

CIVIL PROCEDURE CODE

LAW N.19 OF THE JULY 1974

The president of the supreme revolutionary council having seeing the first and the second charter of the revolution; considered of the approval of the supreme revolutionary council and the council of the secretaries of state; on proposals of the secretary of state to the justice and religious affairs; promulgate the following law:

ARTICLE 1

It is approved the civil procedure code attached to the present law. The norms of said code will regulate all the civil judgements and, as for applicable, also the judgements relative to the personal institute (family law).

ARTICLE 2

A copy of the text in the Italian language signed from the president of the S.R.C. and contra signed from the state secretary to the justice and religious affairs will serve as original and will be deposited at the office of the general advocate of the state.

ARTICLE 3

The Somali procedure code will be enforced on 21 October 19974. From the same date will cease to have efficacy in the Somali democratic republic territory the fallowing dispositions:

- Italian civil procedure code;
- Ordinance N.5 of the 2-2-1956;
- Decree N.28 of the 24-2-1956;
- Decree N.29 of the 24-2-1956;
- Decree N.30 of the 24-2-1956;
- The procedural dispositions in the H.D. 12-6-1962. N.3;
- Indian code of civic procedure 1960;
- civil procedure ordinance;

- Indian evidence act 1872;
- Indian evidence act ordinance;
- Execution of money decree ordinance;
- All other laws incompatible with the present code. Mogadishu, 27 July 1974.

The president of the supreme revolutionary council Jalle Gen.div. Mohamed Siad Barre.

The secretary of state to the justice and religious affairs, Jalle Dr, Abdisalam shekh Hussen.

ARTICLE 4

JURISDICTION IN RESPECT TO THE FORIEGNER

The foreigner can be convened before the Somali judicate organs;

- 1) If is resident domiciled in Somalia or has a representant that is authorized to stay in process;
- 2) If the request concern goods existing in Somalia or heritages of Somali citizen, open in Somalia or otherwise obligations arised or to execute in Somalia;
- 3) If the request is connected with other pending before the Somali judge;
- 4) If, in the reciprocal case, the judge of the state to whom the foreigner belongs, can know of the requests proposed against a Somali citizen.

ARTICLE. 5

DETERMINANT MOMENT OF THE JURIDICITION

The jurisdiction and the competence are determined on basis to the fact state existent to the moment of the proposition of the request and not relevance respect to them the subsequent changes of that satate.

ARTICLE. 6

INDEROGATION OF THE CONVENTIONAL COMPETENCE

The competence cannot be derogated on agreement of the parts, except that the cases established from the law.

SECTION II

COMPETENCE PER MATTER, VALUE AND TERRITORY

ARTICLE.7

COMPETENCE OF THE DISTRICT TRIBUNALS

The district tribunal is competent for all the controversy of which value not exceed sh.s.3,000 and for the questions relative to the personal institute (family law), without limit of value.

The territorial competence of the district tribunal is delimited from the circumscription of the district.

CIVIL PROCEDURE CODE**FIRST BOOK****GENERAL DISPOSITION****TITLE I****JUDICIARY ORGANS****CHAPTER 1****THE JUDGE****SECTION I****ARTICLE.1****JURISDICTION OF ORDINARY JUDGES¹**

The civil jurisdiction, except special disposition of law, is exercised from ordinary judicate organs according the norms of the present code.

ARTICLE.2**CONVENTIONAL UNDEROGABLE THE SOMALI JURISDICTION**

The Somali jurisdiction cannot be derogated neither in favor of a foreign jurisdiction nor arbitrates that pronounce to the abroad, except that concerns of a case related to obligations between foreigners or between a foreigner and a citizen not residing nor domiciled in Somalia. (19c.c)

ARTICLE.3**PENDING CONTRSVERSY BEFORE A FOREIGN JUDGE**

The Somali jurisdiction not exclude from the pendency before a foreign judge of the same case or other with this connected. (19,24,25,313, n.5)

ARTICLE.4**JURISDICTION IN RESPECT OF FOREIGNER**

¹ On jurisdictional activity; article.1 of the judiciary ordinance, 1974 on jurisdictional defect, see article.25 c.p.c

The foreigner can be defendant before the Somali juridicant organ;

- a) If the resident or domiciled (40 c.c) in Somalia or has a representant who is authorized to stay in process;
- b) If the request concern goods existing in Somalia or hereditary successions of Somali citizen, opened in Somalia or obligations arisen or to execute it in Somalia (88,159,160,175,176,177,178-184,,185-194,195 c.c);
- c) If the request is connected with other pending before a Somali judge;
- d) If, in the reciprocal case, the judge of the state to whom the foreigner belongs, can know of the requests proposed against a Somali citizen;

ARTICLE.5

DETERMINANT MOMENT OF JURISDICTION

The jurisdiction (22) and the competence (6-21) are determined on basis to the state of fact existent at the moment of preposition of the request and not have relevance respect to them the subsequent changes of that state (7 judiciary act, 1974).

ARTICLE.6

CONVENTIONAL UNDEROGABLITY OF THE COMPETENCE

The competence cannot be derogated on parts accord, except that in the cases established from the law (230).

SECTION II

COMPETENCE PER MATTER, VALUE AND TERRITORY

ARTICLE.7

COMPETENCE OF THE DISTRICT TRIBUNAL

The district tribunal is competent for all the controversy of which value not exceed sh.so.3,000 ² and for all the questions related to the personal institute (family law), without limit of value³.

² See art.9 last comma, jud.org, of 22 September, 1974 'the labor section of regional court has competence for the cases of labor of whatever values '

³ See law n.23 of January, 1975- law on personal institute- family law.

The territorial competence of the district is delimited from the circumscription of the district (6,8 judiciary organization, 1974).

ARTICLE.8

COMPETENCE OF REGIONAL COURT

The regional court has competence for all controversy of which value is greater than sh.so.3,000 or are of undetermined value. It has also competence for the labor cases, for those in which is part the state and for all the cases for which the competence is to it attributed from special law.

The territorial competence of regional court is delimited from the circumscription of the region (6,9 judiciary organization act,1974).

ARTICLE.9

COMPETENCE OF THE APPEAL COURT

The appeal court is competent to know of all the appeal against the sentences of the district, and the regional (230-245) to it is also attributed the resolution of conflicts of jurisdiction and competence between district tribunal of the region and between these and regional of the same.

The appeal court has also exclusive competence in matter of deliberation of foreign sentences 312,316⁴

The territorial competence of the appeal court is delimited from the circumscription of the region (10-12 jud.org, 1974).

ARTICLE.10

COMPETENCE OF THE SUPREME COURT

The supreme court has jurisdiction on all the republic and competence (13 judiciary act, 1974):

- 1) For all the petitions against the sentences of second instance and of first grade not appealable pronounced from judicant organs of the republic;
- 2) For all the administrative cases ⁵;

312 ⁴ See art. c.p.c deliberation of foreign sentence, and says: 'who wants to prevail in the Somali Democratic Republic a foreign sentence should propose request through citation before to the appeal court, in which the sentence should have execution'.

⁵ For the competence of the administrative cases, see the law of which to the preceding note.

- 3) For the revocation proceedings (266) of the sentences issued from the same supreme court;
- 4) For all the matters attributed from the law to its competence⁶;
- 5) For the competence regulation and jurisdiction between ordinary judicant organs and between extraordinary jurisdictional organs and specials, (266) to the exception to what is foreseen to the art.9.

ARTICLE 11

DETERMINATION OF THE VALUE

The value of the case to the end of the competence is determined and basis of the introductive request of the process.

SECTION III

COMPETENCE PER TERRITORY

ARTICLE.12

DETERMINATION OF THE TERRITORIAL COMPETENCE OF THE JUDGE

Except otherwise different dispositions of law, the territorial competence of the judge is determined from the place in which the defendant has the residence or domicile (40 cc). If the defendant has not residence nor domicile in Somalia or if these are unknown is competent the judge of the place in which resides the plaintiff.

ARTICLE.13

Competence for the cases related to real rights (681, 698, 707, 718, 745, 792, 803, 806, 821, 855 c.c) or possession on immobile is competent the judge of the place where is situated the immobile (757).

ARTICLE.14

COMPETENCE FOR THE CASES RELATED TO THE RIGHT OF OBLIGATION

⁶ See art.137, comma 2, labour code.

For the cases related to the rights of obligations (88,225 c.c) the competence can be attributed discretionally to the judge of the place in which is arisen or should be executed the obligation.

ARTICLE.15

COMPETENCE FOR THE CASES RELATED TO THE HERIDETARY QUESTIONS

For the cases related to the hereditary questions is competent the judge of the place in which is opened the succession (724,725 c.c).

ARTICLE.16

Competence for the cases related to the forced executions on mobile or immobile is competent the judge of the place in which the things are situated (343, 346, 360, 390). The same judge is competent for the cases of apposition to the execution (432, 636).

ARTICLE.17

DEROGABILITY OF THE TERRITORIAL COMPETENCE FOR PART ACCORD

The competence per territory can be derogated for expressed accord of the parts, except that the derogatory not being incompatible with mandatory disposition of law (293,294,346,427,429).

ARTICLE 18

FORUM OF ELECTED DOMICILE

Who has elected domicile to the norm of the articles 40 and subsequent civil codes, can be defendant before to the judge of the elected domicile.

SECTION IV

MODIFICATION OF THE COMPETENCE

ARTICLE 19

ACCESORY CASES

The accessory cases can be proposed before the judge territorially competent for the principal request independently from the reason that per matter or value could replace that competence to another judge.

ARTICLE.20

SUBJECTIVE ACCUMULATION

The cases connected against more persons (12) that should be proposed before different judges, can be proposed before the judge (70, 191) of the place of residence or domicile (40 c.c) of one of any of them.

ARTICLE.21

RECONVENTIONAL CASES

The competent judge for the principal case is competent also for the reconvention request.

SECTION V

DEFECT OF JURISDICTION OR COMPETENCE

ARTICLE.22

DEFECT OF JURISDICTION

The defect of jurisdiction is raised also by the office in any stage and grade of the process (26, 246 n.1).

ARTICLE.23

INCOMPETENCE

The incompetence per matter is raised by office in any stage and grade of the proceeding.

The incompetence per value or territory can be raised only in the first grade (26), if the parts comply with the exception of incompetence and be indicated the judge that should be competent, the judge addressed can return the case to the competent judge ordering that it should be resumed in the maximum term of three months.

If the resumption doesn't take place within that term the case will be canceled from the register.

ARTICLE. 24**LITISPENDENCE**

If a same case is proposed before a different judge the subsequent addressed declares with sentence the litispence and cancels from the register (191) the case continues before the judge previously addressed.

ARTICLE. 25**CONNECTION**

If are proposed before different judges more cases that can be decided in one process the judge order that they be proceeded Infront of the competent judge for the principal case or Infront of the judge previously addressed (191).

SECTION VI**JURISDICTION AND COMPETENCE REGULATION****ARTICLE. 26****JURISDICTION AND COMPETENCE REGULATION**

Till the case not been decided in the first grade each of the parts can request the resolution of the questions of jurisdiction (5, 22) and of the competent (7-18).

The request will be proposed to the supreme court or to the appeal court in view of the article.9, in the case of conflict between district tribunal of the same region and between these and regional court.

The decisions of the appeal court in matter of conflicts of jurisdiction and competence are impugnable Infront of the supreme court, except the cases of conflict of territorial competence, for which the decision of the appeal court is definitive.

ARTICLE. 27**CONFLICT OF COMPETENCE RAISED BY THE JUDGE**

The regulation of jurisdiction or of competence can be also requested from the judge whom the case arrived at as sentence of another judge who determined the jurisdiction or the competence.

ARTICLE. 28

SUSPENSION OF THE CASE DURING THE REGULATION OF JURISDICTION AND COMPETENCE

The regulation of jurisdiction or competence (26) the case can be suspended, but the judge can order the execution of acts that retain urgent.

SECTION VII

ABSTENTION, RECUSATION AND RESPONSIBILITY OF THE JUDGE

ARTICLE. 29

ABSTENTION

The judge is compelled to abstain:

- 1) If he has personal interest in the case (68);
- 2) If he himself or the wife and his relatives are linked from parental tie (34, 37 c.c) up to 4th grade with one of the parts or the Defensor;
- 3) If he himself or his parents are in great hostility or rapport of debt or credit with one of the parts or one of the Defensor;
- 4) If he has given advice or expressed judgement in merit to the case or has known of it for reasons of his duties in other grade of the process;
- 5) If he is tutor or employer of work or administrator of one of the parts, in any other case in which there are serious reasons to abstain.

ARTICLE. 30

RECUSATION OF THE JUDGE

In the cases foreseen from the article that precede each of the parts can request the recusation of the judge with written petition to the head of the office (12 judiciary act 1974)) explaining the reasons and indicating eventually the means of prove.

The petition of recusation suspends the process.

ARTICLE. 31

COMPETENT JUDGE FOR THE RECUSATION

If the head of the office to whom is addressed cannot decide or the petition is directed against him, the petition will be transmitted to the organ immediately superior.

ARTICLE. 32

PROVISION OF RECUSATION

If the petition is accepted with the provision of receiving will be designated also the judge that replace that recused (12 judiciary act, 1974).

ARTICLE. 33

CIVIL RESPONSIBILITY OF THE JUDGE⁷

The judge is civilly responsible:

- 1) If in the exercise of his duties is alleged of fraud or bribery;
- 2) If without just reason refuses, omits or delays acts of his office.

ARTICLE. 34

AUTHORIZATION OF THE SECRETARY OF STATE

The request of declaration of responsibility of the judge can be proposed only prior authorization of the secretary of state to the justice and religious affairs.

CHAPTER 2

CLERK AND JUDICIARY OFFICER

ARTICLE. 35

ACTIVITY OF THE CLERK

The clerk documents in written on ways and modality foreseen by the law all the proper activity of the judiciary organs and of the parts, he assists the judge writing verbal process of his activity.

⁷ See art.26, comma 3, judiciary act, 1974: “the magistrates cannot be convened in civil process for acts performed in the exercise of their duties if not in the case in which is not made responsible of an offence”

The clerk undersigns the acts signed by the judge (68). He performs also all the attributions to him expressly conferred by the law (94, 339, 351, 391, 397, 432, 433).

ARTICLE. 36

ACTIVITY OF THE JUDICIARY OFFICER

The judiciary officer assists the judge in the audience, provides the execution of his order, to the notification of the acts and all the incompetence to him attributed from the law (361, 365, 367, 423, 425, 426, 428).

ARTICLE. 37

RESPONSIBILITY OF THE CLERK AND OF THE JUDICIARY OFFICER

The clerk and the judiciary officer are civilly responsible (116/2 c.c):

- 1) If they refuse, omit or delay of performing acts of their office;
- 2) If they have done a null act with fraud or serious culpa.

CHAPTER 3

TECHNICAL CONSULTANT, CUSTODY AND AUXILIARIES OF THE JUDGE

ARTICLE. 38

TECHNICAL CONSULTANT

If is necessary the judge can be assisted from one or more consultant (136-141) of particular technical competence.

ARTICLE. 39

ACTIVITY OF THE TECHNICAL CONSULTANT

The consultant performs the investigation that are requested, expresses the opinions and provides the judge the elements of the information in the virtue of his specific competence.

ARTICLE. 40

DUTY TO ASSUME THE NOMINATION AND RECUSATION OF THE CONSULTANT

The consultant designated has the duty to render his office (255 p.c) except that exist right motives of abstention.

The consultant can be recused from the parts for the reasons of which on the article.29 on the recusation of the consultant decide the judge that has designated.

ARTICLE. 41

The consultant is responsible of the damage that has caused to the parts by fraud or serious culpa.

Further that to the compensation he can be condemned from the judge that has designated to the penal pecuniary.

ARTICLE. 42

THE CUSTODIAN

The conservation and administration of goods subjected to distraint (346,) or sequester (293, 294, 296) is trusted to a custodian nominated from the judge, who determines also the compensation to him awaiting.

The custodian can be one of the parts or one third.

ARTICLE. 43

SUBSTITUTION OF CUSTODIAN

The custodian can be substituted in any moment from the judge, of office or to part request.

ARTICLE. 44

RESPONSIBILITY OF CUSTODIAN

The custodian is liable to the compensation of damages provoked if not has acquitted⁸ to his duty with the normal diligence (261, 262-285 p.c). He can also be condemned from the judge to a pecuniary of penalties.

⁸ Acquitted- to acquit oneself from debt

ARTICLE. 45

OTHER AUXILIARY

When arises necessity either the clerk and the judiciary officer can assist themselves from experts, interpreters or other auxiliaries (18/2 judiciary organization).

The judge can always request the assistance of the police force.

TITLE II

ATTORNEY GENERAL

ARTICLE. 46

CIVIL ACTION OF ATTORNEY GENERAL

The A.G exercises the civil action in the cases established from the law (15, comma 2/6-c, judiciary act 1974).

ARTICLE. 47

INTERVENTION IN THE CASE OF A.G

The A.G intervene on civil process in the cases foreseen from the law (113, 159/3, 267, 306, 315) and in any other case in which identifies connected with a public interest.

ARTICLE. 48

COMMUNICATION OF THE PROCEDURAL ACTS TO THE A.G

The judge before whom is proposed one the cases on which to the article that preceed should give to the A.G communication of the acts because he could intervene.

ARTICLE. 49

ABSTENTION OF THE A.G

The A.G can abstain himself to participate to the civil cases for one of the motives of which to the art.29, but he cannot be recused.

ARTICLE. 50

RESPONSIBILITY OF THE A.G

Is applied to the A.G the dispositions of which to the art.33 on the civil responsibility of the judge.

TITLE III

CHAPTER I

PARTS AND REPRESENTS

ARTICLE. 51

PROCEDURAL CAPACITY

Can stay in process the persons that have the free exercise that can prevail their rights (44 c.c).

Those that have not that free exercise cannot stay in process if not assisted or represented according the norms that regulate their capacity (47 c.c).

The legal persons stay in process of whom represents to norm of law (53/3 c.c).

ARTICLE. 52

SPECIAL CURATOR

If lacking the person whom awaits the representant of the incapable persons (47 c.c) or the legal persons (companies) (53 c.c), the judge, in urgent cases, can proceed to the nomination of a special curator.

ARTICLE. 53

PROCEDURAL SUBSTITUTION

No one can prevail in process in proper name a right of others.

ARTICLE.54

ADVOCACY

Before to the tribunals of first and second instance, the parts can stay in process without the assistance of Defensor. Before the supreme court the assistance of a Defensor is compulsory.

ARTICLE.55

POWER OF ATTORNEY TO THE LITIGATION

When the part stays in process with the assistance of Defensor this should provided of power of attorney to the litigation. Except that is not differently and expressly foreseen in the power of attorney, this has the efficacy for only one grade of the process and doesn't give ability to compromise (512 c.c) or reconcile.

ARTICLE.56

POWER OF THE DEFENSORS

The Defensor that stay in process provide of attorney can perform and receive in the process all the acts that are not from the law expressly reserved to the parts. However, he cannot perform acts that involve the disposition of the contended right except that is not expressly authorized (513 c.c)

ARTICLE.57

REVOKE OR RENOUNCE TO THE ATTORNEY

In case of revoke or of renounce to the attorney, this has not affected in confront of the other part till that there is not substitution of the Defensor or the defense is assumed from the part personally.

If the substitution and the assumption of the defense personally not be done, the judge provides to norm of the dispositions on the activity of the parts (217) and on the contumacy (203-206).

ARTICLE.58

ASSISTANCE OF THE TECHNICAL CONSULTANT

The part, furthermore a Defensor, can do assist from a technical consultant (38).

CHAPTER III

DUTIES OF PARTIES AND THEIR DEFENSORS

ARTICLE. 59

DUTIES OF LOYALTY

The parties and their lawyers have the duty to behave themselves in process with loyalty.

In case of failure to that duty from the lawyers' side the judge has the duty of reporting to the authority that exercise the disciplinary power on them (law n.85 of 21-10-1975).

ARTICLE. 60

INPROPER OR OFFENSIVE EXPRESSIONS

In the speeches and in the writings presented to the judge should not be included offensive expressions. The judge has the power to order the cancellation of those expressions, if it's made use.

CHAPTER IV

EXPENSES AND PROCEDURAL DAMAGE

ARTICLE. 61

BURDEN OF THE EXPENSES

Each of the parties has the duty to provide to the expenses of the acts that performs and of those that request and should anticipate for the other necessary acts when the law and the judge put the anticipation on his charge.

ARTICLE. 62

CONVICTION OF THE EXPENSES

The judge with the sentence that close the process, convicts the succumbing part to refund of the expenses in favor of the other part and liquidate the amount with the honorary of defense, (216, 220/2, 259/3).

ARTICLE. 63

EXCESSIVE PROCEDURAL EXPENSES

In the pronounce the conviction of which to the preceding article the judge can exclude the excessive expenses or unnecessary.

If there is reciprocal succumbence or take place other just reasons the judge can compensate partially or totally the expenses.

If there is a conciliation the expenses are compensate.

ARTICLE. 64

EXPENSES OF THE PROCESS OF EXECUTION

The expenses sustained from the creditor to proceed to the execution are to charge on the executed, (428).

ARTICLE.65

AGGRAVATED RESPONSIBILITY

If the results that the succumbence part has acted or resisted in the process with mal faith or serious culpa, the judge, on the request of the other part, can convict the succumbence to the compensation of the damages. Liquidate as an office in the sentence.

ARTICLE. 66

RESPONSIBILITY OF MORE SUCCUMBENCE

If the succumbence parts are more than one the judge should condemn in proportion to the respective interest in the case.

If the judge not pronounce on the division of the expenses these go divided in equal between the parties.

ARTICLE. 67

DEPOSIT FOR THE EXPENSES

The judge on request of the defendant can dispose that the plaintiff plays adequate guarantee for the refund of the expenses which there is a founded fear that the zondemn of eventual step can remain not executed.

TITLE IV
EXERCISE OF THE ACTION

ARTICLE. 68

PRINCIPLE OF THE REQUEST AND INTEREST TO ACT

Who wants to prevail a right in process should propose request to the competent judge (judiciary act, 1974).

To propose a request a request or to reject of the same is necessary to have interest (53, 71).

ARTICLE. 69

PRINCIPLE OF THE CONTRADICTORY

Except what is foreseen contumacy proceeding (203, 206) the judge cannot decide at any request if the defendant not has been regularly cited and not is appeared.

ARTICLE. 70

NECESSARY LITISCONSORCE

If the decision should pronounce it Infront of more parties, these should be cited. In lack of it the judge order the integration of the contradictory in prentory term from him established, (187, 225, 239, 242).

ARTICLE. 71

VOLUNTARY INTERVENSION

Anyone can intervene (74, 186, 187,190) in a process between other persons if has a right to prevail. Can also intervene to sustain the opinions of a part when has a proper interest (68).

ARTICLE. 72

INTERVENTION UPON PART REQUEST

Each part can call in process a third to whom retain common the case, in any stage and grade of the proceeding.

ARTICLE.73

INTERVENTION FROM ORDER OF THE JUDGE

The judge can order the intervention in case of a third to whom the case is common (189-190) in any stage and grade of the proceeding.

ARTICLE. 74

MOMENT OF THE INTERVENTION

The spontaneous intervention or to request of part can happen only in first grade, or in appeal in view of the art.234.

ARTICLE. 75

EXCLUSION OF THE GUARANTOR

If the guarantor appears in process and accept to assume the case, the guarantee can be excluded (437 c.c) if the other part not oppose himself.

ARTICLE. 76

SUCCESSION IN THE PROCESS

If during the process the controversial right is transferred to others through acts between alives the case proceeds between the original parts.

If the transfer of the right happens for reason of death the process is continued from the successor or in their confronts (211, 212).

TITLE V

POWER OF THE JUDGE

ARTICLE. 77

CORISPONDENCE BETWEEN THE REQUEST AND THE PRONOUNCE

The judge should pronounce on all the request and not beyond the limits of it (194). However, if the general interest requires it the judge can establish on questions that have not been posted from the parts.

ARTICLE. 78

PRONOUNCE ACCORDING THE LAW AND ACCORDING THE EQUITY

In the pronouncement on the case the judge should conform to the legislation of the state.

In lack of legislative disposition applicable, the judge should conform to the principles of Islamic law; in the lack of these should apply to the principles of social justice or to the equity.

ARTICLE. 79

AVAILABILITY OF THE PROVE

The judge should set to foundation of the decision the prove proposed from the parts.

If retain it necessary can request or research all the prove that are useful to the decision.

ARTICLE. 80

EVALUATION OF THE PROVE

The judge except that the law disposes otherwise, should evaluate the prove (386-414 c.c) according a wisdom appreciation. Can desume arguments of prove from the free interrogatory of the parts (165-167), from the inspections of persons or things (151) and from any other elements of ascertainment.

ARTICLE. 81

PUBLICATION OF THE SENTENCE

When the publicity of the decision can contribute to repair the damage, the judge can order that of the sentence can be given publication on the press or spread with other means.

TITLE VI

CHAPTER I

PROCEDURAL ACTS

ARTICLE. 82

LIBERTY OF FORM

If it's not differently disposed from the law the acts can be performed in the form more suitable to the scope of which are directed, (85-91).

ARTICLE. 83

USE OF THE SOMALI LANGUAGE

In all the process is prescribed the use of the Somali language. In the necessary cases the judge can nominate an interpreter or translator.

ARTICLE. 84

INTERROGATION OF THE DEAF AND THE DUMB

If should be heard a dumb or a deafmute the interrogation and the answers can be given for written or through a person capable to comprehend the disabled, (116 c.c).

ARTICLE. 85

CONTENT AND UNDERSIGNING OF THE ACTS OF PART

The introductive acts of the process should contain the indication of the judiciary of which are directed, of the parts, of the object, of the reason of the request and of the conclusion. Should be undesignated from the part (51-54) or from his/her lawyer provided with power of attorney (55).

ARTICLE.86

CONTENT OF THE VERBAL PROCESS

The verbal should contain the indication of the persons intervened, of the place and the time in which the acts are performed, the description of all the activities developed. It should be undersigned from the clerk and the judge to a penalty of nullity (111).

SECTION II

THE AUDIENCE

ARTICLE.87

DIRECTION IF THE AUDIENCE

The audience is directed from the judge that presides the collage, who takes in account, that the audience be performed in an ordered way and profitable, (127).

ARTICLE.88

PUBLIC AUDIENCE

The audience is public to penal of nullity; but the judge can dispose that it is performed to closed doors for security reasons, public order or good custom, (3, judiciary act, 174).

ARTICLE.89

DUTIES OF WHOM INTERVENE OR ASSIST TO THE AUDIENCE

Who intervene to the audience should attain a correct behavior and cannot take arms or sticks, (see also art.188, 189 c.pc. for intervention).

ARTICLE.90

WRITING THE VERBAL PROCESS

Of each audience should be written verbal process (86).

SECTION II

THE SENTENCE

ARTICLE.91

Form of the provisions in general except that the law disposes otherwise the provisions of the judge can have any form suitable to reach of their scope (129, 196, 202, 280, 295, 306, 321/4, 331, 334, 347, 349, 370, 427).

ARTICLE.92

PRONOUNCIATION OF THE SENTENCE IN THE NAME OF THE SOMALI PEOPLE AND THEIR CONTENTS

The sentence is pronounced in the name of the Somali people and should contain:

1. The heading of the Somali democratic republic.
2. The indication of the judge and of the judiciary office.

3. The indication of the parts and their Defensor
4. The conclusion.
5. The concise exposition of the performance of the process and the reason of the decision (3 judiciary act, 1974;
6. The dispositive, the date and undersigning of the judge.

ARTICLE. 93

PUBLICATION AND COMMUNICATION OF THE SENTENCE

The sentence is published through deposit in the clerk. The clerk certifies the take place of the deposit and gives communication to the parts constituted.

SECTION IV

NOTIFICATIONS

ARTICLE.94

COMMUNICATIONS

The communication is done from the clerk handing over to the destnatary that give it receipt, or send through recommended post or by means of the judiciary officer (messenger) (35, 124).

ARTICLE. 95

NOTIFICATION

The notification is done from the judiciary officer through consignment to the destnatary of copy conform to the original of the act to notify (36, 124).

ARTICLE. 96

NOTIFICATION IN PROPER HANDS

The judiciary officer executes the notification handing over the copy of which to the article that precede in the hands of the destnatary wherever finds him.

If the destnatary refuses of receiving the copy, the judiciary officer gives act in the report (106) and the notification is considered executed.

ARTICLE. 97

NOTIFICATION IN THE RESIDENCE ON THE SOJOURN OR IN THE DOMICILE

In case of untraceable of the destinary the copy of the act can be handed over a person of the family, of the home or of the office, but not minor of 15 years or evidently incapable (45 c.c).

ARTICLE. 98

NOTIFICATION THROUGH POSTAL MEANS

If it is not possible execute the notification in the ways indicated in the articles that precede, the judiciary officer sticks up copy of the act in the bulletin board of the judiciary office from which the act comes from, and gives notice by recommended post notifying of the receipt to the destinary.

ARTICLE. 99

NOTIFICATION AT ELECTED DOMICILE

The notification can be executed at the elected domicile in the cases in which this been elect in the view of the civil code (43 c.c).

ARTICLE. 100

NOTIFICATION TO A PERSON NOT RESIDENT, NOT DWELLING NOR DOMICILED IN THE REPUBLIC

If the destinary have not residence or domicile in Somalia and not has any attorney, the act is notified through affixing a copy in the bulletin board of the judiciary officer Infront of whom is proceeding, and through consignment of other copy to the destinary by means recommended postal.

A third copy of the act is handed over to the Attorney General that takes care the transmission to the destinary through the Ministry of the foreign affairs and the normal diplomatic channels.

ARTICLE. 101

NOTIFICATION TO A PERSON OF UNKNOWN RESIDENCE AND DOMICILE

If are of all unknown the places of last residence or domicile of the destinary (40-41,43 c.c), the notification occurs though posting of a copy of the act in the

judiciary office in which is proceeded. Other copy will be sent to the Attorney General.

In the cases foreseen of the present and from the preceding article the notification is retained accomplished within the 30th day from the accomplishment of the formality described.

ARTICLE. 102

NOTIFICATION TO THE ADMINISTRATION OF THE STATE

Notification to the administration of the state is done, except special provisions, to the office of the General Advocate of the State.

ARTICLE. 103

NOTIFICATION OF THE LEGAL COMPANIES

The notification to the legal companies (52 C.C) is made in their Centre to the physical person that represent it or to any in charge to the same Centre (53/3 C.C).

ARTICLE. 104

NOTIFICATION TO MILITARIES IN ACTIVITY OF SERVICE

If the destinatary is a military in service and is not possible notify him the act in proper hands, this will be transmitted to the Attorney General that will take care to forward to the commandant of the corps to which the military pertains.

ARTICLE. 105

TIME OF NOTIFICATION

The notification to proper hands can be done only between the hours seven from the morning and the hours nineteens.

ARTICLE. 106

The judiciary officer certifies the executed notification through report dated and undersign to the original and to copy of the act.

The report should indicate with preciseness the person to whom the act has been handed over and the name in which the notification is done (115).

ARTICLE. 107

NOTIFICATION TO POSTAL SERVICE MEANS

In case of the notification through recommended post the report should be likewise written on the original and on the copy of the act and to the original in attached the notice of receipt.

ARTICLE. 108

NOTIFICATION PER PUBLIC PROCLAMATION AND OTHER MEANS

When the notification presents particular difficulty, because of numerous destinataries, of great urgency or for other justified motives, the judge can order that the notification happens in a different manner from those foreseen in the articles that precede.

CHARTER III

TERMS

ARTICLE. 109

LEGAL TERMS AND JUDICIAL TERMS

The term for performance of the acts established from the law or from the judge, if the law permits him (204, 303, 440).

If not declared expressly their prentory the terms are intended ordinary (127).

The ordinary terms can be postponed; the prentory terms cannot be postponed even in the accord of the parts.

ARTICLE. 110

COMPUTATION OF THE TERMS

In the computation of the terms to days and hour is excluded the initial day and the hour (377 c.c).

For the computation of terms to months and years is observed the common calendar.

The festival days is computed in the term. If the expiry day is a holiday the expiry is postponed to the first day not festive (86 labor code).

CHAPTER III
NULLITY OF THE ACTS

ARTICLE. 111

PRONOUNCE OF NULLITY

Cannot be pronounced nullity for in observance or form if the nullity is not expressly imposed by the law.

However, can be pronounced when the act is lacking of formal requirements indispensable for the achievement of the scope; however, the nullity cannot never be pronounced if anyway the act has reached its scope which was directed (122).

ARTICLE. 112

DEACTABILITY AND SANATORIUM

Cannot be pronounced the nullity without the request of part if the law not disposes that it is pronounced from office (113).

Only the part in which interests is established a requirement can oppose the nullity for the lack of the same requirement.

The nullity cannot be raised from whom has given cause or has renounced.

ARTICLE. 113

Nullity deriving from the constitution of the judge and of the attorney general is irremediable and should be raised by office.

The nullity deriving from defect in the constitution of the judge or in the attendance of the Attorney General (46-47) is irremediable and should be raised by office (112).

ARTICLE. 114

EXTENSION OF NULLITY

The nullity of an act, when is declared, rends null those consequetive that depends from It (140, 141 C.C).

ARTICLE. 115

The notification is null if there is an absolute uncertainty on the person to whom is made or on the date (106).

ARTICLE. 116**INNOVATION OF THE NULL ACTS**

The judge that pronounces the nullity should dispose, when it's possible, the innovation of the acts to which the nullity is extended (204-242), with the same provision the judge puts on charge of the responsible of the nullity the expenses for the innovation of the acts

SECOND BOOK**PROCESS OF COGNITION****TITLE I****PROCESS OF FIRST INSTANCE****CHAPTER I****INTRODUCTION OF THE CASE****SECTION I****CITATION AND CONSTITUTION****ARTICLE. 117****CONTENT OF THE CITATION**

In the first grade the request is proposed with petition for citation to the competent judge, who taking in the account of the place in which should executed the notification of the act, fixes the audience of appearance of the parts (121) and order that it should be given to this communication (94).

The appearance of the parts to the first audience is compulsory; in it the judge accomplishes a tentative conciliation of the controversy (338,latt b). If any of the parts appear to the first audience, or if not appearing the plaintiff, the defendant not request that be proceeded in his absence, the process will be distinguished (217).

If the defendant not appear, the judge evaluates the opportunity of his presence, can order the accompany.

ARTICLE. 118

DECISION ACCORDING EQUITY

If the controversy concerns a disposable right the parts can agree that the judge decide according equity (78).

ARTICLE. 119

CONTENT OF THE CITATION

The request of which to the article 117 should contain:

- 1) The indication of the court Infront of which the request is proposed;
- 2) The complete name and the residence of the plaintiff, the complete name and the residence of the defendant, as well as of the persons that respectively assist him.

If the plaintiff or defendant is a legal person the request should contain the domination of it and the indication of the organ or office that has representance in process.

- 3) The determination of the object of the request.
- 4) Exposition of the facts and of the elements of law based on the request, with the relative conclusion;
- 5) Indication of the means of prove of which the plaintiff intends resort and the documents that exhibits;
- 6) The name of the attorney and the indication of the power of the attorney, when that has been issued;
- 7) Indication of the date of the audience fixed from the judge for the first appearance and the invitation to the defendant to appear himself in the fixed audience.

The original of the request, of the listed indications, should be notified to the defendant to the care of the plaintiff.

ARTICLE. 120

REGISTRATION OF THE CASE ON THE GENERAL REQUESTER, FORMATION OF THE FILE OF THE OFFICE AND THE INSERTION OF THE NOTE OF REGISTRATION IN THE FILE.

To the reception of the request of which to the article that precede the clerk of the court Infront of which the request is proposed writes the case on register and copy of the introductive request.

In the office's file will be therefore inserted to the care of the clerk all the subsequent acts.

ARTICLE. 121

TERMS TO APPEAR

Between the date of the notification of the citation and that of the appearance should take place at least the following terms:

- Fifteen days, if the place of the notification is situated in the same circumscription of the court;
- Thirty days, if the place of the notification is situated outside of the circumscription of the courts but in the same regional sphere;
- Forty days if the place of the notification is situated outside of the region;
- Eighty days if the place of the notification is situated in foreign country in the sphere of the African continent.
- Hundred sixty days if the place of the notification is situated outside of the African continent.

The judge addressed the request from the plaintiff, in particular cases of urgency, can with motivated decree abbreviate up to one third the terms of above mentioned,

ARTICLE.122

NULLITY OF THE REQUEST

The request is null if missing or is totally uncertain one of the requirements indicated in art.119 or if has been assigned a lower term to those indicated in the art. 121.

The nullity is healed from the appearance of the defendant (111/2), except the rights from this acquired previously (116).

ARTICLE.123

APPEARANCE OF THE PARTS

To the act of appearance plaintiff and defendant is constituted in process, the defendant proposes orally or with appearance it's defense, eventual reconventional request (21) and the indication of the means of the prove of which intends to defend himself.

If intends call a third in case should declare to the first audience (72, 74, 188).

ARTICLE. 124

NOTIFICATIONS AND COMMUNICATIONS DURING OF THE PROCEEDING

After the constitution in process all the notification and the communication are done to the attorney constituted or if there is no attorney, to the parts in the residence from him indicated (119,n.2).

ARTICLE.125

DELAYED CONSTITUTION OF THE PARTS

Except what is disposed in the art.123 the judge can assign to the parts a new term to constitute (116), if one of the parts not constitutes himself in the new term it will be declared contumacy and the process continues in his absence (203, 204).

ARTICLE. 126

IMMUTABILITY OF THE DESIGNATED JUDGE

The designated judge for the treatment of the case cannot be substituted till the decision, except impediment of serious reasons of service or when exist motives of rejection, abstention (29) or responsibility (33).

CHAPTER II

INTRODUCTION OF THE CASE

SECTION I

POWERS OF THE JUDGE

ARTICLE. 127

DIRECTION OF THE PROCEEDING

The judge exercises all the powers intended to the more considerable and loyal performance of the proceeding.

He fixes the subsequent audience and the terms with which the parts should make the procedural acts (86).

ARTICLE. 128

FORMS OF THE PROVISION

The provisions issued from the judge in the stage of instruction have the form of the ordinance (134); if they are pronounced in audience are retained known from the present parts. If someone of the parts is not present or if the ordinance is pronounced outside audience (196), the clerk will give communication (94) within the subsequent three days.

ARTICLE. 129

EFFECT AND REVOCATION OF THE ORDINANCE

The ordinance issued during the instruction not prejudice the decision of the case (197).

They can be always modified and revoked from the judge that has issued (149/3, 349).

Not are modifiable nor revocable the ordinance declared expressly not appealable from the law (130/2, 216/2, 321/4, 359, 363,412/5), or those which, upon accord of the parts, having pronounced in matter of which these can dispose, except that the parts be subsequently accord for the modification or the revoke.

ARTICLE. 130

ORDINANCE OF CONDEMN TO PECUNIARY

The condemn to pecuniary penalty foreseen from the present code (41/2) are pronounced with ordinance. Adverse of them the condemned part can propose complaint to the same Jude that has issued within the term of three days (183).

The Jude decides on the complaint with ordinance not appealable.

The ordinance of which to the present article constitute executive title (338).

SECTION II
PROCESSING OF THE CASE

ARTICLE. 131

FORM OF THE TREATMENT

The treatment of the case Infront of the judge can be done orally; the judge can authorize the exchange of written appearance, postponing the process,

From the treatment of the case is drew up verbal process (86) in which are inserted the conclusion of the parts (85) and the provisions of the judge (90).

ARTICLE. 132

VERIFICATION OF THE REGULARITY OF THE CONSTITUTION

The judge verifies as office the regularity of the constitutions and, when requires invites the parts to regulate and complete the documents offered in prove.

If points out a defect of representance or assistance (51-53>55) can assign a term in order to constitutes the person whom awaits the representamen or assistance, except the cases in which is already verified the expiration.

ARTICLE. 133

FIRST AUDIENCE OF THE PROCESS

In the first audience of treatment the parts can modify the requests, the exceptions, the conclusions.

The judge request to the parts the necessary clearances and indicate the issues on which retain appropriate the treatment. Except what disposed to the first comma, modication of the request, of the exceptions and of the conclusions can be done even during of the case before this has not been assigned to sentence.

ARTICLE. 134

INSTRUCTORY ACTIVITY OF THE JUDGE

The judge issues in audience the necessary instructory provision (128), but can also reserves of pronouncing it outside audience in the subsequent five days.

ARTICLE. 135

ASSIGNMENT OF THE CASE TO SENTENCE

If the judge retain that the case is mature for the decision without need of assumption of means of prove (180), invites the parts to formulate the proper definitive conclusions and assigns the case to sentence.

But if retains that its necessary to assume means of prove, disposes in conformity fixing the audience for the assumption.

SECTION III

PROPATORY INSTRUCTION

ARTICLE. 136

NOMINATON OF THE TECHNICAL CONSULTANT

In the cases in which the judge retains necessary to use of the cognitions of an expert nominate one or more consultants and fixes the audience in which this should appear.

ARTICLE. 137

OATH OF THR CONSULTANT

To the audience of appearance, the judge after having advised the consultant of the functions that is called to perform and having informed the questions which should answer, collects oath of the same consultant to carry out faithfully the task entrusted him (291, 299-303 pc; 41).

ARTICLE. 138

ACTIVITY OF THE CONSULTANT

The consultant assists to the audience to which is invited from the judge, performs all the necessary inquiry, collects information of the parts, or from thirds and lastly deposits written report expressing his opinion and answering to the questions (39).

To the operations performed from the consultant can assist the parts with their lawyers and with consultant of parts.

ARTICLE. 139

VERBAL PROCESS

Of all the operations performed from the consultant should be written verbal process.

ARTICLE. 140

RINNOVATION OF THE ENQUIRY AND SUBSTITUTION OF THE CONSULTANT

If the judge retains it appropriate can always dispose the renovation of the acts accomplished from the consultant and, if the case, the substitution of the same consultant.

ARTICLE. 141

ASSISTENCE TO THE AUDIENCE AND PART CONSULTANT

The parts can autonomously nominate a proper consultant that assists to the operation of the consultant's office, without that being able to put in a word (speak) or interfere in the operation of the office's consultant.

Together with to the proper appearance or conclusional deductions the parts can present technical report of their proper consultants.

ARTICLE. 142

TIME, PLACE AND WAY OF ASSUMPTION OF THE PROVE

In the arrangement of means of prove the judge establishes an audience, the place and the way of the assumption (49).

If the assumption not exhausts in the fixed audience can be continued in a subsequent day.

ARTICLE. 143

ASSUMPTION OUTSIDE OF THE CIRCUMSCRIPTION OF THE COURT

If the means of prove should be assumed outside of the circumscription of the court, the judge can delegate for the assumption the judge of the place, or disposes that the proper office be transferred in the place of assumption.

In the audience of delegation, the judge fixes a term within which the prove should be assumed and the audience for the appearance of the parts Infront of him for the continuation of the process.

ARTICLE. 144

DELEGATED JUDGE TO THE ASSUMPTION OF THE PROVE

The delegated judge on the interested parts request, or also of office, proceed to the assumption of means of prove and send the verbal to the delegator judge within the fixed term and however before the audience of continuation of the process.

The term previously mentioned can be postponed on part request from the delegator judge.

ARTICLE. 145

THE ROGATORY OF THE SOMALI JUDGES TO THE FOREIGN

The rogatories of Somali judges to the foreign for the execution of the instructor provision are transmitted through diplomatic channel.

When the rogatory concerns Somali citizens resident to abroad the judge delegate to the competent consulate authority.

ARTICLE. 146

PROVISIONS OF THE DELEGATED JUDGE

The judge that proceeds to the assumption of the means of prove, even is delegated, pronounce with ordinance (128) to all the questions that arise in the course of it.

ARTICLE. 147

ASSISTANCE OF THE PARTS TO THE ASSUMPTION OF THE PROVE

The parts can attend personally to the assumption of means of prove.

ARTICLE. 148

VERBAL PROCESS OF THE ASSUMPTION OF THE PROVE

From the assumption of the means of the prove is written verbal process (86).

The declaration of the parts and of the testimonies are reported in first person after the complete generality (full name) of the declarant and then are read to the declarant that unsign it.

ARTICLE. 149

DECADENCE OF THE ASSUMPTION OF THE PROVE

If no one of the parts is present in the day fixed for the initiation or the prosecution of the prove the judge declares expired from the right to the assumption (142). Similarly provides upon part request appeared, if not presents himself that who has asked the assumption of prove.

The interested part can in the subsequent audience ask the revocation of the ordinance that disposes the expiry from the prove and the judge revocates it, if he identifies that the missing appearance was due to serious reasons.

ARTICLE. 150

CLOSURE OF THE ASSUMPTION OF THE PROVE

When the assumption is ended or it has been declared the expiry in view of the preceding article or when the judge retains unnecessary the proceeding of the prove (79-80), order the closure of the assumption.

ARTICLE. 151

ORDER OF EXHIBITION TO THE PARTS OR TO THE THIRDS

The judge can order the inspection or the exhibition of things in possess of one of the parts or of a third (80), can order also the exhibition of documents kept in custody from thirds when it retains necessary the acquisition to the process (293, n.2).

Ordering the exhibition, the judge fixes the times the place and the way of the same exhibitions (142).

ARTICLE. 152

GUARDIANSHIP OF THE RIGHTS OF THE THIRD

The third whom is been ordered the exhibition can oppose it intervening in the process, before of the term fixed for the exhibition.

ARTICLE.153

REQUEST OF INFORMATION TO THE PUBLIC ADMINISTRATION

When retains it necessary the judge can ask to the public administration written information related to acts and documents of the same administration (80).

ARTICLE.154

DISREGARD OF THE PRIVATE WRITING

Who against whom is produced a written to him attributed (391 c.c), if intends disregard it, is retained to deny formally the proper script or the proper undersigning.

ARTICLE.155

TACIT RECOGNITION OF THE PRIVATE WRITTEN

The script produced in process is retained recognized if the part whom is attributed it is in contumacy, or if the part is appeared and not declare of disregard of it, is retained to deny formally to the first audience of production.

ARTICLE.156

REQUEST OF VERIFICATION

The part that intends to use of the disregarded script can request the verification proposing means of prove or indicating the script that can serve as comparison.

The judge disposes the custody of the document, order the acquisition of eventual script of comparison and can order to the part, that has disregarded the script, to write under dictation, even with the presence of technical consultant if the part refuses or not presents himself, the script is retained recognized.

ARTICLE.157

WAY OF PROPOSITION OF THE FALSE COMPLAIN

In any stage and grade of the proceeding can be proposed complain of falsity in relation to a document produced in process (388 c.c; 162).

ARTICLE.158

CONTENT OF THE COMPLAIN OF FALSITY

The complaint should contain, to a penalty of nullity (111), the indication of the elements and of the prove of the falsity and should be proposed personally from the part to from an attorney provided of special mandate to propose it (55-56).

ARTICLE.159

INTERPELLATE OF THE PART THAT HAS PRODUCED THE SCRIPT

The judge that has received the complaint interpellated the part against whom is proposed it, if this confirms that he wants to use of the document the judge disposes the adequate instructor means for the ascertainment.

In that case is compulsory the intervention in the case of the attorney general (A.G) if the part interpellated give up to use the document cannot be used in no way in the process.

ARTICLE.160

SEQUESTRATION OF THE DOCUMENT

Before starting the ascertainment on false the judge provides to sequestrate of the documents and to all other necessary measures to ensure its availability in the course of the instruction.

ARTICLE.161

SUSPENSION OF THE PROCEEDING IN WHICH THE COMPLAIN OF FALSITY IS PROPOSED

In the proceeding in which is proposed complain of falsity remain suspended till the sentence on false be passed in adjudicated (222).

However, the judge, if retains it adequate and if the both of the parts request it, can decide in the merit together with the process of falsify.

ARTICLE.162

PREPOSITION OF THE FALSE COMPLAINT

If the complain of falsify is proposed in appeal or before to the supreme court and are served the conditions of which to article 158 and 159, the process should be suspended and remitted to the judge of the first instance for the ascertainment of the false.

ARTICLE.163

JUDICIAL CONFESSION

The judicial confession can be spontaneous or provoked through formal interrogatory (165).

ARTICLE.164

SPONTANEOUS CONFESSION

The spontaneous confession can be contained in any procedural act signed from the part personally, or can be made in the course of not formal interrogatory (80), disposed from the judge in any stage or grade of the process (610 c.c).

ARTICLE. 165**FORMAL INTERROGATORY**

The formal interrogatory should be directed in separate articles and specific.

Cannot be made questions on different facts from those deducted in the articles, except that the parts are agreed on it.

ARTICLE. 166**ANSWER**

The part interrogated should answer personally without using of prepared written previously, but the judge can authorize to consult with notes and clipboard when the circumstances require them.

ARTICLE.167**MISSING ANSWER**

If the part isn't present or refuses to answer without reason, the deducted facts in the interrogatory can be retained admitted (382/2).

ARTICLE. 168**DEFERIMENT OF THE DECISIVE OATH**

Each of the parts can defer to the other oath to decide the controversy (407,610 c.c).

The oath should be deferred with written act undesigned from the part and formulated in separate articles in clear way and specific.

ARTICLE.169**REFERENCE OF THE OATH**

Before of having declared to be ready to swear the part whom the oath is deferred can refer in the same limits to other part (407/2 c.c).

ARTICLE.170**IRREVOCABILITY**

Who has deferred or referred the oath cannot revoke it when the adversary has declared of being ready to swear (409 c.c).

ARTICLE. 171**FORMULA OF THE OATH**

In the cases provided from that preceding the formula of the oath cannot be anyway motified.

ARTICLE.172**PERFORMANCE OF THE OATH**

The oath is performed personally from the part before to the judge with formula solemn conform to the religion professed from the swearing.

ARTICLE. 173**MISSING PERFORMANCE OF THE OATH**

The part whom is been deferred or referred the oath and refuses of performing it without just reason, succumbs on points of the controversy object of the oath (411 c.c).

ARTICLE.174**DEFFERIMENT OF THE SUPPLEMENTARY OATH**

The oath can be also deferred from the judge to each one of the parts on any point of the controversy (412 c.c).

The deferred oath from the judge to a part cannot from this be referred to the other part.

ARTICLE.175**POSTPONEMENT TO THE NORMS ON DECISORY OATH**

Except what is disposed from the previous article is applied to the oath deferred from the judge the dispositions foreseen for the oath deferred from the part.

ARTICLE. 176**MODALITY OF DEDUCTION AND ORDINANCE OF ADMISSION OF THE PROVE BY TESTIMONIES**

The prove by testimonies (397-400 c.c) should be requested through indication of the persons and of the facts on which each one of them should be interrogated.

The part against whom the prove is proposed can oppose it or can indicate to his turn persons to interrogate.

The judge admits or rejects the prove indicating, in the first case, the lists of the testimonies admitted by each part.

With the ordinance of admission, the judge fixes the audience and the modality of the assumption.

ARTICLE. 177

INCAPACITY TO TESTIFY

Cannot be admitted as testimonies the persons that might participate to the process, to defend of their interest (71).

ARTICLE. 178

PROHIBITION OF TESTIFYING

Cannot testify the wife of the part, his relatives or kinship up to the fourth grade (34,37 c.c), except the case not regards question regulated from the personal institute (family law)⁹.

ARTICLE. 179

AUDITION AS TESTIMONY OF THE MINORS OF FIFTEEN YEARS

If necessary, can be listened as testimonies the minors of fifteen years (45 c.c), but they do not give oath.

ARTICLE.180

OATH OF THE TESTIMONY AND THEIR ADMONISHMENT

The testimonies are examined separately. Before the deposition the judge reads them the formula of the oath, the testimony swears repeating the formula.

The judge should in account of the religion of the testimony and if this not professes any religion invites him to pronounce a solemn declaration.

ARTICLE.181

IDENTIFICATION OF THE TESTIMONIES

⁹ Family law n.23 of 11 january 1975 (B.U. 'F.R' sppl.n.1 to n.3).

The testimony should be preventively identified with the home and with all the other necessary elements.

The judge can ascertain it with the more appropriate means of the reliability of the testimony.

ARTICLE. 182

INTERROGATION AND ANSWERS

The judge interrogates the testimony on facts on which he is called to dispose, but may, to request of parts or of office, address him all the questions that he retains appropriate.

The parts and the attorney, if present, cannot interrogate directly the testimony.

If there is a divergency between the dispositions of the two testimony the judge can put them to confrontation.

ARTICLE.183

MISSING APPEARANCE OF THE TESTIMONIES

The testimony that regularly cited not be present can be condemned to a penal pecuniary from Sh.So.20.00 to 200,00.

The condemn can be revoked from the same judge that has issued, if the testimony will be present subsequently adducing valid reasons of justification (129, 130).

ARTICLE.184

REFUSAL OF GIVING EVIDENCE AND FALSE TESTIMONY

If the testimony refuses without reason to give evidence or appear reticent or obviously false (291, p.c) the judge denounces him to the Attorney General in the serious cases can order him the arrest (28 subs. p.p.c).

ARTICLE.185

POWER OF THE JUDGE DURING THE INSTRUCTION

The judge, during the probatory instruction, can proceed to inspect of places, mobile things and immobile, never the less to corporal inspection (151).

In such activity can do assist from a technical consultant (136-138), interrogate testimonies and give all the necessary depositions for the best outcome of the inspection.

SECTION IV

THIRD INTERVENTION AND REUNION OF PROCEEDINGS

ARTICLE.186

CONSTITUTION OF THE THIRD INTERVENING

The third that intend constitute himself in process should be present in audience or deposit in clerk's office an appearance with the copies for the other parts, the documents and the attorney (71). If the constitution happened in the clerk's office the clerk is retained to give communication to the parts personally constituted.

ARTICLE.187

CONSTITUTION AFTER THE FIRST AUDIENCE

The third intervention can happen till that the case has not been assigned to sentence. But if it comes after the first audience (133) the third cannot perform the acts that are not anymore consented to the other parts.

ARTICLE. 188

CALL OF A THIRD IN THE CASE

The part that intends to call a third in case (72) should cite him to appear to the first audience observing the terms of which to the art.121 c.p.c. The judge when is requested can allow a term for the call of the third fixing a new audience (217).

ARTICLE.189

CALL OF A THIRD BY ORDER OF HE JUDGE

In any moment of the process the judge calls a third ordering to the parts to cite him for an audience that he fixes to the scope (73).

In no one of the parts provide to the citation the judge disposes with ordinance the cancelation of the case.

ARTICLE.190**CONSTITUTION OF THIRD CALLED**

The third called in the cause is constituted through presenting himself or deposit of appearance.

ARTICLE.191**REUNION OF PROCEEDINGS RELATED TO THE SAME CASE AND
REUNION OF CONNECTED CASES**

If two or more proceedings related to the same case pending before to the same judge, the judge by office disposes the reunion.

The reunion is disposed from the president of the court if the proceeding pends Infront of the different judges of the same court.

The same disposition is applied if the proceedings are connected or accessories in view of the articles 19 and 20 of c.p.c.

CHAPTER III**DECISION OF THE CASE****ARTICLE.192****DISCUSSION OF THE CASE**

To the last audience of proceeding destined to the assignment of the case to sentence, the Jude after having listened the discussion of the parts assign the case to sentence.

ARTICLE.193**DELIBERATION OF THE DECISION**

The decision is deliberated in council room. If more judges have participated to the instruction they participate to the decision.

The law establishes the cases in which the instruction is trusted to a single judge and the decision to a judicant college nominated to the scope¹⁰.

In case of collegial decision this is taken to a majority of the votes, the president of the college votes at last (92/2).

The content of the decision will be expressed in the dispositive of the sentence, that before the publication (93), will be proceeded from the drawing up of the motivation.

ARTICLE. 194

EXAM OF THE REQUEST AND EXCEPTION

In the deliberation of the sentence the judge should decide on all the requests proposed and the related exceptions defying the process.

ARTICLE.195

GENERIC PROVVIONAL CONDEMN

If is ascertained the existence of a right but controverted the quantity of the owed performance, the judge upon part request can limit himself to pronounce generic condemn to the performance ordering that the process continue for the liquidation In that case, always upon part request, the judge can condemn the debtor to the payment of a provisional sum, according to his wise appreciation.

ARTICLE.196

FORM OF THE PROVISION OF THE JUDGE WHEN NOT DEFYING THE CASE

In the cases in which the judge cannot define with sentence a case assigned to sentence pronounce ordinance (128) disposing appropriate provisions for the continuation of the process, the acquisition of new proves or what other retains necessary.

ARTICLE.197

ORDINANCE PRONOUNCED DURING THE CASE

¹⁰) see art.1-3 of the law n.18 of the November, 1973- institution of judicant college as the only judicant organs for the administration of the justice.

The ordinance in that way pronounced not prejudice the definitive decision of the case are always modifiable or revocable from the same judge that has issued (129), who will remain vested of all the powers for the further treatment of the case (131 ss).

CHAPTER IV

EXECUTORITY AND NOTIFICATION OF THE SENTENCES

ARTICLE.198

PROVISIONAL EXECUTION

The sentence subject to appeal can be, on part request, declared provisionally executive with bail or without, if the request is founded on public (387 c.c) act or recognized script (391 c.c) or sentence passed in adjudicated (222), or is there a serious danger in the delay of the execution.

The provisional execution should be allowed, upon part request, for the sentence that pronounce condemn to the payment of provisional (195) or to alimentary performance (32 pers. Institute).

ARTICLE.199

CONCESSION OR REVOKE OF THE PROVISIONAL EXECUTION IN APPEAL

If the judge of first grade has not pronounced on the request of provisional execution or has rejected (198) the interested part can repropose it to the judge of appeal with principal petition or with that incidental with the same form and to the same judge of appeal can request to be revoke the concession of the provisional execution or be suspended the started proceeding (240) that become suspended the started execution.

ARTICLE.200

WAY OF THE NOTIFICATION OF THE SENTENCE

The notification of sentence, to the end of the starting date of the term for appeal, is made to the attorney constituted or to the part, in view of the norm 124 (221,232,233).

CHAPTER V
CORRECTION OF THE SENTENCES AND OF THE ORDINANCE

ARTICLE.201

CASES OF CORRECTION

The judge that has issued the sentence or the ordinance, upon request of part or also from office, can always proceed to the correction of material errors or of calculation in which he met in the drafting of the provisions.

ARTICLE.202

PROVISIONS OF CORRECTION

To the correction of which to the preceding article the judge provides with decree if there is an accord of the parts in regard of the correction; otherwise disposes with ordinance after have heard the parts.

CHAPTER VI

THE PROCEEDING IN CONTUMACY

ARTICLE.203

CONTUMACY OF THE PLAINTIFF

If the plaintiff not constitutes himself in process the judge can order that the case be cancelled from the role and declares distinguished the process.

If however the defendant is constituted and request that the process be prosecuted in absence of the plaintiff, the judge declares the contumacy of this last and disposes for the prosecution of the process (135).

ARTICLE.204

CONTUMACY OF THE DEFENDANT

If the defendant not constitutes himself and the judge notice defect in the notification of the citation (122), fixes to the plaintiff a perentory term to renew it.

The renovation prevents any decadency. If the defendant not constitutes even to the new audience, the judge except what is disposed to the last comma of the article 117 cpc, declares the contumacy and order the continuation of the process.

If the order of renovation of the notification of the citation not performed from the plaintiff the judge order the cancelation of the case from the role and the process extinguishes (217).

ARTICLE.205

NOTIFICATION AND COMMUNICATION OF ACTS TO THE CONTUMACIOUS.

The provisions that dispose on the instruction, the new questions, exceptions or reconventions are notified to the contumacious personally (200).

All the other acts are considered communicated with the deposit in clerk's office, the sentence is notified to the part personally.

ARTICLE.206

CONSTITUTION OF THE CONTUMACIOUS

The part declared contumacious can constitutes in any moment through deposit of appearance in the clerk or presentation to the audience till that the case not has been assigned to sentence.

After the constitution can ask to the judge to set again in terms to perform defensive activities that would be precluded.

The judge evaluated the reasons that caused the contumacy opportunity to accept the request of which ahead decide on it with ordinance.

CHAPTER VII

SUSPENTION, INTERRUPTION AND EXTINGTION OF THE PROCESS.

ARTICLE.207

NECESSARY SUSPENTION ¹¹

¹¹ Process in which is request the regulation of jurisdiction or competence (28); or the recusation of the judge (30); if is proposed false quarrel

the judge disposes that the civil process be suspended in the case foreseen from the art.272 of the penal procedure code and in any other care in which the decision of the case depends from the resolution of another civil controversy or administrative.

ARTICLE.208

SUSPENSION ON PART REQUEST

on unanimous request of all the parts the judge can dispose that the process remain suspended for a period not exceeding to three months (209).

ARTICLE.209

FIXITION OF THE NEW AUDIENCE AFTER THE SUSPENSION

If with the provision of suspension has not been fixed the date in which the process should be continued, the parts should request the fixation within the prentory terms of four months for the annulment of the case of suspension (207).

The request is proposed, at least ten days before the expiry of the terms of which ahead, to the judge that has initiated the process or to the president of the office.

ARTICLE.210

EFFECT OF THE SUSPENSION

During the suspension (207-208) cannot be done acts of the proceeding; the ongoing terms are interrupted and will start to begin from the day of the new audience fixed for the continuation.

SECTION.II

INTERRUPTION OF THE PROCESS

ARTICLE.211

DEATH OR LOST OF THE CAPACITY OF THE PART BEFORE THE CONSTITUTION

If before the constitution occur the death or the loss of capacity of one of the parts or of hislegal reppresentant or the annulment of the report of reppresentance, the process is interrupted, except that those of whom awaits continue it voluntarily constituted or are cited from the other part.

ARTICLE.212**DEATH OR LOST OF THE CAPACITY OF THE CONSTITUTED PART
OR FROM THE CONTUMACIOUS**

The process is equally interrupted if one of the events of which the preceding article verifies during of the instruction.

If it verifies instead after that the case has been to sentence it has not affected on the decision.

ARTICLE.213**DEATH OR IMPEDIMENT OF THE ATTORNEY**

The death, the cancelation or suspension from the “albo” of legal reppresentant interrupt the process till that the part is not constituted personally or nominate another reppresentant.

The revoke of the power of attorney or the renouncement to it are not reason of interruption (57).

ARTICLE.214**RESUMPTION OF THE PROCESS**

The interrupted process for one of the reasons of which to the article that precede can be summed up to the request of one of the parts within the terms of three months from the verification of the interruption.

ARTICLE.215**EXTINCTION OF THE PROCESS**

In case of interruption is applied the disposition of which to the art.210,

If process not be prosecuted and resumed with in the terms foreseen from the preceding norms, it will be declared extinct.

SECTION. III
EXTINCTION OF THE PROCESS

ARTICLE.216

RENOUNCE TO THE ACTS OF THE PROCESS

The process is extinguished for renounce of the acts of process done from all the parts without reserve or conditions. Upon accord of the parts, or even from office, the judge provides with ordinance not appealable to the liquidation of the expenses (62-63).

ARTICLE.217

EXTINCTION OF THE PROCESS FOR INACTIVITY OF THE PARTS

The process is extinguished also for inactivity of the parts, if no one of them appear nether to the first audience nor to that subsequently fixed from the judge (117/3, 203, 204/2, 215,219). The process is extinguished also if the parts not observe the terms for the resumption after the suspension of the process (204).

The extinction is declared from the judge with ordinance or with sentence and operates by law.

ARTICLE.218

COMMUNICATION AND APPELLABILITY OF THE ORDINANCE

The provision that declares the extinction is communicated to the parts, against it is admitted complaint to the same judge that has issued it, who can revoke the same provision.

ARTICLE.219

MISSED APPEARANCE TO THE AUDIENCE

If in the course of the process no one of the parts is present to the audience, the judge fixes a new audience for their appearance, if the parts not constitute not even to that audience the process extinguishes.

ARTICLE.220

EFFECT OF THE EXTINCTION OF THE PROCESS

The extinction of the process not extinguishes the action; but renders in effective the acts accomplished; the proves collected can be eventually evaluated from the judge in a new process, according to him prudent appreciation (80).

The expenses of the extinguished process are on the parts that have anticipated (61).

TITLE.II

APPEALS

CHAPTER.I

MEANS OF APPEAL

ARTICLE. 221

MEANS OF APPEAL

The means for the appeal of the sentence are: the appeal (230-245), the complaint to the supreme court (246-265), the revocation (266, 270), the opposition to the execution (432-436).

ARTICLE.222

FORMAL ADJUDICATED MATTER

Is said passed in adjudicated the sentence that is not any more subject to appeal (221, 220), except in the hypothesis of revocation (266).

ARTICLE.223

TERMS FOR THE APEAL

The term to propose the appeal in 30 days; it is a prentory and starts from the date in which the sentence it has been notified (110, 200). Independently from the notification no appeal can be proposed passed one year from the publication of the sentence in view of the article 93 cpc.

ARTICLE.224

PLACE OF THE NOTIFICATION OF THE APPEAL

The notification should be notified to the opposite part in the place indicated from him as proper residence in the introductive act or in the appearance of response of the first grade process (119,n.2; 123), except what is disposed from the article. 200 cpc.

ARTICLE.225

INTEGRATION OF THE CONTRADICTORY

If the sentence is pronounced between more parts, is it appealed only in front of one of them; the judge, when necessary, order the integration of the contradictory (239) fixing a term for notification of the appeal also to the other parts (70).

ARTICLE.226

INCIDENTAL APPEAL

The part against whom the sentence has been appealed and the other parts is indicated in the article that precede can propose in the same process through incidental appeal against the sentence (233).

The term of 30 days for the incidental appeal starts from the date of the notification of the principal appeal.

ARTICLE.227

REUNION OF THE SEPARATE APPEAL

All the appeals proposed separately against the same sentence should be reunited in only one process (191).

ARTICLE.228

SUSPENSION OF THE EXECUTION

The execution of the sentence, when is not ordered the provisional execution (198), remain suspended if is proposed appeal; the other types of appeal not suspend the execution except that in the cases expressly foreseen from the law (28,256,270).

ARTICLE.229

EFFECT OF THE EXTINCTION OF THE PROCESS OF APPEAL

The extinction of the process of appeal renders in adjudicated (222) the sentence appealed.

CHAPTER II**APPEAL****ARTICLE.230****APPEALABLE SENTENCES**

Can be appealed, provided that the appeal not been excluded from the law¹² or from the accord of the parts, the sentences pronounced in first grade from the district tribunal and Regionals (7, 8).

ARTICLE.231**APPEAL COURT.**

For the appeal against the sentences of district and regional tribunals is competent the court of appeal (9) in which the circumscription has seat the judge that has pronounced the sentence.

ARTICLE.232**FORM OF THE APPEAL**

The appeal is proposed through citation containing the summary exposition of the facts and the reasons of the appeal, presented to the judge that has issued the appealed provision, who will transmit without delay to the appeal judge, together with the file of the process of first grade enclosed, provided with of the appealed provision.

ARTICLE.233**WAY OF PROPOSING THE INCIDENTAL APPEAL**

The incidental appeal is proposed through appearance of response to the principal appeal.

ARTICLE.234**INTERVENTION IN APPEAL**

In the appeal process is admitted the intervention of thirds that might do opposition to the execution of the sentence to protect of the proper rights (74,186).

¹². The decision of the regional court in matter of controversy of labour can be appealed only in front to the supreme court (art.139/4, 140 laabour code)

ARTICLE.235

REQUEST AND NEW EXCEPTIONS

In the process of appeal cannot be proposed new request, and, if proposed, should be rejected by office; can be instead proposed new exceptions, new documents and indicated means of proof not produced in first grade can be requested the interests, the fruits and the accessories matured after the appealed sentence (160, 218, 223 c.c).

ARTICLE.236

EXPIRY OF THE REQUEST AND OF THE EXCEPTIONS NOT REPROPOSED

The requests and exceptions not accepted in the sentence of first grade are intended renounced if not are expressly repropose in appeal.

ARTICLE.237

FORM AND TERMS OF THE CONSTITUTION IN APPEAL

The Constitution in appeal happens in the modalities and in the forms indicated for the first-grade process.

ARTICLE.238

UNPROCEEDING OF THE APPEAL

If the appellant not constitutes to the first audience the judge postpones the case to a next audience of which the clerk gives communication to the appellant; if even to the new audience the appellant not appears the appeal is declared unproceedable (245).

ARTICLE.239

INSTRUCTORY ACTIVITY OF THE APPEAL JUDGE

The appeal judge, to the first audience fixed for the proceeding, verifies the regular constitution of the parts (132), orders when required the integration of the contradictory and the notification to the other eventual parts in view of the article.70.

Declares, in the case provided from the article that precede unproceedable of the appeal; declares also the contumacy of the appellate when this not been appeared

and issues with ordinance all the necessary Provisions for the proceeding of the process.

in any case, ordering, if necessary, the appearance of the parts, should try a tentative of reconciliation of the litigation.

ARTICLE.240

PROVISIONS ON THE PROVISIONAL EXECUTION.

The appeal judge provides eventually on the request to him is proposed in view of the article.199 Cpv, relatively to the provisional execution or to the suspension of it.

ARTICLE.241

REMISSION OF THE CASE TO SENTENCE

Ended the instructory of the process of appeal the judge fixes an audience for the assignment of the case to sentence. in that audience the parts specify the proper conclusion after that the case will be assigned the sentence (135).

ARTICLE.242

REMISSION OF THE CASE TO THE JUDGE OF THE FIRST GRADE

The appeal judge can with sentence remit the case to the first judge only if notices the nullity of the introductive act of the first process (122) or of any act that cannot be renewed in appeal; the missed integration of the contradictory in first grade; a defect of competence (23) or wrong of the declaration of extinction of the process of first grade (216-219).

ARTICLE.243

POSTPONEMENT TO THE NORMS RELATED TO THE FIRST GRADE

Except what is foreseen in the article.235, to dispose the assumption of new proof, the judge of appeal will observe the norms set for the process of first grade.

ARTICLE.244

APPLICABILITY OF THE NORMS SET FOR THE PROCESS OF FIRST GRADE

All the norms dictated for the process of first grade are applicable to the appeal process if not incompatible with the dispositions is of this chapter.

ARTICLE.245**INADMISSIBLE OR UNPROCEEDABLE**

The appeal declared inadmissible (223) or un proceedable (238) cannot be proposed again even if not is expired the fixed term from the law.

CHAPTER III**PETITION TO THE SUPREME COURT****ARTICLE.246****APPEALABLE SENTENCES BEFORE THE SUPREME COURT AND REASONS OF PETITION**

Are appealable with petition to the Supreme Court the sentences of second grade and those of first grade against which is not admitted the appeal¹³;

- 1) for reason related to the jurisdiction or to the competence;
- 2) for violation or false application of norms of law;
- 3) For nullity of the sentence or of the proceeding;
- 4) For omission or insufficient motivation on a decisive point of the controversy prospected from the parts or raised by office.

ARTICLE. 247**OTHER CASES OF APPEAL TO THE SUPREME COURT**

The law disposes the other cases in which the jurisdictional decisions can be appealed with petition to the Supreme Court (26).

ARTICLE.248**PETITION IN THE INTEREST OF THE LAW**

¹³ The appeal of the sentence issued from the regional judge in matter of labour is an exclusive competence of the supreme court.

Even if the interested parts have not proposed petition to the Supreme Court or have renounced this can be proposed from The Office of the Attorney General in the interest of the law (47, 15/2, lett “c” of the judiciary act, 1970). In that case the parts can intervene to sustain or resist to the petition.

ARTICLE.249

TERMS TO PROPOSE PETITION

The term to purpose petition is 30 days from the date of notification (200). If the sentence is not notified, the petition become inappealable passed one year from the publication of the sentence (223).

ARTICLE.250¹⁴

UNDERSIGNING OF THE PETITION AND IT’S CONTENT

The petition to the supreme court should be undersigned from a lawyer or attorney registered to the “albo” and should contain:

- 1) The indication of the name and residence of the parts;
- 2) The extremes of the sentence appealed;
- 3) The summary exposition of the facts of the case;
- 4) The reasons of the petition with the indication of the norms of law on which they are based on;
- 5) The indication of the attorney if it is conferred with separate act;

The inobservance of the above prescriptions provokes the inadmissibility of the petition (259).

ARTICLE.251

ELECTION OF DOMICILE

The petitioner part elects domicile at the lawyer or attorney that represents him (42 c.c); the notification will be executed through deposit at the clerk of the court.

ARTICLE.252

NOTIFICATION OF THE PETITION

¹⁴ The first paragraph of the art.250 c.p.c. it has been modified the text according in the same article enforce of the law n.70 of the October, 1975.

The petitioner should to his care notify the petition to the part or to the parts against whom is proposed (95).

ARTICLE.253

DEPOSIT OF THE PETITION

The petition, to a penalty of unproceedable should be deposited in the clerk's office of the court that has pronounced the appealed sentence. To it should be attached authentic copy of the appealed sentence, the power or attorney released to the lawyer, the receipt proving the deposit of the due tax or the decree of admission of the petitioner part to the free advocacy (defense).

ARTICLE.254

TRANSMISSION OF THE FILE.

The clerk of the court that has received the petition with the documents of which to the preceding article should transmit to the related office immediately to the clerk of the Supreme Court.

ARTICLE.255

COUNTER PETITION

The part against whom the petition is directed can propose counter-petition notifying it to the petitioner within 10 days from the receiving of the notification of the principal petition.

The counter petition should be written according the norms dictated to article.250; it should be deposited in the clerk's office of the court within 10 days from the notification.

In the lack of counter petition the part that has not presented it is only admitted to the oral discussion.

ARTICLE.256

SUSPENSION OF THE EXECUTION

The petition to the Supreme Court not suspends the execution of the sentence. However, the Supreme Court and the same court that has issued the sentence for Justified reasons, heard the parts and disposed if the case a caution can temporarily suspend the execution.

ARTICLE.257

FIXATION OF THE AUDIENCE FOR THE DISCUSSION OF THE PETITION AND COMMUNICATION TO THE PARTS

The president of the Court fixes the audience for the discussion of the petition and the Clerk of the Court gives it communication to the parts at least before 10 days.

ARTICLE.258

RELATION ON THE CASE AND DISCUSSION

To the fixed audience reporter judge nominated from the president refers on the case; hence the president admits the parts to illustrate the reasons of the petition and of the counter petition.

Ended the discussion the court deliberate in the council room the sentence, except that the president retains appropriate postponing the decision to a future audience.

ARTICLE.259

DECISION OF THE SUPREME COURT

If takes place the cases foreseen from the law (249), the court declares inadmissible or unproceedable the petition confiscates the deposit and provide on the expenses. The petition declared inadmissible (249, 250) or unproceedible (253) cannot be repropose.

If the court retains that the case could not be proposed or the process continued erase the appealed sentence.

If rejects the petition condemn the petitioner to the loss of the deposit and to the expenses, except that retains appropriate to compensate these lastly (62, 63).

If accepts the petition, nullifies the sentence appealed and decides definitely in the merit if the case is sufficiently instructed; in the contrary the court can directly submit to the exam the facts of the case and disposes also instructory means, or else, only in case of absolute necessity, can send the case to the tribunal that has pronounced the sentence disposing that the new treatment be trusted to a different judge (262-264).

ARTICLE :260

DEPOSIT OF THE SENTENCE AND NOTIFICATION

The sentence will be deposited in the clerk's office of the court; on the event of deposit the clerk gives notice to the interested parts through notification; the file with all the acts is sent back to the court that has pronounced the sentence appealed together with a copy of the dispositive of the sentence of the supreme court that should be noted to the edge of the sentence appealed.

ARTICLE:261

RENOUNCE

Before the start of the report on the case of which to the art.258 the parts can respectively renounce to the petition (250) or counter petition (255).

ARTICLE:262

RESUMPTION OF THE CASE

Within a year from the publication of the sentence of the supreme court (93) each of the parts can, in case of postponement to the court of the sentence appealed, resume before to this the case.

In case of extinction of the case the sentence of the supreme court preserves its binding efficacy

ARTICLE:263

PROCEEDING IN CASE OF POSTPONEMENT

In the process of postponement continued before the court that issued the appealed sentence, the parts reassume the same procedural position that they had in the first process.

ARTICLE:264

PRINCIPLES OF RIGHT ENOUNCED FROM THE SUPREME COURT

The judge of postponement should comply to the principles of law enunciated from the supreme court.

ARTICLE:265

JURISDICTION AND COMPETENCE REGULATION

The same modality of which the articles that precede is observed for the regulation of competence and jurisdiction (26).

CHAPTER: IV

REVOCACTION

ARTICLE:266

CASES OF REVOCATION

The sentences passed in adjudicated (222) can be appealed for revocation in the following cases:

- 1) If are effect of Fraud of one of the parts in damage of the others;
- 2) If it is adjudicated on basis of prove recognized and declared false after the sentence;
- 3) If after the sentence have been found decisive documents that the part could not produce for reason of force major or for culpa of the adversary;
- 4) If the sentence is an effect of an error of fact resulting from the acts or documents of the case;
- 5) If the sentence is an effect of fraud of the judge ascertained with sentence passed in adjudicated (222).

ARTICLE:267

REVOCACTION PROPOSABLE FROM THE ATTORNEY GENERAL

In the cases in which is mandatory the intervention of the Attorney General (47,113,306,312/3); this has the power to appeal the sentence for revocation in the following cases:

- 1) When he has not participated to the process (113);
- 2) When there is clear collusion¹⁵ between the parts to fraud the law.

ARTICLE:268

PROPOSITION OF THE REQUEST

The revocation is proposed with citation before the same judge that has pronounced the appealed sentence.

¹⁵ fraudulent

The citation should contain the reason of the revocation and the related prove to the demonstration of one of the cases foreseen in the art.266 cpc the citation should be undersigned from a lawyer provided with special power of attorney and accompanied from the receipt of the payment of the deposit of the due tax.

ARTICLE:269
REMITIAL TO THE NORMS DICTATED FOR THE
PROCEEDING OF FIRST GRADE

Is observed, in as much not incompatible, the dispositions dictated for the proceeding of first grade.

ARTICLE:270
SUSPENSION OF THE EXECUTION

The judge of the revocation can upon request of part, heard the opposite part and disposes eventually a bail, suspends the execution of the sentence appealed with revocation.

The judge of the revocation if declares inadmissible the request or rejects for baseless of the reasons, condemn the plaintiff to the loss of deposit and to the expenses.

If instead accept the revocation, order the restitution of the deposit and decides in the merit of the case, postponing the effect of the sentence appealed.

ARTICLE:271
APPEAL OF THE SENTENCE OF REVOCATION

The sentence pronounced in the process of revocation cannot be appealed for revocation, however it is subject to the other means of appeal if is not passed the terms (223).

THIRD BOOK
SPECIAL PROCEEDING
TITLE:I
SUMMARY PROCEEDING

ARTICLE:272**EXECUTIVE TITLE**

On request of whom is creditor of a liquid sum of money or of a determined quantity of things substitutable or for he has right to hand over of a determined mobile thing the competent judge pronounce injunctive of payment or of hand over:

- 1) If the right is based on written prove (273-274);
- 2) If the credit regards honorary or reimburse of expenses made from lawyers, attorneys, clerks, judiciary officers or from any other has performed his opera in occasion of a process (42 c.p.c);
- 1) If the credit regards honorary for professional performance¹⁶.

The injunction cannot be pronounced if the notification to the debtor should happen outside of the territory of the republic.

ARTICLE:273**WRITTEN PROVE**

Are written prove suitable in view of the preceding article the bills, the unilateral promise, the private writhing (391), the extract of banking nevertheless the extracts of written accountants duly endorsed and marked.

ARTICLE:274**WRITTEN PROVE FOR STATE CREDIT AND THE PUBLIC ENTITY**

For credits of the state or public entity are suitable prove the books or the registers of the public administration with the attestation of regular estate. Are also suitable prove the ascertainment executed from the inspector of the labor (110.n.10, 112, 138 labor code).

ARTICLE:275**FEE OF THE EXPENSES**

¹⁶ For the liquidation of the honorary and expense of the lawyers, see law n.85 of 21 October, 1975- law on the cooperative of the lawyers, (in appendix 12).

In the cases foreseen from the numbers 2 and 3 of the article 272 the request should be accompanied from the fee of the expenses and of the performance.

The judge that accepts the request, should verify that the fee of the expenses is conform to the professional rate¹⁷.

ARTICLE:276

COMPETENT JUDGE

For the proceeding of injunction is competent the judge that would be competent for the request in ordinary way (14).

ARTICLE:277

CONTENT OF THE REQUEST OF INJUNCTION

The request of injunction should contain the requirement of which to the article.119, and be accompanied from the documents based on its ground.

ARTICLE:278

INTEGRATION OF THE REQUEST

The judge who retains insufficiently proved the request can ask to whom has proposed it the integration of the prove or can, in lack reject the request of injunction.

The rejection not precludes the reproduction of the request either for appeal or in ordinary way.

ARTICLE:279

FOR THE PROVISION AND TERMS FOR THE PERFORMANCE

If subsist the conditions provided from the article.272 and the prove is sufficient the judge with decree order to the other part to pay or to hand over the request things within the terms of ten days, informing that in the same terms can be done opposition (281) and that in lack of opposition will be proceeded to the forced execution (338 s.s).

¹⁷ See for the liquidation of the honorary the note to the art.272.

For serious reasons the terms can be reduced to the half; in the decree will be liquidated also the expenses of the proceeding¹⁸ and will be ordered the payment.

ARTICLE: 280

AUTHORIZATION OF THE EXECUTION

If the credit is founded on bill of exchange (104) of bill of exchange bank allowance (cheque) or act received from notary, the judge orders to the debtor to pay without delay, authorizing in lack the forced execution, and fixing a term to only end of the opposition (281).

Copy of the request and of the decree will be notified by the part to the debtor, if the notification will not be executed within the term of thirty days the decree become Inefficacy; but the request can be repropose.

ARTICLE:281

WAY OF PROPOSING THE OPPOSITION

The opposition is proposed before to the judge that has issued the decree with act of citation, observing the dispositions on the introduction of the case (117, 11 s.s). In the case of opposition, the opponent become plaintiff and the part that has proposed the request and has obtained the decree of injection is defendant.

Is observed the dispositions dictated for the ordinary process, but the terms of appearance are reduced to half of it (121).

ARTICLE:282

LACK OF OPPOSITION

If has not been done opposition in the established term (279) or if the opponent not be present to the audience the judge declares executive the decree (285), after have ascertained the regularity of the notification (115).

When the decree has been declared executive cannot be any more proposed opposition.

ARTICLE:283

¹⁸ See the note to the art.272

CONCESSION OF THE PROVISIONAL EXECUTION

Except the cases provided from the art 280 upon request of part can be always allowed from the judge the provisional execution with or without deposit of bail.

Likewise, to request of the opponent the judge can suspend the provisional execution.

ARTICLE:284

EXECUTIVE EFFICACY OF THE DECREE

If the opposition is rejected the decree that is not already provided acquire executive efficacy (338, lett “a”).

If the opposition is accepted only in part the executive title is constituted from the sentence that concludes the proceeding.

ARTICLE.285

EFFICACY OF THE INJUNCTIVE DECREE DECLARED EXECUTIVE.

The decrees declared executive constitute title for the assignment of immobile foreseen from the civil code (875 c.c).

CHAPTER II

VALIDATION OF EVICTION

ARTICLE. 286

INTIMIDATION EVICTION FOR DELAY

In case of lack of payment of the rent to the established expiry date the lessor can intimidate to the conductor the licence for eviction for overdue payment even before the term of contract.

ARTICLE:287

NOTIFICATION

The intimidation of eviction for overdue payment should be notified to the conductor personally together with the citation to appear in process.

ARTICLE:288

Competent judge

The competence of the judge in front of whom the defaulting conductor should be dependent is determined on bases to the rent established for the entire duration of the contract (11).

ART. 289

FORM OF THE CITATION TO APPEAR

The form of citation to appear is the same to that proscribed for the interdiction of the process of the first grade (117, 119 ss).

ARTICLE.290

LACK OF APPEARANCE OF THE LESSOR

If the lessor isn't present to the audience fixed from the judge for the appearance cease the effects of the intimation.

If the conductor not appear or appearing not opposes the judge, validates eviction and disposes with ordinance which in the edge to the citation be affixed the formula executive.

In the same ordinance the judge, upon request of the lessor can order the payment of fees expired.

Art.291

Opposition of the conductor

If the conductor appears and opposes to the payment without founded exceptions the judge, reserving for himself to decide on the intimation of eviction, order the prosecution of the process for the decision of merit in the forms of the process of first grade.

ART.292

POSTPONEMENT TO THE SPECIAL LAWS ON THE RENT

The effective release of the real estate rent, after intimation of the eviction notice, is subordinated to the dispositions of the special laws on the rent¹⁹.

CHAPTER III
PROTECTIVE PROCEEDING
SECTION I
SEQUESTRATION

ART.293

AUTHORIZATION OF THE JUDICIAL SEQUESTRATION

The judge can authorize the judicial sequestration (634-641 c.c):

- 1) Of mobile or immobile things or of enterprise when it is controversial the Property and is appropriate provide to their custody or to their temporary administration
- 2) Of books, registers, documents, samples and of any other thing appropriate to prove a controversial right, when is appropriate provide to their temporary custody.

ARTICLE.294

CONSERVATIVE SEQUESTRATION

The judge, upon request of the Creditor that has grounded reason to lose the guarantee of the proper credit, can authorize the conservative sequestration of mobile goods and immobile of the debtor or of the sum to him owed in the limits in which the law permits him the distraint (372,364,379).

ARTICLE.295

**SEQUESTRATION BEFORE THE CASE AND SEQUESTRATION
DURING THE CASE**

¹⁹ See appendix 24

The conservative sequestration can be requested either before to the case or in the course of a case already initiated.

In the first case the judge if accepts the request provides with decree and fixes an audience for the convalidation of the provision ordering the appearance of the requirement and of the debtor.

ARTICLE:296

BAIL

Either the proceeding that authorize the sequestration or in the subsequent proceeding of convalidation the judge can dispose that the requirent deposits adequate bail.

In the same provisions the judge dispose for the custody of the goods sequestrated (42).

ARTICLE:297

INEFFICIENCE OF THE PROVISION THAT AUTHORIZE THE SEQUESTRATION

The provision that authorizes the sequestration lose efficacy if is not executed with in thirty days from its pronounciation.

ARTICLE:298

REVOCACTION OF THE CONSERVATIVE SEQUESTRATION

The debtor can obtain the revocation of the sequestration paying adequate bail for the amount of the credit and of the related expenses.

ARTICLE:299

SELL OF THE DETERIORABLE

If the sequestered things (293,294) are subject to deterioration the judge can dispose the sell and price obtained remain under sequestration in place of the things sold.

SECTION II

PREVENTIVE ASCERTAINMENT

ARTICLE. 300**PREVENTIVE ASSUMPTION OF PROVE**

Who has a good reason to retrain that it is missing prove that may be necessary in a case to propose it in a future, can ask to the judge that disposes the acquisition.

ARTICLE. 301**REQUEST**

The request is proposed to the judge that would be competent for the case to propose; the acquisition will happen in the ways and with the forms foreseen for the collecting of the proves in process and it can be subsequently be prevailed in the case after that this will be proposed.

SECTION III**URGENT PROCEEDING AND POSSESSORS****ARTICLE. 302****URGENT PROVISIONS**

Who has good reason to be afraid that during the necessary time to prevail his rights in ordinary way, this is threatened from an eminent danger and irreparable can request to the judge all those urgent provisions that appear adequate to ensure provisionally the effects of the decision that will follow on the merit.

ARTICLE. 303**COMPETENT JUDGE**

The request of which to the preceding article should be directed to the judge that would be competent for the case in merit.

The judge, if retains founded the reason, heard if required the opposite part, provide the provisions requested fixing the peremptory term within which should be initiated the process of merit, if this will not be initiated in said term the provision admitted become inefficient.

ARTICLE. 304

POSSESSORY PROCEEDING

The same procedure of which to the articles that precede can be followed for possessory actions intending to reintegration or to the maintenance of the possessors of immobile thing, or to the report of new opera provided from the art.770 of the civil code.

CHAPTER IV

INTERDICTION AND DISABILITY

ARTICLE. 305

REQUEST OF INTERDICTION OR DISABILITY

The request for interdiction or disability of the persons mentally semi-unsound (112-116 c.c) is proposed in the regional court of the place where the person resides.

ARTICLE.306

PROVISIONS OF THE JUDGE

The judge, with intervention of the Attorney General and disposed the necessary medical ascertainment, provide with decree after has evaluated the effective mental conditions of the interdict or disability.

ARTICLE. 307

ADMINISTRATION OF THE PROPERTY

With the same provision the judge nominates a tutor or curator and gives any disposition appropriate to the administration of the Property of the person subject to the guardianship (47,116-117 c.c).

ARTICLE.308

REVOKE OF THE INTERDICTION AND DISABILITY

With the same formality can be proceeded to the revoke of the interdiction or disability if are ceased the reasons that had to rouse.

CHAPTER V
ABSENCE AND PRESUMED DEATH

ARTICLE.309

DECLARATION OF ABSENCE OR PRESUMED DEATH

If a person is given as dispersed in sea or in operations of war, or else he disappeared without giving any more news of him, the judge can to request of part or of the Attorney General, according the cases issued declaration of absence or presumed death. Special laws establish the minimum period (45,106 family law) of disappearance after which can be requested the above-mentioned declaration (16 c.c).

ARTICLE.310

REVOKE OF THE DECLARATION OF ABSENCE AND PRESUMED DEATH.

Both the declarations are revoked and the effects of them will be ceased if the person declared absent or presumed death reappear (47, 108 family law).

ARTICLE.311

PUBLICITY OF THE DECLARATION OF ABSENCE AND PRESUMED DEATH

The declaration of absence or presumed death should be published in the official bulletin of the republic and be known with other means of publicity.

TITLE II

EFFICACY OF THE FOREIGN SENTENCE

CHAPTER I

DELIBATION

ARTICLE.312

COMPETENT JUDGE TO THE DELIBATION

Who wants to prevail in the Somali Democratic Republic a foreign sentence should propose request through citation before to the appeal court in which the sentence should be carried out (10 judiciary act, 1974).

The declaration of efficacy can be also requested through diplomatic channel.

The subsequent process is compulsory the intervention of the Attorney General (47,267).

ARTICLE.313

CONCLUSION FOR THE DECLARATION OF EFFICACY

The appeal court before declaring the efficacy of the foreign sentence should ascertain;

- 1) That the process has been performed with the observance of the norms on the current jurisdiction in the country in which it is established;
- 2) That the parts are regularly constituted in that process;
- 3) That the sentence be passed in adjudicated;
- 4) That it is not contrary to another sentence pronounced from Somali judge;
- 5) That is not pending before a Somali judge other process for the same object and between the same parts established before passing in adjudicated of foreign sentence;
- 6) That the sentence doesn't contain contrary dispositions to the Somali public order (28 c.c)²⁰

ARTICLE.314

EFFICACY OF THE FOREIGN SENTENCE

If, on bases of the conditions indicated in the preceding articles, the judge declared the efficacy of the foreign sentence it becomes executive title in the Somali Democratic Republic (338).

ARTICLE.315

²⁰ Article 28 c.c limits deriving from the P.O and from good custom

"The application of the foreign law in view of the preceding art in excluded if it is contrary to the P.O or good custom in Somalia (119 pers.inst.)

ASSUMPTION OF THE MEANS OF PROVE DISPOSED FROM FOREIGN JUDGE

The request of assumption of means of prove from the side of foreign judges should be directed to the appeal court of the place where the prove should be assumed (9); the court provide with decree, heard the attorney general (47).

ARTICLE.316

CITATION BEFORE TO FOREIGN AUTHORITY

The notification of citation to appear before to foreign authority or of other acts came from a foreign state is authorized and executed with the care of the attorney general of the place in which the notification should be executed.

TITLE III

ARBITRATION

ARTICLE.317

ARBITRATION

The parts can do decide from arbitrators the controversy arisen between them except those related to indisposed right;

If the parts have unanimously decided to submit to the arbitrators a controversy, no one of them can apply to the judge before it is initiated the arbitration.

ARTICLE.318

COMPROMISE

The unanimous decision to submit to the arbitrators the resolution of a controversy should result from a written act and contain the object determined from the controversy.

ARTICLE.319

CLAUSE OF COMPROMISE

The decision of which to the article that precede, that assume in name of compromise, can be inserted as clause in a contract, or in a subsequent act in provision of controversies that may arise in consequence of the same contract.

That clause cannot be included in the collective contracts of labour (7 labor code), neither can exclude the competence of the ordinary judge from the controversies related to indispensable rights.

ARTICLE.320

ARBITRATORS

The arbitrators can be one or more, provided be of odd number (318); the compromise (318) or the related clause (319) relatively inserted in a contract, should contain the nomination of the arbitrators or establish the number of them and the way to nominate them.

ARTICLE.321

NOMINATION OF THE ARBITRATORS

When, a norm of the compromise, the arbitrators should be nominated from the parts, each one of them can notify, through of the judicial officer, to the other the nomination of the proper arbitrators.

The part that received the notification should in his turn, with in the term of ten days, notify to the other the proper nominations.

In lack of that, the part that has proceeded to the proper nomination can resort to the president of the regional court competent per territory requesting the nomination of the arbitrators of the counterpart.

The president of the regional court, heard the parts and taken vision of the compromise, provide with ordinance not appellable (129/2).

ARTICLE.322

SUBSTITUTION

If for any reason come to missing all or some of the nominated arbitrators; and are not foreseen substitution of the compromise, is provided with the procedure of which to the article that precede.

ARTICLE.323

CAPACITY OF THE ARBITRATORS

The arbitrators should be Somali citizens; not can be arbitrators the minors (44-45), the interdicted, the disabled (142,114 c.c) (305, 306), the bankrupted and those that have to undergo the Interdiction from the public offices (101-107 p.c).

ARTICLE.324

ACCEPTANCE AND DUTY OF THE ARBITRATORS

The acceptance to the arbitrators should be drafted in written or in subscription of the compromise (318).

The arbitrators should deposit the arbitration sentence in the term established in the art.331; in lack of that, and in case of waiver to the assignment without justified reason are retained to the remedy of the damages.

ARTICLE.325

RIGHTS OF THE ARBITRATORS

The arbitrators have right from the reimbursement of the expenses sustained and to the honorary for the opera rendered in the measure established in the compromise and accepted from the parts.

ARTICLE.326

RECUSAL AND ABSTENTION

Is applied to the arbitrators the disposition on the recusal and the abstention established for the ordinary judges (29-30), but the part cannot recuse the arbitrator nominated by himself.

ARTICLE.327

ARBITRAL PROCEEDING

- The arbitrators, the course of proceeding, have the same powers attributed to the ordinary judge for what regard the interrogatory of the parts (165-167), the exam of the testimonies (176-183) and the acquisition of the prove, in that their activity should, as it is possible. Observe the dispositions of law in civil procedure matter.

- The arbitrators can however concede confiscation nor other protective provisions (293, 300, 302)

ARTICLE.328

ARBITRAL SENTENCE

The arbitrators are retained to deliberate their sentence within 90 days from the nomination (321); if are not been nominated at the same time the term runs from the date of the last nomination.

The term, upon agreement of the parts, can be postponed till to the double.

If within the term established or postponed the arbitrators not reach a decision their nomination expire and the parts are free to proceed to another arbitrator or to refer to the judge the resolution of the controversy

ARTICLE.329

MOTIVATION OF THE ARBITRAL SENTENCE

The arbitral sentence can be motivated either according law or according equity, even if the parts not have expressly conferred to the arbitrators that option.

It however should be conform to the criteria of decision specified in the art.1, n.2. of the civil code.

ARTICLE. 330

FORM AND CONTENT OF THE ARBITRAL SENTENCE

The arbitral sentence, should be drawn up for written and contain:

- 1) The indication of the parts;
- 2) The exposition of the facts and of the reasons;
- 3) The undersigning of all the arbitrators and the indication of the respective nominations;
- 4) The date and the place in which has been deliberated.

ARTICLE. 331

DEPOSIT OF THE SENTENCE

Within 10 days of its deliberation the sentence, to the care of the arbitrators, should be deposited to the clerk's office of the regional court of the place in which it has been deliberated (8). The president of the regional court, ascertained the regularity

of the deposit, attributes with his decree executive efficacy to the arbitral sentence (338); that decree should be immediately succeeding to the deposit.

ARTICLE. 332

APPEAL

The arbitral sentence can be challenged to the court of appeal competent per territory (9) only for the following reasons:

1. Nullity for lack of one of the requirements indicated in the art.330;
2. Inobservance of the term indicated in the art.328;
3. Revocation for one of the reasons indicated in the art. 266.

The appeal should be proposed within the term of thirty days from the deposit of the sentence (331).

The president of the appeal court can, upon request of the part that has proposed the appeal, suspend the execution.

ARTICLE. 333

EXTRAJUDICIAL CONCILIATION

The extrajudicial conciliation concluded between the parts spontaneously or through the representatives of the elders of the city, villages and neighborhoods acquire validity and executive efficacy through registration in the clerk's office of district tribunal of the place in which the conciliation is occurred (7).

TITLE IV

PROCEEDING IN COUNCIL ROOM

ARTICLE.334

FORM OF THE REQUEST AND OF THE PROVISION

The provisions not litigious, that should be pronounced in council room are requested with appeal to the competent judge and have form of decree except that the law disposes otherwise (91).

ARTICLE. 335

PROVISION

The judge assumed the appropriate information and heard when is prescribed the

Attorney General (47), formulate the provision extending the decree in the footage of the petition.

ARTICLE. 336

OPPOSITIONS OR COMPLAINTS

The decree of which to the article that precedes has executive efficacy if adverse of it have not been opposite complains from the parts or from the Attorney General within ten days from its publication through deposit in clerk's office.

ARTICLE. 337

REVOCABILITY OF THE PROVISSION

The decrees issued to norm of this chapter can be always modified or revoked from the same judge that has issued.

BOOK FOURTH
PROCEEDING OF EXECUTION

CHAPTER I
EXECUTIVE TITLE AND PRECEPT

ARTICLE. 338
EXECUTIVE TITLE

The forced executive can take place only in force of an executive title and for a certain right, liquid and claimable

Are executive titles:

- a. The sentence (222) and the other provisions of the judge to which the law attributes expressly executive efficacy²¹;
- b. The verbals of judicial conciliation and the other verbals of conciliation to which the law attributes expressly the same efficacy (333, 176/3 maritime code);
- c. The bill of exchange as well as the other titles of credit and the acts to which the law attributes expressly the same efficacy²²-credit titles which has the same efficacy;
- d. The acts received from notary or from other public officer authorized from the law to receive it, relatively to the obligations of sum of money contained in them.

ARTICLE. 339
ATTESTATION OF EFFICACY

The sentences and the other provisions of the Judiciary Authority, the verbal of conciliation and the other acts received from other public officer, to be worth as title for the forced execution, should be provided from the clerk or notary or other officer of the following formula; “the present title has executive efficacy”.

The signature of the certifying should be validated from the affixing of the seal of the clerk, of the notary or of the public officer.

²¹ Are provisions to which the law attributes execution efficacy. Ordinance of the penal pecuniary (130/3); injunctive executive decree (284); foreign sentence declared efficacy in Somalia (314).

²² Are credit title having the same executive efficacy of the bill of exchange; the cheques and circular check.

The attestation of which to first comma can be released it only to the part in favour of which was pronounced the provision or stipulated the obligation or to his successors (724 c.c; 159 pers.inst) with indication in bottom of the person to whom is has been released.

Of the release of the attestation the clerk, notary or public officer should take note on the original of the act.

ARTICLE. 340

COPIES IN EXECUTIVE FORM

Cannot be released without rightful reason, more than one attestation, the interested of executive efficacy to the same part, the subsequent attestation are requested from part in the cases of which to the letter a) of the art. 338, to the head of the office that has pronounced the provision or undersigned the verbal of conciliation, and in the cases in which to the letter d) of the same article to the competent judge in which the circunasciption the act has been formulated.

On the request is provided with decree. the clerk, notary or other public officer that contravenes to the dispositions of the present article is condemned with decree of the head of the office or of the competent judge according to the norm of second comma to a pecuniary penalty not exceeding to sh.so 500 /= The decree of condemn constitute executive title (338).

ARTICLE. 341

EFFICACY AGAINST THE HEIRS

The executive title against the deceased has executive efficacy against his heirs (159 pers.inst.) from the moment in which is them notified from the creditor.

within a year from the death, the notification can be done to the heirs collectively and impersonally in the last domicile of the deceased.

ARTICLE. 342

NOTIFICATION OF THE PRECEPT

If the law not disposes otherwise, the forced execution should be preceded from the notification of the precept to the debtor or to his heirs personally, except in case of which to second comma of the preceding article.

However, if there is danger in the delay, the judge can authorize with decree of which to the art. 350, the immediate execution without notification of the precept.

The precept is not however necessary when the forced execution be initiated directly against the debtor within a year from the date of the verbal of conciliation, of the sentence and of the other provisions indicated in the letter

a) and b) of the art. 338, or of the date of expiry of the term for the performance of the obligations of which to the letter c) and d) of the same article.

ARTICLE. 343

FORM OF THE PRECEPT

The precept consists in the order of performing to the obligation resulting from the executive title (338) within a term not less of ten days, with warning that in lacking will be proceeded to the forced execution (350 ss).

The precept should contain, to a penalty of nullity, the indication of the parts and of their domicile (43 c.c), of the extremes of the executive title, of the amount of the sum of which is requested the payment and of the date of occurring attestation of executive efficacy from side of the clerk, from the notary or other competent public officer.

If it concerns of bill of exchange or of other title of credit of which to the letter

c) of the article. 338, the precept should contain the integral transcription of the same title, with the certification of the judiciary officer that the transcription exactly corresponds to the original title.

The precept should contain, also the declaration of residence or the election of domicile of the requesting part the place where has residence the competent judge for the execution. In lack of that indication, the eventual notifications to the requesting part are made at the clerk of the same judge.

The precept should be undersigned from the part or from one his attorney.

ARTICLE. 344

CESSATION OF THE EFFICACY OF THE PRECEPT

The precept become inefficient²³ if, in the term of ninety days from its notification, is not initiated the execution.

ARTICLE. 345

TERM OF THE PRECEPT

Except the cases of which to the comma 2 and 3 of the art. 342, cannot be initiated the forced execution if not passed the term indicated in the precept.

CHAPTER II

FORCED EXPROPRIATION IN GENERAL

ARTICLE. 346

JUDGE OF THE EXPROPRIATION²⁴

The forced expropriation is directed from the judge of the place in which are situated the property to expropriate, or else, in cae of expropriation of credits, of the place where resides the third debtor (16).

Competent is the district judge if the sentence to execute has been pronounced from a district judge and the regional judge if has been pronounced from a regional judge.

If the forced expropriation is founded on a different title from the sentence competent is the district judge or the regional judge, according that the value of the title is not exceeding or exceeds to So.Sh. 3.000/= (7,8)

ARTICLE. 347

FIXATION OF THE AUDIENCE

When the law require or the judge retain necessary that the parts and eventually others interested be heard, the same judge fixes with decree the audience in which the distraint creditor, the intervened creditors (357), the debtors, and eventually the other interested should appear before him.

The decree is communicated to the parts from the clerk.

²³ The art. 181 of maritime code establish that the term of the precept become inefficient passed the thirty days without that being proceeded to the distraint.

²⁴ See art.51 of the law n.76 Of 7 December, 1972: law on the mandatory insurance against the accidents on labour and the professional disease.

If results or appears probable that any of the parts is not appeared for reasons independent from his willing, the judge fixes a new audience of which the clerk gives communication to the parts not appeared.

ARTICLE. 348

FORM OF THE REQUEST AND OF THE ANSWERS

The request and application if the law not disposes otherwise, are proposed orally to the judge when they come to the audience, or with petition to be deposited in clerk in the other cases.

ARTICLE. 349

FORM OF THE PROVISIONS

Except that the law not disposes otherwise (406, 438/4), the provisions of the judge are given with ordinance (91), that can be from the same judge modified or revoked till not has had execution.

For the ordinance of the judge is observed the dispositions of this code, when it is applicable (128-129).

ARTICLE. 350

START OF THE EXPROPRIATION²⁵

Except the hypothesis for seen in the art. 372 c.p.c, the forced expropriation takes place with the expropriation. The authorization to the expropriation is requested from the creditor to the judge through petition deposited in the office of the clerk together with the executive title (338) and to the eventual precept (342-343).

In the case in which has been notified the precept, the petition cannot be presented if not passed the term of which to the first comma of the art. 343 cpc.

The judge, ascertained the formal validity of the title and of the eventual precept, authorize with decree the expropriation.

ARTICLE. 351

FILE OF THE EXPROPRIATION

²⁵ Should be transcript the judicial request related to the distraint for the effects disposed of the art.941 c.c

The clerk, to the act of the presentation of the request of authorization to expropriation, forms for each proceeding of expropriation a dossier (file)²⁶ in which are inserted all the acts performed from the judge, from the clerk and from the judiciary officer, and the acts and documents deposited from the parts and from the eventual interested.

ARTICLE. 352

SEQUESTRATION

The sequestration consists in an injunction to the debtor to abstain from any act directed to subtract to the guarantee of the credit the assets that are subjected to the expropriation and the fruits of them.

ARTICLE. 353

PAYMENT IN THE HANDS OF THE JUDICIARY OFFICER

The debtor can avoid the sequestration paying to the judiciary officer the sum for which is proceeded and the amount of expenses with the charge of paying them to the creditor, though with the reserve to repeat the sum paid whenever not owed.

ARTICLE. 354

CONVERSION OF THE SEQUESTRATION

In any time before to sale, the debtor can ask to the judge to substitute to the sequestered a sum of money equal to the amount of the expenses and of the credits of distrainer creditor and of the intervened creditors (357).

The judge determine with ordinance, heard the parts, the sum that should be substituted to the asset sequestered; and disposes that the sequestered thing be liberated from the sequestration, and that the paid sum from the debtor be subject in their substitution.

ARTICLE. 355

REDUCTION OF THE SEQUESTRATION

When the value of the assets sequestered is greater to the amount of the expenses and of the credits of which to the preceding article, the judge, upon request of the

²⁶ Dossier= a file containing detailed information.

debtor or even as office, heard the distrained creditor and the intervened creditors, can dispose the reduction of the sequestration.

ARTICLE. 356

NOTICE OF WRITTEN CREDITORS

The distraining creditor should within five days from the occurring sequestration, notify to the creditors, that on sequestered assets boast of a right of pre-emption (847, 884, 903, 918) resulting from public registries a notice containing the indication of the distraining creditor, of the credit for which is proceeding, of the title and of the assets seized.

Whenever results that an asset subjected to the distraint has been previously executed a conservative sequestration (294), the notice of which to the preceding comma should be notified also to the sequestrant.

The original of the notice should be deposited in the clerk's office of the judge within five days of the happening notification. In lack of the prove of the notification, the judge cannot provide to the sale.

ARTICLE. 357

INTERVENTION

Can intervene in the execution, besides the indicated creditors in the preceding article, also the other creditors, though not privileged.

The intervention is done with petition to the judge, containing the indication of the credit, of the title of it, the declaration of residence and the election of domicile (43 c.c) in the place in which the judge has head office (16). To the petition should be attached the titles proving the credit.

ARTICLE. 358

EFFECT OF THE INTERVENTION

The intervention gives right to participate to the expropriation or to the distribution of the sum obtained and, if the intervener is provided of executive title (338), gives also right to substitute himself in the expropriation to the creditor distrainer in the case in which this renders inactive.

ARTICLE. 359

CUMULUS OF THE MEANS OF EXPROPRIATION

The creditor can adopt cumulatively of the different means of force expropriation foreseen from the law but the debtor can request to the judge, who decides with ordinance not appellable, to be determined the means of expropriation.

CHAPTER III

MOBILE EXPROPRIATION OF THE DEBTOR

ARTICLE. 360

INDICATION OF THE ASSETS OF THE DEBTOR

The creditor that wants proceed to mobile expropriation, should indicate even briefly, in the recourse of which to the article. 348 which assets of property of the debtor intends to be subject to the distraint and the place where they are situated.

The judge, in the authorization the distraint in view of article, 350, sends for execution to the judiciary officer assigned to his office, or else to a judiciary police officer if the location where should take place the execution is different from the place of the office.

Copy of the decree is handed over for that purpose from the clerk to the judiciary officer that should proceed.

ARTICLE. 361

RESEARCH OF THE ASSETS TO DISTRAIN

The judiciary officer, equipped with the copy of the decree of which to the preceding article, can search the assets to distraint in the home of the debtor and in the other places to him belonged.

Can also research on the person of debtor, observing the appropriate caution to respect dignity.

Can at last research the assets to distraint that are not situated in places not appertaining to the debtor, but of which he can directly dispose.

When appear difficulties, the judiciary officer provides according the circumstances, requesting, when required, the assistance of the public force.

The distrainted creditor has right to assist to the distraint.

ARTICLE. 362

MOVEABLE THINGS ABSOLUTELY UNDISTRAINTABLE

In addition to the things declared undistrainable from special dispositions of law²⁷, cannot be distainted:

- a. The sacre things and those that serve to the exercise of the worship;
- b. The dresses, the underwear, the beds, the tools of house and of kitchen, since indispensable to the debtor and to the persons of his family with him co habitants;
- c. The edibles and the combustibles necessary for one month for maintenance of the debtor and to the persons indicated in the proceeding number;
- d. The instruments, the objects and the books indispensable for the exercise of the profession, of the arts or of the profession of the debtor;
- e. The army and the objects that the debtor has the duty to preserve for the performance of public service;
- f. The decorations to the value, the books, the registers and usually the family written, except that form part of a collection.

The patrimonial assets and state property cannot be in any case subjected to distraint nor to sequestration²⁸.

ARTICLE. 363

MOBILE THINGS RELATIVELY APPELLEABLE

The things that the property owner of a real estate retains for the service or the farming of the same can be distrained seperately from the immobile only in lack of other mobiles, however the judge, on debtor's request and heard the creditor, can exclude from the distraint, with ordinance not appelleable, those among the above indicated things that are necessary use for the farming of the property, can also permits the use, though distrained, with the appropriate caution for their conservation and reconstruction (371/2).

ARTICLE. 364²⁹

Things distrainable in particular circumstance the fruits not yet harvested or separated from the soil cannot be distrained separately from the immobile to which they access if not in the last six weeks prior to the ordinary time of their

²⁷ Edibles- any substance that can be used as food (commestibile).

²⁸ For the forced execution of the ships, boats and of the courteous.
- Courteous-galante

²⁹ For the fiscal effect, the fiscal administration can distrain the fruits of the debtor's land before the lands being rented (art.99, comma 2 of unique test of the law on the direct taxation).

maturation, except that the distrained creditor assumes the major expenses of the custody.

ARTICLE. 366

FORMS OF DISTRRAINT

The judiciary officer writes of his operations verbal process in which gives act of the injunction of which to the art. 352, describes the things distrained determining approximately the value and does report of the disposition given for the custody and the conservation of the things distrained, to norm of the following article.

If the debtor is not present, the injunction is addressed to a person of family or employed to the house, to the office or to the enterprise (97), unless not minor of fourteen years and not obviously incapable, to whom will be given a notice of the same injunction for the debtor.

In lack of the person, the J.O. affixes that notice to the door of the immobile in which he executed the distraine. The verbal process, together with the copy of the decree indicating the authorization.

ARTICLE. 367

CUSTODY OF THE MOBIL GOODS DISTRAINED

The judiciary officer distrained should hand over to the clerk the money, the credit titles and the valuable objects striked from the distraine.

For the conservation of the other things the judiciary officer provides, transporting it in a place of public deposit, or intrusting to a custody, that can be even one of the parts, whenever is not possible intrust the custody to different person and the opposite part present doesn't oppose (42-44).

The custodian assumes the duty to store up the distrained mobiles to disposition of the justice and cannot use without authorization of the judge (261-262,285 p.c).

ARTICLE. 368

TIME OF THE DISTRRAIN

The distraine cannot be executed in the days declared festival by law³⁰, neither before of the hours 6 and after the hours 18, except that not been given

³⁰ For the festival days, see art.86 of labor code.

authorization from the judge. The distraine started in the hours prescribed can be proceeded till to its accomplishment.

ARTICLE. 369

REQUEST OF SUCCESSIVE DISTRAINE

Whenever the recourse of which to the art. 350 be direct against person that results having suffered other distraine still effective, the judge limits his authorization to the remaining goods of the debtor, if were indicated.

In case negative, the request will be attached to the file (351) formed on basis to the first distraine and has effect of an intervention in regard to goods striked from that distraine.

ARTICLE. 370

PROVISION FOR THE ASSIGNMENT AND FOR THE AUTHORIZATION OF THE SALE

Deposited The verbal of distraint, The Judge fixes with decree the audience of appearance of distrainor creditor, of the debtor of the intervened Creditors (357) and the others eventually interested.

The clerk gives notice of the fixation of the audience to the parts through a notice of the clerk's office.

To the audience the pants Can do observations around the time and the modality of the sale. If concur just motives, the judge can allow to the debtor the payment in instalment of the debtor or a term to fulfil.

On request of the preceding creditor or of other intervened creditor provided of executive title the Judge disposes the sale in public establishing the day, the hour, the locality and the basic price.

The mobile sale is executed from the judiciary officer. If this is impeded the judge can delegate an officer of judiciary police.

ARTICLE. 371

SALE OF PENDING FRUITS

The sale of pending fruits cannot be disposed if non for their time of maturation, except different local customs.

Of the things indicated in the art. 363 the judge can differ the sale for the period that retains necessary to satisfy the requirements of agricultural firm.

ARTICLE. 372

SALE OF THE PAWN

Except the special dispositions of the civil code (885-917 cc), for the expropriation of the things given in pawn³¹ is followed the norms of the present code, but the expropriation should be always preceded from the notification of the precept (342). The sale can be requested without that is been preceded from the distraint; in that case the creditor should present to the judge application of sale within the term of efficacy of the precept.

ARTICLE. 373

PUBLICATION OF THE ORDINANCE OF SALE

The ordinance of sale should be affixed as extract, to the care of the clerk, at least ten days before the day fixed for the sale, to the board of the judiciary officer and publiced, in the same term, in a daily newspaper for national spread.

The judge, where retains it suitable, can dispose other forms of publicity. The publicity is made on the expenses of part.

ARTICLE. 374

MODALITY OF THE SALE

The appointee of the Sale should above all do, in competition with the custodian, the recognition of the objects to sell, contrasting it with the description contained in verbal process of distraint.

The things to sell are offered singularly separated Cotta, according the Convenience, on the basis of the fixed price from The Judge.

The adjudicator is retained to pay immediately the offered price and the amount of the expenses of registration of the verbal; in lack, his offer is considered null and remain valid the preceding major offer.

³¹ Pawn-pan

Of the operations performed the entrusted of the sale writes verbal that should be immediately deposited in the clerk of the judge together with the sum received from the sale and with that necessary for the registration of the verbal.

The clerk takes care the registration of the verbal.

ARTICLE. 375

NEW INCANTATION

when a thing put to the incantation remain unsold, the clerk gives notice to the judge who heard when required the parts, fixes a new incantation in which is admitted any offer.

The golden objects and of silver cannot in any case be sold for a price less than to the intrinsic value.

ARTICLE. 376

DISTRIBUTION OF THE SUM OBTAINED

Taken place the deposit of the verbal of sale and of the sum obtained, the judge fixes with decree the audience to proceed to the distribution of the sum itself.

Of the audience the clerk gives timely communication to the instant creditor, to the excluded debtor and to the other parts intervened.

In the audience the judge, if there is only a creditor, disposes in favor of the same the payment of what expects him. In case of plurality of creditors, the sum received is distributed among them from the judge, taking in account to eventual legitimate cause of pre-emption (847,884,903,918 c.c).

If, after that all creditors have been satisfied, remain some money the judge disposes the consignment to the excluded debtor.

In the case that arise controversy between the parts around the existence of rights of pre-emption, the judge after a summary instruction in the ordinary forms, decide with sentence.

The judge can proceed to the distribution of the sum received not controversial, except that not retains suitable suspend totally the distribution to the resolution of the controversy.

CHAPTER IV
ESPROPRIATION FROM THIRDS

ARTICLE. 377

FORM OF THE DISTRRAINT

The creditor that intends subject to distrain credits of the debtor toward thirds or things of the debtor that are in possess of thirds that should, in the petition of which to the art.350, the things and the sum on which intends to proceed.

The judge, in the authorization with decree the distrainment toward the third of the things and of the sum indicated from the recurrent, summons to third to not dispose of the same without his order.

With the same decree order the appearance of the instant creditor, of the debtor and of the third before to him, in order that the third does the declaration of which to the art. 381 in contradictory with the other parts.

Copy of the petition and of the decree is notified to the care of the clerk, to the debtor and to the third, at least ten days before of the fixed audience, in the same term the clerk gives communication of the decree to the requirement creditor.

ARTICLE. 378

PAWN OR MORTGAGE FOR GUARANTEE OF DISTRAINED CREDIT

If the distrained credit is guaranteed from pawn (885cc), who detains the thing given in pawn is retained not execute the restoration without order of the judge.

If the distrained credit is guaranteed from mortgage (821 cc) the act of distrainment should be annotated, to the will of the applicant creditor, in the real state registries.

ARTICLE. 379

DISPUTABLE CREDITS

Cannot be distrained the foodstuff, except that for reason of alimentary (15 c.c.; 74 of family law), and always with the authorization of the judge and for the part from, him determined in the decree of authorization.

Cannot be distrained credits having per object subsidy owed for maternity, diseases and funerals from insurance bank, from assistant enterprise or from beneficiary institute.

The recompense³², the other indemnity and the assignment of quiescence of the workers dependent from privates, from the state and from public enterprises can be.

- a. Up to the concurrency of one third, evaluated to the net of the deduction, if is proceeded for reasons of alimentaries;
- b. Up to the concurrency of a quarter, evaluated to the net of the deduction, in the other cases (79 labor code)

The distraint, for the simultaneous competition of the reasons indicated in the preceding paragraphs, not can in any case strike a quota higher to a third.

ARTICLE. 380

DUTY OF THE THIRD

From the day in which it has been notified to him the act of which to the article 377, the third is subjected, relatively to the things and to the sum of him owed, to the duties that the law imposes to the custodian (367).

ARTICLE. 381

DECLARATION OF THE THIRD

With declaration of the audience, the third personally or through a special attorney, should specify of which sum is debtor and of which things is he in possess and when should execute the payment or the delivery.

If it concerns of sum owed of the persons and enterprises indicated in the third comma of the art. 379, who that venders the declaration should also specify the amount, evaluated to the net of deducted, of the sum that the dependent receives continuously in relation to the rapport of occupation or of job, to a little of wages or labor, a title of salary, recompense salary or retirement.

The third should also specify the confiscations executed beside him. In that case the judge orders the appearance before him also of the sequestrator.

ARTICLE. 382

LACK DECLARATION OF THE THIRD

If the third not appear to the established audience, the judge postpones the appearance to other audience, of which the clerk gives communication to the parts

³² Recompense- retribution

through written notice of the clerk. If the third not appear even to this audience or appearing refuses to render the declaration, the judge can retain the silence as affirmative declaration (167), and takes with ordinance not appealable the provisions of which to the articles 386 and 387.

ARTICLE. 383

CONTRADICTED DECLARATION OF THE THIRD

if around to the declarations of the third arise contradictions, the judge suspends with ordinance the executive process and provides to the instruction and decision of the case related to the contradictory in the ordinary forms of the process of cognition (117 ss.).

if in that may be ascertained the existence of the right of the debtor in front of the third, the judge fixes with ordinance the audience of appearance of the parts to proceed the execution.

ARTICLE. 384

PLURALITY OF DISTRRAINTS

In the case in which the third results to endure other distraint regarding the same debtor and is still efficacy, is applied the dispositions of which to art. 369.

ARTICLE. 385

The intervention of other creditors is regulated to the norm of the articles 357 and 348. The intervention should take place not further than the fixed audience for the declaration of the third (381).

ARTICLE. 386

SALE OF THINGS OWED FROM THE THIRD.

If the third declares himself or is declared owner of things belonged to the debtor, the judge provides for the sale in conformity of the art. 370 and subsequent.

ARTICLE. 387

ASSIGNMENT OF CREDITS

If the third declares himself or is declared debtor of a sum payable immediately or in term not greater of ninety days or of a sum that will be mature periodically

deriving from the rapport of which to the art. 379, the judge assigns them in payment, except exaction, to creditors, till to the competition of their credits.

In the cases indicated from the art. 379, the third should give immediately communication to the judge of the eventual ceasing or interruption of the payments in favour of the debtor.

ARTICLE. 388

PAWN OR MORTGAGE FOR GUARANTEE OF THE ASSIGNED CREDIT.

If the assigned credit is guaranteed from pawn (885 c.c), the judge disposes that the thing given in pawn be entrusted to the conferee (378).

CHAPTER V

IMMOBILE EXPROPRIATION

ARTICLE. 390

Form of the immobile expropriation-

In the case in which the creditor intend to distrain immobile of property of the debtor, should, in the petition of which to article 350, indicate.

Exactly the same immobile, specifying their nature, the locality where is situated, the number of the real state register (950 c.c.) if is written, and at least three of their boundaries.

To the petition should be attached, further to the executive title (338), the eventual precept (343) and the certificate of the registration (954 c.c) and transcription (950 c.c.) burdened on goods to distrain on.

In the decree that authorize the distraint, the judge does to the debtor the injunction foreseen from the art. 352.

The distraint happens through notification, to the care of the clerk, of the petition and decree to the debtor.

As soon as happens the notification, the judiciary officer should deposit in clerk's office the original of the act.

ARTICLE. 391

TRANSCRIPTION OF THE IMMOBILE DISTRAINTED

Within five days from the occurrence deposit of the petition and notified decree to the sense of the proceeding article, the clerk should provide to the transcription of that act (828 c.c.), presenting authentic copy of the same, together with the relative note, to the competent office of the real state registries (939, n.5; 947 c.c.).

ARTICLE. 392

LIMITATION OF THE EXPROPRIATION

If a hypothecary creditor extend the distraint to real state not distrained to his favor, the judge can apply the disposed of the article. 355, or can suspend the sale till the completion of that related to the distrained real states.

ARTICLE. 393

CUSTODY OF GOODS DISTRAINED

With the notification of the act of which to the art. 390, the debtor is constituted custodian of the real states distrained and of all the assessor, including the pertinence and the fruits, without right to compensation.

Upon request of the distraining creditor or of a intervened creditor, the judge of the execution, heard the debtor, can nominate custodian a person different from the debtor (42-44).

In this case awaits to the custodian a compensation that will be established with decree of the judge.

ARTICLE. 394

WAY OF THE CUSTODY

The debtor and the third nominate custodian should render the account of their management, to a norm of the art. 412. To them is made forbiddance to give in rent the distrained real state if not authorized from the judge.

With the authorization of the judge the debtor can continue to live in the distrained real state, occupying the places strictly necessary to him and to his family.

If the debtor demonstrate of not having other means of support, the judge can also allow him alimentary allowance on the revenue, in the limit of the strict necessary, and that till to the moment of the adjudication.

The authorizations of which to the preceding commas are given from the judge heard the parts and the other interested.

ARTICLE. 395

REQUEST OF SUCESSIVE DISTRAINT

In the case of request of successive real state distraint is applied the norms of which to the first and second comma of the art. 369.

ARTICLE. 396

CONDITION AND TIME OF THE INTERVENTION

Can intervene, to the art. 357, all those that in confront of the debtor have a credit, even if is subject to term (268, c.c.) and condition (262 c.c.). the intervention has not effect if occurs after the audience foreseen from the art. 414.

ARTICLE. 397

PROVISION FOR THE FIXATION OF THE SALE

Deposited the verbal of distraint, the judge fixes with decree the audience for the appearance of the distrained creditor, of the debtor of the intervened creditors and of the other interested.

The clerk gives notice of the fixation of the audience to the parts through note of the clerk.

To the fixed audience the parts can do observations around the time and the modality of the sale.

If concur just reasons, the judge can allow to the debtor the payment in installment of debtor a term to fulfill (343/2 c.c.).

Upon request of the proceeding creditor or of other creator provided of executive title the judge disposes the sale of the real state in public market to the norm of the following articles.

ARTICLE. 398

CONTENT OF THE PROVISION THAT DISPOSES THE SALE

The judge, heard when require an expert, establishes:

- a. If the sale should be done in one or more blocks.

- b. The basic price of the auction sale;
 - c. The day and the hour of the auction sale;
 - d. The amount of the auction, in measure not less to one tenth of the basic price and those approximative of the senses of sale;
 - e. The term within which the related deposits should be fulfilled;
 - f. The minimum measurement of the increase to bring itself to the offers;
 - g. The term, not greater to sixty days from the adjudication, within which the price should be deposited, and the modality of the deposit;
 - h. The term that should run between the competition of the forms of publicity and the incantation, as well as the eventual forms of extraordinary publicity.
- The ordinance should, to the care of the clerk, be notified to the creditors registered not appeared, and be communicated according the forms of which to article 397.

ARTICLE. 399

DELEGATION TO PERFORM THE SALE

If a part of the goods distrained is situated in the circumscription of other judge, with the ordinance that disposes the sale the judge can establish that the incantation happens, for that part, before to the judge of the place where is situated.

In that case copy of the ordinance is transmitted from the clerk to the delegated judge to proceed to the sale.

ARTICLE. 400

PERSONS ADMITTED TO THE INCANTATION

Everyone, except the debtor, is admitted to do offer to the incantation provided having paid the caution and deposited the amount approximative of the expenses of sale to norm of the ordinance of which to the art. 398.

The offers should be made personally or through of an agent provided of special power of attorney.

If the offeree not become the highest bidder, the caution and the deposit for the expenses will not be returned back after the dosing of the incantation.

ARTICLE. 401

MODALITY OF THE INCANTATION

The incantation take place before to the judge in the hall of the public audience. The offers are not efficacy if not exceed the basic price or the proceeding offer in the limit indicated in the conditions of sale.

Soon after each offer the judge does subsequently to a distance of one minute the one from the other, three invitation to the participants, to the incantation to increase the same offer.

When is elapsed a minute from the last invitation without that been done a higher offer, the real state is adjudicated to the last offerer.

Each offerer ceases of being compelled for his offer when it is exceeded from another, even if this is declared null.

ARTICLE. 402

DECLARATION OF RESIDENCE OR ELECTION OF DOMICILE OF THE HIGHEST BIDDER.

The highest bidder should declare the proper residence or elect domicile (40,43, c.c), in the place in which has seat the judge that has proceeded to the sale.

In lack the notifications and communications can be done in clerk.

ARTICLE. 403

OFFER AFTER THE INCANTATION

Occurred the incantation, can also be done offer of purchasing within the term of ten days, but are not efficient if the offered price not exceed of twenty percent that reached in the incantation.

The offeror should present in the clerk's office declaration containing the indication of the price, should lend caution in limit not less to one decimal of the price offered and deposits the approximative of the further expenses of the sale, that will be determined from the clerk. Is applied, in confront of the provisional tenderer of which to the art. 401, the disposition of the last comma of the same article.

ARTICLE. 404

NEW INCANTATION

Expired the term for the presentation of the offer in addition of which to the preceding article, the judge fixes with decree the audience in which should take place the new incantation which will be opened on the basic price resulting from the higher offer.

The clerk gives to the decree publicity in the forms foreseen to the article 397.

The incantation is performed in the forms provided from the art. 401 and the adjudication to the best offeror is definitive.

ARTICLE. 405

PAYMENT OF THE PRICE

The tenderer should pay the price, in cash of the caution already paid, in term and in the modality fixed from the ordinance that disposes the sale, to the norm of the article. 398.

If the immobile has been adjudicated to a creditor for mortgage (821,859/2,865 c.c), or the tenderer has been authorized to undertake himself a guaranteed debt from mortgage, the judge can limit with decree the payment to the remaining of the price.

ARTICLE. 406

TRANSFER OF THE GOODS DISTRAINED

Occurred the payment of the price, the judge pronounce decree with which transfers to the tender the goods expropriated (939 c.c.) repeating the descriptions contained in the ordinance that disposes the sale, and ordering that be erased the transcriptions of the distrainers and the registration of the mortgages, if these last not is referred to obligations undertaken from the tenderer to a norm of second comma of the preceding article.

The decree contains also the injunction to the debtor and to the custodian to release the sold immobile.

It constitutes title for the registration of the sale in the real state registries (944 c.c) and executive title for the release. (422).

ARTICLE. 407

Unfulfilled of the highest bidder

If the price not be paid in the term and modality established, the judge declares with decree the expiry of the bidder and the loss of the caution from these paid to a title of fine and fixes a new audience for the hearing of the parts to norm of the article. 397.

The clerk, further to communicate the decree of the bidder, it gives public notice according the formality foreseen from the article. 397.

For the new incantation is proceeded to norm of the article. 397 and subsequent.

If the price that is obtained, together with the confiscated caution, results less to that of the preceding incantation, the judge, heard the interested parts, condemn with decree the unfulfilling bidder the payment of the difference.

That provision constitutes executive title (338) in favor of the creditors that couldn't find useful placement in the distribution of the proceeds' sum or, in their lack, of the debtor.

ARTICLE. 408

PROVISION IN THE CASE OF NEGATIVE INCANTATION

if the sale to the incantation not takes place for lack of an offers, each creditor, in the term of ten days, can do request of allocation to the norm of the following article.

ARTICLE. 409

CONTENT OF THE REQUEST OF ALLOCATION

The request of allocation should contain the offer of a sum not less to the expenses of execution, to the amount of eventual credits having right of pre-emption (847,884,903,918 c.c.) before to that of the offer and to the price of the immobile fixed from the judge in the decree that disposes the sale (405/2).

ARTUCLE. 410

RENEW OF THE DESERT INCANTATION

Passed ten days from that of the incantation became desert, the judge of the execution disposes the hearing of the parts and of the creditors registered not intervened (397).

To the audience, if there is difference between the credit of the petitioner and the fixed price for the immobile, the judge invites the highest bidder to pay in, the eventual balance.

Occurred the pay in, the judge pronounces the decree of transfer (406).

To the audience of which to the n.2, if there are not requests of assignment (408), the judge disposes the judiciary administration or order that is proceeded a new incantation.

In this last case the judge can establish different conditions of sale and different forms of publicity, fixing a basic price less of one fifth to that preceding.

ARTICLE. 411

NOMINATION OF THE JUDICIARY ADMINISTRATOR

The judiciary administrator of the immobile is disposed for a time not higher to three years; is entrusted to one or more creditors, or either to the same debtor if all the creditors so consent. To the expiry of the term, should be proceeded to new incantation.

Upon request of all the parts, the judge can allow one or more post prominent that not extend completely the amount over three years.

The administration can be before the term indicated in the first comma if the pignorant creditor or other of the creditor's request that be proceeded to new incantation.

ARTICLE. 412

THE ACCOUNT

The administrator has the duties of the custody (44) and, except that not renounces it has right to a compensation which is liquidated from the judge with decree.

At the end of each trimester, if the judge not believe to fix other term, the administration should present in clerk the bill of his administration and deposit the available income in the ways established from the judge,

To the end of the administration should present the final report. The partial bill and that final should be approved from the judge.

To that end, as soon as presented the bill, the judge fixes the audience for the hearing of the parts in merit to the bill presented and for the resolution of the controversies that might arise in merit to it.

The provisions of the judge are given with ordinance not appealable.

ARTICLE. 413

ASSIGNMENT OF THE INCOME

During the course of the judicial administration, the judge, with ordinance not appealable, can dispose that the income collected be assigned to the creditors according the of the articles 414 and subsequent.

ARTICLE. 414

PROJECT OF DISTRIBUTION OF THE SUM OBTAINED

The judge, not late more of thirty day from the payment of the price provide to form a project of distribution containing the graduation of the creditor's that participate it, with regard of the legitimate cause of pre-emption (847-884, 903,918 c.c.), and deposit it in clerk's office so that can be consulted from the creditors and the debtor, fixing the audience for their hearing.

Between the communication of the invitation and the audience, should intervene at least ten days.

ARTICLE. 415

LACK APPEARANCE

If any of the parts not appear to the fixed audience to norm of the preceding article and results or is likely that not been appeared for reasons independent from his willing, the judge fixes a new audience of which the clerk gives communication to the parts not appeared. The lack appearance also to the second audience imports approval of the project.

ARTICLE. 416**APPROVAL OF THE PROJECT**

If the project is approved or is reached the accord between the parts, it gives act in the verbal process (86) and the judge order the payment of the single quotes, otherwise is applied the dispositions of the lastly and the last paragraph of the article. 376.

CHAPTER VI**THE EXPROPRIATION OF UNDIVIDED GOODS****ARTICLE. 417****DISTRAINT OF UNDIVIDED GOODS**

Can be distrained the undivided goods (698 c.c) also when not all the co-owner are compeled toward the creditor.

In that case, in the authoritative decree of distraint of which to the art. 350, the judge fixes an audience for appearance of the interested to give the provisions of which to the following article, and does forbiddance to the co-owners let to separate from the debtor his part of the common things without order of justice.

The clerk should notify to the debtor and to the co-owners copy of the petition and decree of which to the preceding comma at least ten days before of the fixed audience.

In the same term the clerk gives communication of the decree to the applicant debtor.

In case it concerns of immobile expropriation should be observed the forms of publicity prescribed from the article. 397.

ARTICLE. 418**PROVISION OF THE JUDGE**

To the audience fixed the judge provide to the separation in nature of the quota a waiting to the debtor (707-717 c.c).

If the separation is not possible order the sale of the quota undivided or disposes that to proceed to the division to norm of civil code, and provides to the instruction

and to the decision of the case related in the ordinary forms of the process of cognition.

In the last case, the execution is suspended till on the same division not been intervened an accord between the parts (708 c.c.) or pronounced a sentence passed in adjudicated (709-710 c.c.; 222).

Occurred the division, the sale of the goods attributed to the debtor take place according the norms contained in the preceding chapters, conserving the distraint validity for the goods attributed as fore said.

CHAPTER VII

THE EXPROPRIATION AGAINST THIRD OWNER

ARTICLE. 419

WAY OF THE EXPROPRIATION AGAINST THIRDS

When object of the expropriation is burdened good from pawn (885 c.c.) or from mortgage (821 c.c.) for others debt, or a good of which alienation from the side of the debtor has been revoked due fraud (234 c.c.), is applied the dispositions contained in the preceding titles, since are not modified from the articles that follow.

ARTICLE. 420

NOTIFICATION OF THE PRECEPT

The expropriation should be always preceded from the precept (343-343), that be carried out also in confront of the third.

In the precept should be made express mention of the goods of the third that is intended to expropriate (343).

ARTICLE. 421

PARTICULAR DISPOSITONS

The distraint and in general the acts of expropriation are performed also in confront of the third, to whom is applied all the dispositions related to the debtor, except the prohibition of which to the article 400 first comma.

SECOND TITLE

THE EXECUTION FOR HAND OVER OR RELEASE

ARTICLE. 422

PRECEPT FOR HAND OVE OR RELEASE

Who intends proceed for handover of mobile goods or release of immobile thing should notify to the obliged a precept containing. Further the indication of which to the article. 343, also the summary description of the goods itself.

If the executive title (338) disposes around the term of the hand over (423) or of the release (425), the order is done with reference to that term.

ARTICLE. 423

WAY OF THE HAND OVER

Passed the term indicated in the precept, the judiciary officer, provided with the executive title and the precept, will go in the place in which the things are situated and search them to norm of the article. 361; therefore, does it hand over to the applicant part or to a person from him designated.

ARTICLE. 424

THINGS DISTRAINED

If the things to hand over are distrained, the hand over cannot take place, and the applicant part should prevail his reasons through opposition according the norm of the article. 433.

ARTICLE. 425

WAY OF RELEASE

The judiciary officer communicates, at least before three days, to the part that is retained to release the immobile the day and the hour in which will proceed.

In the day and in the hour established the judiciary officer, provided of the executive title (338) and of the precept (343), and doing use, when required, of the powers to him conferred from the article. 361, admit the applicant part or a person designated from him in the possess of the immobile, of which hand over the keys, ordering to the eventual holders to recognize the new possessor.

ARTICLE. 426

PROVISIONS AROUND THE MOBILES OUTSIDER TO THE EXECUTION

If in the immobile are found mobile thing pertaining to the part retained to the release and that should not be hand over, the judiciary officer, if the same part not remove them immediately gives notice of the happening release to the applicant creditor of which been executed the distraint or the sequestration and to the competent judge for the eventual substitution of the custodian.

ARTICLE. 427

TEMPORARY PROVISIONS

If in the course of the execution arise difficulty that not admit delay, each of the parts can request, even verbally, to the judge of the place in which are situated the thing to handover or the goods to release the temporary provisions required the judge issue the provisions of which to the preceding comma with decree (91).

ARTICLE. 428

EXPENSES OF THE EXECUTION

In the verbal process the judiciary officer specifies all the expenses advanced from the applicant part.

The liquidation of the expenses is done from the judge with decree that constitute executive title (64. 338)

CHAPTER I

THE FORCED EXECUTION OF OBLIGATIONS TO DO AND NOT TO DO

ARTICLE. 429

PROVISIONS OF FORCED EXECUTION

Who intends to obtain the forced execution of a sentence of condemn for violation of an obligation to do (206 c.c.) or not do (209 c.c.), should request, with petition to the judge of the place in which the obligation should be performed (14,16), that are determined the modality of the execution?

The judge provides with ordinance, heard the obligated part, and designate the judiciary officer that should proceed to the execution and the persons that should

provide to the performance of the opera not executed or to the destruction of that performed.

ARTICLE. 430

DIFFICULTIES ARISE IN THE COURSE OF EXECUTION

The judiciary officer can do assist him from the public force and should request to the judge the appropriate dispositions to eliminate the difficulties that arise in the course of the execution. The judge provides with decree (91).

ARTICLE. 431

REFUND OF THE EXPENSES

At the end of the execution or in the course of it, the applicant part presents to the judge the note of the expenses anticipated seen from the judiciary officer, with request of order of payment.

The judge, when recognize justified the expenses denounced, provide with decree that constitute executive title (338).

THIRD TITLE

THE OPPOSITIONS

ARTICLE. 432

OPPOSITION TO THE EXECUTION

When is contexted the right of the applicant part to proceed to forced execution, that opposition is proposed with petition to the competent judge in view to the norm of the art.346, 427, 429.

The related opposition to the formal regularity of the title (338) and of the precept (343) and those related to the notification and performance of the single executive acts, being inclusive those that regard the liability to distraint of the goods (362-364), is proposed to the norm of the first comma.

The judge fixes with decree the audience of appearance to the parts before him. The notification of petition and of the decree is made to the care of the clerk.

The instruction and decision of the case that happen in the ordinary forms of the judgement of cognition (127, 192, 194).

ARTICLE.433

OPPOSITION OF THIRDS

The third that pretend the property or other real wright upon goods distrained can propose opposition with petition to the judge before that being disposed the sale of the same goods (370, 397).

The judge fixes with decree the audience of appearance to the parts before him, and the clerk provide to the notification of the petition and of the decree.

If to the audience the parts not reach an accord, the judge provides to the instruction and to the decision of the case according the ordinary formality of the judgement of cognition.

ARTICLE.434

LATE OPPOSITION

If the following to the opposition the judge doesn't suspend the sale of the moveable things (438) or if the opposition is proposed after the same sale, the right of the third be deducted from the sum extracted.

ARTICLE.435

LIMITS OF THE TESTIMONIAL PROVE

The third opponent cannot prove with testimony his rights on goods distrained in the house or in the enterprise of the debtor, except that the existence of the same right rendered likely from the profession or from the business exercised form the third or from the debtor.

ARTICLE.436

OPPOSITION OF THE WIFE OF THE DEBTOR

The opposition cannot be proposed from the wife cohabitant with the debtor relatively to mobile goods distrained in his house (29 pers.inst), except that for the goods given him or for goods that she proves, with act of certain date (329 c.c) being appertained her before the marriage or being attained for donation (483 c.c) or succession due death (724 c.c; 160 pers.inst)

FORTH TITLE
OF THE SUSPENSION AND OF THE EXTINCTION OF THE
EXECUTIVE PROCESS

ARTICLE.437

LIMITS OF THE SUSPENSION

Except that the suspension be disposed from the law, the forced execution cannot be suspended except with provision of the judge (349).

ARTICLE.438

SUSPENSION FOR OPPOSITION TO THE EXECUTION

If is proposed opposition to the execution in view of art.432 and subsequent, the judge, concurring serious reasons, suspends upon request of part the process, with bail or without.

The judge suspends totally or partially the distribution of the sum obtained when arise one of the controversies foreseen in the art.376.

The provision is given with ordinance, hears the parts.

In the urgent cases, the judge can dispose the suspension with decree, in which fixes the audience for the appearance of the parts. To the fixed audience, provide, with ordinance.

ARTICLE.439

EFFECTS OF THE SUSPENSION

When the process is suspended, no executive act can be performed, except different disposition of the judge.

ARTICLE.440

RESTORATION

The executive process should be restored with petition in the prentory term fixed from the judge, and in any case not later of six months from passed in adjudicated of the sentence of first grade (222) and from the communication of the sentence of appeal that rejects the opposition.

ARTICLE.441
RENOUNCE

The process is extinguished if, before of the adjudication, the distrained creditor and those intervened provided with executive title renounce to the acts (216).

After the sale the process is extinguished if renounce to the acts all the concurrent creditors.

ARTICLE.442
INACTIVITY OF THE PARTS

Further than that in the cases expressly foreseen from the law, the executive process is extinguished when the parts not re-assumption it or not proceed in the pre-emptory term established from the law or from the judge (440).

The extinction operates by law, and should be declared also by office from the judge with ordinance.

ARTICLE.443
LACK OF APPEARANCE TO THE AUDIENCE

If in the course of the executive process none of the parts is present to the subsequent audience, of which the clerk gives communication to the parts.

If none of the parts is present to the new audience, the judge declares with ordinance the extinction of the executive process (217).

ARTICLE.444
EFFECT OF THE EXTINCTION OF THE PROCESS

If the extinction of the process is verified before of the adjudication (401), it renders ineffective the acts performed, if occurs after the adjudication (405-406), the sum obtained is recon signed to the debtor.

In the of immovable expropriation, the judge, with ordinance that declares the extinction, disposes that be cancelled the transcription of the sequestration.

The ordinance is valid title for the cancellation occurred the extinction of the process, the custodian renders to the debtor the discount, which discussed and closed before to the judge.

The expense of the extinct process is on burden of the parts that have anticipated it (61).