties, may determine that the case, or certain parts of the case, shall be heard in private session.

96. If the case is heard in private session, only the parties and their attorneys, witnesses, and experts shall be admitted by the court. The judgment of the court, in any event, shall be announced in public.

97. In commencing the trial, the court shall ascertain which of the parties summoned to the court have appeared and the reasons for the nonappearance of the others.

98. The nonappearance of one of the parties, upon whom, according to the information of the court, the summons has been served, shall not prevent the trial and the rendering of a judgment (as amended July 25, 1927, R.S.F.S.R. Laws, text 521).

[20] See Vol. I, Chapter 23, p. 866 *et seq.*

Comment

The soviet Code does not provide for judgment in default. In the absence of the summoned party the court may try the case on its merits. For details, see Volume I, Chapter 23, pp. 866–867.

99. If the court finds it necessary to hear the personal declaration of the party who has failed to appear, it may adjourn the trial of the case. Citation of the plaintiff or the defendant for personal testimony shall be permitted even in cases in which they are represented by counsel.

100. If the plaintiff and the defendant both fail to appear without justifiable reason and have not filed a motion that the case be heard in their absence, the trial of the case shall be adjourned.

If, in response to a second summons, the parties fail to appear without justifiable cause, the court shall enter an order dismissing the case (as amended July 25, 1927, R.S.F.S.R. Laws, text 521).

Note: In the event that the case is dismissed by reason of nonappearance of the parties, the plaintiff shall not be deprived of his right to file the suit anew before the claim is barred by statute of limitation (as amended *id.*).

101. With respect to suits for maintenance of destitute and unemployable spouses (alimony) and suits for wages, the court may order the defendant brought in, provided his personal appearance is deemed necessary by the court and the party has been summoned twice, with due warning (as amended May 10, 1937, R.S.F.S.R. Laws, text 40).

101*a*. In suits for the collection of funds from par-

ents for the maintenance of children (alimony), the parties must appear in court personally. In the event that the defendant fails to appear, the court shall enter an order to the police to bring in the defendant. Irrespective of such order, the court, where the defendant fails to appear without justifiable reason, may impose upon him a fine of up to 100 rubles and may require a bond assuring his remaining in the locality until the determination of the case.

The defendant may be exempted from personal appearance in court only in the event that he resides too far away from the trial court, or for other justifiable reason, by order of the court in each separate case (enacted May 10, 1937, *id.;* amended April 16, 1945, Vedomosti No. 26).

102. Prior to the commencement of the trial on the merits, the parties may assert objections against the trial of the case in the given court, or by the given members of the court.

103. The court may order the case remanded to another court or another institution, in the following cases:

(a) If the court finds that the particular claim, in view of the circumstances of the case, may be with greater convenience tried at the place where the principal evidence is to be taken or, in general, in another court and not in the court chosen by the plaintiff (Section 30);

(b) If the motion of the defendant, whose residence was unknown (Section 26), to remand the case to a court of the place where he actually resides is deemed justifiable;

(c) If, upon the removal of the people's judge (Section 104), his substitution in the given court is difficult;

(d) If the court finds that the case is subject to hearing by another institution (governmental arbitrator, and the like) (as amended May 30, 1931, R.S.F.S.R. Laws, text 254).

104. Where a judge or a people's assessor is interested in the outcome of the case or has special relations with a litigant, such person shall be removed from participation in the trial, either on motion of the parties, or on the motion of the judge or people's assessor himself, which he must make to the court even though the parties themselves have failed to make an appropriate declaration.

105. The court shall begin the trial on the merits by calling the parties to present their pleadings with due reference to all the evidence submitted in the case.

106. The presentation by the parties of new evidence after the commencement of the trial of the case shall be permitted only where the court finds the reason that prevented timely presentation thereof justifiable.

107. In postponing the trial, the court shall fix the time for presentation or hearing of evidence and shall also fix, if possible, the day for further trial.

Witnesses appearing in response to the summons of the court to a given court session must be examined by the court at that session. A second summons of the same witnesses, if the trial of the case has been adjourned, shall be permitted in extraordinary cases only by special order of the court (as amended November 20, 1929, R.S.F.S.R. Laws, text 851).

108. When the court finds the case sufficiently clarified, it shall terminate the pleadings and proceed to render the judgment.

Chapter XI. Court Records

109. Every session and every judicial act performed outside the session shall be entered in the record.

110. The record shall recite: (a) the place and time of the session or action; (b) the composition of the court; (c) the names of the parties appearing; (d) the essence of the testimony and declarations made by the parties, the witnesses, and the experts; (e) the separate motions of the parties in the case and the objections to such motions and the court's rulings thereon; and (f) the proof and the documents submitted.

111. The record shall be made during the session itself, or during the performance of the separate acts outside the session, and must be signed by the presiding judge and by the secretary (as amended November 20, 1929, R.S.F.S.R. Laws, text 851).

112. The parties participating in the case shall have a right to examine the record and may, not later than within three days from the day of approval, submit their remarks upon it. It shall rest with the presiding judge to order modifications of the record in consequence of such remarks.

Chapter XII. Suspension of Proceedings

113. The court must suspend proceedings in the following cases:

(a) Death of a litigant;

(b) If it is necessary to institute guardianship for a litigant, or in the case of any other restriction in the right to sue and be sued;

(c) If a legal entity (corporate body) which is party to the suit ceases to exist;

(d) If a litigant is called to the service in a field unit of the Red Army;

(e) If the case in question cannot be determined prior to the adjudication of another case which is being tried in a civil, criminal, or administrative proceeding.

114. The proceedings likewise shall be suspended by the court in the event that one of the parties is called to the Red Army or to some other compulsory service (as amended November 20, 1929, R.S.F.S.R. Laws, text 851).

115. In cases specified by subsections (a), (b), and (c) of Section 113, the proceedings shall be suspended until the successor in interest or the legal representative of the party withdrawn joins the case as party or is cited as a party by the adverse party.

116. The running of the period of limitation (Section 51 of the Civil Code) in cases suspended for reasons specified by subsections (a), (b), and (c) of Section 113, shall commence on the day when the proceeding is suspended, and in cases specified by subsection (d) of the same section, from the moment when the party leaves the field unit of the Red Army.

117. When a proceeding is revived, the court shall summon the parties in accordance with general rules.

Chapter XIII. Evidence [21]

118. Each party must prove the facts upon which he relies as the basis of his claims and defenses. Evidence shall be submitted by the parties, and may also be collected at the instance of the court. If the evidence submitted is inadequate, the court may request the parties to submit additional proof.

119. The admission of any item of the evidence submitted by the parties depends upon whether or not the court finds it relevant to the case.

[21] For discussion, see Vol. I, Chapter 23, p. 858 *et seq.*

120. The determination of whether some circumstance shall be considered self-evident rests with the court.

121. The court may, on its own initiative, or on motion of the parties, take the necessary steps to verify the evidence submitted, whether by view of the premises, by summoning specialists (experts), by summoning and examining witnesses, or by examination of written evidence.

122. The parties shall be notified of the examination of evidence, even though this occurs outside the place where the case is heard. When such acts are performed within the district of the court concerned, the parties shall be summoned in the usual manner.

Chapter XIV. Depositions

123. Persons who have reason to apprehend that the submission of evidence relevant to their case may subsequently become impossible or very difficult may move the court to take such evidence. If the claim for which such evidence is necessary has not yet been filed, the evidence shall be taken by the notarial office under the rules of Sections 55–56 of the Statute on Notarial Offices [R.S.F.S.R. Laws 1930, text 476] (as amended January 16, 1928, R.S.F.S.R. Laws, text 97).

Comment

Statute of July 20, 1930 on Governmental Notaries Public of the R.S.F.S.R.:

55. . . . In taking evidence, the notarial agency may examine witnesses, view the premises, and examine experts.

The notarial agency may not take evidence in a case which is on trial in a court or other judicial body.

124. The motion to take evidence shall be heard by the permanent people's judge in whose district the taking of evidence is to occur.

125. The motion to take evidence must show: (a) the nature and form of the evidence required; (b) the statement of the facts to be established by the evidence; (c) the reason for which the motion to take evidence is made.

126. [Repealed January 16, 1928, *id.*]

127. In the order granting the taking of evidence, the court shall indicate the method or means of obtaining it. The order of the people's judge granting the taking of evidence may not be appealed separately from the appeal from the decision rendered on the merits of the case.

Chapter XV. Particular Forms of Evidence

1. Testimony of Witnesses [22]

128. Testimony of witnesses shall be admitted in all instances except where reduction to writing of certain acts or relations is mandatory under the law.

Comment

Contracts which require either written form or notarization for validity are stated in the comment to Section 29 of the Civil Code. See also Volume I, Chapter 12, p. 431 and Chapter 23, p. 862.

129. No one shall have the right to refuse to testify as a witness in court, except in cases where the communication of the facts required would violate State or service secrets.[23]

130. Where a party states that a witness is interested in the outcome of the case, or in the event of special

[22] See Vol. I, Chapter 23, p. 861 *et seq.*

[23] Concerning state secrets see *infra* Nos. 51, 52.

relations between the witnesses and the party, the court may refuse to permit the examination of the witness.

131. The party offering in evidence a witness's testimony must specify the facts to be substantiated by the witness, and indicate his full name and address.

132. The witnesses examined shall be forewarned of their liability for false testimony under Section 95 of the Criminal Code.

133. Each witness shall be examined separately.

134. Witnesses who as yet have not given testimony may not be present in the courtroom during the trial of the case.

135. The order in which witnesses shall be examined is determined by the judge presiding over the trial.

136. Each witness examined must remain in the courtroom during the hearing until the termination of the examination of all witnesses, unless the court allows him to leave earlier.

137. The witness may be re-examined at the same or at a subsequent hearing, at his personal request, on motion of the parties, or on the initiative of the court.

138. The court may order confrontation of witnesses in order to clarify conflicting points in their testimonies.

139. Witnesses who have their permanent residence outside the city in which the case is tried shall be examined by the court at their place of residence, but in the event of their appearance at the court which hears the case, they may be examined there.

2. Written Evidence [24]

140. Written evidence, such as all written instruments, documents, and correspondence of a business or

[24] See Vol. I, Chapter 23, pp. 861 and 863–864.

private character shall be presented to the court by the parties themselves, or they may be procured by request of the court.

141. The party requesting, through the court, that the other party, or persons who are not parties in the case, submit certain documents must describe the required documents in detail, indicating the reason for his belief that the document is in the possession of the adverse party, or in that of other persons, and the circumstances which may be substantiated by said documents.

142. Documents requested by the court from government institutions and private persons shall be delivered directly to the court. The court may issue a certificate to the parties authorizing them to obtain documents, copies, and all kinds of information from government institutions and private persons for the purpose of submission to the court.

143. Institutions and persons described in the preceding section who are unable to submit to the court, within the specified period, the document requested must give notice thereof to the court, indicating the reason. Where the reason is not justifiable, or in case of failure so to notify the court, the court may impose a fine in accordance with Section 52 of the present Code.

144. If submission of documents to the court is difficult, for example, by reason of their large number, or because only some of them are relevant, the court may demand the submission of duly certified excerpts or have the documents examined on the premises.

145. Documents submitted in a language other than that in which the proceedings are conducted shall be accompanied by proper translations.

146. Written evidence may be contested except in cases especially provided for by law.

147. [Repealed March 20, 1931, R.S.F.S.R. Laws, text 164.]

148. If the adverse party alleges that a document filed in the case is a forgery, the party filing it may waive use of the document as evidence in the case and may move the court that the trial of the case be continued on the basis of other evidence.

149. If, at the request of the party who submitted the suspected document (Section 148), the document remains in the file as evidence, the party who alleges forgery must submit proof of the allegation within a period fixed by the court.

150. If an allegation concerning the forgery of a document is made in a court trying a civil case, the court shall verify the genuineness of the document by one of the following methods:

(a) By examining the document and comparing it with other documents;

(b) By examination of witnesses specified in the document, or those upon whom the parties rely, as well as those called by the court on its own motion;

(c) By comparing the writing and signatures on the suspected document with the signature of the same person on other undisputed documents;

(d) By means of expert testimony.

151. If the court becomes convinced that the document is a forgery, the court shall cause the removal of the document from the file of evidence submitted and shall cause the institution of a criminal prosecution.

Chapter XVI. Expert Testimony

152. The court may appoint experts to clarify such questions arising during the trial of the case as require special knowledge.

If the judges of the trial bench include persons who have adequate knowledge for the clarification of a special question, the court may make its decision without appointing experts.

If the appointment of an expert is found to be superfluous or too costly because of the disproportion between the amount of the claim and the cost of expert testimony, the court may decline to appoint experts and may make its decision on the basis of all other data available in the case (as amended November 20, 1929, R.S.F.S.R. Laws, text 851).

153. The parties may challenge persons proposed as experts on the same ground as witnesses may be challenged.

154. The order providing for the appointment of experts must recite the facts upon which the expert testimony is required.

155. Experts shall give their opinions orally or in writing, as the court may direct. Oral opinions shall be entered in the court record and signed by the experts. Where a written opinion is given by an expert, the court may request him to give an oral explanation of his opinion as well.

156. To clarify facts which are relevant to their work, the experts may interrogate witnesses and may take part in the view of the premises and the hearing of evidence.

157. An expert opinion must recite all grounds for its conclusions.

158. Where it is necessary to amplify the examination or to interpret an expert opinion, or where opinions of several experts conflict, the court may request the experts to submit additional explanations or may appoint other experts.

159. Experts may perform their duties in the court-

room or outside the courtroom if the nature of the inquiry so requires or because of the difficulty of delivering the subject matter of the inquiry to the court.

160. A view of the premises shall be made either by the whole trial bench of the court or by the judge presiding over the trial.

161. If they have appeared, the parties shall be present at the view of the premises.

162. Written records shall be made describing the acts performed at the view of the premises and shall be signed by all persons participating in the view. All maps, plans, drawings, photographs, et cetera, made or compared during the view, with a list thereof, shall be appended to the records.

Chapter XVII. Plurality of Plaintiffs or Defendants in the Case, and Participation of Third Parties

163. Suits may be filed jointly by several plaintiffs or against several defendants.

164. With respect to the adverse party, each of the plaintiffs or defendants shall appear in the case independently, and the acts of any one of the coparties to the claim in the court shall be neither in favor of nor to the prejudice of the other, except in claims growing out of obligations for which several persons are liable jointly and severally.

165. Coparties may entrust the conduct of the case to one of the coparties, even though that person generally shall have no right to represent others in court.

166. If it appears, in the course of the proceedings, that the complaint has been filed by a party other than he who has the right to sue in the case, or against a party

other than he who should be the respondent, the court, without dismissing the case, may permit the substitution of proper plaintiffs or defendants for the original plaintiffs or defendants in the case.

167. If the decision in the case may create, for third parties, rights and obligations with respect to either of the two parties, the plaintiff and the defendant may seek the joinder of third parties, as parties plaintiff or as parties defendant, as the case may be.

168. Where the decision in the case may create, for third parties, rights and obligations with respect to either of the two parties, the said third parties may join the suit, either as parties plaintiff or as parties defendant, as the case may be.

169. Third parties who have independent rights in the subject matter of the dispute may become parties to the case by filing a complaint under general rules against either of the litigants, or against both litigants jointly.

170. Petitions by litigants or third parties for the joinder of the latter as parties plaintiff or as parties defendant must specify the reasons for which said third parties must be called joined as parties or be permitted to join on their own petition.

171. Filing of independent claims by third parties against either of the two parties, as well as joinder in the proceedings by third parties, either voluntarily or on petition of original litigants, shall be permitted at any stage of the proceedings prior to the rendering of the judgment in the case.

172. If it appears, in the course of the proceedings, that a government institution or enterprise, though not a party to the case, is interested in its outcome, the court shall serve due notice on the government institution or

government enterprise concerned, as well as on the office of the government attorney.

172*a*. In cases tried in the people's court concerning reinstatement in office, or reinstatement in a job, of persons wrongfully discharged, the people's court may, on its own motion, cause the joinder as parties defendant of such officials of the governmental, co-operative or other public enterprises as were responsible for the wrongful discharge, and it may impose upon such persons the duty to reimburse the enterprise or institution concerned for damages sustained by it through the payment of compensation to the wrongfully discharged employee. The said reimbursement may not exceed the equivalent of the guilty official's three months' pay (as amended March 25, 1929, R.S.F.S.R. Laws, text 273).

173. Where a court is trying several cases in which the same persons participate either as parties plaintiff or as parties defendant, the court may order the proceedings in these cases to be joined and enter an order for the joint trial of the same.

Chapter XVIII. Rendition of Judgments [25]

174. A judgment shall be made by a majority of votes. None of the judges may abstain from voting. Each judge may attach to the record his dissenting opinion.

175. The judgment reached shall be reduced to writing and signed by all the judges.

176. The judgment must state:

(a) The time at which it was handed down;

(b) The names of the trial judges of the court and the names of the litigants;

(c) The subject matter of the dispute;

[25] See Vol. I, Chapter 23, p. 866 *et seq.*

(d) The grounds for the decision and references to the laws by which the court was guided;

(e) The contents of the judgment rendered in the case and the manner in which it is to be enforced;

(f) The manner in which appeal may be taken from the judgment;

(g) The apportionment of court costs.

Comment

See Sections 3, 4.

177. The judgment shall be rendered immediately upon completion of the trial. In extraordinary cases, by reason of special complications in the case, the preparation of a judgment with a considered opinion may be postponed for a period not to exceed three days, but in that event the court must announce to the parties the decision contained in the judgment at the same hearing in which the trial is completed (as amended November 20, 1929, R.S.F.S.R. Laws, text 851).

178. The judgment reached by the court shall be announced in public. If, by reason of unforeseen circumstances, any one of the members of the court cannot sign the judgment, a written notation thereof shall be made, subscribed by the presiding judge.

178*a*. Judgments and appellate decisions of judicial bodies in labor cases must be communicated to the parties, they being furnished with copies thereof within three days from the date on which the judgment or appellate decision was made (enacted March 25, 1929, R.S.F.S.R. Laws, text 273).

179. If the amount of the prayer for relief is not based on a preliminary agreement of the parties, or where it has not been determined by law (as in the case of bills and notes, contracts, tariffs, and the like), the

court, in adjudicating the case, may, according to the circumstances brought to light during the trial, exceed the limits of the prayer for relief presented by the plaintiff.[26]

180. If the judgment orders the transfer of specific property in kind or the performance of a definite act, the court, in its decision, shall specify the period within which the judgment is to be executed.

181. Within five days from the date of rendering the judgment, each of the parties may petition the court to render a supplementary judgment:

(a) If the court has failed to render a decision upon a prayer for relief regarding which the parties have presented evidence and pleadings;

(b) If the court, having decided the issue of law, has failed to indicate the exact amount of the judgment or to specify the object to be delivered or claimed (as amended March 20, 1930, R.S.F.S.R. Laws, text 163).

182. In determining in the judgment the manner of its execution, the court may postpone its execution or order execution in installments, depending upon the economic status of the parties, or upon any other circumstance of the case.

In extraordinary cases, the court may, after entry of the judgment, postpone its execution or permit execution in installments, or modify the method and manner of execution; the court shall enter an order therefor, after a hearing, on notice to parties whose failure to appear does not suspend the hearing. The order thus entered shall not be subject to a separate appeal (as amended November 20, 1929, R.S.F.S.R. Laws, text 851).

[26] See Vol. I, Chapter 23, pp. 858 *et seq.*, 866 *et seq.*

Comment

The power of the court to allow payment in installments was recognized by the imperial Code of Civil Procedure, Section 136 (as amended in 1906).

183. Where the decision is in favor of or against several coparties to the case, the court shall specify the share in which the judgment affects each one of them severally, and whether or not they are jointly and severally liable or entitled.

184. Judgments shall be rendered only by judges who participated in the hearing in which the trial of the case was completed.

185. The explanation and interpretation of judgments rests with the court which decided the case. The filing of petitions for the interpretation of a judgment is not limited to any period of time, provided the decision has not been executed and has not lost its force by lapse of time (Section 255 [1] of the present Code) (as amended September 10, 1932, R.S.F.S.R. Laws, text 327).

Chapter XIX. Issuance of Writs of Execution

186. The decision of the court shall be subject to execution:

(a) After the lapse of the period allowed for cassation appeal, if no such appeal has been taken within the period fixed by law; or,

(b) After the appellate court affirms the judgment of the lower court, if cassation appeal has been filed, except in cases specified in Sections 187, 187*a*, 187*e*; or,

(c) Where the decision is not subject to cassation appeal (as amended November 20, 1929, R.S.F.S.R. Laws, text 851).

187. The following judgments shall be subject to immediate execution:

(a) Judgments on claims for wages, alimony, and remuneration due to authors (or their heirs) for the use of their exclusive copyrights or rights to an invention (subsection (d) of Section 43);

(b) Judgments on claims on documents enumerated in Section 25 of the Statute on Governmental Notarial Agencies of the R.S.F.S.R. of 1930;

(c) Judgments on claims admitted by the defendant in court during the trial of the case either in full or in such part as is tantamount to an admission (as amended July 9, 1928, R.S.F.S.R. Laws, text 603; September 24, 1928, *id.*, text 788).

187*a*. At the request of the plaintiff, the court may also permit immediate execution of the following judgments:

(a) Judgments on documents which either are notarially certified or, though not certified, have been acknowledged by the defendants, provided that the law does not make their notarization mandatory under penalty of invalidity;

(b) Judgments with respect to claims to vacate premises by reason of the expiration of the lease period, or in cases especially provided for by law;

(c) Judgments in cases where, owing to special circumstances, a delay in the execution of the judgment may cause substantial or irreparable prejudice in its execution, or may render execution altogether impossible.

In the cases specified in the present section, the court may order the plaintiff to post security for a counterclaim, which may be filed in the event that the decision

is reversed (as amended October 4, 1926, R.S.F.S.R. Laws, text 580).

187*b*. Immediate execution of decisions against governmental agencies shall not be permitted, except of decisions which adjudicate wages or remuneration due to authors (and their heirs) for the use of their exclusive copyrights and rights to an invention, and decisions in disputes between governmental agencies in cases specified by Sections 187 and 187*a* (as amended May 3, 1934, R.S.F.S.R. Laws, text 116).

187*c*. At the request of the plaintiff, security for collection of judgment may be ordered pursuant to Sections 85–90 of the present Code, where immediate execution of a decision is not granted (as amended February 16, 1925, R.S.F.S.R. Laws, text 83).

187*d*. Orders either permitting or refusing immediate execution may be appealed from under Section 249 (as amended *id.*).

187*e*. Judgments of the people's court in labor cases and judgments of people's courts adjudicating, in favor of a worker, sums of money not exceeding his monthly wage, shall be subject to immediate execution.

Judgments rendered in favor of farm hands and shepherds in labor disputes between farm hands or shepherds and their employers shall be subject to immediate execution if they adjudicate up to 50 rubles.

Judgments adjudicating sums of money in excess of the monthly wage (or 50 rubles for farm hands and shepherds) shall be subject to immediate execution to the amount of the monthly wage (or 50 rubles with respect to farm hands and shepherds).

Immediate execution for the collection of the balance of the adjudicated sum may be permitted only under a

special court order (as amended August 10, 1931, R.S.F.S.R. Laws, text 355).

188. A writ of execution of a court judgment, of a peaceful settlement reached in court, or of an order to secure collection of claim, shall be issued by the court at the request of a party (as amended January 16, 1928, R.S.F.S.R. Laws, text 97).

189. Where property which is located in several places is subject to transfer under the court judgment or where the judgment is in favor of several plaintiffs, or against several defendants, the court, at the request of the plaintiffs, may issue several writs of execution, designating in each exactly that part of the judgment which is subject to execution under the particular writ of execution.

190. In place of a lost original writ of execution, a duplicate may be issued by the court which rendered the judgment. The motion for the issue of a duplicate shall be heard on notice to the parties.

PART THREE. SPECIAL PROCEEDINGS

CHAPTER XX. GENERAL PROVISIONS

191. The following matters shall be regulated by the rules for Special Proceedings:

(a) Matters involving property left by decedents (Section 198);

(b) Arbitration agreements and awards;

[(c) Exemption from military service by reason of religious convictions;]

(d) Appeals from the acts of notaries public;

(e) Proceedings in the restoration of rights based on lost bearer documents (publication procedure) (as amended July 9, 1928, R.S.F.S.R. Laws, text 603).

Comment

(1) The original provisions of Section 191, assigned to Special Proceedings several other categories of cases, viz., procedure on court deposits, Chapter XXIII, Sections 204–209 of the present Code, which sections were repealed on July 25, 1927 (R.S.F.S.R. Laws, text 521), the issuance of court orders based on instruments, Chapter XXIV, Sections 210–219, repealed July 9, 1928 (R.S.F.S.R. Laws, text 603), and divorce procedure, Chapter XXV, Sections 222–225. Divorce procedure was regulated in conjunction with the provisions in force before 1926, under which divorce was granted by the court. However, under the Code of Laws on Marriage, Family, and Guardianship of 1926, divorces were obtained by filing a unilateral declaration with the Civil Status Record Office. Therefore, Sections 222–225 of this chapter were repealed (March 17, 1927, R.S.F.S.R. Laws, text 164). The Edict of the Presidium of the Federal Supreme Soviet of July 8, 1944, ordained that a divorce may be granted by the court only, but rules of divorce procedure were incorporated by the R.S.F.S.R. Presidium in the Code of Laws on Marriage, Family, and Guardianship (Section 20 and others) and not in the Code of Civil Procedure.

Additional rules of divorce procedure were enacted by the Instruction of the Commissar for Justice, approved by the Council of People's Commissars on November 27, 1944, No. 1622. For text, see Code of Civil Procedure (1948) 213–219.

(2) Subsection (c) is placed in square brackets for the reason that, without being repealed, it has become inoperative as a result of the Law on Universal Military Service of September 1939, still in force, which does not provide for any exemption from military service by reason of religious conviction. Therefore, Sections 226–230 have not been translated.

(3) A species of special procedure was established by the Instruction of the People's Commissar for Public Health of May 22, 1937 (R.S.F.S.R. Laws, text 145) enabling the court to establish the fact of the birth of a child to a mother as a

basis for a grant of the special aid awarded to mothers of numerous children.

(4) Two other species of special proceedings not incorporated in the Code of Civil Procedure may also be mentioned:

(a) Decisions to appeals from refusal by administrative authorities to include in the list of voters (Act of May 5, 1938, U.S.S.R. Laws 1938, text 146), and U.S.S.R. Edict of October 11, 1945, Sections 21–23; R.S.F.S.R. Edicts of November 26, 1946, and October 8, 1947.

(b) Attachment and foreclosure of property for collection of arrears in taxes (Act of April 11, 1937, U.S.S.R. Laws 1937, text 120, Instruction of the Commissar for Justice of February 1, 1945, No. 7, Code of Civil Procedure 1948).

192. Cases subject to the rules for Special Proceedings shall be tried by a people's judge sitting alone [27] in a public session of the court, in which the evidence shall be heard and to which the interested parties shall be summoned (with the exception of cases provided for in Chapter XXVI of the present Code) (as amended January 1928, R.S.F.S.R. Laws, text 97, and December 20, 1934, R.S.F.S.R. Laws 1935, text 9).

193. If an interested party commences a dispute in the course of the trial of the case, the judge may dismiss the case as a special proceeding and refer the parties to the general rules governing proceedings in civil disputes for the settlement of their controversy.

Chapter XXI. Court Rulings Regarding Property Left by a Decedent

194–197. [Repealed July 25, 1927, R.S.F.S.R. Laws, text 521; January 16, 1928, R.S.F.S.R. Laws, text 97.]

[27] See comment to Section 24*a*.

198. Persons having claims against the decedent shall be authorized to apply to the people's court in whose district the succession is opened for relief securing satisfaction of their claims.

Comment

"Opening of Succession" is explained in Volume I, Chapter 17, p. 639. Measures to be taken for protection of the estate, which were originally assigned to the jurisdiction of the court, were transferred to the jurisdiction of notaries public. See Volume I, Chapter 17, p. 647 *et seq.*

Chapter XXII. Submission to Arbitration and Awards [28]

199. An agreement by parties to submit their dispute respecting a private right to an arbitral tribunal (submission to arbitration) must be certified notarially [29] (as amended October 4, 1926, R.S.F.S.R. Laws, text 580).

200. [This section prescribing fees for notarial certificates under Section 199 was amended June 1, 1937, R.S.F.S.R. Laws, text 90, and repealed June 19, 1942, by the Edict of the Presidium of the R.S.F.S.R. Supreme Soviet.]

201. Upon the termination of the arbitral proceedings, a complete file thereof shall be submitted for safekeeping to the people's court in whose district the arbitral tribunal was held. When the enforcement of the award is required, the people's judge shall issue a writ of execution in conformity with the rules laid down in Chapter XIX of the present Code.

202. In issuing a writ of execution, the people's judge

[28] See also *infra* No. 50 and comment 4 to Section 2 of the Civil Code (*supra* No. 2).

[29] The Azerbaijan Code requires the submission to be registered with the people's court.

shall ascertain that the award has been made in conformity with the requirements established for arbitration courts and that, in general, it does not contradict the law.

203. A separate appeal may be lodged from the refusal of the people's judge to issue a writ of execution (as amended March 30, 1930, R.S.F.S.R. Laws, text 163).

203*a*, 203*b*. [Repealed May 20, 1930, R.S.F.S.R. Laws, text 312.]

CHAPTERS XXIII—XXV, Sections 203–225, repealed (See comment to Section 191)

CHAPTER XXVI, Sections 226–230, has become inoperative (*id.*)

CHAPTER XXVII. APPEALS FROM ACTS OF NOTARIES AND AGENCIES PERFORMING NOTARIAL ACTS

231. Appeals from any act, provided for by the Statute on Notarial Agencies, performed by notaries, or appeals from a refusal by a notary to perform an act, with the exception of cases specified by Section 234, may be filed by the parties, and shall be reviewed by the people's judge sitting alone,[30] on notice to the parties in interest, upon hearing of evidence, and, if the court deems it necessary, upon obtaining from the district notarial office its opinion in the case.

Appeals from a notarial act performed by village soviets, or from their refusal to perform a notarial act, shall be addressed to the people's court at the place where

[30] The Judiciary Act of 1938 does not provide for any hearing by a people's judge sitting alone without people's assessors. Therefore, this provision is considered repealed. See U.S.S.R. Laws 1939, text 381; see also comment to Section 24*a*.

the village soviet is located, and shall be tried by the people's judge sitting alone upon hearing of evidence, on notice to parties in interest, and, if the court deems it necessary, upon obtaining from the regional notarial office an opinion in the case [31] (as amended May 21, 1928, R.S.F.S.R. Laws, text 414; March 20, 1930, *id.*, text 163; January 15, 1931, *id.*, text 105; December 20, 1934, *id.* 1935, text 6; June 9, 1936, *id.*, text 100; July 20, 1940, *id.*, text 58).

232. Appeals may be filed within ten days from the day on which the appellant learns of the act of the notary or of the agency acting in his stead.

Appeals shall be filed with the agency whose acts are being appealed from, and shall be submitted by the latter to the court not later than within three days from the date of their filing, together with comments on the merits of the case and the file of the original case, or of copies of the necessary documents. Appeals also may be filed directly with the court (as amended May 21, 1928, R.S.F.S.R. Laws, text 414; March 20, 1930, *id.*, text 163).

233. Decisions of the people's judge made under the provisions of Sections 231 and 232 of the present Code shall not be subject to appeal (as amended *id.;* January 15, 1930, *id.*, text 105; December 20, 1934, *id.* 1935 text 9).

234. Refusal to write an execution clause upon an instrument may be appealed by a creditor under Sections 231–232 of the present Code. Only the appellant shall be called to the hearing of the appeal.

A claim based on an execution clause written upon

[31] The text of paragraph 2 of Section 231 is translated as it has been in force since the Act of July 20, 1940, R.S.F.S.R. Laws, text 58. Prior to that the notarial functions were performed also by district executive committees.

an instrument may be disputed by the debtor only by means of an ordinary legal action.

In order to secure the collection of judgment in a claim, the court may suspend the execution which is being made under the authority of an execution clause written on an instrument.

No appeal shall lie from the decision of the notarial office to proceed in taking a deposition. Refusal by the notarial office to take a deposition may be appealed from to the people's court at the place where the evidence is to be secured. Decisions of the people's court with regard to these issues shall not be subject to appeal (as amended May 21, 1928, R.S.F.S.R. Laws, text 414; March 20, 1930, *id.*, text 163).

Comment

Instruments upon which the notarial offices are authorized to write an execution clause are enumerated in the Acts of December 28, 1944, March 17, 1946, and November 4, 1947, R.S.F.S.R. Laws 1945, text 1, *id.* 1946, text 24, *id.* 1947, text 34.

Chapter XXVII*a*. Procedure to Restore Rights Under Lost Bearer Document (Procedure by Publication)

Comment

For the scope of application of this chapter see Section 234*n* and comment thereon.

234*a*. Parties interested in having a bearer document adjudicated as legally destroyed shall file a petition therefor with the people's court at the place where the institution or the person who issued the document is located (as enacted November 18, 1926, R.S.F.S.R. Laws, text 666).

234*b*. The petition shall include:

(a) The exact name of the petitioner, and his place of residence;

(b) A copy of the lost document or its name and characteristics;

(c) The circumstances under which the document was lost;

(d) A request for its adjudication as legally lost (as enacted *id.*).

234*c*. The people's judge, having established the loss of the document, shall enter an order:

(a) For publication to the effect that the petition reciting the loss of the document was filed with the court, and that the holder of the document must appear in court within one year, or, if the documents of a State Labor Savings Bank are involved, within a three-month period, from the date of said publication;

(b) Enjoining persons obligated under the document to effect payment under said document (as amended January 10, 1930, R.S.F.S.R. Laws, text 28).

Note: Persons obligated under the lost document may deposit payment due thereon with a notarial office (as amended *id.*).

234*d*. An appeal may be taken from a decision of a people's judge refusing to grant the said petition (as amended March 30, 1930, *id.*, text 163).

234*e*. Publication concerning loss of a document shall contain:

(a) The first name, the patronymic and the family name, and place of residence of the petitioner;

(b) The name and the characteristics of the document concerning the loss of which the petition was filed with the court;

(c) Indication of the time period specified in subsection (a) of Section 234*c*, within which the holders of said document must file with the court a declaration stating their rights respecting said document;

(d) An order enjoining persons obligated under the document from effecting payment under said document during the period fixed by the court (as enacted November 18, 1926, R.S.F.S.R. Laws, text 666).

234*f*. Publication shall be made at the expense of the petitioner by a single insertion in the official gazette of the respective soviet (soviet of an autonomous republic, or region, or province, as the case may be) (as amended March 20, 1930, *id.*, text 163; January 15, 1931, *id.*, text 105; R.S.F.S.R. 1937 Constitution).

234*g*. The holder of the lost document must, prior to the expiration of the period specified in subsection (a) of Section 234*c*, file with the people's court which made the decision under Section 234*c* a declaration that he is the holder of the document, and file therewith the original of the document or a certified copy thereof (as enacted November 18, 1926, R.S.F.S.R. Laws, text 666).

234*h*. If the declaration specified in Section 234*g* is filed with the people's court prior to the expiration of the period fixed, the people's judge shall enter an order granting the original petitioner a period of time within which to file suit, under the general rules of civil procedure, against the holder of the document, and give notice thereof to the holder of the document. This period of time may not exceed two months (as enacted *id.*).

234*i*. If the declaration specified in Section 234*g* is not filed with the people's court within the period of time specified in subsection (a) of Section 234*c*, then the court shall enter an order declaring null and void all rights under the lost document, and order the person

who had issued the lost document to issue a new document to the petitioner in place of the document lost (as enacted *id.*).

234*j*. Both the petitioner and the institution or the person who issued the lost document shall be given notice of the hearing of the case under Sections 234*h* and 234*i*, but their nonappearance does not suspend the determination of the case (as enacted *id.*).

234*k*. Orders of the people's judge entered under Sections 234*h* and 234*i* may be appealed from by a cassation appeal to the regional (provincial) court (as amended March 20, 1930, R.S.F.S.R. Laws, text 163; January 15, 1931, *id.*, text 105).

234*l*. If the petitioner fails to file suit against the holder of the document within the period of time fixed by the court, then the measures taken by the court under the publication procedure (subsection (b) of Section 234*c*) become null and void, and the holder of the document acquires the right to seek from the petitioner damages caused by the measures taken by the court (as enacted November 18, 1926, R.S.F.S.R. Laws, text 666).

234*m*. After the order of the court adjudicating null and void the rights under the lost document becomes final, the holder of the lost document, who for some reason has failed to give timely notice of his rights with respect to the document (Section 234*g*), may file with that court an action for unjust enrichment against the person legally granted the right to obtain a new document in place of the one lost (as enacted *id.*).

234*n*. The rules of this procedure shall apply solely to types of documents to which the publication procedure is extended by special enactments (as enacted *id.*).

Comment

The latest available annotated edition of the Code (1948) quotes only the following enumeration of documents to which this chapter applies, made by the U.S.S.R. Supreme Court in 1934: "deposit and mortgage certificates, receipt or book for deposit accounts or mortgage of securities and other valuables in banks (credit institutions) and governmental saving banks" (U.S.S.R. Laws 1929, text 140, Section 28, paragraph 2; *id.*, text 344).[32]

PART FOUR. APPEAL AND REOPENING OF CASES

Comment

This part is discussed in Volume I, Chapter 24.

CHAPTER XXVIII. APPEAL FROM JUDGMENTS[33]

235. Parties to a case may bring an appeal for cassation [quashing] of a court judgment before the competent regional (provincial) court or the supreme court, as the case may be. The appeal shall be filed with the court which rendered the judgment in the case; a number of copies of the appeal equal to the number of adverse parties must be appended (as amended March 20, 1930, R.S.F.S.R. Laws, text 163, and January 15, 1931, *id.*, text 105).

Note: [Repealed on September 20, 1936, R.S.F.S.R. Laws 1937, text 136.]

Comment

(1) The regional (provincial) courts and the supreme courts of the autonomous republics hear appeals from the judgments of the people's courts, and the R.S.F.S.R. Supreme Court

[32] U.S.S.R. Supreme Court, 48th Plenary Session, Ruling of September 17, 1934, Code of Civil Procedure (1948) 221.

[33] This chapter of the Code is analyzed in Vol. I, Chapter 24, **I.**

hears appeals from the judgments of the regional (provincial) courts and supreme courts of the autonomous republics. The somewhat confusing appellate jurisdiction of the supreme courts of other constituent republics is discussed in Volume I, Chapter 23, p. 840. Private parties have no direct means of bringing their grievances to the U.S.S.R. Supreme Court. This court hears cases only on protests lodged by the Attorney General or the President of the Court (Judiciary Act of 1938, Sections 51, 64, 71). See Volume I, Chapter 24, p. 894.

(2) The Judiciary Act of 1938 contains the following provisions with respect to appellate procedure:

15. In accordance with the procedure established by law, convicted persons, their counsels for defense, plaintiffs, defendants, and their representatives in interest, may bring to the superior court appeals and the government attorneys protests from civil and criminal judgments and interlocutory orders of any court, except the U.S.S.R. Supreme Court and the supreme courts of the constituent republics.

In reviewing cases on appeal or protest, the superior court shall ascertain, on the ground of the materials on record in the case and those submitted by the parties, whether the judgment rendered by the lower court in a criminal or civil case is legally correct and well founded.

235*a–b*. [Repealed September 20, 1936, R.S.F.S.R. Laws 1937, text 136.]

236. The appeal must contain: (a) reference to the judgment which the appellant contends is erroneous (Section 176); (b) a statement specifying the points of error in the judgment; (c) the petition of the appellant for a full or partial reversal of the judgment.

237. These shall be the grounds on which a judgment may be reversed:

(a) If the laws in force, Section 4 of the present Code in particular, have been violated or erroneously applied; or,

(b) If the judgment is plainly in contradiction with

the factual circumstances of the case as established by the trial court.

238. An appeal for cassation of a judgment of any court shall be filed within a period of ten days running from the day on which the judgment was entered in its final form (Section 177) (as amended November 20, 1929, R.S.F.S.R. Laws, text 851).

239. The trial court shall transmit the appeal file with the complete record of the case to the appellate court within three days from the date of filing of the appeal and shall simultaneously serve a copy of the appeal on the appellee.

The provisions of Section 81 of the present Code may apply to appeals filed without due payment of the fee only in exceptional cases where the interests of the State, the co-operatives, or the toilers so require (as amended November 20, 1929, R.S.F.S.R. Laws, text 851).

240. Within a period of five days from the date of receipt of the copy of the appeal, the appellee may file with the court which rendered the judgment appealed from, his comments on the appeal together with a copy. The comments shall be transmitted to the appellate court and the copy to the appellant (as amended March 30, 1930, R.S.F.S.R. Laws, text 163).

241. In case there are several plaintiffs or defendants, each of them may join the appeal of a party of the same side not later than at the first hearing of the case in the appellate court.

242. The hearing on appeal for cassation shall be in public. The court of original jurisdiction shall notify the parties of the day of the appellate hearing. In cases examined by the Supreme Court as an appellate court, the Supreme Court shall post within the court building five days in advance the calendar of cases marked for

hearing. The taking of minutes of the hearing in the appellate court is not required (as amended November 20, 1929, R.S.F.S.R. Laws, text 851, and March 30, 1930, *id.*, text 163).

Comment

For a description of the hearing in the appellate court, see Volume I, Chapter 24, p. 892.

243. The nonappearance of parties notified of the date of the appellate hearing shall not prejudice review of the case.

244. In appellate proceedings in a case, the government attorney may submit his opinion either in writing or orally at the hearing.

245. The superior court, in reviewing a case on appeal for cassation, shall not be bound by the grounds of error specified by the appellant, and it is the duty of the court to examine in a revisional procedure on its own motion in every instance the whole case, both in its contested and uncontested parts, as well as with regard to parties who have not filed any appeal whatsoever (as amended November 20, 1929, R.S.F.S.R. Laws, text 851).

Comment

For discussion of these provisions, see Volume I, Chapter 24, p. 885 *et seq.*

246. Should the appellate court, after the examination of the case in a cassation-revisional procedure (Section 245), find the judgment of the lower court correct, it shall enter an affirmative decree upholding the judgment in its full effect. If the appellate court finds the judgment erroneous, it may:

(a) Reverse the judgment in full or in part and remand the case for a new trial by the lower court composed of the same or of different judges;

(b) Dismiss the proceedings where it finds that the plaintiff has no right to sue or that the cause is not subject to judicial jurisdiction;

(c) Modify the judgment of the lower court without remanding the case for a new trial, provided the modifications are called for in view of an error in the application of law by the lower court or in view of discord between the decision and the facts of the case established in court, and these modifications do not require any collecting or additional hearing of evidence.

No judgment which is essentially correct may be reversed for purely formal reasons.

The superior court may enter an order in the reviewed case, pointing out, in order to eliminate them from future judicial practice, irregularities committed by the lower court which by their nature are not deemed good grounds for reversal of the judgment (as amended November 20, 1929, R.S.F.S.R. Laws, text 851).

Comment

For discussion of the powers of the appellate court, see Volume I, Chapter 24, pp. 883 *et seq.* and 907 *et seq.*

246*a*. In labor cases, the superior (cassation) court shall reject the appeal of the parties or the protest of the government attorney, or reverse the judgment of the people's court [sitting in a special session for labor cases] and remand the case for a new trial by that court, or make a decision on the merits of the case, or dismiss the case.

In reviewing judgments handed down by the people's

court [sitting in a special session] in labor cases appealed from by parties or protested by the government attorney, the superior (cassation) court may make a decision on the merits of the case without remanding the case for a new trial in the following instances:

(a) If the facts of the case are sufficiently clear;

(b) If only the grounds of the decision, citation of laws and the like, should be changed;

(c) If the lower court in a new trial has violated the rulings of the appellate court issued upon reversal of the first judgment of the lower court rendered in the case (enacted March 25, 1929, R.S.F.S.R. Laws, text 273).

Comment

(1) The words within brackets have become inoperative because no special sessions for labor cases are provided for by the Judiciary Act of 1938. Such cases are heard by the regular people's courts.

(2) See Volume I, Chapter 24, p. 887 *et seq.*

247. [Repealed October 30, 1930, R.S.F.S.R. Laws, text 655.]

248. The reasons for which the superior court reverses the judgment or order of the court of original jurisdiction must be stated briefly but exhaustively in the ruling of the superior court. Instructions given in such ruling are binding on the lower court assigned for the new trial of the case (as amended November 20, 1929, R.S.F.S.R. Laws, text 851).

248*a*. [Enacted March 25, 1929, R.S.F.S.R. Laws, text 273; repealed September 20, 1936, *id.* 1937, text 136].

249. Separate appeals [from interlocutory orders] may be filed apart from the appeal for cassation in in-

stances specified by the present Code, and, moreover, in cases not specified by the Code, if the order entered by the court bars further proceedings in the case. Such separate appeals shall be filed within five days from the entry of the order appealed from, in accordance with the following:

(a) Appeals from orders entered by a judge sitting alone shall be filed with the same court (not later than the date of the hearing of the case on the merits) to be reviewed by a collegiate body of judges whose order is not subject to further appeal;

(b) Appeals from orders of the people's courts sitting in a collegiate body shall be filed with the regional (provincial) courts;

(c) Appeals from orders entered by the regional (provincial) courts [and supreme courts of the autonomous republics] as courts of original jurisdiction shall be filed with the R.S.F.S.R. Supreme Court.

Provisions of the present chapter shall also apply to separate appeals from interlocutory orders (as amended January 15, 1931, R.S.F.S.R. Laws, text 105).

Comment

Subsection (c) is modified by the translator to conform with Section 48 of the Judiciary Act of 1938, in accordance with the Ruling of the U.S.S.R. Supreme Court Plenary Session, June 13, 1939. Code of Civil Procedure (1948) 227.

Section 249 deals with appeals brought, not from judgments (i.e., decisions on the merits of the case), but from interlocutory orders, rulings, et cetera, by which the court decides individual questions arising in the course of the proceedings. Section 249 states the general rule that such orders, rulings, et cetera, may not be appealed from, apart from an appeal from the final determination on the merits of the case, unless the present Code expressly permits such "separate appeal," e.g.,

Sections 31, 33, 48, 91, 92, 187*d*, 203, 234*d*, 252. See also Volume I, Chapter 24, p. 877.

CHAPTER XXIX. REOPENING OF CASES DECIDED BY A COURT JUDGMENT

DIVISION ONE

Reopening of Cases by Reason of Newly Discovered Circumstances

Comment

This type of reopening of a case is discussed in Volume I, Chapter 24, pp. 905-907.

250. The decision of the question whether, by reason of newly discovered circumstances, a case determined by a final and executory judgment should be reopened, falls within the jurisdiction either of the court which decided the case on the merits or of the regional (provincial) court, depending upon the nature of the newly discovered circumstances (Section 252) (as amended October 30, 1930, R.S.F.S.R. Laws, text 655).

251. The case may be reopened in the following instances only:

(a) If new circumstances have been discovered which have an essential bearing on the case and which were not known, and could not have been known, to the petitioner;

(b) If a judgment of the court has established that there occurred in the case false testimony of witnesses, criminal acts of parties, their counsel or experts, or criminal acts of members of the court who participated in the case; or,

(c) If the judgment in the case is based on documents which have been subsequently declared a forgery

by a court judgment rendered in criminal proceedings, or if a decision of a court or of another authority upon which the judgment in the case is based has been set aside (as amended November 18, 1926, R.S.F.S.R. Laws, text 666).

252. The question of the reopening of a case by reason of newly discovered circumstances may be raised either by the petition of any party to the suit or by motion of the President of the R.S.F.S.R. Supreme Court, the Attorney General of the R.S.F.S.R., the president of the respective regional (provincial) court, or the regional (provincial) or district government attorney.

A petition for reopening of a case for reasons indicated in subsections (b) and (c) of Section 251 shall be filed with the court which tried the case on the merits, which court shall decide whether to grant the petition for reopening of the case. An order by which the court granted the petition to reopen the case is not subject to appeal; a separate appeal (Section 249) may be taken from the order refusing a petition to reopen the case.

A petition to reopen the case on grounds specified in subsection (a) of Section 251 shall be filed with the regional (provincial) court and shall be decided by its civil division.

253. A petition to reopen a case (Section 252) shall be filed by a party within one month from the day on which the circumstances serving as a basis for the petition for reopening were established (as amended November 18, 1926, R.S.F.S.R. Laws, text 666).

DIVISION TWO

Ex Officio Reopening of Decided Cases

Comment

(1) The remedy provided for in this division is a particu-

lar feature of the soviet appellate procedure and is discussed at length in Volume I, Chapter 24, pp. 894 *et seq.* and 907 *et seq.* Some of the provisions of the Code of Civil Procedure dealing with this subject matter are in conflict with the provisions of the Judiciary Act of 1938 and are therefore considered inoperative. Such provisions are put in square brackets in the text of Sections 254–254*e*.

(2) The sections of the Judiciary Act of 1938 dealing with the reopening and review of cases are as follows:

16. A protest against such judgments and orders of the courts in criminal and civil cases as have become final may be filed only by the U.S.S.R. Attorney General or the attorney general of a constituent republic, the President of the U.S.S.R. Supreme Court or the president of the supreme court of a constituent republic, in accordance with Sections 51, 64, and 74 of the present statute. . . .

51. The supreme court of a constituent republic shall exercise supervision over the administration of justice by the courts of the republic by means of:

(a) The examination of protests filed by the U.S.S.R. Attorney General, the attorney general of the constituent republic, the President of the U.S.S.R. Supreme Court, or the president of the supreme court of the republic against such judgments and orders in criminal and civil cases as have become final;

(b) The examination in judicial sessions of appeals and protests filed in cases decided by the courts of the constituent republic. . . .

64. The U.S.S.R. Supreme Court shall superintend the administration of justice by all the judicial bodies of the U.S.S.R. and constituent republics by means of:

(a) The examination of protests filed by the U.S.S.R. Attorney General and the President of the U.S.S.R. Supreme Court against such judgments and orders in criminal and civil cases as have become final; . . .

74. (Paragraph 2) The President of the U.S.S.R. Supreme Court and the U.S.S.R. Attorney General shall be authorized to obtain the record of any case from any court of the U.S.S.R. or a constituent republic and to file in such case a protest in the procedure established by law.

See also Volume I, Chapter 24, p. 879.

(3) A judgment which is not subject to appeal becomes final upon rendition. A judgment which is subject to appeal becomes final upon the expiration of the period of time fixed by law for the filing of the appeal without its being filed, or, if an appeal is filed, upon the rejection of the appeal or the affirmation of the judgment by the appellate court. Thus, the decisions of an appellate court are always final.

254. [The People's Commissar for Justice], the Attorney General of the Republic, and the President of the R.S.F.S.R. Supreme Court shall be authorized to obtain from any court of the republic the record of any case in which the judgment has become final for examination in the exercise of supervisory powers and shall be authorized to suspend the execution of the judgment in this case until the termination of such ex officio review (as amended, November 20, 1929, R.S.F.S.R. Laws, text 851).

Comment

The words in brackets have become inoperative. See *supra* comment 1 preceding section 254. On the other hand, powers granted by this section to the Attorney General of the R.S.F.S.R. belong at present also to the U.S.S.R. Attorney General and the President of the U.S.S.R. Supreme Court. See Volume I, Chapter 24, p. 900 *et seq.*

245*a*. [The regional (provincial) attorney shall be authorized to obtain for examination in the exercise of supervisory powers from any court of his region (province) the record of any case in which the judgment has become final; the district attorney shall be authorized to obtain records of such cases only from the people's court situated within his district. The same right shall belong to the president of the regional (provincial) court with respect to cases in which essential infractions have

been disclosed during his inspection of the courts under his authority, provided he exercises this right within the period of six months limitation from the date on which the judgment in the case became final. At the time of his request that the record of the case be sent for examination, the president of the regional (provincial) court and the regional (provincial) attorney may suspend the execution of the judgment until the termination of the ex officio review of the case (as amended October 30, 1930, R.S.F.S.R. Laws, text 655).]

Comment

This entire section has become inoperative because, under the Judiciary Act of 1938, the officers mentioned in Section 254*a* have no authority to move for the reopening of cases (see *supra* comment before Section 254). But they may nevertheless report to their superiors suggesting such motion (see Volume I, Chapter 24, II, 1 and 3, especially p. 904).

254*b*. Should a particularly essential violation of the laws in force or a plain violation of the interests of the workers' and peasants' State or the toiling masses be disclosed in the case so examined, the case shall be brought before the following bodies for ex officio reopening and review:

[(a) Before the civil appellate division of the regional (provincial) court, if the case has not been tried in an appellate procedure by the regional (provincial) court;

(b) Before the plenary session of the regional (provincial) court, if the case has been reviewed by the appellate division of the regional (provincial) court;]

(c) Before the civil division of the supreme court, if the protest in the case is filed by [the People's Commissar for Justice,] the attorney general of the repub-

lic, or the President of the R.S.F.S.R. Supreme Court, [or if, in a case reviewed in the plenary session of the regional (provincial) court, there is involved a question of principle which, in the opinion of the plenary session, calls for a general interpretation, as well as where there is in the case disagreement between the plenary session and the president of the regional (provincial) court or the regional (provincial) attorney.]

Having reopened and reviewed the case ex officio, the Supreme Court [or the regional (provincial) court] may:

(a) Reverse the judgment and remand the case for a new trial, or dismiss the case if the plaintiff has no right to sue or the cause is not subject to judicial jurisdiction; or,

(b) Affirm one of the judgments rendered in the case; or,

(c) Modify the judgment or render a new judgment, provided all the facts of the case are established and there is no need whatsoever for the collection or new hearing of evidence (as amended *id.*).

[Note: Supervisory powers granted under the present section to the regional (provincial) courts shall be exercised with respect to the courts of an autonomous republic by the supreme court of such republic (as amended *id.*).]

Comment

The words in brackets have become inoperative because, under the provisions of the Judiciary Act of 1938, quoted *supra* (comment 1 preceding Section 254), the U.S.S.R. Supreme Court and the supreme courts of the constituent republics alone have the power to reopen decided cases. See Volume I, Chapter 24, II, 3.

254*c*. Judgments of the judicial bench and rulings of the appellate division of the R.S.F.S.R. Supreme Court may be removed [to the Plenary Session of the Supreme Court] on a protest lodged for ex officio reopening of the case by the President of the Supreme Court, [his deputy,] the attorney general of the republic, [or his deputy attached to the Supreme Court] (as amended November 18, 1926, R.S.F.S.R. Laws, text 666).

Comment

The words in brackets have become inoperative. According to Sections 64 and 67 of the Judiciary Act of 1938, such judgments and rulings may be removed to the U.S.S.R. Supreme Court on protest of the U.S.S.R. Attorney General and the President of the U.S.S.R. Supreme Court. See Volume I, Chapter 24, II, 3.

254*d*. [The institution of proceedings for the ex officio reopening of a case and the filing of a protest to that effect shall be barred to regional (provincial) and district attorneys after the expiration of three months from the date on which the judgment became final.] No period of limitation shall be established for the filing of a protest for the ex officio reopening of a case by [the People's Commissar for Justice,] the President of the R.S.F.S.R. Supreme Court and the R.S.F.S.R. Attorney General (as amended November 20, 1929, R.S.F.S.R. Laws, text 851; January 15, 1931, *id.* 1931, text 105).

Note: Protests by government attorneys against judgments of the people's courts [sitting in special sessions] in labor cases for ex officio reopening of such cases shall be permitted only within the period of three months from the date on which the judgment was rendered and only in especially exceptional cases (as amended March 25, 1929, R.S.F.S.R. Laws, text 273).

Comment

The words in brackets have become inoperative in view of their conflict with the Judiciary Act of 1938, quoted *supra,* comment 1 preceding Section 254. See also Volume I, Chapter 24, II, 3.

254*e*. Where court judgments are reversed as a result of the ex officio reopening of the case, sums of money paid under the reversed judgments may be recovered from a worker only if the reversed judgment was based upon forged documents submitted by the worker, or if information supplied by him proved to be false. In such cases, recovery shall be permitted only in a judicial proceeding upon judgment of the people's court [sitting in special session for labor cases] (as amended March 25, 1929, R.S.F.S.R. Laws, text 273).

Comment

Words in brackets have become inoperative because they are in conflict with the Judiciary Act of 1938. See *supra,* comment preceding Section 254, also Volume I, Chapter 24, II, 3.

PART FIVE. EXECUTION OF JUDGMENTS AND COURT ORDERS

Comment

This part (Sections 255–473) has been to a great extent superseded by the Instruction for Procedure to be Followed in the Execution of Judgments issued by the U.S.S.R. People's Commissar for Justice on September 28, 1939. The provisions of the sections mentioned above have not yet been brought into accord with this instruction. Therefore only a few of the most general sections of both are translated below.

CHAPTER XXX. GENERAL PROVISIONS

255. The following shall be subject to execution in

accordance with the procedure laid down in the sections hereinbelow:

(a) Court judgments in civil cases;

(b) Execution clauses issued by notarial offices and agencies performing the functions of notarial offices; clauses placed by them on bills and notes certifying the protests and on checks certifying nonpayment;

(c) Excerpts from records of registration of the dissolution of marriages attesting the agreements of parents as to maintenance of the children and the unemployable spouses;

Comment

After the Edict of July 8, 1944, such excerpts are no longer issued. See Code of Civil Procedure (1948) 64.

(d) Court orders issued in civil or criminal cases and imposing fines;

(e) Court decisions rendered under Sections 121, 121*a* and 459 of the Code of Criminal Procedure;[34]

(f) Awards of governmental arbitrators in accordance with the statute concerning governmental arbitration and awards of [other] arbitral tribunals;

(g) Compositions made in court (as amended May 10, 1937, R.S.F.S.R. Laws, text 40).

Note 1: Awards of the Maritime Arbitration Commission attached to the U.S.S.R. Chamber of Commerce as well as orders of the chairman of this commission concerning posting security for the claim shall be executed on the basis of a clause written by the said chairman and certifying that the award is subject to execution or establishing the procedure for the payment of the adjudicated sum or for the realization of security posted

[34] See *supra* comment to Section 10.

(as amended May 10, 1931, R.S.F.S.R. Laws, text 238; March 10, 1933, *id.* 1933, text 63).

Note 2: Procedure in the execution of judgments of foreign courts shall be determined by agreements with the foreign countries concerned (enacted May 10, 1931, R.S.F.S.R. Laws, text 238).

Comment

The provisions of Sections 4 and 5 of the Instruction of 1939 is in part overlapping, in part slightly different, and in part identical with those of the Code of Civil Procedure, as follows:

4. The marshal of the court shall execute:

(a) Judgments and orders of the court in civil cases;

(b) Judgments of the criminal court in parts relating to the collection of property;

(c) Compositions made in court;

(d) Execution clauses issued by notarial offices;

(e) Agreements as to the maintenance of children or unemployable spouses executed in the Civil Registry Offices;

(f) Decisions of governmental arbitrators;

(g) Decisions of such agencies of departmental arbitration as are granted the power to subject their decisions to compulsory execution (as defined in the Order of the People's Commissar for Justice of June 21, 1940, No. 70);

(h) Awards of arbitral tribunals;

(i) Awards of the Maritime Arbitration Commission;

(j) Decisions of foreign courts on the basis of special agreements of the U.S.S.R. with the foreign country concerned.

Note: The execution of court decisions concerning foreclosure of property for arrears in taxes (U.S.S.R. Laws, 1937, text 12) shall be determined by a special instruction.

5. The following instruments shall be subject to execution:

(a) Writs of execution issued on the basis of judgments and orders in civil cases and in criminal cases in parts ordering the collection of property;

(b) Execution clauses issued by notarial offices;

(c) Excerpts from the record of the registration of dissolution of marriages attesting the agreement of parents concerning the maintenance of children or the agreement of divorced

spouses concerning the maintenance of the unemployable spouse;

(d) Orders issued on the basis of the decisions of the governmental arbitrators and the Maritime Arbitration Commission;

(d [1]) Orders of departmental arbitrators who are authorized to subject their decisions to compulsory execution;

(e) Decisions of the piece-rate and dispute boards certified by the agencies of labor inspection.

255 [1]. Judgments in all disputes between governmental enterprises and institutions, collective farms, cooperatives and public organizations must be presented for execution within one year, and those in all other disputes within a three-year period (as amended September 10, 1932, R.S.F.S.R. Laws, text 327; December 10, 1934, *id.* 1934, text 268).

Note: [Contains transitory provisions relating to the period before December 31, 1934.]

Comment

The Instruction of 1939, Section 6, states the same periods of time regarding all instruments subject to execution under Section 5 quoted above. It also adds: "Instruments subject to execution for which the period of time expired shall not be accepted for execution by the marshals of the court."

255 [2]. [Is apparently superseded by the following Section 3 of the Instruction of 1939:]

3. The acts of execution shall be performed by the marshal of the court in whose district the place of the debtor's residence, or work, or property is located.

In exceptional cases, upon the order of the judge, the marshal of the court may proceed with execution outside his precinct but within the same city or the same district (rayon) in rural localities.

256. Persons authorized to execute court judgments shall initiate execution upon oral or written petition of

the judgment creditor based upon writ of execution.

256*a*. [Repealed July 14, 1930, R.S.F.S.R. Laws, text 412.]

256*b*. Arrest and levy of execution upon property belonging to a foreign state may be effected only upon permission obtained for each individual case in advance from the Council of Ministers of the U.S.S.R. (enacted November 20, 1929, R.S.F.S.R. Laws, text 851).

Comment

The Instruction of 1939 makes plain that the court has to request such permission through the Minister of Justice (Section 32).

45

Statute on Maritime Arbitration Commission

Statute on the Maritime Arbitration Commission Attached to the U.S.S.R. Chamber of Commerce (MAK).[1]

1. A Maritime Arbitration Commission shall be attached to the U.S.S.R. Chamber of Commerce in Moscow for arbitration of the following:

(a) Disputes over compensation for the rendering of assistance by seagoing vessels to each other, or by a seagoing vessel to a river craft or vice versa (salvage);

(b) Disputes arising out of collisions of seagoing vessels, or of seagoing vessels and river craft, or disputes arising from damage caused by seagoing vessels to port structures;

(c) Disputes growing out of relations of affreightment of seagoing vessels, steamship agency services, and maritime shipping (by consignment), as well as disputes arising from marine insurance (as amended January 8, 1933, U.S.S.R. Laws, text 12; May 7, 1936, U.S.S.R. Laws, text 222).

2. The Maritime Arbitration Commission shall consist of twenty-five members appointed for a period of one year by the Presidium of the U.S.S.R. Chamber of Commerce from among representatives of maritime, commercial, insurance, and kindred organizations, as

[1] U.S.S.R. Laws 1930, text 637; *id.* 1933, text 12; *id.* 1936, text 222.

well as from among other persons having knowledge of the merchant marine, maritime law, and marine insurance (as amended January 8, 1933, U.S.S.R. Laws, text 12).

3. The Maritime Arbitration Commission shall elect, for the duration of its term, a chairman and two deputy chairmen from among its members.

4. When submitting a dispute to arbitration by the Maritime Arbitration Commission, each party shall designate an arbitrator chosen from among the members of the Commission.

5. Submission of disputes to arbitration by the Maritime Arbitration Commission may also be provided for in salvage contracts.

In such instance, each party shall, within thirty days from the termination of the salvage or assistance operations, designate to the Chairman of the Maritime Arbitration Commission the name of the arbitrator chosen by him from among the members of the Commission. If, within the stated period, one of the parties does not name his arbitrator, the Chairman of the Maritime Arbitration Commission shall, upon the petition of the other party, appoint such arbitrator at his own discretion.

6. Should the arbitrators fail to reach an agreement on the merits of the dispute, they shall choose an umpire from among the members of the Maritime Arbitration Commission.

Should the arbitrators fail to agree on the umpire, the latter shall be appointed by the Chairman of the Maritime Arbitration Commission.

7. By mutual consent, the parties may leave the choice of arbitrators to the Maritime Arbitration Commission. In such instance, the Chairman of the Maritime Arbi-

tration Commission may, at his discretion, appoint one of the members of the Commission to act as sole arbitrator.

8. In cases subject to arbitration by the Maritime Arbitration Commission, the Chairman of the Commission may, at the request of the plaintiff, ask the respondent to post security for performance and may determine the amount and form thereof.

9. In cases heard by the Maritime Arbitration Commission, a fee shall be collected to cover the costs of the proceedings, remuneration of the arbitrators, maintenance of the Commission, and citation of witnesses, experts, et cetera, to the extent of 2 per cent of the sum in dispute, in accordance with the rules issued by the U.S.S.R. Chamber of Commerce.

10. Should the award of the Maritime Arbitration Commission contain a violation or erroneous application of the laws in force, the U.S.S.R. Supreme Court may, on an appeal lodged by a party concerned or a protest lodged by a government attorney attached to the U.S.S.R. Supreme Court, set aside the award and remand the case to the Maritime Arbitration Commission for arbitration *de novo*.

In such case, the Chairman of the Maritime Arbitration Commission shall fix a period of time within which the parties shall indicate new arbitrators chosen from among the members of the Commission.

Should the parties fail to designate their arbitrators within the fixed period, arbitrators shall be appointed by the Chairman of the Commission.

11. If, within one month from the date on which the Maritime Arbitration Commission renders a motivated award, no appeal by a party or protest by the government attorney is filed, the award shall become final.

12. The procedure to enforce posting security under Section 8, as well as payment of the amounts awarded, shall be determined by the Chairman of the Maritime Arbitration Commission as soon as the award becomes final.

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Instruction on Procedure of Maritime Arbitration Commission

Instruction on Procedure of the Maritime Arbitration Commission, Approved by the Presidium of the U.S.S.R. (formerly Western) Chamber of Commerce, February 8, 1931.[1]

1. The Maritime Arbitration Commission shall proceed with arbitration upon the filing of written applications by the parties concerned. In the applications filed, the parties concerned shall state the arbitrators chosen from among the members of the Commission.

When a dispute arising from a salvage contract which provides for arbitration by the Maritime Arbitration Commission is submitted for settlement to the Maritime Arbitration Commission, the original contract shall be filed together with the applications, or, if this is impossible, a duly certified copy thereof and a statement of the reasons for which the original could not be filed.

2. Upon filing an application, a sum of fifty rubles shall be paid in advance on account of the total costs of arbitration by the Maritime Arbitration Commission. This sum shall be either paid in cash or deposited in the current account of the U.S.S.R. Chamber of Commerce, and a receipt therefor shall be filed with the application.

3. In the applications filed, the parties concerned shall

[1] (1934) 1 Collection of Decisions of the Maritime Arbitration Commission (in Russian) 136.

either state the amount claimed for salvage or leave the determination of the amount to the Maritime Arbitration Commission, without stating in the petition the amount claimed.

4. Upon receipt of an application to institute arbitration proceedings, the Chairman of the Maritime Arbitration Commission shall notify the other party within two weeks of the receipt of the application and grant him ten days if he resides in the U.S.S.R., or thirty days if he resides outside the U.S.S.R., to give notification of the arbitrator chosen from among the members of the Commission. In the event that the whereabouts of the respondent are unknown, an advertisement shall be printed in *Izvestiia* before the commencement of arbitration proceedings, and the period for the choice of an arbitrator shall be extended up to forty days.

5. Upon receipt from the respondent of an answer stating the arbitrator chosen, the Chairman of the Maritime Arbitration Commission shall within two days appoint a date for the hearing of the case and shall notify the arbitrators thereof. Such notification shall be forwarded to the arbitrators at least five days in advance of the date of hearing.

6. When the Maritime Arbitration Commission arbitrates disputes arising from salvage contracts providing for arbitration by the Maritime Arbitration Commission, each party shall, within thirty days from the termination of salvage operations, notify the Chairman of the Maritime Arbitration Commission of the arbitrator chosen from among the members of the Commission. If within this period one of the parties does not choose an arbitrator, the Chairman of the Maritime Arbitration Commission shall, upon the request of the other party, appoint an arbitrator at his own discretion.

7. By mutual consent, the parties may leave the choice of arbitrators to the Maritime Arbitration Commission. In such case, the Chairman of the Maritime Arbitration Commission may, at his own discretion, appoint one member of the Commission to act as sole arbitrator.

8. If the dispute is heard by two arbitrators and they cannot arrive at an agreement, they shall select an umpire from among the members of the Commission. Should the arbitrators fail to agree on the choice of an umpire, the Chairman of the Maritime Arbitration Commission shall appoint the umpire from among the members of the Commission at his discretion.

9. The arbitrators shall hear the case in public, and the parties shall be invited to appear at the hearing. Nonappearance of the litigants shall not prevent determination of the case. The Chairman of the Maritime Arbitration Commission may require the parties to file with the Maritime Arbitration Commission detailed pleadings in writing before the case is heard.

10. The parties may plead their cases before the Maritime Arbitration Commission either in person or through attorneys. The attorneys must be accredited with proper powers, which may be given by the parties orally at the hearing and taken in the record or stated in duly certified powers of attorney.

11. It is the duty of the parties to present evidence, but the arbitrators may also seek evidence on their own motion. The admission of one or another item of evidence and the hearing of evidence (testimony of witnesses and experts, view of the premises, et cetera) shall depend upon whether the arbitrators find the same material to the case.

12. The methods of hearing and the evaluation of

the evidence shall rest in the discretion of the arbitrators.

By agreement of the arbitrators, one of them may be commissioned to hear the evidence.

The parties shall be summoned for the hearing of evidence.

13. Brief records of the sessions of the arbitrators shall be kept and signed by the arbitrators.

14. The award shall be made by the arbitrators unanimously. Should an umpire participate in the hearing of the case, the award shall be made by majority vote.

15. The award shall be reduced to writing and must be motivated. It shall recite: the date on which the award is made, the names of the arbitrators and the umpire, the names of the litigants, a brief statement of the facts, and the grounds upon which the award is made.

The award shall be signed by the arbitrators and the umpire.

16. The award shall state the apportionment of the costs of the proceedings between the parties. The amount of the costs and the distribution thereof shall be determined in accordance with the Instruction Concerning Fees to Be Collected in Cases Arbitrated by the Maritime Arbitration Commission, Approved by the U.S.S.R. Chamber of Commerce. The party in whose favor the award is made may be adjudicated, in addition to compensation for the expenses incurred in the arbitration proceedings, an attorney's fee, not to exceed, however, 5 per cent of the adjudicated claim. Moreover, the same party may be adjudicated interest to the date of payment not to exceed 6 per cent per annum.

17. If the award contains a violation or erroneous

application of the laws in force, the U.S.S.R. Supreme Court may, on appeal lodged by the party concerned or protest lodged by the government attorney, set aside the award and remand the case to the Maritime Arbitration Commission for arbitration *de novo*. The appeal by the party concerned or the protest by the government attorney must be filed within one month. Appeals of parties shall be filed with the Maritime Arbitration Commission and shall be transmitted by said Commission to the U.S.S.R. Supreme Court within three days.

18. In the event that the case is remanded to the Maritime Arbitration Commission for a new arbitration, the Chairman of the Commission shall fix a period of time within which the parties shall designate their new arbitrators chosen from among the members of the Commission.

Should the parties fail to designate their arbitrators within the period fixed, then such arbitrators shall be appointed by the Chairman of the Commission.

19. If, within a month from the date on which the award is made, neither an appeal by the party concerned nor a protest by the government attorney is filed, the award shall become final and take effect. The final award shall be enforced in accordance with the procedure established by the legislation of the soviet constituent republics.

20. By request of the parties who initiated the arbitration, the Chairman of the Maritime Arbitration Commission may require security for performance to be posted. The amount and form thereof shall be determined by the Chairman.

If the posting of security for performance of the claim submitted to arbitration is provided for in the

salvage contract, the posting of such security shall be mandatory.

The decision of the Chairman of the Maritime Arbitration Commission ordering the posting of security for performance of the claim submitted to arbitration shall be enforced in accordance with the procedure established for the enforcement of awards of the Maritime Arbitration Commission (Section 19).

21. In the event that security for performance of the claim submitted for arbitration is posted, realization of the security and payment of the sums adjudicated shall be effected by order of the Chairman of the Maritime Arbitration Commission as soon as the award becomes final.

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Statute on Foreign Trade Arbitration Commission

Statute of June 17, 1932, on the Foreign Trade Arbitration Commission Attached to the U.S.S.R. Chamber of Commerce (VAK)[1]

1. A Foreign Trade Arbitration Commission attached to the U.S.S.R. Chamber of Commerce shall be established for arbitration of disputes arising from legal transactions involving foreign trade, in particular, disputes between foreign firms and soviet trade organizations.

2. The Foreign Trade Arbitration Commission shall consist of fifteen members appointed for a period of one year by the Presidium of the U.S.S.R. Chamber of Commerce from among representatives of commercial, industrial, shipping, and kindred organizations, as well as from among persons having special knowledge in the field of foreign trade.

3. The Foreign Trade Arbitration Commission shall elect a Chairman and two deputy chairmen from among its members.

4. When submitting a dispute to arbitration by the Foreign Trade Arbitration Commission, each party shall choose an arbitrator from among the members of the Commission.

[1] U.S.S.R. Laws 1932, text 281.

5. Not later than within fifteen days from the appointment of the arbitrators, the arbitrators shall choose an umpire from among the members of the Commission.

In the event that no agreement between the arbitrators is reached within this period of time concerning the choice of the umpire, the latter shall be appointed by the Chairman of the Commission from among its members.

6. By mutual agreement, the parties may leave the choice of arbitrators to the Foreign Trade Arbitration Commission.

In such case, the Chairman of the Foreign Trade Arbitration Commission may, at his own discretion, entrust the determination of the dispute to a sole arbitrator appointed from among the members of the Foreign Trade Arbitration Commission.

7. To defend their interests before the Foreign Trade Arbitration Commission at the hearing of the dispute by the Commission, the parties may, at their own discretion, appoint attorneys, who may be foreign nationals.

8. In the event that submission of the dispute to arbitration by the Foreign Trade Arbitration Commission is provided for in the contract made between the parties, and one of the parties evades naming his arbitrator within the period of time specified in such contract, then, upon the petition of the other party, the Chairman of the Foreign Trade Arbitration Commission shall in his own discretion appoint a second arbitrator, who together with the first arbitrator shall select the umpire.

9. While the case is being heard by the Foreign Trade Arbitration Commission, the Commission may order

the posting of security for performance of the claim and define the amount and form thereof.

10. At the hearing of the case, the Foreign Trade Arbitration Commission shall collect a fee to cover the costs of procedure, maintenance of the Commission, citation of witnesses and experts, et cetera. The amount of the fee shall be determined by the Commission during the hearing but shall not exceed 1 per cent of the sum in dispute.

11. Awards made by the Foreign Trade Arbitration Commission in cases arbitrated by it shall be final and not subject to appeal.

12. The party against whom the award of the Foreign Trade Arbitration Commission is made shall himself execute the award within a period of time fixed by the Commission. Awards not executed by such party within the period of time fixed shall be enforced in accordance with the procedure provided in the codes of civil procedure of the constituent republics for execution of the awards of arbitral tribunals.

13. Rules of procedure for the Foreign Trade Arbitration Commission shall be approved by the Presidium of the U.S.S.R. Chamber of Commerce.

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Rules of Procedure of Foreign Trade Arbitration Commission

Rules of Procedure of the Foreign Trade Arbitration Commission, Approved by the Presidium of the U.S.S.R. Chamber of Commerce on the Basis of Section 13 of the Resolution of the Central Executive Committee and Council of People's Commissars of the U.S.S.R. of June 17, 1932, Concerning the Foreign Trade Arbitration Commission.[1]

1. The Foreign Trade Arbitration Commission shall proceed in the arbitration of a case upon the written application of the parties concerned.

2. The application must contain: (1) the names of the plaintiff and defendant; (2) indication of the residence of the plaintiff and defendant; (3) the prayer for relief of the plaintiff; and (4) the designation of the arbitrators selected by the parties from among the members of the Foreign Trade Arbitration Commission, or a statement that the parties authorize the Foreign Trade Arbitration Commission to select the arbitrators.

3. Original documents (contracts, correspondence between the parties, et cetera) which may establish the facts in the case, or certified copies thereof, must be appended to the application.

[1] Foreign Trade Arbitration (in Russian 1941) 91.

4. Copies of the application and of all appendices to be served on the party of the second part must also be appended to the application.

5. Upon the filing of the application instituting arbitration proceedings, the Foreign Trade Arbitration Commission shall notify the defendant thereof without delay, shall serve upon him a copy of the application and all appendices, and shall grant him, if he remains within the confines of the U.S.S.R., not less than ten days from the date of receipt of the communication, or, if he is outside the confines of the U.S.S.R., not less than thirty days, to choose an arbitrator from among the members of the Foreign Trade Arbitration Commission.

Note: In case arbitration of the dispute by the Foreign Trade Arbitration Commission is provided for in the contract made between the parties, and said contract specifies other periods of time for this purpose, such periods of time shall be followed.

6. Upon receipt from the defendant of notice concerning the arbitrator chosen by him, the Foreign Trade Arbitration Commission shall notify the arbitrators chosen within five days.

7. The arbitrators shall select an umpire from among the members of the Foreign Trade Arbitration Commission no later than within fifteen days from the receipt of such notice from the defendant by the arbitrator.

8. In case arbitration of the dispute by the Foreign Trade Arbitration Commission is provided for in the contract made by the parties, and one of the parties evades the naming of his arbitrator within the period fixed by the contract, or within the period stated in Section 5 of the present Rules if no period is provided for by the contract, the Chairman of the Foreign Trade Arbitration Commission shall, upon the request of the

other party, appoint at his discretion a second arbitrator, who, together with the first arbitrator, shall select the umpire.

9. In case no agreement between the arbitrators concerning the choice of the umpire is reached within the periods provided for in Sections 7 and 8 of the present Rules, the Chairman of the Foreign Trade Arbitration Commission shall appoint the umpire from among the members of the Commission.

10. By mutual agreement of the parties, the case may be heard by a single arbitrator who is directly selected by them or personally appointed by the Chairman of the Foreign Trade Arbitration Commission in his discretion, in both cases from among the members of the Commission.

11. Where the parties agree that the case be heard by a single arbitrator, they shall inform the Foreign Trade Arbitration Commission thereof before the expiration of the period granted to the defendant for the selection of his arbitrator (Section 5).

12. The date for the hearing shall be set by the Chairman of the Foreign Trade Arbitration Commission in agreement with the umpire, or, in cases provided for in Section 10, with the sole arbitrator.

13. The Foreign Trade Arbitration Commission may require the parties to file detailed pleadings in writing before the case is heard.

14. The case shall be heard by the Foreign Trade Arbitration Commission sitting as a body consisting of two arbitrators and one umpire, or, in cases provided for in Section 10, by a single arbitrator, always in a public session to which the parties shall be summoned.

Nonappearance of the parties or their attorneys shall not preclude the hearing of the case.

15. The parties may plead the case before the Foreign Trade Arbitration Commission in person or through attorneys whom they appoint in their discretion from among any persons including foreign nationals.

The attorneys must present their proper powers.

16. It is the duty of the parties to present the evidence, but the Arbitration Commission may also seek evidence on its own motion.

17. Written evidence, such as all kinds of instruments, documents, business correspondence, et cetera, shall be presented to the Arbitration Commission by the parties, but the parties may also be requested by the Arbitration Commission itself to present such evidence. The admission of one or another item of evidence and the hearing of evidence, such as the testimony of witnesses and experts, view of the premises, et cetera, shall depend upon whether or not the Arbitration Commission finds one or another item of evidence material or immaterial to the case.

19. The methods of hearing and the evaluation of evidence shall rest with the Arbitration Commission.

The Arbitration Commission may delegate one of its members for the hearing of evidence.

20. The Foreign Trade Arbitration Commission may ask the opinion of experts for the clarification of such questions raised during the trial as require special knowledge, to which questions pertain among others the question of the existence of definite business practices, the interpretation of foreign law, et cetera.

Experts may be appointed in the discretion of the Arbitration Commission from among soviet as well as alien witnesses.

21. The parties shall be summoned for the hearing at which the evidence is presented and examined.

22. If the hearing of evidence (experts' testimony, view of the premises, et cetera) entails expense, the party upon whose motion such evidence is admitted shall, prior to its presentation, deposit the necessary amount determined by the Arbitration Commission.

23. The record of the hearing of the Foreign Trade Arbitration Commission shall be signed by the umpire, or, in the cases indicated in Section 10, by the arbitrator.

24. Awards of the Foreign Trade Arbitration Commission shall be made by majority vote.

25. The award shall be reduced to writing and state the reasons for the decision.

The award must recite the time when it was made, the names of the arbitrators and of the parties, a statement of the facts and the reasons upon which the award is based, as well as the term for the execution of the award by the party against whom the award is granted.

The award shall be signed by the arbitrators and the umpire and shall become final upon the signing by the arbitrators and umpire, or, in the case provided for in Section 10, by the single arbitrator.

26. The apportionment of the costs of arbitration between the parties shall be stated in the award.

The party in whose favor the award is made may also be adjudicated, in addition to compensation for the costs of arbitration, an attorney's fee, not to exceed, however, 5 per cent of the sum adjudicated to such party.

Moreover, the party in whose favor the award is rendered may be adjudicated interest to the date of payment not to exceed 6 per cent annually.

27. If in the course of the proceedings, the parties settle the dispute by agreement, this fact shall be established upon the request of the parties, either in the record of the session of the Foreign Trade Arbitration Commission or in the award of the Commission rendered on the basis of the agreement of the parties.

28. Simultaneously with the making of the award in the case, the Arbitration Commission shall determine the amount of remuneration to be paid to the arbitrators and the umpire.

This remuneration shall be paid from the sums received by the Foreign Trade Arbitration Commission under Section 10 of the Statute on the Commission.

29. Either party who wishes to obtain a copy of the award of the Foreign Trade Arbitration Commission shall deposit with the Foreign Trade Arbitration Commission the amount of the costs of arbitration established in the award of the Arbitration Commission, reserving the right to recover the deposited sum from the adversary, if such right is granted in the award of the Foreign Trade Arbitration Commission.

30. Upon the request of the plaintiff, the Chairman of the Foreign Trade Arbitration Commission may order that security for performance of the claim submitted for arbitration be posted.

The amount of security and the method of posting security shall be established by the Chairman of the Foreign Trade Arbitration Commission.

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Act Concerning Rates of Governmental Fees of April 29, 1942[1]

On the basis of Sections 4 and 13 of the Edict of the Presidium of the U.S.S.R. Supreme Council of April 10, 1942 (Vedomosti 1942 No. 13), the Council of People's Commissars has resolved:

1. To approve the following rates of governmental fees:

Name of the action or documents for which the fee is collected	Amount of rate in rubles	Amount of rate proportionally to the amount of the document
1. In cases tried by courts		
(a) for complaints where the amount of claim is under 200 rubles	3	—
for complaints where the amount of claim is 200 and over up to 500 rubles	5	—
for complaints where the amount of claim is 500 rubles and over but does not exceed 5,000	—	2%
for complaints where the amount of claim is 5,000 rubles and over	—	6%
(b) for complaints in disputes involving other subject matter than property	3	—

Note: For complaints in disputes among collective farms and in disputes of collective farms with governmental and co-operative organizations, the government fee shall be collected at the rate of 1 per cent from the amount claimed but not less than one ruble.

[1] U.S.S.R. Laws 1942, text 71.

Name of the action or documents for which the fee is collected	Amount of rate in rubles	Amount of rate proportionally to the amount of the document
(c) for appeals for cassation from the court decisions	—	50% of the rate established for complaints (computed by the amount of claim)
(d) for issuance of copies of papers and documents kept on record of the case by request of the litigants and other parties admitted to participate in the case	2	—
2. In cases tried by the agencies of governmental arbitration		[from 100 rubles to 2% of the claim]
3. For acts performed by notarial agencies		
(a) for certification of contracts establishing building tenancy	50	—
(b) for certification of contracts of conveyance of building tenancy	—	3%, but not less than 50 rubles
(c) for certification of wills	10	—
(d) for certification of contracts distributing an estate, contracts of suretyship and contracts not subject to appraisal in money	25	—
(e) for certification of renting contracts	—	3%, but not less than 15 rubles
(f) for certification of other contracts	—	1%, but not less than 10 rubles
(g) for certification of a power of attorney		
(1) for management of property and performance of credit transactions	20	—
(2) for all other kinds of power of attorney	5	—
(h) for placing an execution clause on an instrument	—	1%, but not less than 3 rubles
(i) . . . (p)		

Name of the action or documents for which the fee is collected	Amount of rate in rubles	Amount of rate proportionally to the amount of the document
(r) for issuance of certificates attesting to the right of succession, on amount up to 300 rubles	10	—
on amount over 300 to 1,000 rubles	20	—
on amount over 1,000 to 3,000 rubles	50	—
on amount over 3,000 to 5,000 rubles	100	—
on amount over 5,000 to 10,000 rubles	—	5%
on amount over 10,000 rubles	—	10%
(s) . . .		
21. For registration of acts of civil status		
(a) marriage	15	—
(b) divorce [Section 138 of the Code of Laws on Marriage, Etc., as amended by the Edict of April 16, 1945, Vedomosti No. 26]	500–2,000	
filing of a complaint for divorce (As amended August 24, 1944, U.S.S.R. Laws, text 178)	100	
22. Registration of the change of the first and last name	150	—

Note: The fee shall be assessed in round figures of rubles; sums under 50 kopeks shall be dropped, and sums over 50 kopeks shall be taken as one ruble.

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Statute on Arbitral Tribunals Official Appendix to Chapter XXII of the Code of Civil Procedure

Resolution of the All-Russian Central Executive Committee of October 16, 1924 (R.S.F.S.R. Laws, text 783).

Comment

See comment to Section 2 of the Civil Code.

1. Any dispute respecting private rights among private persons (including corporate bodies) may be submitted, by agreement of the parties, for decision to an arbitral tribunal functioning under the procedure prescribed in the following sections.

Note 1: Disputes which are subject, on the basis of subsections (c) and (d) of Section 4 of the Judiciary Act of 1926, to the jurisdiction of special courts and institutions may not be submitted to arbitration courts.[1]

Note 2: This statute shall not apply to arbitral courts organized under Section 168 and subsequent sections of the Code on Labor Laws and of other laws enacted in further development of these sections.

Note 3: [This Note, dealing with special rules for

[1] This note refers to the Judiciary Act of 1926, which is superseded by the Judiciary Act of 1938 not containing similar provisions.

Kazakhstan, became inoperative because of the administrative reorganization of that region.]

2. Arbitral tribunals shall be organized under separate agreement of all disputants in each case; therefore, an agreement to submit to arbitration all disputes in general, or all disputes of a particular kind which may arise in the future, shall not deprive parties to such agreements of the right to apply to the proper court under the general rules of the Code of Civil Procedure.

3. An arbitral tribunal shall be formed by the choice of the parties and shall consist either of one arbitrator or of several arbitrators selected in equal number by each of the parties to the case who has an independent claim, together with one umpire chosen by general vote of all arbitrators.

4. The following persons may not serve as members of arbitral tribunals:

(a) Persons deprived of their rights by a court sentence (Section 31 of the Criminal Code);

(b) Persons against whom a criminal investigation or trial is pending;

(c) Persons deprived by a judicial or disciplinary procedure of the right to occupy judicial positions.

5. The agreement to submit a case to an arbitral tribunal must be stated in a special written instrument (submission to arbitration), which must contain the following:

(a) The full names and addresses of the disputants;

(b) If the submission to arbitration is made in the name of a corporate body or by persons other than the disputants themselves, the authority to form an arbitral tribunal must be indicated;

(c) The subject matter of the dispute which is to be submitted to arbitration;

(d) The exact names of the arbitrators chosen, as well as the indication of one of them chosen as president (name, patronymic and last name);

(e) The period of time fixed for the determination of the case;

(f) The place and time of the drafting of the submission to arbitration;

(g) The consent of the persons chosen as arbitrators;

(h) The signatures of all parties to the dispute and of the arbitrators.

6. The submission to arbitration must be notarially certified (Section 199 of the Code of Civil Procedure).

7. Substitution of arbitrators prior to the termination of the case shall not be permitted. The litigant may withdraw from the submission to arbitration, if he proves that any one of the arbitrators is interested in the outcome of the case and that this fact was not known to him at the time he signed the submission to arbitration.

8. Where one of the arbitrators dies, or is away or seriously ill, the parties may agree to submit the dispute for determination to the remaining arbitrators, or to appoint a new arbitrator at the choice of the party who had chosen the missing arbitrator; in such a case, an appropriate notification shall be made on the submission to arbitration and shall be signed by all members of the arbitral tribunal and by the parties.

9. [Dealing with taxes, this has become inoperative.]

10. The parties who consented to submit the dispute to arbitration have no right to withdraw from the case prior to the expiration of the term provided by the sub-

mission to arbitration except in cases specified by Section 7 of the present statute. If the period of time fixed for the determination of the case has not been specified in the submission to arbitration, the hearing must be concluded within one month from the date of the certification of the submission to arbitration.

11. The arbitral tribunal shall not be bound by the formal rules of procedure; it may not, however, determine the case without hearing the pleadings of the litigants or without calling for their pleadings.

12. It shall be considered that an arbitral tribunal has failed to materialize:

(a) Upon the expiration of the time period;

(b) If any one of the arbitrators withdraws or is removed (Section 7);

(c) If, during the hearing of the case, circumstances are discovered which give rise to the institution of criminal prosecution against any one of the litigants and which may have a bearing upon the outcome of the case;

(d) If any of the litigants dies.

13. The award of the arbitration court shall be reached by a majority of votes.

14. The award shall be in writing, the following being indicated:

(a) The place, day, month and year of the decision, and the composition of the arbitral tribunal;

(b) The submission to arbitration according to which the tribunal functioned;

(c) The names of all parties to the dispute;

(d) The subject matter of the dispute;

(e) The essence of the decision of the arbitral court;

(f) The distribution of expenses incurred in procedure and taxes.

15. The award shall be signed by all arbitrators. The refusal of any one of the arbitrators to sign and any dissenting opinion shall be stated in the award itself. An award signed by the majority of the arbitrators shall have full legal force.

16. The decision shall be announced to the litigants during the hearing of the court, and they shall sign their names upon the award itself. If a party refuses to sign, or fails to appear before the session of the court without justifiable reason, the award shall be deemed to have been announced to such party and an appropriate notation thereof shall be made upon the award by the presiding arbitrator.

17. The procedure governing verification of the correctness of the arbitration award is provided for in Sections 202–203 of the Code of Civil Procedure.

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PART TWELVE

STATE SECRETS

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Information Containing State Secrets

Concerning Establishment of a List of Information Forming State Secrets the Disclosure of Which Shall be Punished by Law.[1]

The U.S.S.R. Council of Ministers has resolved [on June 8, 1947]:

The following list of information which constitutes state secrets shall be established:

Information of a Military Nature

1. Organization, strength, location, combat capacity, armament, equipment, combat training, supply of materiel or money, plans of mobilization and operations relating to the Armed Forces of the U.S.S.R. as a whole and to individual branches of service, as well as to large military formations, military units, ships, small units, offices, establishments, and individual military objects.

2. Composition, size, condition, location, and assignment of national stocks of all kinds prepared for mobilization, of national reserves of material and food, as well as of human reserves, subject to mobilization covering the U.S.S.R. as a whole, as well as the constituent or autonomous republics, regions, provinces, bases, industrial and transportation enterprises, as well as large

[1] Izvestiia, June 10, 1947, No. 134 (9356).

military formations, military units and offices of the Armed Forces of the U.S.S.R.

3. Plans of mobilization and operations, schedules, proposed or approved measures connected with the plans of mobilization, securing the national defense of the U.S.S.R. along the line of government administration, industry, transportation, communication and all other branches of national economy (as a whole and regarding individual branches of the government, individual enterprises, or territorial divisions).

4. Location, equipment, financial and industrial plans, condition, productive capacity, nomenclature and size of production of war industries, as well as of all other industries engaged in the execution of war contracts.

5. Discoveries, inventions and improvements, research and experimental projects in the field of technical and any other means of defense of the U.S.S.R.

6. Documents, material and publications relating to the defense of the U.S.S.R., as well as data based upon such material and publications.

Information of an Economic Nature

7. Information declared by the U.S.S.R. Council of Ministers to be kept secret and relating to the industry as a whole, and to its separate branches, to agriculture, to commerce and means of conveyance.

8. The state of foreign exchange reserves, data concerning the current exchange balance, plans of financial operations of the U.S.S.R., information concerning the place and manner of safekeeping and shipping of precious metals of the National Reserve Fund, of foreign exchange values, and of moneys.

9. Approved or contemplated plans of import and

export of individual kinds of merchandise; conditions of export reserves of individual kinds of merchandise.

10. Geological resources and extracting of nonferrous and rare metals and soils.

Information Concerning Discoveries, Inventions and Improvements of Nonmilitary Character

11. Discoveries, inventions, technical improvements, research and experimental works in all fields of science, technology and national economy until they are definitely completed and permitted to be published.

Information of Any Other Kind

12. Information pertaining to negotiations, relations and agreements of the U.S.S.R. with foreign countries, as well as to any other measures in the field of foreign policy and foreign trade that are not contained in the officially published data.

13. Governmental cipher codes and the contents of coded correspondence.

14. Other information which will be declared by the U.S.S.R. Council of Ministers not to be made public.

In connection with the issuance of the present resolution, the Resolution of the U.S.S.R. Council of People's Commissars of April 27, 1926, "Concerning Approval of a List of Information Which by Their Contents Form Specially Protected State Secrets" (U.S.S.R. Laws 1926, No. 32, text 213) shall be considered ineffective.

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Responsibility for Disclosure of State Secrets

Edict of June 9, 1947 of the Presidium of the U.S.S.R. Supreme Soviet Concerning Responsibility for the Disclosure of State Secrets and for Loss of Documents Containing State Secrets.[1]

In order to unify legislation on, and to strengthen the responsibility for, disclosures of information which forms a state secret, a list of changes was established by the U.S.S.R. Council of Ministers in its Resolution of June 8 of this year. The Presidium of the U.S.S.R. Supreme Soviet has enacted:

1. The disclosure of information forming a state secret, committed by a person to whom this information was entrusted or who had access to such information by virtue of his official position, shall be punished—unless such act may be qualified as treason or espionage—by confinement in a camp of correctional labor for a period of from eight to twelve years.

2. The disclosure by a person in the military service of information of a military character forming a state secret—unless his act may be qualified as treason or espionage—shall be punished by confinement in a camp of correctional labor for a period of from ten to twenty years.

[1] Vedomosti, June 16, 1947, No. 20.

3. Disclosure by private persons of information forming a state secret—unless such act may be qualified as treason or espionage—shall be punished by confinement in a camp of correctional labor for a period of from five to ten years.

4. The loss by an official of material, documents, or publications containing information forming a state secret—unless this act entails by its nature a more severe punishment under the law—shall be punished by imprisonment for a period of from four to six years.

The same crime, if it caused especially serious consequences shall be punished by imprisonment for a period of from six to ten years.

5. The loss by a man in the military service of documents containing information forming a state secret—unless such act by its nature entails a more severe punishment under the law—shall be punished by confinement in a camp of correctional labor for a period of from five to eight years.

The same crime, if it caused especially serious consequences, shall be punished by confinement in a camp of correctional labor for a period of from eight to twelve years.

6. Registration or transmittal abroad of inventions, discoveries, or technical improvements forming a state secret and made within the confines of the U.S.S.R. as well as abroad, but by citizens of the U.S.S.R. dispatched by the government, shall be punished—unless these crimes may be qualified as treason or espionage—by imprisonment in a camp of correctional labor for a period of from ten to fifteen years.

7. Cases involving crimes provided for in the present edict shall be tried by military tribunals.

8. In connection with the issuance of the present edict the following shall be considered repealed:

(a) The Edict of the Presidium of the U.S.S.R. Supreme Soviet of November 15, 1943, Concerning Responsibility for the Disclosure of a State Secret and for the Loss of Documents Containing a State Secret;

(b) Subsection (a) of Section 25 of the Statute Concerning Military Crimes.

The supreme soviets of the constituent republics of the Union are hereby requested to amend the legislation of the constituent republics in conformity with the present edict.

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STATUTES [1]

1917

[1] All acts are arranged according to the date of enactment indicated in the official text. The letters U.S.S.R. or R.S.F.S.R. indicate whether the statute appeared in the U.S.S.R. or the R.S.F.S.R. collection of laws and decrees (*sobranie uzakonenii*, later *zakonov* and recently *postanovlenii*). These letters are followed by the number for the particular year under which the text of the statute was printed in the collection (*statia*). If an act appeared in a year other than that in which it was dated, the year in which it was printed is stated before the law number. Laws passed after 1938 by the Supreme Soviet and edicts of its Presidium are followed by indication of the number of *Vedomosti* in which they were published. Acts amending codes and other statutes, the translation of which is included in the book, are not listed, unless referred to in Volume I.

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Note: In view of the absence of any system of reporting in the Soviet Union, it was impossible to follow any uniformity in citation. Decisions are cited by such data as were given when they were published. Cases referred to by soviet authors without citation are not included. Abbreviations:

U.S.S.R.—The Supreme Court of the U.S.S.R.
R.S.F.S.R.—The Supreme Court of the R.S.F.S.R.
Ukrainian—The Supreme Court of the Ukraine

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Addenda and Errata

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P. XVI, line 32	For Jashy, read Jasny.
P. 67	Add at end of first paragraph: The Act of August 12, 1948, established rates of payment by parents for keeping their children in crèches and kindergartens. These rates range from 30–45 rubles a month for crèches and 50–60 rubles for kindergartens; they may be increased up to a hundred per cent depending on the time spent there by the child. R.S.F.S.R. Laws 1948, text 55.
P. 68, line 5	After "citizens," add (Section 124).
P. 72	The writer's opinion that edicts repeal and amend acts technically called "laws" is shared by Nosov in a recent soviet monograph, "Legal Nature of the Edict in Soviet Law," Transactions (Uchenye Zapiski), Leningrad Law Institute, No. IV (in Russian 1947) 103 *et seq.*
P. 74	See addendum to page 67.
P. 90, note 98, line 1	For or administration, read of administration.
P. 96	Add at end of first paragraph: Recent acts concerning Stalin Prizes were issued on April 1, April 20, May 29, June 2, and July 17, 1948. U.S.S.R. Laws 1948, texts 11, 35, 47, 48, 69.
P. 107	See addendum to page 584 ff.
P. 137, note 101, line 2	For 1926, read 1925.
P. 175, note 65, line 2	For Soviet State No. 3, 13 *passim*, read Bolshevik No. 12 *passim;* also issued as a separate pamphlet.

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P. 176	Vyshinsky's definition of law has been criticized recently by Stal'gevich, "Contribution to the Problem of the Concept of Law" (in Russian 1948) Soviet State, No. 7, 49.
P. 223	See addendum to page 72.
P. 236, line 23	For Dzerzinski, read Dzerzhinsky.
P. 251, note 58, last line	For 3 Problems of Soviet Law, read Soviet State No. 3.
P. 284, note 31	For Protocol No. 70, read Protocol No. 7.
P. 291	Add at end of first paragraph: The U.S.S.R. Supreme Court, overruling on June 20, 1947, a previous decision of the R.S.F.S.R. Supreme Court, held that the limitations on the purchase of houses stated in Section 182 of the Civil Code do not apply to the acquisition of houses by testate succession. U.S.S.R. Supreme Court Plenary Session, Ruling of June 20, 1947; Civil Code (1948) 224.
P. 292	See addendum to page 584 ff.
P. 311, line 28	For 1922, read 1942.
P. 333, note 49, line 2	For No. 16, read No. 18.
P. 371	See addendum to page 584 ff.
P. 411, Section 12	Add: The U.S.S.R. Supreme Court ruled on October 23, 1947, in case No. 1068, that churches may not inherit under a testament, because under the present law "property may be bequeathed to governmental agencies and public organizations to which the church does not belong." (1948) Judicial Practice of the U.S.S.R. Supreme Court, No. 1, 5.
P. 413, note 90, line 10	For 1944, read 1941.
	Add: New acts concerning co-operatives: Statute on Co-operatives of Invalids of May 21, 1948, R.S.F.S.R. Laws 1948,

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	text 33; Statute on the Administration Attached to the R.S.F.S.R. Council of Ministers and Concerned with Co-operatives Engaged in the Timber Industry, Chemical Utilization of Wood and Wood Processing, January 13, 1948, *id.* text 3; Statute on the Ministry of Local Industry, January 13, 1948, *id.* text 5.
P. 423, note 15, last line	For 1913, read 1910.
P. 463	See addendum to page 584 ff.
P. 474, line 14	For 1928, read 1929.
P. 501, note 27, line 6	For Nippersky, read Nipperdey.
P. 520, note 6, line 3	For 1925, read 1935.
P. 541, note 59, line 14	For October 28, read October 8.
P. 543, note 63	For 1928, read 1938.
P. 555 ff.	Venediktov's extensive work, *Governmental Socialist Property* (Gosudarstvennaia sotsialisticheskaia sobstvennost') (in Russion 1948), appeared after Volume I of the present treatise was printed.
P. 558, line 10	For (Section 64), read (Section 66).
P. 558, line 12	For (Sections 61–63, 65–67), read (Sections 61–65).
P. 560	See addendum to page 584 ff.
P. 568, line 22	Recognition of the fact that four types of "personal" ownership actually exist under soviet law is implied in statements by the soviet writer Braude, *Transactions Concerning Buildings* (Sdelki po stroeniiam) (in Russian 1946) 4.
P. 571, note 42, line 2	For 1940, read 1941.

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P. 583, note 58 — For texts 4, read texts 49.

P. 584 ff. — Add: The tendency to allow the erection of residential houses in private ownership instead of under building tenancy found its full expression in two recent Acts of August 26, 1948, translated at page 844, *infra*. Evidently, a building tenancy still is less attractive for a soviet citizen than private ownership, which appears more potent as a stimulus for the rebuilding of devastated cities. The size of the lots assigned under the new law compares unfavorably with that allowed for the restoration of prerevolutionary housing. (*Cf.* Volume I, p. 288.) The new provisions contain strict limitations on the size of private houses, even as to interior partitions (not more than five rooms), and the maintenance is subjected to strict control by local authorities without any redress to court.

The Edict of February 1, 1949, of the R.S.F.S.R. Presidium (Vedomosti 1949, No. 8) made plain the decision to abolish building tenancy altogether. It declared that Sections 71–84*c* of the Civil Code dealing with building tenancy "ceased to be effective," and that references to building tenancy in other sections are to be struck out. (*Cf. infra* page 848.) The status of existing building tenancies is not defined and depends on future regulations.

P. 588, note 69 — For June 22, read June 29.

P. 634 — See addendum to p. 411.

P. 644 — Add at end of paragraph 4: Creditors of the estate may file their claims with the court at the place of the opening of the succession. See Code of Civil Procedure,

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Section 198, as translated in Volume II, p. 615.

P. 655, note 79, line 2 — For 1927, read 1937.

P. 663, note 6, line 10 — For *Trudy,* read *Zapiski.*

P. 664, note 9, line 14 — For p. 667 at note 12, read p. 668.

P. 682, note 47 — For March 23, 1904, read March 12, 1903.

P. 714 — Add: The management of the collective farm is authorized to refuse to register the contract of a collective farmer for outside employment; if he nevertheless takes such employment, he may be expelled, according to the official interpretation given in *Sotsialisticheskoe Zemledelie,* June 19, 1948, No. 140. Any dispute concerning this matter is subject to decision by the district soviet and not the court, according to the same source.

P. 716, note 89, line 3 — For at notes 98, 99, p. 757, read pp. 761–762.

P. 717, note 92 — For August 28, read August 21.

P. 734, Section 4 — Add: The Act of March 25, 1948, regulates assignment of land from forest reserves, U.S.S.R. Laws 1948, text 9. A wide program for reforestation was established by the Act of October 20, 1948, *id.* text 80.

Pp. 740–741 — Add: A new Statute Respecting Income Tax on Collective Farms of August 11, 1948, repealed the Act of 1941 and introduced higher rates, Vedomosti 1948.

Pp. 741–747 — Add: The Resolution of the Council of Ministers of April 19, 1948, printed as a pamphlet, introduced bonuses depending upon the crops raised, in addition to the remuneration by labor days, thus making

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the whole system of remuneration even more complex. The Resolution calls for an over-all revision of the established standards of production required for credit in labor days. At the beginning of the year an estimate of the total credit for labor days and of individual credits must be made. Those who fail to attain the estimated credit suffer further deductions, while the credit of those who surpassed the estimate is increased. Brigades which obtained a lower yield receive smaller credit in labor days than brigades that obtained a higher yield.

P. 743 — Add: The remuneration of the chairmen of the collective farms was also changed by the Resolution of the U.S.S.R. Council of Ministers of April 19, 1948. Credit in labor days depends not only on the area sown, with credits being lowered to twenty-seven days per month for smaller areas sown, but also on the results of animal husbandry.

P. 834 — See addendum to page 413.

P. 839 — Add at end of paragraph two: A Statute Concerning Election of the People's Courts of the R.S.F.S.R. was enacted on September 25, 1948, Vedomosti 1948, No. 39, and elections took place in January 1949. Nominations are reserved to the Communist Party and kindred organizations, as provided for in Section 25 of the Judiciary Act of 1938.

P. 851, note 42 — Add: A new Statute on Notarial Offices was enacted on December 31, 1947, R.S.F.S.R. Laws 1947, text 15. It is largely a codification of all previous amendments with no essential changes.

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P. 851, note 43 — Add: Further amendments to the list of documents enumerated in the Act of December 28, 1944, were enacted on March 26 and November 4, 1948, R.S.F.S.R. Laws 1948, texts 20, 39.

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P. 52, lines 14, 15; pp. 81–90; p. 92, lines 5, 21, 26, 27; p. 93, line 25; p. 94, line 10; p. 98, lines 12, 28; p. 121, last line; p. 138, line 11 — See addendum to Volume I, p. 584 ff.; also *infra* p. 848.

P. 223 — See addendum to Volume I, p. 411.

P. 329 ff. — See addendum to Volume I, p. 411.

P. 398, note 1, line 3 — For 4th ed., read 6th ed.

P. 454 ff. — See addendum to Volume I, p. 714.

P. 505 — By the Edict of September 16, 1948 (Vedomosti 1948, No. 38) Section 11 of the Judiciary Act was amended to read:

11. Every citizen of the U.S.S.R. who enjoys the right to vote and has reached twenty-three years of age by election day may be elected judge or people's assessor. Persons who have been convicted in court may not be elected judges or people's assessors.

Pp. 525–526 — See *infra* p. 838 for translation of the new statute.

Statute Concerning Disciplinary Responsibility of Judges

Edict of the U.S.S.R. Presidium of July 15, 1948.[1]

1. The Constitution of the U.S.S.R. and the Act on the Judiciary of the U.S.S.R., Constituent, and Autonomous Republics have imposed upon the soviet court responsible tasks in the administration of justice, in fortifying the socialist legality, and in rearing the citizens of the U.S.S.R. in the spirit of devotion to their country and the cause of socialism, in the spirit of honest attitude to the State and public duty. The Stalin Constitution assigns to the court an important and honorable place in the system of governmental agencies. The courts are independent and are subject only to law.

The soviet judge elected by the people must cherish the people's trust and show an example of honest service to the country, of precise and unswerving execution of soviet laws, of moral purity and of irreproachable conduct in order to have not only a formal but also a moral right to judge and teach others.

Transgressions of official duties and actions of judges incompatible with the dignity of their office undermine the authority of the court, harm the cause of justice, the interests of the State, and the rights of citizens and therefore must entail a strict responsibility.

2. People's judges, presidents and members of the district, regional, and provincial courts, of the courts of

[1] Vedomosti 1948, No. 31.

autonomous republics, of the supreme courts of the constituent and autonomous republics, of the special courts, as well as the justices of the U.S.S.R. Supreme Court may be subject to disciplinary penalty:

(a) For violation of labor discipline;

(b) For faults in their judicial work caused by negligence or lack of discipline of the judge;

(c) For commission of acts incompatible with the dignity of a soviet judge.

3. For the trial of cases involving disciplinary transgressions by judges, benches for disciplinary matters shall be established at the regional and provincial courts, supreme courts of the autonomous republics, supreme courts of the constituent republics, courts-martial of the military areas and fleets and other courts-martial of the same rank, and at the U.S.S.R. Supreme Court.

4. A bench for disciplinary matters shall proceed as a body consisting of the president of the respective court, or his deputy, and two members of the court by appointment of the president.

5. A bench for disciplinary matters of a regional or a provincial court or of the supreme court of an autonomous republic shall hear the cases concerning disciplinary transgressions committed by the people's judges of the respective region, province, or autonomous republic, also by members of the courts of autonomous regions, of the district courts, and of the courts of the regions included in a province.

6. The benches for disciplinary matters of the supreme courts of the constituent republics shall hear cases involving disciplinary transgressions committed by the presidents and members of the regional and provincial courts and of the supreme courts of the autonomous republics, by the presidents of the courts of autonomous

regions, of the district courts, and courts of regions included in a province, but in the constituent republics not subdivided into regions [such benches shall try] cases concerning disciplinary transgressions of people's judges.

7. The benches for disciplinary matters attached to the courts-martial of military areas, or fleets or to courts-martial of equal rank shall try cases concerning disciplinary transgressions of the presidents and members of the lower courts-martial.

8. The bench for disciplinary matters of the U.S.S.R. Supreme Court shall try cases concerning disciplinary transgressions of the presidents and members of the supreme courts of the constituent republics, of the courts-martial of the military areas, fleets, and courts-martial of equal rank, of the courts established for railroad lines and other special courts, as well as such cases against justices of the U.S.S.R. Supreme Court.

9. The power to institute disciplinary proceedings shall belong:

(a) To the Minister of Justice of the U.S.S.R. in cases against all judges;

(b) To the ministers of justice of constituent republics in cases against the people's judges, presidents and members of the district, regional and provincial courts, courts of autonomous regions, and supreme courts of autonomous republics;

(c) To the ministers of justice of autonomous republics and to the chiefs of the local agencies of the ministry of justice attached to the regional or provincial soviets, in cases against the people's judges, members of the courts of autonomous regions, district courts and courts of regions included in a province;

(d) To the presidents of the courts-martial of the

military areas, fleets, and courts-martial of equal rank in cases against the presidents and members of the lower courts-martial;

(e) To the presidents of the supreme courts and of the regional, provincial and district courts, courts of the autonomous republics and special courts in cases against the members of their courts as well as the lower courts, provided that the Minister of Justice of the U.S.S.R. or of the constituent republic concerned are simultaneously notified.

10. Disciplinary proceedings against the judge may be instituted not later than within one month from the date when the transgression was disclosed and not later than within six months from the date when it was committed.

11. Before the hearing of the case by the bench for disciplinary matters, the reasons for institution of the proceedings must be thoroughly verified; the judge against whom it is instituted must be asked to submit a written explanation, and, if necessary, the witnesses may be heard.

12. The judge against whom the disciplinary proceedings are pending must be summoned to the hearing by the bench for disciplinary matters.

13. The person who instituted the proceedings may participate in the hearing by the bench for disciplinary matters either in person or through his representative.

14. The judge against whom the disciplinary proceedings are pending may move for disqualification of members of the bench for disciplinary matters. The question whether this motion has foundation shall be decided by other members of the bench; if no unanimity is reached the challenged member of the bench shall be considered disqualified. The disqualified member of the bench shall

be replaced by another by appointment of the president of the corresponding court.

15. The hearing of the disciplinary bench shall take place as a rule in a public session and shall begin with the report of one of the members of the bench. Thereupon, the explanations of the judge against whom the proceeding is instituted shall be heard. The person who instituted the proceedings or his representative is entitled to plead at the hearing by the bench. Thereafter, the bench withdraws to the conference room to render the decision.

The minutes of the hearing shall be kept by the secretary.

16. The benches on disciplinary matters may impose upon those found guilty of disciplinary transgression the following disciplinary penalties:

(a) warning,

(b) reprimand,

(c) severe reprimand.

17. If the bench on disciplinary matters deems that the judge is not qualified for his position, it shall so submit to the Minister of Justice of the U.S.S.R. or the minister of justice of a constituent republic in order to initiate the proceeding required by law to recall the judge from his position.

18. If the bench for disciplinary matters finds in the acts of the judge the indicia of a crime, it shall raise in the procedure established by law the question of criminal prosecution against the judge and shall simultaneously notify thereof the person who instituted the disciplinary proceedings, the Minister of Justice of the U.S.S.R., and the minister of justice of the constituent republic.

19. The decision of the bench for disciplinary matters must recite: name and members of the bench; date

and place of hearing; surname, name, and patronymic and office of the judge against whom the proceedings were instituted; by whom the case was initiated; whether the person who initiated the case or his representative was present; the circumstances of the case, explanation of the respondent, and disciplinary penalty imposed or reason for dismissal of the case.

20. The decisions of the bench for disciplinary matters shall be final and may be repealed only by way of an ex officio reopening of the case by the bench for disciplinary matters attached to the superior court, made upon the motion of the president of that court, the Minister of Justice of the U.S.S.R., or the minister of justice of a constituent or of an autonomous republic.

21. The transcript of the decision of the bench for disciplinary matters shall be served upon the judge against whom the disciplinary proceedings were instituted, the president of the court whose member the judge is, and the person who initiated the proceedings; if the case is initiated by the president of the court, then also on the minister of justice or the chief of the local office concerned attached to the regional or provincial soviet.

The decision imposing a disciplinary penalty shall be filed with the personal records of the judge.

22. If within one year from the date when the disciplinary penalty was imposed the judge is not subject to a new penalty, it shall be deemed that no penalty was imposed upon him.

Edict Concerning the Right of Citizens to Buy and Erect Individual Residence Houses

Edict of the Presidium of the U.S.S.R. Supreme Soviet of August 26, 1948, Concerning the Right of Citizens to Buy and Erect Individual Residence Houses.[1]

In order to establish uniformity in legislation regulating the right of citizens to buy and erect individual residence houses and in accordance with Section 10 of the U.S.S.R. Constitution, the Presidium of the U.S.S.R. Supreme Soviet has resolved:

1. Be it enacted that every male or female citizen of the U.S.S.R. shall have the right to buy or to erect for himself or herself, in personal ownership, a residence house of one or two stories with the number of rooms from one to five inclusive, in a city as well as outside of a city.

2. Land lots shall be assigned in the cities and outside of the cities to citizens for erection of individual residence houses for use without a time limit.

The size of the land lots assigned to citizens shall be determined by the executive committees of the regional, city, or district soviets in accordance with the blueprints for planning and rebuilding of cities as well as with the general standards to be established by the Council of Ministers of the U.S.S.R.

3. The legislation in effect concerning the procedure of assignment and the size of the land lots for individual housing of citizens residing in rural localities shall remain in force.

[1] Izvestia, August 31, 1948; Pravda, August 30, 1948.

Decree Concerning the Application of the Edict of the Presidium of August 26, 1948

Decree of the Council of Ministers of the U.S.S.R. Concerning the Application of the Edict of the Presidium of August 26, 1948.[1]

1. It shall be the duty of the regional, provincial, and city soviets to assign to citizens in the cities and outside of the cities land lots for the erection of individual residence houses of one or two stories with the number of rooms from one to five inclusive.

2. Land lots for the erection of individual residence houses shall be assigned, for use without time limit, from the land reserve of cities and settlements, from the state land reserve, and from the forest land reserve, and houses erected on these lots shall be in the personal ownership of the tenants.

3. The size of an individual lot shall be determined in each case by the executive committee of a regional, city, or district soviet, depending upon the size of the house and local conditions, within the limits of the following standards: in cities, from 300 to 600 square meters; outside of cities, from 700 to 1200 square meters.

4. A rent, in the amount established by law, shall be collected for the use of the land lots.

5. The erection of individual houses shall be done in accordance with the blueprints for the planning and rebuilding of cities, suburbs, and settlements in areas suitable for this purpose.

[1] U.S.S.R. Laws 1948, text 62.

6. The erection of individual residence houses must be done in accordance with standard and individual blueprints.

The executive committees of local soviets are hereby requested to secure for the builders the necessary standard blueprints.

7. It shall be the duty of the owners of the individual residence houses to take care of landscaping and keeping the lots in good order, making sidewalks within the lot, continuous upkeep and maintenance in good repair of the lot and adjacent sidewalks and driveways, in accordance with the rules established by the local soviets.

8. It shall be the duty of the executive committees of the regional, provincial, or city soviet to organize, from among the existing personnel, a governmental inspection for the supervision of the maintenance of the individual housing and to establish strict supervision over the observance of norms and rules for the maintenance of the housing by the owners of the individual residence houses.

9. It shall be the duty of the governmental inspection for the supervision of the maintenance of individual houses:

(a) To supervise the maintenance of individual residence houses and ensure that the repairs are made in time;

(b) To enforce the observance by the owners of individual residence houses of all the regulations issued by the executive committees of the local soviets concerning maintenance of residential houses and building lots;

(c) To enforce the performance of contractual obligations concerning the landscaping of the building lot;

(d) To prosecute in administrative proceedings per-

sons guilty of violation of regulations issued by the executive committees of local soviets concerning the maintenance of housing, house lots, and sidewalks.

10. The executive committees of the city (district) shall have the power in cases of unauthorized erection of buildings or gross violation by the builder of the rules and standards of construction technique to compel the builder to discontinue the construction works and to remove within a month by his own means and at his own expense all buildings constructed by him, or any part thereof, and to put the land lot in order.

Edict Concerning Amendment to the Edict of August 26, 1948

Edict of the R.S.F.S.R. Presidium of February 1, 1949, Concerning Amendment of the R.S.F.S.R. Legislation in Connection with the Edict of the Presidium of the U.S.S.R. Supreme Soviet of August 26, 1948.[1]

Pursuant to the Edict of the Presidium of the U.S.S.R. Supreme Soviet of August 26, 1948 . . . the Presidium of the R.S.F.S.R. Supreme Soviet has resolved:

1. Sections 71 through 84*c* of the R.S.F.S.R. Civil Code shall be considered to have ceased to be effective.

2. From Sections 87, 90, 92, 94, 103, 105, 156*a*, and 185 the references to "building tenancy" shall be excluded.

3. The Council of Ministers of the R.S.F.S.R. is hereby commissioned to issue within a month's period a regulation concerning the application of the present edict.

[1] Vedomosti 1949, No. 8.

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END OF VOLUME