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THE FRENCH CIVIL CODE.
THE

FRENCH CIVIL CODE,

WITH THE

VARIOUS AMENDMENTS THERETO

AS IN FORCE ON MARCH 15, 1895.

BY

HENRY CACHARD, B.A.,

AND COUNSELLOR AT LAW OF THE NEW YORK BAR,
LICENCIÉ EN DROIT DE LA FACULTÉ DE PARIS.

BANKS & BROTHERS,
Law Publishers and Booksellers,
NEW YORK AND ALBANY.
1895.
AFFIDAVIT.

Republic of France, } SS.
City of Paris.

HENRY CACHARD, Counsellor at Law of the Federal Courts of the United States of America and of the Supreme Court of the State of New York, and a Commissioner of Deeds for the State of New York, being duly sworn, says,—

I am familiar with the French and English languages, and accustomed to translate the same. I have made the annexed translation of the Civil Code of France, as amended and completed since its enactment, and have compared said translation with the originals of said Code and of the amendments thereto deposited and filed at the Department of Justice, Paris, France, and the same is a full, true, and exact translation of said Code and amendments, and of the whole thereof.

HENRY CACHARD.

Sworn to before me this 15th day of March, 1895.

HENRY VIGNAUD, Chargé d’Affaires.

Sworn before me at Paris, in the Republic of France, this 15th day of March, 1895.

A. P. INGLIS, Consul.
British Consulate, Paris.
PREFACE.

My object in translating the Civil Code of France into English is to place at the disposal of the members of the Legal Profession in English-speaking countries, a work enabling them to find out and establish what the French law is. For that purpose I have compared my translation with the original records, and have sworn to its correctness. Supplements will hereafter appear, containing the new amendments to the Code.

Foreign Courts when called upon to decide questions of French law have sometimes rendered decisions not in accordance with the laws of that country. This book, it is to be hoped, may be found useful in preventing the recurrence of such cases.

In remembering the achievements of France's great Conqueror, the Code is not among the works which have contributed the least to his fame, and its effects will be more lasting than those of his great battles. When presiding over the meetings at which the Articles of the Code were discussed, Napoleon, although not a jurist, displayed such quickness of perception and soundness of views as to astonish those present.
Although the Code has been in force for almost a century, few amendments have been made to it, and it is practically unchanged.

Those who have practised in a country where the laws are not codified can appreciate the great advantages of a Code. With a Code the Judges apply the law with more correctness, the attorney advises his client with more certainty, the layman has a better knowledge of his own rights, and a great deal of useless litigation is avoided.

I desire to thank those who have given me the words of encouragement which are printed here: their testimonial is the best commendation of this work.

H. C.

Paris: April, 1895.
LETTER FROM THE RIGHT HONOURABLE LORD RUSSELL OF KILLOWEN, CHIEF JUSTICE OF ENGLAND.

ON CIRCUIT.

Newsham House, Liverpool,
18th March, 1895.

HENRY CACHARD, Esq.

Dear Sir,

I have not been able to do more than look hastily through the proof sheets you have sent me of your English translation of the French Civil Code. I must, therefore, content myself with saying that the work seems to be carefully done, and such translation will, I cannot doubt, be found most useful on both sides of the Atlantic.

I am, faithfully,

(Signed) RUSSELL OF KILLOWEN.
Letter from Baron de Courcel, French Ambassador at London, and former President of the Tribunal of Arbitration of the Behring Sea Seal Fisheries.

French Embassy, London,
18th February, 1895.

Dear Sir,

You submitted to me, during a recent stay in Paris, the proof sheets of an English translation made by you of the Civil Code of France. These sheets did not remain long enough in my hands to allow me to express an opinion as to your translation. The articles which I examined appear to me to be very correctly reproduced, notwithstanding the great difficulty of finding in the English language the exact equivalent for many expressions of French law. But I congratulate you sincerely upon the task which you have undertaken, to place at the disposal of English-speaking people, in all parts of the world, the Code Napoleon, which is not only a succinct and exact work of codification, worthy on that account of being studied by the jurists of all nations, but, from a still more practical point of view, is the basis of the legislation established in France and a great number of other countries.

The multiplicity of international relations now-a-days, and the complexity of business matters and interests which spring up between members of different political communities, create a more and more pressing necessity for a knowledge of the laws governing such relations. These different legislations, when better understood, after a more careful and frequent study, will be brought closer together, and will tend to become more simple, to the common benefit of mankind.

You are contributing to this useful object, and it is in my eyes the strongest commendation of your work.

Accept the assurance of my distinguished consideration,

Alph. De Courcel.
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Preliminary Title.

OF THE PUBLICATION, EFFECTS AND APPLICATION
OF LAWS IN GENERAL.

(Passed 5th March, 1803; promulgated 15th of same month.)

Art. 1. Laws become enforceable throughout the whole
of the French territory by virtue of the promulgation made
by the King (the President of the Republic). Law of 25th
February, 1875, Art. 2, Const. Law 16th July, 1875,
Art. 7. They shall be enforced in each part of the King-
dom (of the Republic) from the moment the promulgation
can have become known.

The promulgation made by the King (the President of the
Republic) shall be presumed to be known in the Depart-
ment (a) of the Royal Residence one day after the day of
promulgation, and in each of the other Departments after
the expiration of the same time, increased by as many days
as there shall be ten myriameters (b) (about twenty ancient
leagues) between the city where the promulgation shall have
been made and the chief city of each Department.

2. The law can only make provision for the future: it

(a) France is divided into 86 Departments and one Territory.
(b) Ten thousand meters or 6,2134 American miles.

C.N.
has no retroactive effect. Civ. C. 184, 217, 384, 691, 1179, 2281.

3. Laws of police and public order are binding upon all those who live on the territory.

Real estate, even when owned by foreigners, is governed by French law.

Laws relating to the status and capacity of persons apply to French people, even residing in a foreign country. Civ. C. 3, 11, 14, 170, 331, 488, 805, 843, 1554, 2123, 2128.

4. A Judge who refuses to render judgment under pretense that the law is silent, obscure or insufficient, may be prosecuted as being guilty of denying justice.

5. Judges are not allowed to decide cases submitted to them by way of general and settled decisions.

Book I.

OF PERSONS.

Title First.

OF THE ENJOYMENT AND LOSS OF CIVIL RIGHTS.

(Passed 8th March, 1803; promulgated 18th of same month.)

Chap. I.

OF THE ENJOYMENT OF CIVIL RIGHTS.

7. (Amended by Law of 26th June, 1889.)—The enjoyment of civil rights is independent of the enjoyment of political rights, which are acquired and retained according to the constitutional and electoral laws.

8. (Amended by Law of 26th June, 1889.)—Every Frenchman shall enjoy civil rights.

Are French:

1. Every individual born of a Frenchman in France or in a foreign country.

   Every natural child whose filiation is established during minority by acknowledgment or judgment follows the nationality of the parent with respect to whom the proof has first been made. If such filiation results from the same instrument or judgment with respect to the father and mother, the child shall follow the nationality of the father.

2. Every individual born in France of unknown parents or of parents whose nationality is unknown.
3. Every individual born in France of foreign parents of whom one was born there, but subject to the privilege for such individual, if the mother is the one who was born in France, to decline the French nationality during the year following his majority, by conforming with the provisions of sub-division 4 hereinafter.

A natural child may, under the same conditions as a legitimate child, decline the French nationality when the parent who was born in France is not the one whose nationality such child should follow, according to the second paragraph of sub-division 1.

4. Every individual born in France of an alien and who at the time of his majority is domiciled in France, unless he has declined to be French during the year following his majority, as regulated by French law, and proved that he has retained the nationality of his parents by an attestation in due form of his Government, which shall remain annexed to the declaration, and unless he has also produced, if necessary, a certificate establishing that he has answered the military call according to the military laws of his country, except in the cases provided for by the treaties.

5. Naturalized aliens.

May be naturalized:—

1. Aliens who have obtained permission to establish their domicil in France in conformity with article 13 hereinafter, after being domiciled in France for three years dating from the recording of their application at the Department of Justice.

2. Aliens who can show an uninterrupted residence of ten years.

A sojourn in a foreign country to fulfil duties conferred by the French Government is assimilated to a residence in France.

3. Aliens admitted to establish their domicil in France, after one year, if they have rendered important services to France, if they have displayed remarkable talents or if they
have introduced a new industry or useful inventions, or if they have created industrial or other establishments, or agricultural enterprises, or if they have become connected in some capacity with the military organization in the colonies and countries under French protectorate.

4. An alien who has married a French woman, also after an authorized domicil of one year.

An application for naturalization is passed upon by decree (c) after an investigation as to the morality of the alien.

9. (Amended by Law of 22nd July, 1893.)—Every individual born in France of an alien and who is not domiciled there at the time of his majority, may, up to the full age of twenty-two years, take the engagement to establish his domicil in France, and if he establishes it during the year from the taking of the engagement, he may claim French nationality by a declaration which, unless recorded at the Department of Justice, shall be void.

The recording shall be refused if it appears by the papers produced that the appearer does not come within the conditions required by law; but he may then proceed before the Civil Courts in the form prescribed by articles 855 et s. of the Code of Civil Procedure.

A notice of refusal, stating reasons, shall be given to the appearer within two months from his declaration.

The recording may also be refused to an appearer fulfilling all legal conditions, on account of his unworthiness; but in that case, a decree shall be rendered in accordance with the decision of the Council of State, within three months from the declaration, or in case of controversy, from the day when the judgment which has admitted the application has become final, the appearer having been duly notified.

(c) An act emanating from the executive.
The appearer shall have the right to produce papers and briefs before the Council of State.

In default of the notices hereabove referred to, within the time above specified, and at their expiration, the Minister of Justice shall deliver to the appearer, at his request, a copy of the declaration bearing the statement that it has been recorded.

The declaration shall produce its effects from the day upon which it has been made, subject to the nullity which may result from the refusal to record.

The rules relating to the recording which are contained in paragraphs 2 and 3 of the present article shall apply to the declarations made for the purpose of declining French nationality, in accordance with article 8, sub-divisions 3 and 4, and articles 12 and 18.

The declarations made, either to claim or decline French nationality, shall be inserted in the Bulletin of Laws after being recorded. Nevertheless the omission of this formality shall not impair the rights of the appeasers.

If the individual who claims French nationality is not of the full age of twenty-one years the declaration shall be made in the name of his father; in case of his death, by his mother; in case of the death of the father and mother, or in case of their exclusion from the guardianship in the cases provided by articles 141, 142, and 143 of the Civil Code, by the guardian authorized by a decision of the family council.

He also becomes French, if, having been placed upon the recruiting lists, he takes part in the operations of recruitment without setting up his alienage.

10. (Amended by Law of 26th June, 1889.)—Every individual born in France or abroad, of parents of whom one has lost his or her French nationality, may claim this nationality at any age, under the conditions contained in article 9, unless, being domiciled in France and called upon
to perform military duty at his majority, he has claimed a foreign nationality.

11. An alien shall enjoy in France the same civil rights as those granted to French people by the treaties of the nation to which such alien belongs. Civ. C. 13, 14, 343, 345, 726, 2123, 2128.

12. (Amended by Law of 26th June, 1889.)—A woman who is an alien and who has married a Frenchman shall follow the condition of her husband.

A woman married to an alien who becomes a Frenchman by naturalization, and the children of full age of a naturalized alien, may become French if they apply therefor, without any conditions of residence, either by a decree conferring that nationality upon the husband or the father or the mother, or in consequence of the declaration they may make in accordance with the terms and under the conditions of article 9.

Minor children of a surviving father or mother who are naturalized French become French unless, during the year following their majority, they decline such nationality in accordance with the provisions of article 8, section 4.

13. (Amended by Law of 26th June, 1889.)—An alien who has been authorized by decree to establish his domicil in France shall have the enjoyment of all civil rights.

The effect of the authorization shall cease at the expiration of five years if the alien does not ask to be naturalized or if his application is rejected.

In case of decease before naturalization the authorization and the time of residence which has followed shall count for the wife and children who were minors at the time of the decree granting such authorization.

14. An alien, even not residing in France, may be sum-
moned before the French Courts for the fulfilment of obligations contracted by him in France towards a French person. He may be called before the French Courts for obligations contracted by him in a foreign country towards French people. Civ. C. 11, 14, 15, 822, 2123, 2128.

15. A Frenchman may be called before the French Courts for obligations contracted by him in a foreign country, even towards an alien.

16. (Amended by Law of 5th March, 1895.)—In all cases an alien who is the original plaintiff or interpleads shall be obliged to give security for the expenses and damages resulting from the suit, unless he owns real estate in France of sufficient value to secure the payment thereof. Civ. C. 2040, 2041.

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CHAP. II.

OF THE LOSS OF CIVIL RIGHTS.

§ 1. Of the Loss of Civil Rights by the Loss of French Nationality.

17. (Amended by Law of 26th June, 1889.)—Shall lose their French nationality:

1. A Frenchman naturalized abroad, or who obtains a foreign nationality by operation of the law, upon his own application.

If he is still subject to the duties of military service in the regular army, a foreign naturalization only causes the loss of his French nationality if it has been allowed by the French government.

2. A Frenchman who has repudiated his French
nationality in the cases provided by sub-division 4 of article 8 and by articles 12 and 18.

3. A Frenchman who, having accepted a public office conferred by a foreign government, retains it, notwithstanding the order of the French Government to resign within a stated time.

4. A Frenchman who, without leave of his government, takes up military service abroad, without prejudice to the penal laws against the Frenchman who evades the obligations of military law.

18. (Amended by Law of 26th June, 1889.)—A Frenchman who has lost his French nationality can recover it, if he resides in France, by obtaining his reinstatement by decree. French nationality may be conferred by the same decree upon the wife and the children of full age if they apply therefor. The minor children of the father or mother who have been reinstated become French, unless they decline such nationality within the year following their majority by conforming to the provisions of article 8, subdivision 4.

19. (Amended by Law of 26th June, 1889.)—A Frenchwoman who marries an alien follows the nationality of her husband, unless her marriage does not confer his nationality upon her, and in that event she remains French. If her marriage is dissolved by the death of her husband, or by divorce, she recovers her French nationality with the authorization of the government, provided she resides in France or returns declaring that she intends to remain there.

In case the marriage is dissolved by the death of the husband, French nationality may be awarded, at the request of the mother, to the minor children by the same decree of reinstatement or by a subsequent decree, if the application is made by the guardian with the approval of the family council.
20. (Amended by Law of 26th June, 1889.)—Individuals who acquire French nationality in the cases provided by articles 9, 10, 18, and 19, shall only avail themselves thereof for the rights which have accrued to their benefit since that time.

21. (Amended by Law of 26th June, 1889.)—A Frenchman who, without the authorization of the government, enters military service abroad, shall only be able to return to France by virtue of an authorization granted by decree and shall only recover his French nationality by fulfilling the conditions imposed upon an alien in France to obtain an ordinary naturalization.

§ 2. Of the Loss of Civil Rights in consequence of Judicial Sentences (d).

22. Sentences to penalties of which the effect is to deprive the person sentenced of all participation in the civil rights hereinafter mentioned shall occasion civil death.

(d) Articles 22 to 33 of this section have been repealed and replaced by the Law of 31st May, 1854, which read as follows:—

Art. 1. Civil death is abolished.

2. Sentences to perpetual corporal penalties shall occasion civil degradation, and the legal interdiction established by articles 28, 29 and 31 of the Penal Code.

3. A person sentenced to a perpetual corporal penalty cannot dispose of his property, wholly or in part, either by way of donation inter vivos or by will, nor receive anything in that way, excepting for necessaries. Any will made by him previously to the sentence rendered after appearance when such sentence has become final, is void. The present article only applies to a person sentenced by default after five years from the execution in effigy.

4. The government can relieve the person sentenced to a perpetual corporal penalty from all or part of the incapacities mentioned in the foregoing article. It can grant him, at the place of execution of the sentence, the enjoyment of civil rights, or of a few of those rights of which he has been deprived owing to his condition of legal interdiction. The acts performed by the person so sentenced at the place of execution of the
23. A sentence to natural death shall occasion civil death.

24. The other perpetual corporal penalties shall only occasion civil death if the law has attached this effect to them.

25. By his civil death the individual sentenced loses the ownership of all the property which he possessed; his succession becomes open for the benefit of his heirs, to whom it escheats in the same manner as in case of natural death and as if he had left no will. He can no longer receive any inheritance, nor transmit in that way the property which he has acquired since then. He cannot dispose of his property wholly or in part, either by donation inter vivos or by will, nor receive anything in that way, excepting for necessaries. He cannot be appointed guardian nor take part in matters relating to guardianship. He cannot be a witness to a solemn or public instrument, nor be admitted to give testimony in court. He cannot sue in court, either as defendant or plaintiff, except in the name of and through a special curator appointed by the court before which the action is brought. He cannot contract a marriage producing any civil effects. The marriage previously contracted by him is dissolved as to all its civil effects. The husband or wife and the heirs can respectively exercise the rights and actions which natural death gives rise to.

26. Sentences after appearance only occasion civil death from the day of the actual execution or execution in effigy.
27. Sentences by default shall only occasion civil death at the end of five years after the execution of the judgment in effigy, during which time the individual sentenced can surrender.

28. Individuals sentenced by default shall be deprived of the enjoyment of their civil rights during five years or until they surrender or have been arrested during that time. Their property shall be administered and their rights exercised in the same manner as those of absentees.

29. When an individual sentenced by default voluntarily surrenders during the five years from the time of execution, or when he has been caught and made a prisoner during that time, the judgment shall be annulled as a matter of right: the individual accused shall be placed in possession of his property; he shall be tried again, and if he is sentenced by this new judgment to the same penalty or to a different penalty, also occasioning civil death, such civil death shall take place only from the day of the execution of the second judgment.

30. When an individual sentenced by default, who has only surrendered or has been made a prisoner after the five years, is acquitted by the new judgment or is only sentenced to a penalty which does not occasion civil death, he shall recover all his civil rights for the future from the day upon which he appeared in court; but the first judgment shall retain as to the past the effects produced by civil death during the interval which has elapsed between the time of the expiration of the five years and the time of his appearance in court.

31. If the person accused dies within the period of grace of five years without having surrendered or without having been caught or arrested, he shall be considered as having died in the full enjoyment of his rights. The judgment by default shall be annulled as a matter of right, without prejudice
nevertheless to the action which the aggrieved party is entitled to maintain and which action shall only be brought against the heirs of the person so sentenced, as a civil remedy.

32. Prescription of the penalty shall not in any case reinstate the person sentenced in his civil rights for the future.

33. The property acquired by the person so sentenced, since the civil death has been incurred and which such person owns at the time of his natural death, shall belong to the State by escheatage.

Nevertheless, the King is at liberty to make in favour of the widow, the children, or the parents of the person so sentenced, such provisions as humanity may suggest to him.
TITLE SECOND.

OF CERTIFICATES OF CIVIL STATUS.

(Passed 11th March, 1803 : promulgated 21st of same month.)

CHAP. I.

GENERAL PROVISIONS.

34. Certificates of civil status shall state the year, the day, and the hour when they are made, the first names, names, age, profession, and domicile of all those who are named therein. Civ. C. 42, 45, 57, 76, 78, 79, 88 et s., 194, 195.

35. The officers of civil status shall not insert in the certificates which they make, either as a memorandum or other declaration, anything else than what should be declared by the appearers. Civ. C. 42.

36. In all cases where the interested parties are not obliged to appear in person they may be represented by an attorney-in-fact with a special and authentic power. Civ. C. 38, 44, 1984, 1987.

37. The witnesses produced in connection with certificates of civil status shall only be of the masculine sex and of the age of twenty-one years at least; they may be related or not, and shall be chosen by the interested persons. Civ. C. 39, 46, 56, 71, 75, 96, 980.

38. The officer of civil status shall read the certificates
to the parties who appear or to their attorney-in-fact and to the witnesses.

The fulfilment of this requirement shall be mentioned. Civ. C. 36, 39, 50.

39. Such certificates shall be signed by the officer of civil status, by the appearers, and by the witnesses, or the cause preventing the appearers and the witnesses from signing shall be mentioned. Civ. C. 38, 50.

40. Certificates of civil status shall be recorded in each District in one or several registers kept in duplicate. Civ. C. 42, 50, 63, 67, 171, 198.

41. The registers shall be numbered from the first to the last page and each leaf shall be initialed by the Presiding Justice of the Tribunal of First Instance or by the Judge acting in his place.

42. The certificates shall be written out on the registers one after the other without any blanks. The corrections and additions shall be approved of and signed in the same way as the body of the instrument. Nothing shall be written in abbreviation and no date shall be written in figures. Civ. C. 39, 50.

43. The registers shall be closed and stopped by the officer of civil status at the expiration of each year, and within one month, one of the duplicates shall be deposited with the archives of the District, the other in the Clerk’s Office of the Tribunal of First Instance.

44. The powers of attorney and other papers which are to remain annexed to the certificates of civil status after being initialed by the person who has produced them and the officer of civil status, shall be deposited in the Clerk’s
Office of the Tribunal with the duplicate register which is
to be deposited in said Clerk's Office. Civ. C. 70.

45. Any one can obtain extracts of the registers
from the persons with whom such registers are deposited.
Faith shall be given to the extracts delivered as corre-
sponding with the registers and which are legalized by the
Presiding Justice of the Tribunal of First Instance or by the
Judge acting in his place, until a complaint for forgery is
made.

46. When no registers have existed or they have been
lost, the proof shall be made by documents or witnesses;
and in such cases, marriages, births and deaths can be proved
as well by the books and papers coming from a deceased
father and mother as by witnesses. Civ. C. 53, 194, 319,
320, 321, 323, 324, 341, 1331.

47. (Amended by Law of 8th June, 1893.)—Faith shall
be given to every certificate relating to French people or
aliens made in a foreign country if drawn up according
to the form in use in said country.

When one of such certificates concerning French people
shall be transmitted to the Department of Foreign Affairs,
it shall remain on file there in order that certified copies
thereof may be delivered. Civ. C. 3, 48, 59, 170, 999.

48. (Amended by Law of 8th June, 1893.)—Every
certificate of civil status relating to French people
in foreign countries shall be valid if it has been received
in accordance with French law by diplomatic agents or
consuls.

A duplicate of the registers of civil status kept by these
agents shall be forwarded at the end of each year to the
Department of Foreign Affairs, and it shall remain on file
there in order that certified copies thereof may be delivered.
Civ. C. 170, 171, 999.
49. In all cases in which a certificate relating to civil status shall have to be mentioned in the margin of another certificate already recorded, it shall be done at the request of the interested parties by the officer of civil status in the current registers or in those which have been deposited with the archives of the District and by the Clerk of the Tribunal of First Instance in the registers deposited in the Clerk's Office. For that purpose the officer of civil status shall, within three days, give notice to the King's Attorney (Republic's Attorney) of the said Tribunal, who shall see that the recording takes place in a uniform manner in both registers. Civ. C. 101, 198.

50. Any violation of the foregoing articles on the part of the public officers therein mentioned shall give rise to proceedings before the Tribunal of First Instance, and shall be punished by a fine which shall not exceed one hundred francs. Civ. C. 53, 54, 190, 192, 199, 200.

51. Any person with whom registers are deposited shall be civilly responsible for the alterations which may be made thereon; but he shall have his remedy against those who have made such alterations, if there is occasion therefor. Civ. C. 1382, 1383.

52. All alterations in certificates of civil status, all forgeries, the recording of the certificates on a loose sheet or in any other manner than on the registers therefor intended, shall make the parties responsible for damages, without prejudice to the penalties prescribed by the Penal Code.

53. The King's Attorney (Republic's Attorney) of the Tribunal of First Instance shall be bound to examine the condition of the registers when they are deposited in the Clerk's Office; he shall draw up an official statement of such examination; shall mention the misdemeanors or

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felonies committed by the officers of civil status and shall secure their conviction to fines. Civ. C. 46, 50, 99.

54. In all cases in which a Tribunal of First Instance shall take cognizance of actions relating to civil status, the interested parties shall have the right to attack the judgment. Civ. C. 100, 1351.

CHAP. II.

OF CERTIFICATES OF BIRTH.

55. Declarations of birth shall be made to the officer of civil status of the place within three days from the delivery. The child shall be presented to him. Civ. C. 12, 56, 59, 92, 99, 319.

56. The birth of the child shall be declared by the father, or in default of the father by the doctors or surgeons, midwife, health officers or other persons who may have been present at the delivery; and when the mother shall have been delivered away from her residence, by the person in whose home she has been delivered.

The certificate of birth shall be drawn up at once in the presence of two witnesses. Civ. C. 37, 59, 109.

57. A certificate of birth shall contain the day, the hour and the place of birth, the sex of the child, and the first names which have been given to it, the first names, names, occupation and domicile of the father and mother and those of the witnesses. Civ. C. 34, 35, 37, 56.

58. Every person who may have found a new-born child shall be obliged to hand it to the officer of civil status, with
the clothing and other things found with the child, and shall declare all the circumstances as to the time and place where such child has been found. A full official report shall be drawn up, giving also the apparent age of the child, its sex, the names which have been given to it, and the civil official to whom it has been delivered. This official report shall be recorded on the registers.

59. (Amended by Law of 8th June, 1893.)—In case of birth during a sea voyage a certificate shall be drawn up within three days from the delivery in the presence of the father, if he is on board, and of two witnesses taken from among the officers of the ship, or in default of such officers, among the men of the crew. If the birth takes place during a stoppage in a port, the certificate shall be drawn up in the same manner, if it is impossible to have any communications with the land, or if the port being in a foreign country, there is no French diplomatic or consular agent fulfilling the duties of officer of civil status.

This certificate shall be drawn up, viz., on ships of the navy, by the officer of the pay corps of the navy, or in his absence by the captain or the individual acting as such, and on other ships by the captain, master or commander, or the individual acting as such.

A statement shall be made as to the circumstances under which the certificate has been drawn up, as above set forth.

The certificate shall be recorded on the ship's log. Civ. C. 34, 86, 87.

60. (Amended by Law of 8th June, 1893.)—At the first port where the ship stops for any other cause than to lay up, the officer who has thus acted shall be bound to deposit two certified copies of each of the certificates of birth drawn up on board.

This deposit shall be made, viz., if the port is French, at
the bureau of equipment for the ships of the navy, and at
the bureau of enrolment for other ships. If it is a foreign
port, in the hands of the French consul. In case there
should be no bureau of equipment in such port, no bureau
of enrolment, or no consul, the deposit shall be deferred
until the next port is reached at which stops or calls are
made.

One of the certified copies so deposited shall be forwarded
to the Minister of the Navy, who shall transmit it to the
officer of civil status of the last domicil of the father of the
child, or of the mother if the father is unknown, in order
that it may be recorded on the registers; if the last domicil
cannot be found, or is outside of France, the recording shall
take place in Paris.

The other certified copy shall remain on file with the
archives of the consulate or of the bureau of enrolment.

An entry of the forwarding and filing in accordance with
the provisions of the present article shall be made in the
margin of the original certificates by the commissioners of
enrolment or by the consuls. Civ. C. 87, 90, 91.

61. (Amended by Law of 8th June, 1893.)—Upon arrival
of the ship in the port where it is to lay up, the officer who
has thus acted shall be bound to deposit at the same time as
the ship’s log a certified copy of each certificate of birth
drawn up on board of which a copy has not been filed in
accordance with the provisions of the foregoing article.

Such filing shall be made for the ships of the navy at the
bureau of equipment and for the other ships at the bureau
of enrolment.

The certified copy so filed shall be forwarded to the
Minister of the Navy, who shall transmit it as is stated in
the foregoing article. Civ. C. 87.

62. (Amended by Law of 8th June, 1893.)—The instru-
ment of acknowledgment of a natural child shall be recorded
OF CERTIFICATES OF CIVIL STATUS.

on the registers at its date and a marginal entry shall be made on the certificate of birth, if one exists.

In the cases provided by article 58, a declaration of acknowledgment may be received by the officers who can act according to that article and in the manner therein set forth.

The provisions of articles 60 and 61 relating to the filing and forwarding shall apply in that case. Nevertheless, the certified copy forwarded to the Minister of the Navy shall be transmitted by him to the officer of civil status of the place where the certificate of birth of the child has been drawn up or recorded, if such place is known, in preference to any one else. Civ. C. 87.

CHAP. III.

OF CERTIFICATES OF MARRIAGE.

63. Before the celebration of a marriage, the officer of civil status shall make two publications on Sunday at an interval of eight days in front of the door of the city hall. These publications and the certificate thereof which shall be drawn up, shall state the first names, names, occupation and domicile of the future husband and wife, whether they are of age or minors, and the first names, names, occupation and domicile of their fathers and mothers. This certificate shall also give the days, places and hours when the publications have been made; it shall be recorded on a single register which shall be folioed and initialed as is stated in article 41 and deposited at the end of each year in the Clerk’s Office of the Tribunal of the District. Civ. C. 64, 65, 94, 95, 99, 166, 167, 168, 169, 170, 192, 193.

64. An extract of the certificate of publication shall be,
and remain posted at the door of the city hall during an interval of eight days from the first to the second publication. The marriage shall not be celebrated before the third day after and exclusive of the day of the second publication.

65. If the marriage has not been celebrated within one year from the expiration of the time of publication, it cannot be celebrated until new publications have been made in the manner above provided. Civ. C. 63, 64.

66. Instruments of opposition to the marriage shall be signed on the original and on the copy by the persons opposing it or by their attorney-in-fact by virtue of a special and authentic power. They shall be served with a copy of the power on the person or at the domicile of the party and upon the officer of civil status, who shall stamp the original. Civ. C. 67, 172, 192.

67. The officer of civil status shall forthwith make a summary entry of the oppositions on the registers of publications; he shall also make an entry in the margin of the recording of said oppositions, of the judgments, or of the removal of the oppositions of which certified copies have been delivered to him.

68. In case of opposition the officer of civil status shall not be able to celebrate the marriage until the withdrawal thereof has been handed to him, under penalty of a fine of three hundred francs and of all damages. Civ. C. 76.

69. If there is no opposition a statement thereof shall be made in the certificate of marriage; and if the publications have been made in several Districts the parties shall deliver a certificate drawn up by the officer of civil status of each District declaring that there is no opposition.
70. The officer of civil status shall cause the certificates of birth of the future husband and wife to be handed to him. If one of them should not be able to furnish such certificate, he or she shall replace it by producing an instrument of notoriety delivered by the Justice of the Peace of the place of his or her birth, or of the place of his or her domicile. Civ. C. 71, 72.

71. The instrument of notoriety shall contain a declaration made by seven witnesses of either sex, who may or may not be relatives, of the first names, names, occupation, and domicile of the future husband or wife and of those of his or her father and mother, if they are known; the place, and as much as possible the time, of his or her birth, and the causes which prevent him or her from producing a certificate thereof. The witnesses shall sign the instrument of notoriety with the Justice of the Peace, and if any of them cannot or do not know how to sign, a statement thereof shall be inserted. Civ. C. 70, 72, 155.

72. The instrument of notoriety shall be presented to the Tribunal of First Instance of the place where the marriage is to be celebrated. The Tribunal, after hearing the King’s Attorney (Republic’s Attorney), shall grant or refuse its approval, according to whether it finds the declarations of the witnesses and the causes which prevent the production of the certificate of birth sufficient or insufficient.

73. The public instrument bearing the consent of the father and mother, or grandfathers and grandmothers, or, in default of them, of the family, shall contain the first names, names, occupation, and domicile of the future husband and wife and of all those who have been parties to the instrument, and also their degree of relationship. Civ. C. 148 to 151, 160, 182.
74. The marriage shall be celebrated in the District where either the husband or the wife has his or her domicile. This domicile as to the marriage shall be established by a continuous residence of six months in the same District. Civ. C. 102, 165, 192.

75. Upon the day designated by the parties, after the time for the publications, the officer of civil status shall read to the parties in the city hall, in the presence of four witnesses, related or not, the papers above mentioned relating to the civil status of the parties and to the formalities of marriage, and he shall also read Chapter VI. of the Respective Rights and Duties of Husband and Wife of the Title Of Marriage.

He shall ask the future husband and wife and the persons authorizing the marriage, if they are present, to declare whether a marriage contract has been made, and in case of the affirmative, the date of this contract and also the names and residence of the notary who has made it.

He shall receive from each party, one after the other, the declaration that they wish to take each other as husband and wife; he shall declare in the name of the law that they are united by marriage, and he shall immediately draw up a certificate to that effect. Civ. C. 191, 212 to 226.

76. There shall be stated in the certificate of marriage:—
   1. The first names, names, occupation, age, places of birth, and domicils of the husband and wife;
   2. Whether they are of age or minors;
   3. The first names, names, occupation, and domicils of the fathers and mothers;
   4. The consent of the fathers and mothers, grandfathers and grandmothers, and of the family, in the cases in which it is required;
   5. The respectful summonses, if any have been made;
6. The publications at the various domicils;
7. The oppositions, if there are any; their withdrawal or the statement that none have been made;
8. A declaration of the contracting parties that they take each other as husband and wife, and the announcement by the officer of civil status that they are married;
9. The first names, names, age, occupation, and domicils of the witnesses, and their declaration whether or not there is any relationship or affinity between them and the parties; on which side it exists and its degree;
10. A declaration made in answer to the question required to be put by the foregoing article as to whether or not a marriage contract has been made, and as much as possible the date of such contract, if it exists, and the name and place of residence of the notary who has made it: all of which under penalty for the officer of civil status of the fine imposed by article 50.

In case such declaration should have been omitted or should be incorrect, the Republic's Attorney may ask to have the instrument corrected as to the omission or error therein occurring, without prejudice to the rights of the interested parties in accordance with article 99. Civ. C. 148, 160, 172, 192, 1391, 1394.

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Chap. IV.

Of Certificates of Death.

77. No burial shall take place without a permit of the officer of civil status on unstamped paper and free of charge, and he shall not deliver such permit until he has gone near the deceased person to make certain of the death, and only twenty-four hours after the death, excepting in the cases provided by the police regulations. Civ. C. 81, 96.
78. Certificates of death shall be drawn up by the officer of civil status on the declaration of two witnesses. These witnesses shall, if possible, be the two nearest relatives or neighbours, or when a person has died away from his domicile, the individual at whose residence he has died and a relative or some one else. Civ. C. 34, 50 et s., 79 et s., 82 et s.

79. Certificates of death shall contain the first names, name, age, occupation, and domicile of the deceased person; the first names and name of the husband or wife, if the decedent was married, or a widower or widow; the first names, names, age, occupation, and domicile of the appearers and their degree of relationship, if they are related.

These certificates shall also contain, as closely as can be ascertained, the first names, names, occupation, and domicile of the father and mother of the decedent and the place of his birth. Civ. C. 34 et s., 50 et s.

80. (Amended by Law of 8th June, 1893.)—In case of death in hospitals or ambulances, or naval, colonial or civil hospitals, or other public establishments in France, or in the colonies, or in countries under protectorate, the directors, managers, or administrators of such hospitals or establishments shall be bound to give notice to the officer of civil status, or to the person acting as such, within twenty-four hours.

This officer shall go there and make certain of the death, and shall draw up the certificate in conformity with the foregoing article, on the declarations which have been made to him and according to the information which he has gathered.

A register shall be kept in said hospitals, ambulances, and establishments, on which these declarations and such information shall be entered.

The officer of civil status who has drawn up the certifi-
Of Certificates of Civil Status.

Cate of death shall forward a certified copy thereof to the officer of civil status of the last domicil of the decedent as rapidly as possible, and such copy shall be forthwith recorded on the registers. Civ. C. 34, 96, 97.

81. When there are signs or indications of violent death or other circumstances which give rise to suspicion, the burial shall not take place until a police officer has, with the assistance of a doctor or a surgeon, drawn up an official report of the condition of the body and the circumstances relating thereto, and of all the particulars which he has been able to gather as to the first names, name, age, occupation, place of birth, and domicil of the decedent. Civ. C. 82.

82. The police officer shall be bound to forward at once to the officer of civil status of the place where the person has died all the particulars contained in his official report, and upon which the certificate of death shall be drawn up.

The officer of civil status shall forward a certified copy thereof to the officer of civil status of the domicil of the decedent, if it is known; this certified copy shall be recorded on the registers.

83. The clerks of the Criminal Courts shall be bound to forward to the officer of civil status of the place where a person sentenced to death has been executed, within twenty-four hours from the execution of the sentences ordering capital punishment, all the particulars required by article 79, and according to which the certificate of death shall be drawn up.

84. In case of death in a prison or a place of solitary confinement or detention, a notice thereof shall at once be given by the doorkeepers or the wardens to the officer of civil status, who shall go there as is directed by article 80, and shall draw up the certificate of death. Civ. C. 85.
85. In all cases of violent death or of death in prisons or places of solitary confinement, or in case of capital punishment, such circumstances shall not be mentioned on the registers, and the certificates of death shall simply be drawn up in the manner directed by article 79. Civ. C. 81, 83, 84.

86. (Amended by Law of 8th June, 1893.)—In case of death during a sea voyage and under the circumstances provided by article 59, a certificate shall be drawn up within twenty-four hours and in the presence of two witnesses, by the officers having power to act, named in such article and in the manner therein set forth.

The filing and forwarding of the originals and of the certified copies shall take place in accordance with the provisions contained in articles 60 and 61.

The recording of certificates of death shall be made on the registers of civil status of the last domicile of the decedent, or if such domicile is unknown, in Paris.

87. (Amended by Law of 8th June, 1893.)—If one or more persons marked on the list of the crew or being on board, either of a ship of the navy or of any other ship, falls overboard and his body is not found, an official report of disappearance shall be drawn up by the officer filling the duties of officer of civil status on board. This official report shall be signed by the officer acting in such capacity and by the witnesses of the accident, and shall be entered on the ship's log.

The provisions of articles 60 and 61 relating to the filing and forwarding of certificates and of certified copies thereof shall apply to these official reports.

88. (Amended by Law of 8th June, 1893.)—In case of presumption of total loss of a ship or of the disappearance of a part of the crew or of the passengers, and if it has not
been possible to draw up the official reports of disappearance provided by the foregoing article, a decision shall be rendered by the Minister of the Navy, after an official investigation conducted without special rules, declaring the presumption of loss of the ship or the disappearance of the whole or part of the crew or passengers.

89. (Amended by Law of 8th June, 1893.)—The declaration of presumption of death shall be made as is stated in the foregoing article after an official investigation conducted without special rules by the Minister of the Navy with respect to all sailors or soldiers who have died in the colonies or in countries under protectorate or during expeditions beyond the seas, when no regular certificate of death has been drawn up.

90. (Amended by Law of 8th June, 1893.)—The Minister of the Navy may forward a copy of such official reports or decisions to the Attorney-General of the District in which is located the Tribunal either of the last domicil of the decedent or of the port of registry of the ship, or finally of the place of death, and he may direct such magistrate to proceed of his own accord to have the deaths judicially established.

Such deaths may be established by a collective judgment rendered by the Tribunal of the port of registry in case of persons having disappeared in the same accident.

91. (Amended by Law of 8th June, 1893.)—The interested parties may also begin proceedings to obtain a judicial declaration of a death in the manner provided by articles 855 et s., of the Code of Civil Procedure. In such case the petition shall be submitted to the Minister of the Navy through the instrumentality of the Public Prosecutor.

92. (Amended by Law of 8th June, 1893.)—All judgments establishing a death shall be recorded at their date upon the registers of civil status of the last domicil, or if the
same is unknown, in Paris. An entry mentioning the judgment and the recording thereof shall be made on the margin of the registers at the date of the death.

Collective judgments shall be recorded on the registers of civil status of the port of registry: individual extracts therefrom may be delivered.

Judgments establishing a death shall take the place of certificates of civil status, and can be set up against third parties, who shall only be entitled to have them corrected in accordance with article 99.

Chap. V.

Of Certificates of Civil Status relating to Soldiers and Sailors in certain special cases.

93. (Amended by Law of 8th June, 1893.)—Certificates of civil status relating to soldiers or sailors of the State, and to persons employed in the armies, shall be drawn up as is stated in the foregoing chapters.

Nevertheless, outside of France and under the circumstances provided in this paragraph, such certificates may at all times be likewise drawn up by the officials hereinafter mentioned, in the presence of two witnesses. 1. In bodies of troops mobilised for war, by the paymaster or the officer acting as such, when the organization includes such an office, and when it does not, by the commanding officer. 2. At head-quarters or in the staff, by the quartermasters, or in their absence, by the officers appointed to take their place. 3. For persons not in the service and employed in the armies, by the provost or the officer acting as such. 4. In the ambulances or sanitary establishments for the use of the army, by the officers managing such establishments. 5. In the naval and colonial stationary or movable hospitals, by the head physician or his assistant. 6. In the colonies
and countries under protectorate, or during expeditions beyond the seas, by the quartermasters or officers of the commissariat, or in their absence by the commanders of the expedition, post or detachment.

In France, certificates of civil status may also be drawn up in case of mobilisation or of a siege, by the officers mentioned in the five first numbers of the foregoing paragraph. The powers of these officers shall extend, if necessary, to persons not in the service who may be in the besieged forts and fortified places. Civ. C. 34, 47, 78 et s., 170.

94. (Amended by Law of 8th June, 1893.)—In all the cases provided by the foregoing article, the officer who has drawn up a certificate shall forward a certified copy thereof to the Minister of War or of the Navy, as soon as communications are possible, and within the shortest time; and such Minister shall see that it is recorded on the registers of civil status of the last domicil of the father, or if the father is unknown, of the mother, for certificates of birth; of the husband, for certificates of marriage; and of the decedent, for certificates of death. If the place of the last domicil is unknown, the recording shall take place in Paris.

95. (Amended by Law of 8th June, 1893.)—In the cases mentioned in article 93, a register of civil status shall be kept: 1. In each body of troops or mobilised formation for war, for certificates relating to individuals named on the rolls of the corps of troops or on those of the corps which have participated in the making-up of the formation for war. 2. At each head-quarters or in each staff, for certificates relating to all the individuals employed therein or connected therewith. 3. In the provost's quarters, for all persons not employed in the armies. 4. In each ambulance or sanitary establishment for the use of the armies, and in each naval or colonial hospital for individuals under treat-
ment or employed in those establishments, as also for the
dead belonging to the army who are only deposited there.
5. In each body operating separately in the colonies, in the
countries under protectorate, or in case of expeditions be-
yond the seas, the certificates relating to persons away from
the corps or the staff to which they belong or with which
they are connected, shall be recorded on the registers of the
corps or of the staff in which they are employed or with
which they are serving.

The registers shall be closed at the time the armies are
placed on a peace footing or the siege is raised.

They shall be forwarded to the Minister of War or of the
Navy, to be deposited with the archives of their public
departments.

96. (Amended by Law of 8th June, 1893.)—The regis-
ters shall be numbered and initialed: 1. By the chief of
the staff, in single bodies mobilised and belonging to the
command with which he is connected: 2. By the com-
manding officer, in single bodies not belonging to any
staff. 3. In fortified cities or forts, by the governor of
the city or the commander of the fort. 4. In hospitals
or ambulances belonging to the armies, by the head surgeon
of the hospital or of the ambulance. 5. In naval or
colonial hospitals and in single bodies operating separately
in the colonies, in the countries under protectorate, and in
case of expeditions beyond the seas, by the chief of the staff
or the officer acting as such.

97. (Amended by Law of 8th June, 1893.)—When a
marriage is celebrated in one of the cases provided by
article 93, the publications shall be made at the place of
the last domicil of the future husband. They shall also be
placed on the order of the day of the corps, for individuals
belonging thereto, twenty-five days before the celebration
of the marriage, or on the order of the day of the army or
of the army corps, for officers without troops and for employees belonging to the army. Civ. C. 63, 64, 65, 166, 192.

98. (Amended by Law of 8th June, 1893.)—The provisions of articles 93 and 94 shall apply to acknowledgments of natural children.

Nevertheless, the recording of certificates shall take place at the instigation of the Minister of War or of the Navy on the registers of civil status upon which the certificate of birth of the child has been entered or recorded. And if no such certificate has been made, or if the place is unknown, on the registers mentioned in article 94 for the recording of certificates of birth.

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Chap. VI.

Of Corrections of Certificates of Civil Status.

99. (Amended by Law of 8th June, 1893.)—When the correcting of a certificate of civil status is applied for, the decision thereupon shall be rendered by the Tribunal of the place where the certificate has been drawn up and at the clerk's office of which the register is or ought to be kept, subject to an appeal.

The correcting of certificates of civil status drawn up during a sea journey, in the armies, or in a foreign country, shall be applied for before the Tribunal in the District of which the certificate has been recorded, in accordance with the law. The same rule shall govern in case of certificates of death drawn up in France and in the colonies and of which the recording is ordered by article 80.

The correcting of judgments establishing a death shall be applied for before the Tribunal which has declared that the
death has occurred: nevertheless, when such judgment has not been rendered by a Tribunal of the Metropolis, the correcting shall be applied for before the Tribunal in the District of which the declaration of death has been recorded according to article 92.

The Republic’s Attorney shall be heard on his findings.

The interested parties shall be summoned if necessary. Civ. C. 54.

100. The judgment ordering the correction can never be set up against interested parties who have not applied for it or who have not been summoned. Civ. C. 54.

101. (Amended by Law of 8th June, 1893.)—Judgments ordering corrections shall be immediately forwarded by the Republic’s Attorney to the officer of civil status of the place where the corrected certificate is recorded. They shall be recorded on the registers and an entry shall be made in the margin of the corrected certificate. Civ. C. 40, 49, 50.
TITLE THIRD.

OF DOMICIL.

(Passed 14th March, 1803; promulgated 24th of same month.)

102. The domicil of every Frenchman as to the enjoyment of his civil rights is at the place of his principal establishment. Civ. C. 13, 74, 104, 105, 165, 1247, 1258, 1264.

103. A change of domicil takes place by the fact of an actual residence in another place, coupled with the intention by the person of making it his principal establishment. Civ. C. 104, 166.

104. The proof of intention shall result from a formal declaration, made as well to the municipality of the place which the person has left as to the municipality of the place to which he has transferred his domicil. Civ. C. 103.

105. In the absence of a formal declaration, the proof of intention shall depend upon circumstances. Civ. C. 104.

106. A citizen called to a temporary or revocable public office shall retain the domicil which he had previously, unless he has manifested a different intention. Civ. C. 102, 103, 105, 110.

107. The acceptance of an office conferred for life shall occasion an immediate transfer of domicil of the officer to the place where he is to fill his office.
OF DOMICIL.

108. (Amended by Law of 6th February, 1893.)—A married woman has no other domicil than that of her husband. A minor not emancipated (e) shall be domiciled with his father, mother, or guardian. A person of full age under interdiction (f) has his domicil with his guardian.

A woman separated from bed and board ceases to have as her legal domicil the domicil of her husband.

Nevertheless, every service of papers in matters of status made upon a woman thus separated must also be made upon her husband, otherwise it is void. Civ. C. 214, 506, 507.

109. Individuals of full age who are usually employed by or who work for another person shall have the same domicil as the person who employs them or at whose place they work, when they live in the same house as that person.

110. The place where a succession becomes open (g) shall be determined by the domicil. Civ. C. 784, 793.

111. When an instrument contains on the part of the parties, or of one of them, for the fulfilment of such instrument, an election of domicil in a place which is not the one of the real domicil, any service of notices, actions and proceedings relating to the instrument, may be made or carried on at the domicil selected and before the Judge of that domicil. Civ. C. 1247, 1258, 1264, 2023, 2148, 2150, 2152, 2183.

(e) See Emancipation, art. 476, et seq.
(f) See Interdiction, art. 489, et seq., 513, et seq.
(g) See art. 718, et seq.
TITLE FOURTH.

OF ABSENTEES.

(Passed 15th March, 1803; promulgated 25th of same month.)

CHAP. I.

OF PRESUMPTION OF ABSENCE.

112. If it is necessary to provide for the administration of the whole or part of the property left by a person presumed to be absent and who has no attorney-in-fact, the Tribunal of First Instance shall decide thereupon at the request of the interested parties. Civ. C. 28.

113. The Tribunal, upon the application of the most diligent party, shall appoint a notary to represent the presumed absentees in making the inventories, accounts, distributions and liquidations in which they are interested. Civ. C. 819, 838, 840, 1961, 1996.

114. The Public Prosecutor shall have special charge of looking after the interests of persons presumed to be absent, and he shall be heard upon all applications relating to them. Civ. C. 112, 126.
Chap. II.

Of the Declaration of Absence.

115. When a person ceases to appear at the place of his domicile or residence and has not been heard from for four years, the interested parties may proceed before the Tribunal of First Instance to have the absence established. Civ. C. 112.

116. For the purpose of establishing the absence the Tribunal shall, upon the papers and documents produced, order an investigation to be made with the assistance of the King's Attorney (Republic's Attorney) in the District of the domicile, and also in the District of the residence if they are distinct from each other.

117. The Tribunal, in deciding upon the application, shall moreover take into consideration the motives of the absence and the causes which may have prevented the receipt of news from the individual presumed to be absent.

118. The King's Attorney (Republic's Attorney) shall forward the preliminary as well as the final judgments to the Minister of Justice as soon as they are rendered, and the latter shall make them public. Civ. C. 112.

119. A judgment establishing the absence shall only be rendered one year after the judgment ordering the investigation. Civ. C. 116.
Chap. III.

Of the Effects of Absence.

§ 1. Of the Effects of Absence in Relation to the Property which the Absentee owned at the time of his Disappearance.

120. In case the absentee should not have left a power of attorney for the administration of his property, his presumptive heirs at the time of his disappearance or of the last news received from him, may, upon a final judgment establishing the absence, be put into provisional possession of the property which belonged to the absentee at the time of his departure or of the last intelligence received from him, on condition of giving security for its administration. Civ. C. 312 et s., 1987 et s., 2011, 2040.

121. If the absentee has left a power of attorney, his presumptive heirs can only apply to have his absence established, and cause themselves to be put in provisional possession after ten years have elapsed since his disappearance or since the last intelligence received from him.

122. The same rule shall apply if the power of attorney has expired, and in that event the administration of the property of the absentee shall be provided for in the manner stated in the first Chapter of the present Title.

123. When the presumptive heirs have been put in provisional possession, the will, if there exists one, shall be opened at the request of the interested parties or of the King's Attorney (Republic's Attorney) of the Tribunal, and the legatees or donees, as well as all those who had rights to the property of the absentee depending upon his death,
may exercise them provisionally on condition of giving security. Civ. C. 134, 817, 894, 1004, 1011, 1014, 1082, 1168, 1176, 1177, 1185.

124. The husband or wife having community rights (h), if he or she elects to continue the community, can prevent the provisional putting into possession and the provisional use of all rights depending upon the death of the absentee, and take and keep in preference to others the administration of the property of the absentee. If the husband or wife asks for the provisional dissolution of the community, he or she shall exercise his or her rights to retake (i), and all his or her legal and conventional rights, on condition of giving security for the things subject to restitution.

The wife who elects to continue the community shall retain the right to renounce it thereafter. Civ. C. 120, 1453, 1492, 2011, 2040.

125. Provisional possession is only a deposit, which secures to those who obtain it the administration of the property of the absentee and which makes them accountable to him if he reappears or if he is heard from. Civ. C. 127.

126. Those who have obtained provisional possession, or the husband or wife who has elected to continue the community, shall cause an inventory of the personal property and securities of the absentee to be made in the presence of the King's Attorney (Republic's Attorney) of the Tribunal of First Instance, or of a Justice of the Peace commissioned by said King's Attorney (Republic's Attorney).

The Tribunal shall order, if necessary, the sale of the whole or part of the personal property. In case of sale, the pro-

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(h) See art. 1399, et seq.
(i) See art. 1468, et seq.
ceeds shall be invested \((k)\), as also the income which has accrued. Those who have obtained the provisional possession may for their protection request that the real estate be examined by an expert appointed by the Tribunal for the purpose of establishing its condition. His report shall be approved by the Tribunal in the presence of the King’s Attorney \((\text{Republic's Attorney})\); the expense thereof shall be taken out of the property of the absentee. Civ. C. 114.

127. Those who, in consequence of being put in provisional possession, or having the legal administration of property of an absentee, have had the enjoyment thereof, shall only be bound to return to such absentee one-fifth of his income if he reappears before fifteen years have elapsed since the day of his disappearance, and one-tenth if he only reappears after the fifteen years.

After an absence of thirty years the whole income belongs to them. Civ. C. 129, 138, 1401.

128. None of those who only have the enjoyment of property by virtue of provisional possession can convey or mortgage the real estate of the absentee. Civ. C. 125, 132, 2126.

129. If the absence has continued during thirty years since the putting into provisional possession, or since the time when the husband or wife having community rights has assumed the administration of the property of the absentee, or if one hundred full years have elapsed since the birth of the absentee, the sureties shall be discharged; all those having rights may demand the division of the absentee’s property and have the final putting into possession ordered by the Tribunal of First Instance. Civ. C. 120, 130, 815.

\((k)\) This investment must be made for the benefit of the absentee.
130. The succession of an absentee becomes open from the day his death is established, for the benefit of his nearest heirs at that time; and those who have had the enjoyment of the property of the absentee shall be bound to return it, with the exception of the income secured to them by virtue of article 127. Civ. C. 46, 110, 120, 127, 131, 135, 138, 718, 1315, 1350, 2252, 2262.

131. If the absentee reappears, or if his existence is established during the provisional possession, the effects of the judgment establishing the absence shall cease, without prejudice, should there be occasion therefor, to the measures of protection ordered in Chap. I. of the present Title for the administration of his property. Civ. C. 112 to 114, 130.

132. If the absentee reappears, or if his existence is established, even after the putting into final possession, he shall recover his property in the condition in which it may be, and the proceeds of such of it as has been conveyed or the property coming from the investments which may have been made of the proceeds of the property conveyed. Civ. C. 126, 129, 133.

133. The children or lineal descendants of the absentee may also within thirty years, computed from the putting into final possession, exact the return of his property, as is stated in the foregoing article. Civ. C. 120, 129, 131, 132.

134. After the judgment establishing the absence, any person having rights to assert against the absentee can only enforce them against those who have been put into possession of the property or who may have the legal administration thereof. Civ. C. 120, 124, 129.
§ 2. Of the Effects of Absence upon the Eventual Rights which may belong to the Absentee.

135. Whoever claims a right accruing to a person who is not known to exist, shall prove that the said person existed when such right originated; until such proof is made it shall be held that his claim cannot be admitted. Civ. C. 112, 113, 129, 136 et s., 725, 744, 1039.

136. If a succession in which a person who is not known to exist is interested becomes open, it shall devolve exclusively upon those with whom he would have had the right to share it, or upon those who would have taken it if he had not existed. Civ. C. 112, 113, 135, 137, 725, 744, 817.

137. The provisions of the two foregoing articles shall apply without prejudice to the right to maintain an action to claim an inheritance or to the other rights which may belong to the absentee or to his legal representatives or assigns, and which shall only expire at the end of the time necessary for prescription (l). Civ. C. 130, 131, 132, 133, 772, 2262.

138. So long as the absentee does not appear or no such suits are brought in his name, those who have obtained the succession shall be entitled to the income collected by them in good faith. Civ. C. 135, 136, 549, 550.

§ 3. Of the Effects of Absence in Connection with Marriage.

139. The absentee whose husband or wife marries again is the only person who shall be entitled to attack such mar-

(l) See art. 2219, et seq.
riage, in his or her own name or by his or her attorney-in-fact holding the proof of his or her existence. Civ. C. 147, 184.

140. If a married person who is absent has left no relatives entitled to his or her succession, his wife or her husband may ask to be put into provisional possession of the property. Civ. C. 120, 767.

Chap. IV.

Of the Care of the Minor Children of a Father who has Disappeared.

141. If a father has disappeared leaving minor children born of the same marriage, the mother shall take care of them and shall enjoy all the rights of the husband with respect to their education and the administration of their property. Civ. C. 371, 373, 389.

142. Six months after the disappearance of the father, if the mother was dead at the time of such disappearance or if she happens to die before the absence of the father is established, the care of the children shall be confided by the family council (m) to the nearest ascendants, or in default of them, to a temporary guardian. Civ. C. 402.

143. The same rule shall apply if the husband or wife who has disappeared leaves minor children born of a previous marriage.

(m) See art. 405, et seq.
TITLE FIFTH.

OF MARRIAGE.

(Passed 17th March, 1803; promulgated 27th of same month.)

CHAP. I.

OF THE QUALIFICATIONS AND CONDITIONS REQUIRED TO CONTRACT MARRIAGE.

144. A male under eighteen years elapsed, and a female under fifteen years elapsed, cannot contract marriage. Civ. C. 145, 184.

145. Nevertheless, the King (the President of the Republic) may grant dispensations on account of age for serious causes. Civ. C. 164.

146. There is no marriage when there is no consent. Civ. C. 180, 181, 201, 202, 1109.

147. No one can contract a second marriage before the dissolution of the first. Civ. C. 139, 184, 187, 201, 202.

148. A son who has not reached the full age of twenty-five years, and a daughter who has not reached the full age of twenty-one years, cannot contract marriage without the consent of their father and mother: in case of disagreement the consent of the father is sufficient. Civ. C. 73, 159, 182, 371.
149. If one of the two is dead, or if it is not possible for him or her to express his or her wish, the consent of the other is sufficient. Civ. C. 155 et s., 182, 511.

150. If the father and mother are dead, or if it is not possible for them to express their wish, the grandfather and grandmother take their place; and in case of disagreement between a grandfather and grandmother in the same line, the consent of the grandfather is sufficient.

In case of disagreement between the two lines, this division shall be considered sufficient consent. Civ. C. 112 et s., 142, 143, 182, 183, 502.

151. Children having ascendants and who have attained the majority established by article 148 shall, before they contract marriage, be bound to ask, by a respectful and formal summons, for the advice of their father and mother, or of their grandfathers and grandmothers if their father and mother are dead or if it is impossible for them to express their wish. Civ. C. 148, 152, 153, 157, 158, 177, 178, 182, 502.

(Articles 152 to 157 were passed 12th March, 1804, and promulgated the 22nd of same month.)

152. From the time of the majority established by article 148 until the full age of thirty years for sons, and until the full age of twenty-five years for daughters, the respectful summons required by the foregoing article and without which there would be no consent to the marriage, shall be renewed twice more from month to month; and one month after the third summons the celebration of the marriage can take place. Civ. C. 74, 151, 153, 157, 158, 170, 182.

153. After the age of thirty years, if there is no consent, the marriage can take place one month after one respectful summons.
154. A notice of the respectful summons shall be given to the ascendant or ascendants mentioned in article 151 by two notaries or by a notary and two witnesses, and the official report which must be drawn up shall state the answer made. Civ. C. 104, 151.

155. In case of absence of the ascendant to whom the respectful summons should have been made, the celebration of the marriage can take place upon the production of the judgment which may have been rendered establishing such absence, or if there is no such judgment, upon production of the one which has ordered an investigation, or if no such judgment has yet been rendered, on producing a certificate of notoriety delivered by the Justice of the Peace of the place where the ascendant has had his last known domicile. This certificate shall contain a declaration by four witnesses called by the Justice of the Peace of his own accord. Civ. C. 37, 70, 72, 73, 116, 119, 141, 142, 156, 157.

156. The officers of civil status who have celebrated marriages contracted by sons who have not reached the full age of twenty-five years, or by daughters who have not reached the full age of twenty-one years, without the consent of their fathers and mothers, of the grandfathers and grandmothers and of the family being mentioned in the certificate of marriage in the cases in which such consents are required, shall, upon the application of the interested parties and of the King's Attorney (Republic's Attorney) of the Tribunal of First Instance of the place where the marriage has been celebrated, be sentenced to the fine mentioned in article 192, and also to a term of imprisonment which shall not be less than six months. Civ. C. 73, 76, 148, 157, 182.

157. When no respectful summonses have been issued in the cases in which they are necessary, the officer of civil
status who has celebrated a marriage shall be sentenced to the same fine and to a term of imprisonment which cannot be less than one month. Civ. C. 73, 151, 155.

158. The provisions contained in articles 148 and 149, and the provisions of articles 151, 152, 153, 154 and 155, relating to the respectful summons which must be sent to the father and mother in the case provided in such articles, shall apply to natural children legally acknowledged. Civ. C. 334 et s.

159. A natural child who has not been acknowledged, and one who, after being acknowledged, has lost his father and mother, or whose father and mother cannot express their wish, cannot marry before the full age of twenty-one years, unless he has obtained the consent of a special guardian who shall be appointed to him for that purpose. Civ. C. 112, 160, 170, 175, 405, 502.

160. If there is no father or mother and no grandfathers and grandmothers, or if it is impossible for them to express their wish, sons or daughters who are minors under the age of twenty-one years cannot contract marriage without the consent of the family council (n). Civ. C. 170, 175.

161. Marriage is prohibited in the direct line between all legitimate or natural ascendants and descendants and relatives by marriage in the same line. Civ. C. 184, 187, 190, 348, 736.

162. In the collateral line, marriage is prohibited between legitimate or natural brothers and sisters and relatives by marriage in the same degree. Civ. C. 184, 187, 190, 207, 348, 736.

(n) See art. 405, et seq.
163. Marriage is also prohibited between uncle and niece, aunt and nephew. Civ. C. 164, 184, 190, 201, 202.

164. Nevertheless, the King (the President of the Republic) may, for serious reasons, remove the prohibitions contained in article 162 to marriages between brothers-in-law and sisters-in-law, and in article 163 to marriages between uncle and niece, aunt and nephew. Civ. C. 145, 162, 163.

CHAP. II.

OF FORMALITIES RELATING TO THE CELEBRATION OF MARRIAGE.

165. Marriages shall be celebrated publicly in the presence of the civil officer of the domicil of one of the two parties. Civ. C. 48, 63, 74 et s., 102 et s., 191, 193.

166. The two publications ordered by article 63 of the Title of Certificates of Civil Status shall be made at the Town Hall where each of the contracting parties is domiciled. Civ. C. 63, 74, 94, 102, 169, 170.

167. Nevertheless, if the present domicil is only established by a residence of six months, the publications shall also be made at the Town Hall of the last domicil. Civ. C. 74, 102 et s.

168. If the contracting parties or one of them are under the authority of another person with respect to marriage, the publications shall also be made at the Town Hall of the domicil of the persons under whose authority they are. Civ. C. 102, 148, 372, 388.
169. The King (the President of the Republic) or the officers whom he may designate for that purpose, shall have the right to dispense with the second publication for serious reasons. Civ. C. 145, 163, 164, 170.

170. A marriage contracted in a foreign country between French people or between a French person and an alien is valid if it has been celebrated in the manner followed in such country, provided it has been preceded by the publications required by article 63 of the Title of Certificates of Civil Status, and provided the French person has not violated the provisions contained in the foregoing chapter. Civ. C. 39, 47, 48, 50, 63, 144; et s., 148, 165, 171, 180, 183, 196.

171. Within three months following the return of the French person to the territory of the Kingdom (of the Republic) the certificate of celebration of the marriage contracted in a foreign country shall be recorded on the public register of marriages of the place of his domicil. Civ. C. 40, 102.

Chap. III.

Of Oppositions to Marriages.

172. The right to make opposition to the celebration of a marriage belongs to the person united by marriage with one of the two contracting parties. Civ. C. 66, 147, 176.

173. The father, and in default of the father the mother, and in default of the father and mother the grandfather and grandmother, may make opposition to the marriage of their children and descendants, even when the same are of the full age of twenty-five years. Civ. C. 148, 172, 176, 179.
174. In default of ascendants, the brother or sister, the uncle or aunt, the first cousins of the whole blood who are of full age, cannot make any opposition except in the two following cases:—

1. When the consent of the family council (o) required by article 160 has not been obtained.

2. When the opposition is based upon the state of insanity of the future husband or wife: such opposition, of which the Tribunal may order the absolute removal, shall never be admitted unless the opposing party applies for the interdiction (p) and obtains judgment therefor within the time specified by the Court. Civ. C. 147, 176, 179, 184, 489.

175. In the two cases provided by the foregoing article the guardian or curator cannot during the continuance of the guardianship or curatorship make any opposition unless he has been authorized by a family council, which he may call together. Civ. C. 174, 406.

176. All notices of opposition shall contain the qualifications which give the opposing party the right to make the opposition: they shall contain an election of domicile at the place where the marriage is to be celebrated; they shall also contain the motives of the opposition, unless it is made at the request of an ascendant; all of which shall be done under penalty of nullity and of the dismissal of the public officer who has signed the notice of opposition. Civ. C. 66, 67.

177. The Tribunal of First Instance shall, within ten days, render its decision upon the application to vacate the opposition.

(o) See art. 405 et seq.
(p) See art. 489 et seq.
178. If there is an appeal, it shall be passed upon within ten days from the notice.

179. If the opposition is vacated, the opposing parties, with the exception of the ascendants, may also be ordered to pay damages. Civ. C. 1382.

CHAP. IV.

OF ACTIONS FOR ANNULMENT OF MARRIAGES.

180. A marriage which has been contracted without the free consent of the husband and wife or of one of them can only be attacked by the husband and wife or by the one whose consent was not freely given.

When there has been a mistake as to the person, the marriage can only be attacked by the one of the two parties who has been deceived. Civ. C. 146, 199, 1109 to 1112.

181. In the case provided in the foregoing article the action for annulment can no longer be maintained whenever there has been continuous cohabitation for six months since the husband or wife has acquired his or her full liberty or since the mistake has been discovered by him or her. Civ. C. 185.

182. A marriage contracted without the consent of the father and mother, of the ascendants or of the family council, when such consent was necessary, can only be attacked by those whose consent was required or by the one of the husband or wife who needed such consent. Civ. C. 148, 183, 201, 202.

183. An action for annulment can no longer be main-
tained by the husband or wife or by the parents whose consent was required, whenever the marriage has been expressly or tacitly approved of by those whose consent was necessary, or whenever one year has elapsed since they have had knowledge of the marriage, without objection on their part. Nor can it be maintained by the husband or wife when one year has elapsed without objection on his or her part since he or she has reached the age requisite to consent to the marriage of his or her own accord.

184. Any marriage contracted in violation of the provisions contained in articles 144, 147, 161, 162 and 163, may be attacked either by the husband and wife themselves, or by all those having an interest therein, or by the Public Prosecutor. Civ. C. 2, 3, 162, 170, 171, 185, 187, 190, 201, 202.

185. Nevertheless, the marriage contracted by a husband and wife who have not yet reached the requisite age or of whom one of the two has not reached that age can no longer be attacked:—

1. When six months have elapsed since the husband or wife or both have reached the requisite age;
2. When the wife who had not reached that age has conceived before the expiration of six months. Civ. C. 144.

186. The father, the mother, the ascendants, and the family who have consented to the marriage contracted in the case provided in the foregoing article shall not be entitled to sue for its annulment.

187. In all cases in which an action for annulment can be maintained by all those who have an interest therein in accordance with article 184, such action cannot be maintained by the collateral relatives or by the children born of another marriage, in the lifetime of the husband and wife,
and only if there is an existing and actual interest for them so to do. Civ. C. 184.

188. The husband or wife to whose detriment a second marriage has been contracted can apply for its annulment, even during the lifetime of the wife or husband who was bound towards her or him. Civ. C. 139, 147.

189. If the newly-married persons claim that the first marriage is void, the validity or annulment of that marriage must first be decided upon.

190. The King’s Attorney (Republic’s Attorney) can and shall apply for the annulment of the marriage during the lifetime of the husband and wife and obtain judgment for their separation in all cases to which article 184 applies, and in accordance with the restrictions contained in article 185. Civ. C. 199.

191. Every marriage which has not been publicly contracted and which has not been celebrated in the presence of the proper public officer may be attacked by the husband and wife themselves, by the father and mother, the ascendants, and all those who have an existing and actual interest therein, and also by the Public Prosecutor. Civ. C. 75, 76, 165.

192. If, previous to the marriage, the two requisite publications have not been made, or if the dispensations allowed by law have not been obtained, or if the periods of time ordered for the publications and celebrations have not been kept, the King’s Attorney (Republic’s Attorney) shall cause a fine to be inflicted upon the public officer, which cannot exceed three hundred francs, and another one to be inflicted upon the contracting parties or those under whose authority they have acted, in proportion to their fortune. Civ. C. 63, 166.

193. The penalties imposed by the foregoing article shall
be undergone by the persons mentioned therein for any violation of the provisions contained in article 165, even when such violations shall not be held sufficient to occasion the annulment of the marriage. Civ. C. 74, 75, 165.

194. No one can claim the title of husband or wife and the civil effects of marriage unless he or she produces a certificate of celebration recorded on the registers of civil status, excepting in the cases mentioned in article 46 of the Title Of Certificates of Civil Status. Civ. C. 40, 46.

195. The “possession d'état” (q) shall not make away with the necessity for the alleged husband or wife who respectively claims it of producing the certificate of celebration of the marriage before the officer of civil status. Civ. C. 196, 197, 321.

196. In case of a “possession d'état” (q), and when the certificate of celebration of marriage before the officer of civil status is produced, neither the husband nor the wife is entitled to sue for the annulment of this certificate. Civ. C. 194, 195, 321.

197. Nevertheless, if, in the case mentioned in articles 194 and 195, there are children born of two persons who have openly lived as husband and wife and who are both dead, the legitimacy of the children cannot be contested upon the sole ground of the non-production of the certificate of celebration, whenever this legitimacy is established by a “possession d'état” (q) which is not in contradiction with the certificate of birth. Civ. C. 319 et s.

198. When the proof of the legal celebration of a

(q) These words mean the general and public reputation of having a certain status.
Marriage is established by the result of a criminal action, the entering of the judgment upon the registers of civil status gives all civil effects to the marriage from the day of its celebration, as well in favour of the husband or wife as in favour of the children born of such marriage. Civ. C. 40 et s., 99 et s., 326, 327.

199. If the husband and wife or one of them have died without having discovered the fraud, a criminal action may be brought by all those who are interested in having the marriage declared valid and by the King’s Attorney (Republic’s Attorney). Civ. C. 190, 192, 326, 327.

200. If the public officer is dead when the fraud is discovered, a civil action shall be instituted against his heirs by the King’s Attorney (Republic’s Attorney) in the presence of the interested parties and upon their denunciation. Civ. C. 724.

201. A marriage which has been declared to be void produces nevertheless its civil effects as well in favour of the husband and wife as of the children, when it has been contracted in good faith. Civ. C. 144, 147, 161, 162, 163.

202. If only the husband or the wife acted in good faith, the marriage produces its civil effects in favour of the one who has so acted and of the children born of the marriage.
CHAP. V.

OF THE OBLIGATIONS RESULTING FROM MARRIAGE.


204. A child has no claim against his father and mother for his establishment by marriage or otherwise.

205. (Amended by Law of 9th March, 1891.)—Children owe support to their father and mother and other ascendants who are in want. The succession of a deceased husband or wife owes support in the same case to the surviving wife or husband. The time within which such support can be claimed is one year from the death, and in case of a division it extends until the same is ended.

Such support is provided for out of the estate. All the heirs, and in case of insufficiency, all the special legatees, contribute to it in proportion to what they receive.

If, however, the decedent had expressly declared that a special legacy was to be paid in preference to the others, article 927 of the Civil Code shall apply.

206. Sons-in-law and daughters-in-law owe likewise under the same circumstances support to their father-in-law and mother-in-law, but this obligation ceases:

1. When the mother-in-law has contracted a second marriage;
2. When the husband and wife owing to whom the affinity existed and the children born of his or her marriage with such wife or husband are dead. Civ. C. 205.

207. The obligations resulting from these provisions are reciprocal.

208. Support is only granted in proportion to the wants of the person who requires it and to the fortune of the one who owes it. Civ. C. 205, 209.

209. When the person who furnishes the support, or the one who receives it, is placed again in such a position that the one can no longer give it, or the other is no longer in need of it, wholly or in part, a release therefrom or a reduction can be applied for.

210. If the person who must furnish the support establishes that he cannot pay for the same, the Tribunal may, with proper knowledge of the case, order that he shall receive the individual to whom he owes support in his home and feed and maintain him. Civ. C. 1142.

211. The Tribunal shall also decide whether the father or mother who offers to receive, feed, and maintain in his or her home the child to whom he or she owes support shall be exempt from paying an allowance.
OF MARriage.

Chap. VI.

Of the Respective Rights and Duties of Husband and Wife.

212. Husband and wife owe each other fidelity, support, and assistance. Civ. C. 203, 1388.

213. A husband owes protection to his wife; a wife obedience to her husband.

214. A wife is bound to live with her husband and to follow him wherever he deems proper to reside. The husband is bound to receive her, and to supply her with whatever is necessary for the wants of life, according to his means and condition. Civ. C. 212, 213, 1388, 1448, 1537.

215. A wife cannot sue in court without the consent of her husband, even if she is a public tradeswoman or if there is no community or she is separated as to property. Civ. C. 108, 217, 218, 222, 225, 1388, 1449, 1549, 1576, 2185, 2208.

216. The husband's consent is not necessary when the wife is prosecuted criminally or in a police matter. Civ. C. 215, 218.

217. A wife, even when there is no community, or when she is separated as to property, cannot give, convey, mortgage, or acquire property, with or without consideration, without the husband joining in the instrument or giving his written consent. Civ. C. 214, 218, 219, 776, 905, 934, 1029, 1304, 1322, 1338, 1388, 1409, 1426, 1427, 1431, 1449, 1494, 1538, 1576, 1990.
218. If a husband refuses to allow his wife to sue in court, the Judge may grant the authorization. Civ. C. 215, 219, 222.

219. If a husband refuses to allow his wife to execute an instrument, the wife can cause her husband to be summoned directly before the Tribunal of First Instance of the common domicile, and such Tribunal shall grant or refuse its consent in the Judges' room after the husband has been heard or has been duly summoned.

220. A wife may, if she is a public tradeswoman, bind herself without the husband's consent with respect to what relates to her trade, and in that case she also binds her husband if there is community of property between them.

She is not considered a public tradeswoman if she merely retails the goods of her husband's business, but only when she has a separate business. Civ. C. 217, 1426.

221. When a sentence has been passed upon a husband which carries with it a degrading corporal punishment, even if it has been passed by default, a wife, even of full age, cannot, during the continuance of the punishment, sue in court nor bind herself, unless she has been authorized by the Judge, who may in such case grant the consent without the husband having been heard or summoned. Civ. C. 215 et s.

222. If a husband has been interdicted or is absent, the Judge may, with proper knowledge of the case, authorize the wife to sue in court or to bind herself. Civ. C. 215, 218.

223. Any general authorization, even given by a marriage contract, is only valid as to the management of the wife's property. Civ. C. 218, 1388, 1538, 1987 et s.

224. If the husband is a minor, the authorization of
the Judge is necessary to the wife, either to sue in court or to bind herself. Civ. C. 215, 217, 218, 2208.

225. A nullity based upon the want of authorization can only be set up by the wife, the husband, or the heirs. Civ. C. 215, 217, 1125, 1304, 1312, 1449.

226. A wife can make a will without her husband's consent. Civ. C. 905, 940, 1096.

CHAP. VII.

OF THE DISSOLUTION OF MARRIAGES.

227. Marriages are dissolved:
1. By the death of the husband or wife;
2. By a divorce lawfully decreed;
3. By a final sentence against the husband or wife to a punishment occasioning civil death (s).

CHAP. VIII.

OF SECOND MARRIAGES.

228. A wife cannot contract a second marriage until ten months have elapsed since the dissolution of the previous marriage.

(s) Civil death was abolished by the law of 31st May, 1854.
TITLE SIXTH.

OF DIVORCE.

(Promulgated 27th July, 1884.)

Chap. I.

Of the Causes of Divorce.

229. A husband may sue for a divorce on account of the wife's adultery. Civ. C. 306.


231. A husband and wife may reciprocally sue for a divorce on account of violence, cruelty, or gross insults on the part of the one against the other. Civ. C. 235 et s., 306.

232. (Amended by Law of 27th July, 1884.) — A sentence passed upon a husband or wife imposing upon him or her a degrading corporal punishment shall be for the other a cause for divorce. Civ. C. 261, 306.

233. (Repealed by Law of 27th July, 1884.)
OF DIVORCE.

CHAP. II.

OF THE PROCEDURE FOR DIVORCES.

§ 1. Of Proceedings for Divorces.

234. (Amended by Law of 18th April, 1886.)—A husband or wife who wishes to bring an action for divorce presents in person his or her petition to the Presiding Justice of the Tribunal or the Judge acting as such.

In case of hindrance duly established, the Judge, accompanied by his clerk, shall go to the domicile of the husband or wife who is plaintiff.

In case of legal interdiction resulting from a sentence which has been passed, the petition for divorce can only be presented by the guardian, at the request or with the consent of the interdicted person.

235. (Amended by Law of 18th April, 1886.)—The Judge, after hearing the plaintiff and addressing to him or her the remarks which he considers proper, orders, at the foot of the petition, the parties to appear before him upon the day and at the hour which he appoints, and names a sheriff to serve the citation.

236. (Amended by Law of 18th April, 1886.)—The Judge may, in the order granting leave to make the citation, authorize the husband or wife who is plaintiff to reside separately, indicating, if it is the wife, the place of the temporary residence.

237. (Amended by Law of 18th April, 1886.)—The petition and order are served, at the head of the citation, upon the husband or wife who is defendant, three days at least before the day appointed for the appearance, besides
the time allowed for distances, all of which shall be done under penalty of nullity.

This citation is served by the sheriff appointed and under sealed cover.

238. (Amended by Law of 18th April, 1886.)—Upon the day appointed, the Judge hears the parties in person: if it is impossible for one of them to appear before the Judge, this magistrate selects the place where the reconciliation shall be attempted or issues a commission to hear the defendant; in case there is no reconciliation, or in case of default, he makes an order setting forth the non-reconciliation or the default and authorizes the plaintiff to sue in court.

The Judge, if necessary, grants a new order as to the residence of the plaintiff husband or wife, the provisional custody of the children, the delivery of personal effects, and he also has the right to pass upon the application for alimony, if proper.

This order is enforceable provisionally; it can be appealed from within the time fixed by article 809 of the Code of Procedure.

In consequence of such order the wife is authorized to institute all proceedings for the protection of her rights and to sue in court until the termination of the suit and of the proceedings resulting therefrom.

When the case is before the Court, the provisional measures ordered by the Judge can be changed or completed during the pendency of the suit by a judgment of the Tribunal, without prejudice to the right which the Judge always has of granting new orders at Chambers, at all stages of the case, as to the residence of the wife.

The Judge may, according to circumstances, put the parties off for a period not exceeding twenty days before he authorizes the plaintiff to issue the citation; but he must order the necessary provisional measures.

The plaintiff husband or wife in a divorce suit must make
use of the permission granted by the order of the presiding Justice to issue the citation within a period of twenty days from the time of such order.

In case the plaintiff husband or wife has not made use of such permission within said time, the provisional measures ordered for his or her benefit cease by right.

239. (Amended by Law of 18th April, 1886.) — The case is prepared and decided in the usual manner after hearing the Public Prosecutor.

The plaintiff may, at all stages of the case, change his application for a divorce into one for a separation from bed and board.

Counterclaims for divorce can be set up by a simple pleading.

The Tribunals may decide to proceed with closed doors.

The publication of the proceedings by way of the press is prohibited in divorce cases under penalty of the fine of from 100 to 2,000 francs imposed by article 39 of the Law of the 30th July, 1881.

240. (Amended by Law of 18th April, 1886.) — The Tribunal can, either at the request of one of the interested parties or at the request of one of the members of the family, or at the instigation of the Public Prosecutor, or even of its own accord, order all provisional measures which it deems necessary in the interest of the children.

It also passes upon all applications relating to alimony during the pendency of the action, fees and all other urgent measures.

241. (Amended by Law of 18th April, 1886.) — A wife is bound to prove that she has resided in the house selected whenever she is called upon so to do; if she fails to make such proof, the husband can refuse the alimony, and if the wife is plaintiff in the suit for divorce he can ask that it be c.n.
decided that she shall not be entitled to continue the proceedings.

242. (Amended by Law of 18th April, 1886.)—Both the husband and the wife can, from the time of the first order and with the permission of the Judge, given upon condition of referring back the matter to him, take measures of protection for the preservation of his or her rights, such as applying to have seals affixed on property of the community. The same right belongs to the wife, even when there is no community, for the preservation of such of her property as the husband has the administration or enjoyment of. The seals shall be removed upon the application of the more diligent party; the articles and securities shall be inventoried and appraised; and the husband or wife who is in possession of them shall be appointed judicial custodian, unless it is otherwise ordered.

243. (Amended by Law of 18th April, 1886.)—Any obligation contracted by the husband for which the community is responsible, any conveyance made by him of the real estate forming part thereof, after the date of the order referred to in article 235, shall be declared to be void, if it is proved, in addition thereto, that the same have been made or consented to for the purpose of defrauding the wife of her rights.

244. (Amended by Law of 18th April, 1886.)—A suit for divorce stops by the reconciliation of the husband and wife which has taken place, either since the facts alleged in the complaint have occurred, or since such complaint. In both cases it shall be declared that the plaintiff's action is dismissed; such plaintiff can nevertheless introduce a new action for a cause arising or discovered since the reconciliation, and he or she can avail himself or herself of the former causes in support of the new application.
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A divorce suit also stops upon the death of the husband or wife which has occurred before the judgment has become final by the transcription thereof upon the registers of civil status.

245. (Amended by Law of 18th April, 1886.)—When an investigation is to take place it is conducted in accordance with the provisions of articles 252 et s. of the Code of Civil Procedure.

Relatives, with the exception of descendants, and servants of the husband and wife, can be heard as witnesses.

246. (Amended by Law of 18th April, 1886.)—When the suit for divorce has been brought for any other cause than the one mentioned in article 232, the Tribunal may, even if the case is sufficiently substantiated, not grant the divorce immediately.

In such case, it maintains or orders a separate residence and provisional measures during a time which cannot exceed six months.

If the husband and wife have not become reconciled at the end of the time fixed by the Tribunal, each one of them can cause the other to be cited to appear before the Tribunal within the time allowed by law for the purpose of hearing the Court render the judgment for divorce.

247. (Amended by Law of 18th April, 1886.)—When the complaint has not been delivered to the defendant in person and when such defendant does not appear, the Tribunal may, before rendering judgment upon the merits, order the insertion in the newspapers of a notice for the purpose of bringing to the knowledge of such party the existence of the suit in which such party is interested.

The judgment or decree which grants a divorce by default is served by a sheriff appointed therefor.

If such service has not been made upon the person, the
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presiding Justice orders, upon an ordinary petition, the publication of the judgment by an extract in the newspapers which he selects. The opening of the default can take place within one month from the service, if it has been made upon the person, or otherwise, within the eight months following the last publication.

248. (Amended by Law of 6th February, 1893.)—An appeal can be taken from judgments within the time specified in article 43 et s. of the Code of Civil Procedure, when the defendant has appeared.

In case of judgment by default, the time only begins to run from the day the default can no longer be opened.

In case of appeal, the action is followed up at the usual sittings and as an urgent cause.

Counterclaims can be set up on appeal without being considered as new matters.

The time to appeal to the Court of "Cassation" runs from the day of the service upon the party, for decrees as to which there has been a defence, and from the day the default can no longer be opened, for decrees by default.

Such appeals in cases of divorce and of separation from bed and board, stay execution.

249. (Amended by Law of 18th April, 1886.)—A judgment or decree ordering a divorce cannot be assented to.

250. (Amended by Law of 18th April, 1886.)—An extract of the judgment or decree ordering a divorce shall be published among the notices posted in the court rooms of the Civil Tribunals and Tribunals of Commerce, and also in the Chambers of the solicitors and notaries.

A similar extract shall be inserted in one of the newspapers which are published at the place where the Tribunal sits, or if there is none, in one of those published in the Department.
251. (Amended by Law of 18th April, 1886.)—The enacting part of the judgment or decree shall be transcribed on the registers of civil status of the place where the marriage has been celebrated.

An entry shall be made in the margin of the certificate of marriage mentioning such judgment or decree in accordance with article 49 of the Civil Code. If the marriage has been celebrated abroad, a transcription thereof shall be made on the registers of civil status of the place where the husband and wife had their last domicil, and an entry shall be made in the margin of the certificate of marriage if it has been transcribed in France.

252. (Amended by Law of 18th April, 1886.)—The transcription is made at the instigation of the party who has obtained the divorce: for that purpose the decree shall be served, within a period of two months from the day upon which it has become final, upon the proper officer of civil status, in order that it may be transcribed on the registers. The certificates mentioned in art. 548 of the Code of Civil Procedure, and also, if there has been a decree, a certificate that no appeal has been taken therefrom, shall be served at the same time.

The officer of civil status has charge of having this transcription made on the fifth day after the solicitation, holidays being excluded, under the penalties imposed by article 50 of the Civil Code.

If the party who has obtained the divorce fails to make the service within the first month, the other party has the right, concurrently with the first party, to make such service within the following month.

If the parties have omitted to cause the transcription to be made within a period of two months, the divorce is considered as null and void.

A judgment duly transcribed extends back as to its effects between husband and wife to the day of the complaint.
253 (t). The depositions of witnesses shall be received by the Tribunal sitting with closed doors in the presence of the Public Prosecutor, of the parties and of their counsel or friends, not numbering more than three on each side.

254. The parties may make, themselves or through their friends, such remarks, or put such questions to the witnesses as they shall deem proper, but they cannot interrupt them during the depositions.

255. Each deposition shall be taken down in writing, as also all statements and remarks which it has occasioned. The official report of the investigation shall be read to the witnesses as well as to the parties: all of them shall be requested to sign it, and it shall be stated whether they have signed or whether they have declared that they could not or would not sign.

256. After the two investigations have been closed, or if the investigation of the plaintiff has been closed, in case the defendant should not have produced any witnesses, the Tribunal sends the parties to be heard at a public sitting, of which it names the day and hour: it orders that the papers shall be submitted to the Public Prosecutor and appoints a Judge to make a report. This order shall be served upon the defendant at the instigation of the plaintiff, within the time therein specified.

257. Upon the day named for the final judgment a report shall be made by the Judge appointed therefor: the parties may thereafter, either themselves or through their counsel, present such remarks as they may deem useful to their case: thereafter the Public Prosecutor gives his findings.

258. The final judgment is rendered publicly; when it grants the divorce, the plaintiff shall be authorized to go before the officer of civil status to have the divorce pronounced.

(t) Art. 253 to 274 were repealed by the law of 18th April, 1886.
259. When the action for divorce has been brought for violence, cruelty or gross insults, the Judges may, even if the case is sufficiently well substantiated, not grant the divorce immediately. In such case, before granting the relief, they shall authorize the wife to leave her husband and not to be compelled to receive him, if she chooses not to do so, and they shall order the husband to pay her alimony in proportion to his means, if the wife herself has not a sufficient income to provide for her wants.

260. After a test of one year, if the parties have not come together again, the plaintiff husband or wife can cause the other to be cited to appear before the Tribunal within the time allowed by law, to hear the Court render its final judgment, which shall then grant the divorce.

261. When the divorce is asked for on the ground that the husband or wife has been sentenced to a degrading corporal punishment, the only formalities to be complied with shall be to present to the Tribunal of First Instance a duly certified copy of the decision passing sentence, with a certificate of the clerk of the Court establishing that this decision can no longer be altered by ordinary legal means. The certificate of the clerk shall be certified to by the Attorney-General or by the Republic's Attorney. Civ. C. 232, 306.

262. In case of appeal from the judgment admitting the complaint, or from the final judgment rendered by the Tribunal of First Instance in a divorce suit, the case shall be prepared and decided by the Imperial Court (Court of Appeal) as an urgent cause.

263. An appeal shall not be admitted unless it has been made within two months from the day of the service of the judgment, when the defendant has appeared, or when the judgment has been rendered by default. The time to appeal to
the Court of "Cassation" from a judgment of the higher Court shall also be two months from the service. The appeal shall stay execution.

264. In consequence of any judgment granting a divorce, which has been rendered by the highest court or has become final, the husband or wife who has obtained it shall be bound to appear, within a period of two months, before the officer of civil status to have the divorce pronounced, the other party having been duly summoned.

265. These two months shall only begin to run against judgments in the first instance after the expiration of the time to appeal; against decrees rendered by default on appeal, after the expiration of the time to open the default; and against judgments of the highest court, when the defendant has appeared, after the expiration of the time for the appeal to the Court of "Cassation."

266. The plaintiff husband or wife who has allowed the period of two months above referred to to elapse without summoning the other before the officer of civil status, shall lose the benefit of the judgment obtained, and shall only be able to begin another action for divorce for a new cause: in such case however the former causes may be brought forward.

§ 2. Of the Provisional Measures which an Action for Divorce may give rise to.

267. The provisional custody of the children shall belong to the husband, whether plaintiff or defendant in a divorce suit, unless the Tribunal makes a different order at the request either of the mother or of the family or of the Public Prosecutor, for the greater advantage of the children. Civ. C. 302.
268. The wife, whether plaintiff or defendant in a divorce suit, may leave the domicile of the husband during the proceedings and ask for alimony in proportion to the means of the husband. The Tribunal selects the house where the wife shall be bound to reside, and fixes, if proper, the alimony which the husband shall be bound to pay to her. Civ. C. 214.

269. The wife shall be bound to prove that she has resided in the house selected whenever she may be called upon so to do; if she fails to make such proof the husband can refuse the alimony, and if the wife is plaintiff in the divorce suit he can ask that it be decided that she shall not be entitled to continue the proceedings.

270. The wife, whether plaintiff or defendant in a divorce suit, whose property is in common, can at all stages of the case, from the date of the order mentioned in article 238, ask for the affixing of seals upon the personal property of the community for the protection of her rights. These seals shall only be removed when an inventory is taken with an appraisement, and the husband shall be bound to produce the things which have been inventoried or to answer for their value, as judicial custodian.

271. Any obligation contracted by the husband for the community, any conveyance of real estate forming part thereof which he has made after the date of the order mentioned in article 238 shall be declared to be void, if it is also established that the same has been made or contracted for the purpose of defrauding the wife of her rights.

§ 3. Of Exceptions to Actions for Divorce.

272. An action for divorce shall come to an end by the reconciliation of the husband and wife which has taken place either since the acts which might have given the right to
maintain such action or since the action for divorce has been brought.

273. In either case, it shall be decided that the plaintiff is not entitled to maintain his action: he may nevertheless bring a new action for a cause which has arisen since the reconciliation; and then he can make use of the former causes to strengthen his new action.

274. If the plaintiff in a divorce suit denies that there has been a reconciliation, the defendant shall have to prove it, either by writings or by witnesses, in the manner provided by the first section of the present chapter.

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**Chap. III. (u)**

**Of the Effects of Divorce.**

295. (*Amended by Law of 27th July, 1884.*)—A husband and wife who have been divorced can no longer be

(u) The former Chapter III. (art. 275 to 294) entitled "Of Divorce by Mutual Consent," is repealed. The articles repealed read as follows:—

275. The mutual consent of the husband and wife shall not be sufficient if the husband is less than twenty-five years of age, or if the wife is a minor of less than twenty-one years.

276. Mutual consent shall only be sufficient after two years of marriage.

277. It shall no longer be sufficient after twenty years of marriage, nor when the wife is forty-five years of age.

278. The mutual consent of the husband and wife shall not be sufficient in any case if it is not sanctioned by their fathers and mothers, or by their other living ascendants, according to the rules set down in art. 150 of the Title of Marriage.

279. The husband and wife who are determined to obtain a divorce by mutual consent, shall be bound previously thereto to make an inventory and appraisement of all their property personal and real, and to regulate their respective rights, as to which nevertheless they are free to compromise.
re-united if one of them has contracted a new marriage since the divorce, followed by a second divorce. In case the

280. They shall likewise be bound to put down in writing what they have agreed to as to the three following points: (1) To whom the children born of their marriage shall be confided, either during the time of the test, or after the divorce is decreed; (2) To what house the wife shall retire to reside during the time of the test; (3) What sum the husband shall pay to the wife during such time, if she has not sufficient means to provide for her wants.

281. The husband and wife shall present themselves together and in person before the Civil Tribunal of their District, or before the Judge taking its place, and shall make a declaration of their intention in the presence of two notaries brought by them.

282. The Judge shall make to the husband and wife together, and to each of them separately, in the presence of the two notaries, such representations and recommendations as he shall think proper. He shall read to them Chapter IV. of the present Title, which regulates the Effects of Divorce, and shall explain to them all the consequences of the step they have taken.

283. If the husband and wife persist in their determination, it shall be noted in their favour by the Judge that they seek a divorce, and mutually consent thereto; and they shall be bound to produce and to deposit immediately in the hands of the notaries, besides the instruments mentioned in art. 279 and 280: (1) Their certificates of birth and marriage; (2) The certificates of birth and of death of all the children born of their marriage; (3) The official declaration of their father and mother or other living ascendants, stating that for reasons known to them they authorize so and so, their son or daughter, grandson or granddaughter, married to so-and-so, to apply for a divorce and to consent thereto. The father and mother, grandfather and grandmother of the husband and wife shall be supposed to be living until the certificates establishing their death have been presented.

284. The notaries shall draw up a full official report of everything that has been said or done in compliance with the foregoing articles: the original shall remain with the elder of the two notaries, as well as the papers produced, which shall be annexed to the official report, in which shall be mentioned the notice which shall be given to the wife to retire within twenty-four hours to the house agreed upon between her and her husband, and to reside there until the divorce is decreed.

285. The declaration thus made shall be renewed, complying with the same formalities, in the first fortnight of each of the fourth, seventh, and tenth months next thereafter. The parties shall be bound each time to prove by an official instrument that their fathers and mothers, or other
husband and wife come together, a new celebration of marriage shall be necessary. The husband and wife cannot

living ascendants persist in their first determination, but they shall not be called upon to produce any other instrument.

286. Within the fortnight from the day upon which the year from the first declaration has elapsed, the husband and wife, each attended by two friends, who shall be well-known in the District, of the age of fifty years at least, shall appear together and in person before the presiding Justice of the Tribunal, or the Judge acting as such: they shall deliver to him the certified copies in due form of the four official reports containing their mutual consent, and of all the instruments which have been annexed thereto, and each of them separately, but in the presence of the other and of the four well-known persons, shall request the magistrate to grant the divorce.

287. When the Judge and persons present shall have addressed their remarks to the husband and wife, their request and the delivery made by them of the papers in support thereof, if they persist in their intention, shall stand noted for their benefit. The clerk of the court shall draw up an official report, which shall be signed as well by the parties (unless they declare that they cannot or will not sign, in which case that fact shall be mentioned), as by the four persons, the Judge and the clerk.

288. The Judge shall at once add, at the end of the official report, his order directing that within three days the whole matter shall be referred by him to the Tribunal, in the Judge's room, upon the written findings of the Public Prosecutor, to whom the papers shall be submitted by the clerk of the Court for that purpose.

289. If the Public Prosecutor finds proof in the papers that the husband was twenty-five years of age and the wife twenty-one when they made their first declaration; that at that time they had been married for two years; that the marriage did not date further back than twenty years; that the wife was under forty-five years of age; that mutual consent had been expressed four times during the course of the year after the preliminaries hereabove provided, and with all the formalities required by the present chapter, specially with the consent of the fathers and mothers of the husband and wife, or of the other ascendants living in case of the death of the fathers and mothers; he shall give his findings in these terms: The law allows. Should it be otherwise, the findings shall be in these terms: The law prevents.

290. The Tribunal, upon motion, shall not be able to investigate other matters than those mentioned in the foregoing article. If the result thereof in the opinion of the Tribunal should be that the parties have complied with the conditions, and fulfilled the formalities required by law, the Tribunal shall grant the divorce, and shall send the parties before the
adopt a matrimonial system different from the one which originally governed their relations.

After the husband and wife have been reunited, no new suit for divorce on their part shall be allowed for any cause whatever other than for a sentence to a degrading corporal punishment inflicted upon the one or the other since they have been reunited. Civ. C. 190, 227.

296. (Amended by Law of 27th July, 1884.)—A divorced wife shall not be able to remarry before ten months after the divorce has become final.

297 (x). In case of divorce by mutual consent, neither the husband nor the wife shall be able to remarry until three years after such divorce has been decreed.

The notices of appeal shall be served reciprocally upon the husband and wife, and upon the Public Prosecutor of the Tribunal of First Instance.

Within ten days from the service made upon him of the second notice of appeal, the Public Prosecutor of the Tribunal of First Instance shall forward to the Attorney-General of the Imperial Court of Appeals a certified copy of the judgment and the papers upon which he has intervened. The Attorney-General of the Imperial Court of Appeals shall give his findings in writing within the ten days following the receipt of the papers: the Presiding Justice or the Judge acting for him shall make his report to the Imperial Court of Appeals in the Judges’ room, and a final decision shall be rendered within the ten days following the handing down of the findings of the Attorney-General.

294. By virtue of the decree granting the divorce, and within twenty days from its date, the parties shall present themselves together and in person before the officer of civil status to have the divorce pronounced. After this period is past the judgment shall become void.

(x) Repealed by the law of 27th July, 1884.
298. (Amended by Law of 27th July, 1884.)—In case of a divorce granted by the Court on account of adultery, the guilty party shall never be able to marry his or her accomplice.

299. (Amended by Law of 27th July, 1884.)—The husband or wife against whom a divorce has been decreed shall lose all the advantages which the other had granted in his or her favour, either by marriage contract or since the marriage.

(Law of 6th February, 1893.)—In consequence of the divorce the husband and wife shall each resume the use of their name.

300. The husband or wife who has obtained the divorce shall retain the advantages stipulated in his or her favour by the other, even if it has been agreed that they were reciprocal, and if the reciprocity does not take place.

301. If the husband and wife had not stipulated any advantages in favour of each other, or if those stipulated do not appear to be sufficient to secure the maintenance of the husband or wife who has obtained the divorce, the Tribunal may grant alimony to such husband or wife, which shall not exceed one-third of the income of the other. Such alimony can be stopped in case it should cease to be necessary.

302. The children shall be confided to the husband or wife who has obtained the divorce, unless the Tribunal, at the request of the family or of the Public Prosecutor, should order, for the greater advantage of the children, that all or some of them should be placed under the care of the other or of a third party.

303. Whoever may be the person to whom the children
shall be confided, the father and mother shall respectively retain the right to watch over the maintenance and the education of their children, and they shall be bound to contribute thereto in proportion to their means.

304. The dissolution of the marriage by divorce granted in court shall not deprive the children born of such marriage of any of the advantages which were secured to them by law or by the matrimonial agreements of their father and mother; but the rights of the children shall only take effect in the same manner and under the same circumstances as if there had been no divorce.

305 (y). In case of divorce by mutual consent, the ownership of one-half of the property of the husband and wife shall belong by right, from the day of their first declaration, to the children born of the marriage; the father and mother shall, nevertheless, retain the enjoyment of this half until their children become of age, on condition of providing for their support, maintenance, and education, in accordance with their fortune and standing, all of which shall be without prejudice to the other advantages which might have been secured to the said children by the matrimonial agreements of their father and mother.

Chap. IV.

Of Separation from Bed and Board.

306. (Amended by Law of 27th July, 1884.)—If an action for divorce can be maintained, the husband or wife is at liberty to sue for a separation from bed and board. Civ. C. 219, 229, 230.
307. (Amended by Law of 18th April, 1886.)—Such action shall be brought, prepared, and passed upon in the same manner as any other civil action; nevertheless, articles 236 to 244 shall apply to it. It cannot be brought by the mutual consent of the husband and wife.

The guardian of a person judicially interdicted can, with the consent of the family council, present the petition and follow up the action for separation.

308(z). A wife against whom a separation from bed and board has been decreed on account of adultery shall be sentenced by the same judgment and upon the requisition of the Public Prosecutor to imprisonment in a House of Correction during a stated time, which shall not be less than three months and shall not exceed two years.

309(a). A husband shall be at liberty to prevent the effect of this sentence by consenting to take back his wife.

310. (Amended by Law of 27th July, 1884.)—When a separation from bed and board has lasted three years, the judgment can be changed into a judgment for divorce upon an application made by the husband or wife.

This new application shall be commenced by a complaint answerable within eight full days by virtue of an order rendered by the Presiding Justice.

It shall be discussed in the Judge’s room.

The order shall appoint a Judge to make a report, shall direct that the papers be submitted to the Public Prosecutor, and shall appoint a day for the appearance.

The judgment shall be rendered in open court.

(Law of 18th April, 1886.)—Upon appeal the case shall be heard and passed upon in the Judge’s room upon the

(z) Repealed by law of 27th July, 1884.
(a) Repealed by law of 27th July, 1884.
report made and after hearing the Public Prosecutor. The decree shall be rendered in open court.

311. (Amended by Law of 6th February, 1893.)—The judgment granting a separation from bed and board, or a subsequent judgment, may forbid the wife the use of her husband's name or authorize her not to use it. In case the husband has added the name of his wife to his own, the latter may also ask that the husband should not be allowed to use it.

A separation from bed and board always carries with it a separation of property.

It also produces the effect of restoring to the wife the full enjoyment of her civil capacity, without the necessity for her to solicit the consent of her husband or of the Court.

If the separation from bed and board comes to an end by the reconciliation of the husband and wife, the capacity of the wife is changed for the future and is governed by the provisions of article 1449. This change cannot be set up against third parties, unless the fact of the husband and wife living together again has been established by an instrument executed in the presence of a notary, of which the original shall be filed with him, and of which an extract shall be posted in the manner provided by article 1445, and in the margin of which shall be mentioned:

1. The certificate of marriage;
2. The judgment or the decree ordering the separation;
and, finally, by an insertion of an extract in one of the newspapers of the Department containing legal publications. Civ. C. 1441, 1445, 1449, 1452.
TITLE SEVENTH.

OF PATERNITY AND FILIATION.

(Passed 23rd March, 1803; promulgated 2nd April, 1803.)

CHAP. I.

OF THE FILIATION OF LEGITIMATE CHILDREN OR OF THOSE BORN IN WEDLOCK.

312. A child conceived in wedlock has as father the husband.

Nevertheless, the husband may disown the child if he proves that, during the time running from the three-hundredth day to the one hundred and eightieth day before the birth of the child, it was physically impossible for him, either on account of absence or owing to some accident, to cohabit with his wife. Civ. C. 17, 25, 57, 120, 316, 317, 319, 322 et s., 325, 341, 450, 509.

313. (Amended by Law of 18th April, 1886.)—The husband cannot disown the child by alleging his own natural impotency; he cannot disown him even in case of adultery, unless the birth has been concealed from him, in which case he is allowed to prove all facts tending to show that he is not the father.

In case of a judgment or even of an action for divorce, or separation from bed and board, the husband may disown a child born three hundred days after the decision which has authorized the wife to have a separate domicil, or less
than one hundred and eighty days since the final dismissal of the suit, or since the reconciliation. An action to disown a child shall not lie if, as a matter of fact, the husband and wife have been together.

314. A child born before the one hundred and eightieth day since the marriage cannot be disowned by the husband in the following cases:—1. If he had knowledge of the pregnancy before the marriage; 2. If he was present when the certificate of birth was drawn up, and if such certificate is signed by him or contains his declaration that he does not know how to sign; 3. If it is declared that the child cannot live. Civ. C. 316, 331, 335, 725, 906.

315. The legitimacy of a child born three hundred days after the dissolution of the marriage can be contested. Civ. C. 312, 725.

316. In the various cases in which the husband is entitled to set up his objections, he must do so within one month if he is at the place of the birth of the child;
Within two months after his return if he was absent at that time;
Within two months after the discovery of the fraud committed if the birth of the child has been concealed from him. Civ. C. 313.

317. If the husband has died before entering his objection, but still being within the time to do so, the heirs shall have two months to contest the legitimacy of the child, counting from the time when the child has gained possession of the property of the husband or from the time when the heirs have been disturbed in their possession by the child. Civ. C. 312, 313, 322, 329, 330, 341, 724.
318. Any extra-judicial instrument containing a disavowal on the part of the husband or his heirs shall become void if it is not followed, within the period of one month, by a judicial action brought against a special guardian given to the child and in the presence of the mother. Civ. C. 312 et s.

319. Filiation of legitimate children is proved by the certificates of birth recorded on the register of civil status. Civ. C. 40 et s., 55 et s., 312, 321, 322, 323.

320. In the absence of such a certificate, a continuous "possession d'état" (b) as being a legitimate child is sufficient. Civ. C. 317.

321. The "possession d'état" (b) is established by a sufficient conglomerate of facts which indicate the connection of filiation and the relationship between an individual and the family to which he claims to belong.

The principal facts are: that the individual has always used the name of the father to whom he claims to belong;

That the father has treated him as his son, and in such capacity has provided for his education, maintenance and start in life;

That he has always acknowledged him as such in society;

That he has been acknowledged as such by the family.

(b) Means the general and public reputation of having a certain status.
322. No one can claim a status contrary to the one which his certificate of birth and general reputation in conformity therewith give him. And on the other hand, no one can contest the status of a person who has a general reputation in conformity with his certificate of birth. Civ. C. 196.

323. In the absence of a certificate, or of a continuous "possession d'état" (c), or if the child has been registered under false names or as being born of an unknown father and mother, the proof of the filiation can be made by witnesses. Nevertheless, this proof can only be admitted when there is a commencement of written proof, or when the presumptions or indications resulting from facts already certain are sufficiently important to allow the proof. Civ. C. 46, 214, 319, 320, 321, 324, 325, 1347, 1353.

324. The commencement of written proof results from family deeds, family books and papers of the father and mother, official documents and even private documents emanating from a party engaged in the controversy or who would have an interest therein if he were alive. Civ. C. 1347.

325. The proof of the contrary can be made by all means of a nature to establish that the claimant is not the child of the person whom he pretends to have as mother, or even, the maternity being proved, that he is not the child of the mother's husband. Civ. C. 323.

326. The Civil Tribunals have exclusive jurisdiction to decide claims relating to status. Civ. C. 327.

327. A criminal action for a felony in suppressing a

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(c) Means the general and public reputation of having a certain status.
status can only be instituted after a final judgment on the question of the status. Civ. C. 326, 329.

328. An action for the purpose of claiming a status is never outlawed as regards a child. Civ. C. 2226.

329. The action can only be brought by the heirs of the child who has made no claim if he has died being a minor or within five years after his majority. Civ. C. 317, 318, 724.

330. The heirs can follow up this action when it has been commenced by the child, unless he has formally discontinued it or has allowed three years to pass without any proceedings since the last proceedings taken. Civ. C. 317.

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Chap. III.

Of Natural Children.

§ 1. Of the Legitimation of Natural Children.

331. Children born out of wedlock, other than those born of incestuous or adulterous intercourse, can be legitimated by the subsequent marriage of their father and mother when the latter have lawfully acknowledged them before the marriage, or when they acknowledge them in the certificate of celebration. Civ. C. 319, 322, 334 et s.

332. Legitimation can take place even in favour of deceased children who have left issue, and in this case it benefits such issue.

333. Children legitimated by subsequent marriage have the same rights as if they were born of such marriage. Civ. C. 1913, 1920, 1960.
§ 2. Of Acknowledgments of Natural Children.

334. An acknowledgment of a natural child must be made in an official instrument, when it has not been made in the certificate of birth. Civ. C. 158, 337, 340, 931, 1125, 1128, 1131, 1134, 1317, 2045.


336. An acknowledgment by the father without indicating who the mother is, and without any admission on her part, only produces its effect with respect to the father. Civ. C. 333, 765.

337. An acknowledgment made during the marriage by the husband or the wife for the benefit of a natural child whom he or she has had, before the marriage, of another person than the one he or she is married to, cannot affect the rights of the husband or wife, nor those of the children of the marriage.

Nevertheless, it shall produce its effect after the dissolution of the marriage if no children born thereof remain. Civ. C. 756.


339. All acknowledgments on the part of the father or mother and all claims on the part of a child, can be contested by all those having an interest so to do. Civ. C. 6, 54, 100, 312, 318, 320, 321, 325, 337, 1350, 2045.
340. It shall not be allowed to prove paternal descent. In case of abduction, when the time of abduction coincides with that of conception, the abductor may, in a suit brought by the interested parties, be declared to be the father of the child. Civ. C. 320, 334, 335, 342, 762, 918.

341. Proof of maternal descent is allowed. A child who claims such descent shall be bound to prove that he is identically the same child as the one born of the mother. He shall only be allowed to make such proof by witnesses when there is a commencement of written proof. Civ. C. 320, 329, 334, 766, 1347.

342. A child shall never be allowed to prove paternal or maternal descent in cases in which an acknowledgment cannot take place in accordance with article 335. Civ. C. 312, 335, 340, 341.
Title Eighth.

Of Adoption and Officious Guardianship.

(Passed 24th March, 1803; promulgated 2nd April, 1803.)

Chap. I.

Of Adoption.

§ 1. Of Adoption and its Effects.

343. Persons of either sex can only adopt when they are over fifty years of age; when, at the time of the adoption, they have no children nor legitimate descendants, and when they are at least fifteen years older than the individuals whom they propose to adopt. Civ. C. 11, 345, 355, 356, 357, 366, 504, 901.

344. No one can be adopted by several persons, unless it be by a husband and wife.

With the exception of the case provided by article 366, no married person can adopt without the consent of his wife or her husband. Civ. C. 353, 355, 362.

345. The right to adopt can only be made use of in favour of the individual to whom the person has given assistance or of whom he has taken care uninterruptedly during six years at least when he was under age, or in favour of one who has saved the life of the person who adopts, either during a battle or by rescuing him from fire or water.

In the second case it shall be sufficient if the adopter is of full age, older than the adopted, without children or
legitimate descendants, and when married, if the husband or wife consents to the adoption. Civ. C. 366 et s.

346. Adoption can never take place before the adopted is of full age. If the adopted still has his father and mother, or one of them, and has not reached the full age of twenty-five years, he shall be bound to produce the consent to the adoption given by his father and mother or the survivor of them; and if he is over the age of twenty-five years, to solicit their advice. Civ. C. 148 et s.

347. Adoption confers the name of the adopter on the adopted by adding it to the latter's family name.

348. The adopted shall remain in his real family and shall retain all his rights: nevertheless, marriage is prohibited:

Between the adopter, the adopted and his descendants;
Between the adopted children of the same person;
Between the adopted and the children who may be born to the adopter;
Between the adopted and the husband or wife of the adopter, and reciprocally between the adopter and the husband or wife of the adopted. Civ. C. 161 et s., 184.

349. The natural obligation which continues to exist between the adopted and his father and mother to give support to each other in the cases provided by law, shall be considered to apply to the adopter and the adopted, towards each other. Civ. C. 203, 204, 205.

350. The adopted shall not acquire any rights of succession to the property of the relatives of the adopter; but he shall have the same rights to the succession of the adopter as those which a child born in wedlock would have, even if there were other such children born since the adoption. Civ. C. 348, 745, 913, 1094.
351. If the adopted dies without legitimate descendants, the things given by the adopter or received from his succession and which exist in kind at the time of the death of the adopted, shall return to the adopter or to his descendants, with the obligation to contribute to the payment of the debts and without prejudice to the rights of third parties.

The balance of the property of the adopted shall belong to his own relatives, and the latter shall always exclude all the heirs of the adopter excepting his descendants, with respect to all things, even those mentioned in the present article. Civ. C. 747, 766.

352. If, during the lifetime of the adopter and after the death of the adopted, the children or descendants left by the latter die without issue, the adopter inherits the things given by him, as is stated in the foregoing article; but this right only belongs to the person of the adopter, and does not extend to his heirs, even in the descending line.

§ 2. Of Proceedings for Adoption.

353. A person who desires to adopt, and the one who wishes to be adopted, shall appear before the Justice of the Peace of the domicile of the adopter, to execute the instrument bearing their respective consents. Civ. C. 343 et s.

354. A certified copy of this instrument shall be forwarded within ten days thereafter by the more diligent party to the King’s Attorney (Republic’s Attorney) of the Tribunal of First Instance of the District in which the adopter is domiciled, to be submitted to such Tribunal for approval.

355. The Tribunal, sitting in the Judges’ room, and after having obtained proper information, shall examine: 1. If all the conditions of the law have been fulfilled; 2. If the
person intending to adopt enjoys a good reputation. Civ. C. 343 et s.

356. After hearing the King's Attorney (Republic's Attorney) and without any other proceedings, the Tribunal passes judgment without stating any reasons, in these words: *There is occasion for, or there is no occasion for adoption.*

357. During the month following the judgment of the Tribunal of First Instance, such judgment shall, at the instance of the more diligent party, be submitted to the Royal Court (Court of Appeals) which shall examine the case in the same manner as the Tribunal of First Instance and shall render its decree without giving any reasons: *The judgment is confirmed, or the judgment is reversed; in consequence there is occasion for, or there is no occasion for adoption.* Civ. C. 358.

358. Every decree of the Royal Court (Court of Appeals) allowing adoption shall be rendered in court and published at such places and in as many notices as the Court may deem proper.

359. Within the three months following such judgment the adoption shall be recorded, at the request of one of the parties, on the register of civil status of the place where the adopter is domiciled.

The recording shall only take place upon the production of a certified copy in due form of the judgment of the Royal Court (Court of Appeals); and the adoption shall not produce any effect if it has not been recorded within that time. Civ. C. 40, 102.

360. If the adopter should die after the instrument evidencing his wish to enter into a contract of adoption has been executed before the Justice of the Peace and produced
before the Courts, and before such Courts have rendered a final decision, the proceedings shall be continued and the adoption allowed, if proper. The heirs of the adopter may, if they deem that the adoption should not take place, hand up to the King’s Attorney (Republic’s Attorney) all briefs or statements to that effect.

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**Chap. II.**

**Of Officious Guardianship.**

361. Every individual over fifty years of age, without children or legitimate descendants, who wishes, during the minority of a person, to attach that person to himself in a legal way, may become his officious guardian by obtaining the consent of the father and mother of the child or of the survivor of them, or in default thereof the consent of the family council, or finally, if the child has no parents who are known, the consent of the administrators of the asylum where he has been received or of the municipality of the place of his residence. Civ. C. 343, 346, 405.

362. A married person cannot become an officious guardian without the consent of the husband or wife. Civ. C. 344.

363. The Justice of the Peace of the child’s domicil shall draw up an official report of the applications and consents relating to officious guardianship. Civ. C. 353.

364. Such guardianship shall only be allowed in favour of children of less than fifteen years of age. It carries with it, without prejudice to any special stipulations, the obligation to support the ward, to bring him up,
and to place him in a condition to earn a living. Civ. C. 203, 369, 1134.

365. If the ward has some property, and if he already has a guardian, the administration of his property, as well as of his person, shall be turned over to the officious guardian, who, nevertheless, shall not be at liberty to deduct the expenses of the education of his ward from the latter's income. Civ. C. 389, 450.

366. If the officious guardian, after the expiration of five years since he has become guardian, and foreseeing his death before the ward becomes of age, confers adoption upon him by will, this provision shall be valid if the officious guardian does not leave any legitimate children. Civ. C. 350 et s., 368.

367. In case the officious guardian dies before the five years or after that time without having adopted his ward, the latter shall receive means of support during his minority, of which the amount and kind shall be settled either amicably between the respective representatives of the guardian and ward, or judicially in case of controversy, unless they have been previously settled by a formal agreement. Civ. C. 364, 1122.

368. If, when the ward becomes of age, his officious guardian wishes to adopt him and the former consents thereto, the adoption shall take place in the manner provided in the previous chapter and the effects shall in all respects be the same. Civ. C. 343 et s.

369. If, within three months from the time the ward becomes of age, the solicitations made by him to his officious guardian to be adopted should remain without effect and the ward should not be in a position to earn his living, the
officious guardian may be ordered to indemnify the ward for being unable to provide for his wants.

This indemnity shall consist in the necessary assistance to procure him a trade: all of which shall be without prejudice to the stipulations which might have been made in view of such circumstances. Civ. C. 361, 364, 1132, 1149, 1152.

370. An officious guardian who has had the administration of certain property of his ward, shall in all cases be bound to account therefor. Civ. C. 369.
TITLE NINTH.

OF PATERNAL AUTHORITY.

(Passed 24th March, 1803; promulgated 3rd April, 1803.)

371. A child at all ages owes honour and respect to his father and mother. Civ. C. 151.

372. He remains under their authority until his majority or his emancipation. Civ. C. 148, 476, 488.

373. The father alone exercises this authority during the marriage. Civ. C. 141.

374. A child cannot leave his father's house without the latter's consent, unless it be to enlist voluntarily after he has reached the full age of eighteen years.

375. A father who, for very serious reasons, is displeased with the conduct of a child, shall have the following means to correct him. Civ. C. 468.

376. If the child has not yet commenced his sixteenth year, the father can have him incarcerated during a period of time not exceeding one month: for that purpose the Presiding Justice of the Tribunal of the District must at his request issue an order of arrest. Civ. C. 380 et s., 468.

377. From the beginning of the child's sixteenth year,
until his majority or emancipation, the father can only ask that the child be incarcerated for six months at the utmost: he shall apply to the Presiding Justice of said Tribunal, who, after having conferred with the King's Attorney (Republic's Attorney), shall issue an order of arrest or refuse it, and may in the former case reduce the time of the incarceration asked for by the father. Civ. C. 380, 468.

378. In either case there shall be no writing and no judicial proceedings with the exception of the order of arrest itself, in which the reasons shall not be stated.

The father shall only be bound to sign an undertaking to pay all the expenses and to furnish proper support.

379. The father is always at liberty to reduce the time of incarceration ordered or applied for by him. If, after his liberation, the child again falls back into bad habits, the incarceration can be ordered again in the manner provided by the foregoing articles.

380. If the father has remarried, he shall be bound to comply with article 377 to have a child born of his first marriage incarcerated, even if the child is under sixteen years of age.

381. A mother who survives, and has not remarried, can only have a child incarcerated with the assistance of the two nearest relatives on the father's side, and after making application in accordance with article 377.

382. When the child has personal property, or when he has a trade, his incarceration can only take place upon an application in the manner provided by article 377, even if the child is less than sixteen years of age.

A child who is incarcerated can address a brief to the Attorney-General of the Royal Court (Court of Appeals). The latter shall make inquiries through the King's Attorney

C.N. H
(Republic's Attorney) of the Tribunal of First Instance, and shall make his report to the Presiding Justice of the Royal Court (Court of Appeals), who, after giving notice to the father, and having gathered full information, can cancel or amend the order made by the Presiding Justice of the Tribunal of First Instance.


384. The father, during the marriage, and after the dissolution of the marriage the survivor of the father and mother, shall have the enjoyment of the property of their children until the latter reach the full age of eighteen years, or until the emancipation which might take place before the age of eighteen years. Civ. C. 453, 476, 578, 582, 601, 632, 730, 1442.

385. The conditions of such enjoyment shall be:
1. Those to which usufructuaries are bound.
2. To feed, maintain and educate the children in accordance with their fortune.
3. To pay the arrears or interest on the capital.
4. To pay the funeral expenses and those of the last illness. Civ. C. 203, 600 et s., 2101.

386. Such enjoyment shall not belong to the father and mother against whom a divorce has been decreed, and it shall cease with respect to the mother if she marries again. Civ. C. 384.

387. It shall not extend to the property which the children may acquire by their work or in a separate business, nor to the property given or bequeathed on the express condition that the father and mother shall not have the enjoyment thereof. Civ. C. 389, 730.
TITLE TENTH.

OF MINORITY, OF GUARDIANSHIP, AND OF EMANCIPATION.

(Passed 26th March, 1803; promulgated 5th April, 1803.)

CHAP. I.

OF MINORITY.

388. A minor is an individual of either sex who has not yet reached the full age of twenty-one years. Civ. C. 144, 148, 1124, 1305 et s., 1314, 2195.

CHAP. II.

OF GUARDIANSHIP.

§ 1. Of the Guardianship of the Father and Mother.

389. A father during the marriage is the administrator of the property belonging personally to his minor children.

He is accountable for the property and the income of the things of which he has not the enjoyment; and for the property only of the things of which the law gives him the usufruct. Civ. C. 14, 141, 142, 384, 387, 477, 481, 1388.

390. After the dissolution of the marriage, caused by the natural or civil (d) death of the husband or wife, the

(d) Civil death was abolished by the law of 31st May, 1854.
guardianship of the minor children who are not emancipated belongs by right to the surviving father or mother. Civ. C. 394, 395, 405, 421, 444.

391. The father, nevertheless, may appoint a special counsel to the surviving mother who is guardian, without whose advice she cannot take any steps in connection with the guardianship.

If the father specifies the purposes for which the counsel is appointed, the guardian shall be able to act in all other matters without his assistance.

392. This appointment of a counsel can only be made in one of the following manners:—
1. By a last will;
2. By a declaration made either before a Justice of the Peace, attended by his clerk, or before notaries. Civ. C. 398, 969 et s.

393. If the wife is pregnant at the time of the husband's death, a curator ad ventrem shall be appointed by the family council.

Upon the birth of the child the mother shall become its guardian and the curator shall become by right its assistant guardian. Civ. C. 394, 395, 406 et s., 420.

394. The mother is not bound to accept the guardianship; nevertheless, and in case she refuses it, she must fulfil the duties thereof until she has had a guardian appointed. Civ. C. 390, 421.

395. If the mother who is guardian wishes to remarry, she must call together the family council before the celebration of the marriage, and such council shall decide whether she may retain the guardianship.

If she fails to issue this call she loses the guardianship by
right; and her new husband shall be jointly responsible for all that may follow in connection with the guardianship which she has unduly retained. Civ. C. 225, 372, 390, 405, 406, 407, 1200.

396. When the family council, after being duly called together, has maintained her as guardian, it shall necessarily give to the mother the second husband as joint guardian, and the latter shall become jointly responsible with the wife for the administration subsequently to the marriage. Civ. C. 406, 450, 1200.

§ 2. Of the Guardianship conferred by a Father or Mother.

397. The individual right to select a guardian who is a relative, or even a stranger, only belongs to the survivor of the father or mother. Civ. C. 390, 421, 505, 509.

398. Such right can only be made use of in the manner provided by article 392 and with the following exceptions and restrictions.

399. A mother who remarries and who is not continued as guardian of the children of her first marriage cannot select a guardian for them. Civ. C. 395.

400. When a mother who remarries and is continued as guardian has selected a guardian for the children of her first marriage, this selection shall only be valid if it is confirmed by the family council. Civ. C. 406 et s.

401. A guardian appointed by the father or mother is not bound to accept the guardianship unless he belongs to the class of persons upon whom, in the absence of such
special appointment, the family council might have conferred the guardianship. Civ. C. 421, 427.

§ 3. Of the Guardianship of Ascendants.

402. When no guardian has been appointed to a minor by the survivor of the father or mother, the guardianship belongs by right to the paternal grandfather, or, in his default, to the maternal grandfather, and so on upwards, and in such a way that the paternal ascendant shall always be preferred to the maternal ascendant in the same degree. Civ. C. 142, 421, 907.

403. If, in default of a paternal and maternal ascendant of a minor, the competition should exist between two ancestors of a higher degree, both belonging to the paternal line of the minor, the guardianship shall belong by right to the one of the two who is the paternal ancestor of the minor’s father.

404. If the same competition exists between two great-grandfathers in the maternal line, the appointment shall be made by the family council, which, nevertheless, can only select one of these two ancestors. Civ. C. 406 et s.

§ 4. Of the Guardianship conferred by the Family Council.

405. When a child who is a minor and not emancipated shall be without father or mother or guardian appointed by his father or mother or male ascendants, and also when the guardian of one of the classes above mentioned shall fall under one of the causes of exclusion hereafter referred to, or shall have been duly excused, the appointment of the guardian shall be made by the family council. Civ. C. 397, 402, 427, 442.

406. This council shall be called together at the request and upon the application of the relatives of the minor, of
his creditors, or of other interested parties, or even by the
Justice of the Peace of the minor’s domicil, of the own
accord and upon the own instigation of such Justice. Any
person may report to the Justice of the Peace the cause
necessitating the appointment of a guardian. Civ. C. 108,
407, 409.

407. A family council shall be composed, not counting
the Justice of the Peace, of six blood relatives, or relatives
by marriage, chosen as well in the county where the
guardianship takes rise as within a distance of two myria-
meters, and one-half of such relatives shall be on the
paternal side and one-half on the maternal side, following
the order of proximity in each line.

A blood relative shall be preferred to a relative by
marriage of the same degree; and among relatives of
the same degree the older shall be preferred to the younger.
Civ. C. 408, 409, 410, 413, 415, 735.

408. Brothers of whole blood of the minor and
husbands of sisters of whole blood shall alone be excepted
from the limitation in number set down in the foregoing
article.

If there are six or more of them, they shall all be
members of the family council, which shall be composed of
them alone, together with the widows of the ascendants and
the ascendants duly excused, if there are any.

If their number is less, the other relatives shall only be
called to complete the council. Civ. C. 407, 442.

409. When the blood relatives or relatives by marriage in
one or the other line shall not be sufficiently numerous on
the spot or within the distance designated by article 407,
the Justice of the Peace shall call the blood relatives
or relatives by marriage domiciled at a greater dis-
tance or citizens of the county known to have had
continuous relations of friendship with the minor's father or mother. Civ. C. 407.

**410.** The Justice of the Peace may, even if there is a sufficient number of blood relatives or relatives by marriage on the spot, allow citations to be issued to blood relatives or relatives by marriage who are of a nearer degree or of the same degree as the blood relatives or relatives by marriage present, whatever may be the distance at which they are domiciled. This, however, shall be done in such a way as to omit some of the latter, and so that the number mentioned in the foregoing articles shall not be exceeded.

**411.** The time to appear upon a given day shall be named by the Justice of the Peace, but so that there shall always be between the service of the citation and the day appointed for the meeting of the council an interval of three days at least when all the parties cited reside in the county, or within a distance of two myriameters.

Whenever certain of the parties cited are domiciled beyond that distance, the time shall be increased by one day for each three myriameters.

**412.** The blood relatives, relatives by marriage, or friends so called, shall be bound to appear in person or to be represented by a special attorney.

An attorney-in-fact cannot represent more than one person. Civ. C. 1984 et s.

**413.** Any blood relative, relative by marriage, or friend who has been called and who, without legitimate excuse, does not appear, shall undergo a fine which shall not exceed fifty francs and which shall be imposed by the Justice of the Peace without appeal.

**414.** If there is sufficient excuse, and it should be proper to wait for an absent member or to replace him; in such
case or in any other when the interests of the minor shall appear to require it, the Justice of the Peace may adjourn the meeting or postpone it.

415. The meeting shall be held by right at the office of the Justice of the Peace, unless he himself designates another place. The presence of three-fourths at least of the members called shall be necessary for deliberation. Civ. C. 407, 408.

416. The family council shall be presided over by the Justice of the Peace, who has a deliberative vote or a casting vote in case of division.

417. When a minor domiciled in France owns property in the colonies, or vice versa, the special administration of such property shall be given to a co-guardian.

In such case the guardian and co-guardian shall be independent and not responsible towards each other for their respective administration.

418. A guardian shall act and administer the property in such capacity from the day of his appointment if it has taken place in his presence; otherwise, from the day upon which the notice thereof has been given to him. Civ. C. 450 et seq.

419. Guardianship is a personal duty, which does not descend to the heirs of the guardian. These heirs shall only be responsible for the management of the person from whom they take; and if they are of full age they are bound to continue the same until a new guardian has been appointed. Civ. C. 724, 2003, 2010.
§ 5. *Of Assistant Guardians.*

420. In every case of guardianship there shall be an assistant guardian appointed by the family council. His duties shall be to protect the interests of the minor when they conflict with those of the guardian. Civ. C. 390, 426, 427 et s., 442 et s., 450, 457, 464, 470, 490, 1125, 2012, 2137 et s.

421. When the duties of guardian are awarded to a person of one of the classes mentioned in sections 1, 2 and 3 of the present chapter, the guardian, before assuming his duties, shall call a meeting of the family council, composed as is stated in section 4, to appoint an assistant guardian.

If the guardian has interfered with the management before this formality has been complied with, the family council, called together either at the request of the relatives, creditors, or other interested parties, or by the Justice of the Peace of his own accord, may, in case of fraud on the part of the guardian, take the guardianship away from him, without prejudice to any indemnity which may be due to the minor. Civ. C. 407 et s.

422. In all other kinds of guardianship the appointment of the assistant guardian shall take place immediately after the guardian is appointed.

423. The guardian shall never vote upon the appointment of the assistant guardian, who, except in the case of brothers of whole blood, shall be taken in the line to which the guardian does not belong.

424. An assistant guardian shall not by right take the place of the guardian in case of vacancy or if the guardianship is abandoned owing to the absence of the guardian;
but in such case he must have a new guardian appointed, and otherwise he shall be responsible for the damages which might result to the minor.

425. The duties of assistant guardian shall cease at the same time as the guardianship. Civ. C. 476, 488.

426. The provisions contained in sections 6 and 7 of the present chapter shall apply to assistant guardians. Nevertheless, a guardian cannot ask for the dismissal of an assistant guardian, nor can he vote at the family council called together for that purpose.

§ 6. Of Causes exempting from Guardianship.

427. Are exempt from being guardians:
The persons mentioned in Titles III., V., VI., VIII., IX., X. and XI. of the Act of 18th May, 1804;
The presiding Justices and Justices of the Court of "Cassation," the Attorney-General and the Assistant Attorneys of the same court;
The Prefects;
All citizens holding a public office in a different Department from the one in which the guardianship is constituted. Civ. C. 430 et s.

428. Are also exempt from being guardians:
Soldiers in active service and all other citizens engaged in a mission for the King (President of the Republic) outside of the territory of the Kingdom (Republic). Civ. C. 430 et s.

429. If the mission is not official and is contested, dispensation shall only be granted after the claimant has produced a certificate from the Minister to whose department the mission invoked as an excuse may belong.
430. Citizens of the classes mentioned in the foregoing articles who have accepted to be guardians subsequently to their filling the office, or being in the service, or being sent upon the missions exempting them therefrom, shall not be allowed to be released on that account. Civ. C. 438, 439.

431. Those, on the contrary, upon whom the said office, service or missions have been conferred subsequently to their acceptance and management as guardians, can, if they do not wish to remain guardians, call a meeting of the family council within one month to have somebody replace them.

If, at the expiration of the office, service or missions the new guardian asks to be released, or should the former guardian apply to become guardian once more, the family council may restore the guardianship to him.

432. No citizen who is not a blood relative or a relative by marriage can be compelled to accept to be guardian unless there should not be any blood relatives or relatives by marriage able to fill the guardianship within a distance of four myriameters. Civ. C. 438 et s.

433. Any individual of the full age of sixty-five years can refuse to be guardian. Any one who has been appointed before that age can ask to be released from being guardian when he becomes seventy years of age. Civ. C. 438 et s.

434. Any individual suffering from a serious infirmity, duly established, is exempt from being guardian.

He may even be discharged therefrom if such infirmity has come upon him since his appointment. Civ. C. 438 et s.

435. Two guardianships are a valid excuse for any person refusing a third one.
A person who, being a husband or a father, has already been entrusted with one guardianship, shall not be compelled to accept a second one, excepting that of his children. Civ. C. 438 et s.

436. Those who have five legitimate children are exempt from all guardianships excepting those of the said children.

Children who have died in active service in the armies of the King (of the Republic) shall always be counted for the purpose of giving right to that exemption.

The other children who have died shall only be counted if they have themselves left children then living. Civ. C. 438.

437. The birth of children during the guardianship does not authorize the guardian to resign.

438. If the guardian appointed is present at the meeting which confers the guardianship upon him, he must immediately present his excuses—as to which the family council shall decide—under penalty of any future claim on his part being rejected.

439. If the guardian appointed was not present at the meeting which has conferred the guardianship upon him, he can have the family council called together to decide as to his excuses.

The proceedings on his part for that purpose shall take place within a period of three days from the notice given to him of his appointment: this period shall be increased by one day for each distance of three myriameters from the place of his domicil to the place where the guardianship is constituted; after that time he is debarred. Civ. C. 407 et s.
440. If his excuses are rejected, he can apply to the Courts to have them admitted, but he shall be bound to act provisionally during the litigation. Civ. C. 438.

441. If he succeeds in being exempted from the guardianship, those who have rejected the excuse may be ordered to pay the cost of the proceedings.
   If he fails, he shall be ordered to pay them himself.

§ 7. Of Incapacity, of Exclusions and Dismissals from Guardianship.

442. The following persons cannot be guardians or members of a family council:—
   1. Minors, excepting the father or mother;
   2. Those who have been interdicted;
   3. Women, unless they are the mother or ascendants;
   4. All those who have, or whose father or mother have, a lawsuit with the minor in which the status of such minor, his fortune, or a considerable part of his property are involved. Civ. C. 371, 443, 444, 445, 495, 507.

443. A sentence to a degrading corporal punishment occasions by right exclusion from guardianship. It occasions dismissal in case of a guardianship previously conferred.

444. The following persons are also excluded from guardianship, and can even be removed if they fill such duties:
   1. Those whose conduct is notoriously bad;

445. No individual who has been excluded or removed from guardianship can be a member of a family council. Civ. C. 442 et s.
446. Whenever there shall be occasion for a removal from guardianship it shall be ordered by the family council called together at the instigation of the assistant guardian or by the Justice of the Peace of his own accord.

The latter cannot refrain from making this call in case of a formal requisition by one or more blood relatives, or relatives by marriage of the minor of the degree of first cousins or of a nearer degree. Civ. C. 406 et s., 420.

447. All resolutions of the family council pronouncing the exclusion or the removal of the guardian shall state the motives therefor, and shall only be passed after the guardian has been called or heard.

448. If the guardian adheres to the resolution, it shall be so stated, and the new guardian shall at once enter upon his duties.

If he objects, the assistant guardian shall apply to the Tribunal of First Instance to have the resolution confirmed, and the Tribunal shall render its decision subject to an appeal.

A guardian who has been excluded or dismissed may in such case sue the assistant guardian for the purpose of obtaining a decision maintaining him as guardian. Civ. C. 439.

449. The blood relatives or relatives by marriage who have asked that the meeting be called can take part in the suit, which shall be prepared and tried as an urgent case.

§ 8. Of the Administration of the Guardian.

450. A guardian shall have the care of the person of the minor, and shall represent him in all civil acts.

He shall administer his property as a prudent father, and shall be responsible for all damages resulting from his bad
management. He cannot purchase the property of the minor, nor lease it, unless the family council has authorized the assistant guardian to grant him a lease thereof. He cannot accept the assignment of any rights of, or claims against, his ward. Civ. C. 384, 406, 454, 578, 587, 602, 1596, 1718, 1999.

451. Within the ten days following the time his appointment has become known to him, the guardian shall apply for the removal of the seals, if they have been affixed, and shall immediately cause the inventory of the minor's property to be made, in the presence of the assistant guardian. If anything is due to him by the minor he must declare it in the inventory upon the requisition which the public officer is bound to make to him, and which shall be mentioned in an official report, and otherwise he shall forfeit his claim.

452. Within the month following the closing of the inventory the guardian shall have all the personal property, with the exception of such portion of it as the family council has authorized him to keep in kind, sold in the presence of the assistant guardian at a public auction sale made by a public officer and after notices and publications, which shall be mentioned in the official report of the sale. Civ. C. 1312.

453. Fathers and mothers, so long as they have the individual and lawful enjoyment of the property of the minor, are not obliged to sell the personal property if they prefer to keep it and return it in kind.

In such case, they shall cause an appraisement thereof to be made at its just value and at their own expense by an expert who shall be appointed by the assistant guardian and shall take oath in the presence of the Justice of the Peace. They shall pay the appraised value of the articles which they may not be able to return in kind.
454. At the time every guardian other than a father or mother begins his duties, the family council shall determine, upon a rough estimate and according to the importance of the property administered, the sum which the yearly expenses of the minor and those of the administration of his property may reach.

The same instrument shall specify whether the guardian is authorized to have one or more special and salaried administrators acting under his responsibility to assist him in his management. Civ. C. 1994.

455. The council shall decide positively at what amount the obligation for the guardian shall arise to invest the surplus of the income over expenses. Such investment must be made within a period of six months, after which the guardian shall owe interest if he has failed to invest. Civ. C. 1153, 1907.

456. If the guardian has not made the family council specify the amount at which he shall begin to invest, he shall owe interest on all sums not invested, however small they may be, after the expiration of the period mentioned in the foregoing article. Civ. C. 474, 1153.

457. A guardian, even if he or she is the father or mother, cannot borrow for the minor, nor convey or mortgage his real estate, without being authorized by the family council.

Such authorization shall only be granted in case of absolute necessity or of evident advantage.

In the first case, the family council shall only grant its consent after it has been established by an abridged account presented by the guardian that the funds, the movable articles and the income of the minor are insufficient.

The family council shall, in all cases, indicate the pieces C.N.
of real estate which shall first be sold, and all the conditions which it may deem useful. Civ. C. 460.

458. The decisions of the family council relating to that subject shall only be carried out after the guardian has applied for and has obtained the approval of the Tribunal of First Instance, which shall decide in the Judges' room after hearing the King's Attorney (Republic's Attorney).

459. The sale shall take place publicly at auction in the presence of the assistant guardian and before a member of the Tribunal of First Instance or of a notary appointed for that purpose, and after three notices have been posted at the usual places in the District for three consecutive Sundays.

Each of these notices shall be stamped and certified to by the Mayor of the county in which they have been posted.

460. The formalities required by articles 457 and 458 for the conveyance of property of a minor do not apply in case a judgment should have ordered a public sale upon the application of one of the joint owners.

However, in that case the public sale shall only take place in the manner specified in the foregoing article: outsiders shall necessarily be admitted. Civ. C. 465, 509, 823, 827, 838 et s., 1686, 1687.

461. A guardian cannot accept or refuse a succession falling to the minor, without the previous consent of the family council. The acceptance shall only be made under benefit of inventory. Civ. C. 776, 784, 793, 843.

462. In case the succession refused in the name of the minor should not have been accepted by any one else, it can again be taken up, either by the guardian, authorized thereto by a new resolution of the family council, or by the
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minor, if he has become of age; but only in the condition in which it may be at the time it is taken up again, and the sales and other acts which have lawfully taken place during the time it remained untaken cannot be attacked. Civ. C. 790.

463. A donation made to a minor can only be accepted by the guardian with the consent of the family council. It shall produce the same effect with respect to a minor as with respect to a person of full age. Civ. C. 935, 940.

464. No guardian can institute an action before the Courts relating to the rights of a minor to real estate, nor acquiesce in an action relating to the same rights, without the consent of the family council. Civ. C. 407 et s., 420, 1125.

465. A guardian shall require the same consent to bring about a division; but he may, without such consent, defend to an action for division brought against the minor. Civ. C. 460, 817.

466. In order that a division may produce, with respect to the minor, the same effect as between persons of full age, it must take place judicially, and previously thereto an appraisement shall be made by experts appointed by the Tribunal of First Instance of the place where the succession becomes open.

The experts, after taking the oath in the presence of the Presiding Justice of the same Tribunal, or of any other Judge delegated by him, to do their work well and faithfully, shall make a division of the estates and form shares which shall be drawn in the presence either of a member of the Tribunal or of a notary appointed by him, who shall deliver the shares.

Any other division shall be considered as only provisional. Civ. C. 824 et s., 834, 840, 1125, 1304, 1338.
467. A guardian can only compromise in the name of the minor after being authorized by the family council, and with the advice of three jurists appointed by the King's Attorney (Republic's Attorney) of the Tribunal of First Instance.

The compromise shall only be valid if it has been confirmed by the Tribunal of First Instance after hearing the King's Attorney (Republic's Attorney). Civ. C. 1304, 1312, 1314, 2045.

468. A guardian who has serious reasons to complain of the minor's conduct can present his grievances to the family council, and if he is authorized by the same, he may apply to have the minor incarcerated in accordance with what has been enacted in this respect under the Title Of Paternal Authority. Civ. C. 376 et s.


469. Every guardian is accountable for his administration when it comes to an end. Civ. C. 451, 471, 472, 475, 480, 509, 1319, 1993, 2121, 2135 et s.

470. Any guardian who is not the father or mother can be compelled, even during the guardianship, to furnish to the assistant guardian statements of account of his administration at the times which the family council may have thought proper to specify; nevertheless the guardian cannot be compelled to furnish more than one in each year.

These statements of account shall be prepared and furnished without charge on unstamped paper and without any judicial formality. Civ. C. 396.

471. The final accounts of the guardian shall be furnished at the minor's expense when he has become of age or has obtained his emancipation. The guardian shall advance the expenses therefor.
The guardian shall be allowed all expenses sufficiently warranted and made for a useful purpose. Civ. C. 476, 480, 488.

472. Any agreement entered into between the guardian and the minor who has become of age shall be void unless detailed accounts have previously been rendered and proper vouchers furnished: all of which shall be established by a receipt from the one receiving the accounts ten days at least before the agreement. Civ. C. 469, 907, 2045.

473. If the accounts give rise to controversies, they shall be brought forward and decided as other controversies in civil matters.

474. The sum which the balance due by the guardian may reach shall bear interest, without demand, from the day of the closing of the accounting. The interest which might be due to the guardian by the minor shall only begin to run from the day of the demand for payment which has followed the closing of the accounting. Civ. C. 1907.

475. All actions in favour of the minor against his guardian relating to guardianship matters are outlawed at the end of ten years from the time such minor becomes of age. Civ. C. 472, 942, 1304 et s., 2045, 2135.
Chap. III.
Of Emancipation.

476. A minor is emancipated by right by his marriage. Civ. C. 485, 1388.

477. A minor, even unmarried, can be emancipated by his father, or in default of his father, by his mother, when he has reached the full age of fifteen years. Such emancipation takes place upon the sole declaration of the father or mother, received by the Justice of the Peace attended by his clerk. Civ. C. 488.

478. A minor who remains without a father or mother, can also be emancipated, but only at the full age of eighteen years, if the family council deems that he is worthy of it.

In such a case, the emancipation shall result from the resolution authorizing it and from the declaration which the Justice of the Peace, as president of the family council, has made in the same instrument to the effect that the minor is emancipated. Civ. C. 406 et s., 485 et s.

479. When a guardian has not taken any steps for the emancipation of the minor, as stated in the foregoing article, and when one or more blood relatives or relatives by marriage of the minor of the degree of first cousin or of nearer degrees deem that he is worthy of being emancipated, they can petition the Justice of the Peace to call together the family council to decide thereupon.

The Justice of the Peace must comply with such request.

480. The guardian's accounts shall be rendered to the emancipated minor, assisted by a curator, who shall be appointed for him by the family council. Civ. C. 467, 471.
481. An emancipated minor can execute leases, of which the duration does not exceed nine years: he can receive his income, can give discharges therefor, and can perform all acts of pure administration, without having the right to rescind these acts if no such right existed in favour of a person of full age. Civ. C. 1305 et s., 1718, 1990.

482. He cannot institute an action relating to real estate, nor defend in such an action, nor receive a capital, nor give a discharge therefor, without the assistance of his curator, who, in the latter case, shall watch over the investment of the capital received. Civ. C. 840.

483. An emancipated minor cannot borrow for any cause whatever without a resolution of the family council, confirmed by the Tribunal of First Instance, after hearing the King’s Attorney (Republic’s Attorney). Civ. C. 1124, 1305, 1314.

484. Nor can he sell or convey his real estate or perform any acts other than those of pure administration, without following the rules set down for a minor who has not been emancipated.

As regards the obligations which he has assumed owing to purchases or otherwise, they shall be reduced in case of exaggeration: for that purpose the Tribunals shall take into account the minor’s fortune, the good or bad faith of the persons who have dealt with him, the usefulness or uselessness of the expenses. Civ. C. 457 et s., 461 et s., 467, 481, 903, 1095, 1305, 1312 et s.

485. Every emancipated minor whose engagements have been reduced in accordance with the foregoing article may be deprived of the benefit of emancipation, which shall be withdrawn, and the same formalities shall be complied with as were followed to confer it. Civ. C. 477 et s.
486. A minor shall be replaced under guardianship from the day the emancipation has been revoked and shall so remain until he becomes of full age.

487. An emancipated minor who has a trade is supposed to be of age as to the matters relating to such trade. Civ. C. 1308.
TITLE ELEVENTH.

OF MAJORITY, OF INTERDICTION, AND OF JUDICIAL COUNSEL.

(Passed 29th March, 1803; promulgated 8th April, 1803).

CHAP. I.

ON MAJORITY.

488. Majority takes place at the full age of twenty-one years; at that age one can perform all the acts of civil life, with the exception of the restrictions imposed under the Title Of Marriage. Civ. C. 148 et s., 372, 1313.

CHAP. II.

OF INTERDICTION.

489. A person of full age who is in a usual state of imbecility, insanity or madness, shall be interdicted, even if such condition is accompanied by lucid moments. Civ. C. 512, 901, 1124, 1125.

490. Any relative is allowed to apply for the interdiction of his relative. In like manner, any married person may do the same for his wife or her husband. Civ. C. 420.

491. In case of madness, if the interdiction is not applied
for by the husband or wife or the relatives, the King's Attorney (Republic's Attorney) must do so, and in cases of imbecility or insanity, he can likewise apply for the same against a person who has no husband or wife or parents known.

492. All applications for interdiction shall be made to the Tribunal of First Instance.

493. Acts of imbecility, insanity or madness shall be stated in writing. Those who apply for the interdiction shall produce the witnesses and papers.

494. The Tribunal shall order the family council, composed in the manner specified in section 4 of chapter II. of the Title of Minority, of Guardianship and of Emancipation, to give its opinion on the condition of the person whose interdiction is sought for. Civ. C. 407 et s.

495. Those who have applied for the interdiction cannot form part of the family council; nevertheless, the husband or wife and the children of the person whose interdiction is sought for can be admitted without having the power to vote.

496. After having received the opinion of the family council, the Tribunal shall examine the defendant in the Judges' room: if he cannot appear there, he shall be examined at his home by one of the Judges, appointed for that purpose, attended by his clerk. In all cases, the King's Attorney (Republic's Attorney) shall be present at the examination.

497. After the first examination, the Tribunal shall, if necessary, appoint a temporary administrator to look after the person and property of the defendant.
498. A judgment upon an application for interdiction can only be rendered at a public sitting, after the parties have been heard or summoned.

499. If the Tribunal rejects the application for interdiction, it can, nevertheless, if the circumstances require it, order that the defendant shall no longer be allowed to go to law, compromise, borrow, receive a capital or give discharges therefor, convey or mortgage his property, without the assistance of a counsel, who shall be appointed to him by the same judgment. Civ. C. 513 et s.

500. In case of appeal from a judgment rendered in the first instance, the Royal Court (Court of Appeals), may, if it deems it necessary, again examine the person whose interdiction is applied for, or have him examined by a commissioner. Civ. C. 496.

501. All decrees or judgments ordering interdiction or the appointment of a counsel shall, at the instigation of the plaintiffs, be docketed, served upon the parties, and recorded, within ten days, among the notices which must be posted in the Court room and in the offices of the notaries of the District.

(Law of 16th March, 1893.)—A short extract of the judgment or decree shall also be forwarded by the solicitor who has obtained it to the clerk's office of the Tribunal of the defendant's place of birth, within one month from the time the decision has acquired the effect of a final decision. Such extract shall be entered by the clerk of the Court within a period of fifteen days upon a special register, which everybody may examine and obtain copies of. The clerk of the Court shall, within a new period of fifteen days, forward to the solicitor a certificate showing that this requirement has been fulfilled.

In cases of individuals born abroad, the decisions shall
be entered in the same manner, and within the same time, on a register kept in the clerk's office of the Tribunal of the Seine: such register shall also contain the decisions relating to persons born in the French colonies, independently of the register which shall be kept in the clerk's office of the place of their origin.

Any violation of the foregoing provisions committed by the clerks of the Court or the solicitors shall be punished by a fine of fifty francs, without prejudice to all damages. Civ. C. 502.

502. An interdiction or the appointment of a counsel shall produce its effect from the day of the judgment. All acts performed subsequently by the interdicted person or without the assistance of a counsel, shall be void by right. Civ. C. 499, 503, 901, 970, 1108, 1124, 1125, 1304, 1312, 1328, 1351, 2003.

503. Acts previous to the interdiction can be annulled if the cause of the interdiction notoriously existed at the time these acts were performed. Civ. C. 505, 1108, 1109.

504. After the death of an individual, the acts performed by him can only be attacked on account of insanity if his interdiction had been pronounced or applied for before his death; unless the proof of insanity results from the very act which is attacked. Civ. C. 901, 1109, 1304.

505. If there is no appeal from the judgment of first instance ordering the interdiction, or if such judgment is confirmed on appeal, the appointment of a guardian and of an assistant guardian for the interdicted person shall be made according to the rules set forth under the Title Of Minority, of Guardianship, and of Emancipation. The temporary administrator shall cease his duties and shall render
his accounts to the guardian if he is not himself the guardian. Civ. C. 390, 405 et s., 501, 509.

506. A husband is by right the guardian of his interdicted wife. Civ. C. 213 et s.

507. A wife can be appointed the guardian of her husband. In that case the family council shall regulate the form and conditions of the administration, but the wife who considers that she has been wronged by the decision of the family council may seek her remedy before the Courts. Civ. C. 442, 447, 495.

508. With the exception of the husband or wife, the ascendants and descendants, no one shall be compelled to retain the guardianship of an interdicted person for more than ten years. At the expiration of that time the guardian may apply to be replaced and is entitled to have somebody take his place.

509. An interdicted person is assimilated to a minor as to his person and as to his property: the laws on minors shall apply to guardianships of interdicted persons. Civ. C. 388 et s., 450 et s., 467, 2135 et s.

510. The income of an interdicted person must be specially used to better his condition and hasten his recovery. The family council may direct that he be taken care of at his residence or be placed in an asylum or even in a hospital, according to the symptoms of his disease and the amount of his fortune. Civ. C. 407 et s., 454, 507.

511. When the marriage of a child of an interdicted person is contemplated, the dowry or advancement upon the estate, and other matrimonial agreements, shall be settled according to the opinion of the family council, confirmed by
the Tribunal upon the findings of the King's Attorney (Republic's Attorney). Civ. C. 1095, 1387.

512. Interdiction ceases with the causes which have given rise to it. Nevertheless, the withdrawal thereof shall only be obtained by following the rules set down to obtain an interdiction, and the interdicted person can only resume the use of his rights after a judgment ordering the withdrawal of such interdiction. Civ. C. 492, 494, 498.

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CHAP. III.

OF JUDICIAL COUNSEL.

513. Spendthrifts can be prohibited from going to law, compromising, borrowing, receiving a capital, giving discharge therefor, conveying or mortgaging their property, without the assistance of a counsel who shall be appointed to them by the Tribunal. Civ. C. 215, 218, 222, 499, 514, 1124.

514. The prohibition to act without the assistance of a counsel can be applied for by those who have the right to ask for interdiction; their application shall be examined and decided in the same manner.

This prohibition can only be withdrawn by following the same rules. Civ. C. 490, 496.

515. No judgment in matters of interdiction or appointment of counsel shall be rendered, either at first instance or on appeal, without the findings of the Public Prosecutor.
Book II.

OF PROPERTY, AND OF DIFFERENT KINDS OF OWNERSHIP.

Title First.

OF VARIOUS SORTS OF PROPERTY.
(Passed 25th January, 1804; promulgated 4th February, 1804.)

516. All property is either personal or real.

Chap. I.

Of Real Estate.

517. Property is real estate either by its nature, or by its destination, or on account of the object to which it applies. Civ. C. 2118.

518. Lands and buildings are real estate by their nature.

519. Windmills or watermills constructed on pillars and forming part of a building are also real estate by nature. Civ. C. 528, 531.

520. Crops standing on roots and the fruit of trees not yet gathered are also real estate.
As soon as the crops are cut and the fruit gathered, even if they have not yet been taken away, they become personal property.

If only a part of the crop is cut, this part alone becomes personal property. Civ. C. 518, 521, 526, 548, 1141, 1583, 1690.

521. Copse and forest trees divided into sections to be cut at regular times, only become personal property as the trees are cut down. Civ. C. 518, 590, 1403.

522. Cattle which the owner of the land delivers to the farmers for its cultivation, whether they are appraised or not, are supposed to be real estate so long as they remain on the land owing to an agreement.

Cattle leased to others than farmers are personal property. Civ. C. 564, 1800 et s.

523. Pipes used for conveying water through a house or other hereditament are real estate and form part of the property to which they are fastened.

524. The things which an owner of a piece of property has placed thereupon for the use or cultivation of such property are real estate by destination.

Thus, the following things are real estate by destination when they have been so placed by the owner for the use and cultivation of the property:

- Cattle used for farming purposes;
- Farming implements;
- Seeds given to farmers or settlers paying rent in kind;
- Pigeons belonging to the pigeon-house;
- Warren rabbits;
- Beehives;
- Fish in the ponds;
- Wine presses, boilers, stills, vintage tubs and barrels;
OF VARIOUS SORTS OF PROPERTY.

The necessary implements for working ironworks, paper-mills, and other factories;
Straw and manure.
All personal articles which the owner has placed upon the property to remain there perpetually are also real estate by destination. Civ. C. 528, 564, 1164, 2114, 2118, 2279.

525. An owner is supposed to have placed personal articles upon his estate to remain there perpetually when they are fastened with plaster or mortar or cement, or when they cannot be removed without being broken or damaged or without breaking or damaging the part of the property to which they are affixed.
Mirrors of an apartment are supposed to have been placed to remain perpetually when the back to which they have been fastened forms part of the woodwork.
The same rule applies to pictures and other ornaments.
As to statues, they are real estate when they are placed in a recess made expressly to receive them, even if they can be removed without being broken or damaged. Civ. C. 524, 1350 et s.

526. The following things are real estate on account of the object to which they apply:—
The usufruct of immovable things;
Servitudes or land burdens;
All actions for the purpose of recovering real estate. Civ. C. 578, 637 et s., 2118.

C.N. K
OF VARIOUS SortS OF PROPERTY.

Chap. II.

Of Personal Property.

527. Property is personal by its nature or by regulation of law. Civ. C. 2279.

528. Bodies which can move from one place to another, whether they move themselves, such as animals, or whether they cannot move without the assistance of extraneous power, such as inanimate things, are personal property by nature. Civ. C. 522, 1606.

529. Bonds and shares relating to sums due or to movable articles, shares or interests in financial, commercial, or manufacturing companies, even if real estate is owned by the companies in connection with these enterprises, are personal property by regulation of law. Such shares or interests are considered personal property only with respect to each shareholder as long as the company lasts.

Perpetual annuities or annuities for life, whether paid by the Government or by private individuals, are personal property by regulation of law. Civ. C. 517, 530, 2219.

Article 530 was passed 21st March, 1804, and promulgated 31st of same month.

530. Any perpetual annuity granted as consideration for the price of sale of real estate, or being the condition for the assignment of real estate, with or without consideration, is essentially redeemable.

Nevertheless, creditors shall have the right to make the terms and conditions of the redemption.

They are also allowed to stipulate that the annuity cannot be redeemed before a certain time, which can never exceed thirty years; any stipulation to the contrary is void. Civ. C. 1911, 2103.
531. Boats, ferry-boats, ships, mills, floating baths, and generally all works which are not fastened to pillars and do not form part of a building, are personal property. An attachment against certain of these things may, nevertheless, owing to their importance, be subject to certain special provisions, as shall be explained in the Code of Civil Procedure.

532. Materials coming from a building which has been torn down, those gathered for erecting a new building, are personal property until they are used by the workmen for construction.

533. The word movable used alone in provisions made by law or by man, without any other addition or designation, does not include money in cash, precious stones, book debts, books, medals, instruments for scientific or artistic purposes and those of a trade, clothes, horses, carriages, arms, grain, wines, hay, and other provisions; neither does it include what forms part of a business. Civ. C. 535, 1010.

534. The words furnishing movables only include furniture intended for use and ornamentation of dwellings, such as hanging tapestries, beds, seats, mirrors, clocks, tables, china, and other articles of this kind.

Pictures and statuary which form part of the furniture of a lodging are also included, but not the collections of pictures which may be in picture galleries or special rooms.

The same rule applies to china, of which such only falls under the denomination of furnishing movables as forms part of the decoration of the dwelling.

535. The term personal property, that of furniture or movable effects, comprise generally everything which is con-
sidered as a movable according to the rules above set forth.

A sale or donation of a furnished house includes only the furnishing movables.  Civ. C. 948, 1350, 1352.

536. A sale or donation of a house with everything it contains does not include the money in cash, nor the book debts, nor the other rights as to which the deeds may have been deposited in the house; all other movable effects are included therein.  Civ. C. 1350, 1352.

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Chap. III.

Of Property in Connection with Those Who Own It.

537. Private individuals have the free disposal of what belongs to them, subject to the restrictions established by law.

Property which does not belong to private individuals is administered and can only be conveyed in the manner and according to the special rules which apply to it. Civ. C. 217, 450, 499, 513, 544, 1449, 1554, 1576, 1594, 1712.

538. Ways, roads, and streets, of which the State has charge, rivers and navigable streams, alluvion and derelictions of the sea, ports, harbours, anchorages, and generally all parts of French territory which cannot become private property are considered as forming part of the Public Domain. Civ. C. 714, 1128, 1598, 2226.

539. All property which is vacant or is without an owner, and the property of persons who die without heirs or whose successions are abandoned, belong to the Public Domain. Civ. C. 713, 811 et s., 2227.
540. Gates, walls, trenches, and bulwarks of fortified cities and fortresses also form part of the Public Domain. Civ. C. 2226.

541. The same rule applies to lands, fortifications, and bulwarks of cities which are no longer fortified places; they belong to the State if they have not been lawfully conveyed or if the State's right of ownership has not been outlawed. Civ. C. 2227.

542. County property is that to the revenue of which the inhabitants of one or several Counties have a positive right. Civ. C. 537, 650, 2227.

543. One may have a right of ownership or simply a right of enjoyment of property, or only the right to claim land burdens thereon. Civ. C. 544 et s., 578, 637 et s.
Title Second.

Of Ownership.

(Passed 27th January, 1804; promulgated 6th February, 1804.)

544. Ownership is the right to enjoy and dispose of things in the most absolute manner, provided they are not used in a way contrary to law or regulations. Civ. C. 537, 636 et s., 644 et s., 686, 913, 1382, 1383.

545. No one can be compelled to give up his property, unless it is for public use and for a proper indemnity previously given. Civ. C. 537, 643, 682.

546. The ownership of personal or real property gives the right to everything it produces and to what is added to it accessorially, either naturally or artificially.

This right is called right of accession. Civ. C. 544, 551, 552, 1018 et s., 1352, 1382, 1614, 1692, 2204, 2229.

Chap. I.

As to the Right of Accession to What a Thing Produces.

547. Natural or cultivated fruits of the earth;
Civil fruits (a);
The young of animals;
Belong to the owner by right of accession. Civ. C. 583 et s.

(a) Civil fruits are the revenue derived by operation of the law or by agreement.
548. Fruits produced by a thing only belong to the owner provided he repays the expenses of ploughing, sowing and labour done by third parties. Civ. C. 2102.

549. A simple possessor only acquires the fruits if he possesses in good faith; if not, he is bound to return the revenue with the thing itself to the owner who claims it. Civ. C. 550, 555, 1378 et s., 2102 et s., 2268, 2278, 2279.

550. A possessor is in good faith when he possesses as owner under a deed transferring property of which the flaws are unknown to him. He ceases to be in good faith from the time these flaws become known to him. Civ. C. 1378, 2265 et s.

Chap. II.

Of the Right of Accession to what adds itself to or becomes embodied with a thing.

551. Everything which adds itself to or becomes embodied with a thing belongs to the owner according to the rules hereafter set forth. Civ. C. 546, 1615.

§ 1. Of the Right of Accession in Connection with Real Estate.

552. Ownership of the land carries with it ownership of what is upon and what is below it.

An owner can make upon it all the plantations and constructions which he deems proper, with the exceptions set forth in the Title Of Servitudes or Land Burdens.

He can make below it all constructions and excavations
which he deems proper, and draw from these excavations all the products which they may give, with the exception of the restrictions resulting from the laws and the regulations relating to mines and from the police laws and regulations. Civ. C. 544, 553, 664, 671 et s., 1859.

553. All constructions, plantations, and works on a piece of land, or below it, are supposed to have been made by the owner at his expense, and to belong to him if the contrary is not proved; without prejudice to the ownership either of a subterranean work under another person's building or to any part of the building which a third party might have acquired or might acquire by prescription. Civ. C. 690, 1350, 1352, 2262.

554. An owner of land who has made constructions, plantations, and works thereon with materials which do not belong to him must pay the value thereof; he can also be ordered to pay damages, if proper; but the owner of the materials cannot remove them. Civ. C. 1149.

555. When the plantations, constructions, or works have been made by a third party and with his materials, the owner of the property has the right to keep them or to compel such third party to remove them.

If the owner of the land asks to have the plantations or constructions removed it shall be done at the expense of the person who has made them, without giving him any indemnity, and he can even be ordered to pay damages, if proper, for the injury which the owner of the land may have suffered.

If the owner prefers to keep the plantations and constructions he must repay the value of the materials and the price of the labour, without regard to the increase or loss in value which may have been occasioned to the land. Nevertheless, if the plantations, constructions, or works have
been made by a third party who has been ejected and who has not been ordered to return the fruits because he was in good faith, the owner cannot ask that the said works, plantations, and constructions be removed; but he may at his choice either reimburse the value of the materials and the price of the labour or repay a sum equal to the additional value which the property has acquired. Civ. C. 546, 549, 551, 553, 1341, 1372, 1375, 1381, 2204.

556. Accretion and increase which add themselves successively and imperceptibly to land bordering a river or stream are called alluvion.

Alluvion belongs to the owner of the riparian property, whether it be in connection with a river or a stream navigable or not for boats or rafts; provided, however, the owner leaves in the first case a way or towing-path in accordance with the regulations. Civ. C. 538, 546, 551, 557, 560, 561.

557. The same rule applies to derelictions formed by running water which withdraws imperceptibly from one of its banks and encroaches upon the other: the owner of the bank uncovered gains the advantage of the alluvion, and the riparian owner on the opposite bank cannot claim the land which he has lost.

This right does not apply to derelictions of the sea. Civ. C. 538, 563.

558. Alluvion does not take place in connection with lakes and ponds, and the owner thereof always retains the land covered by the water when it reaches the height of the outlet of the pond, even if the volume of water should decrease.

On the other hand, the owner of a pond does not acquire any rights to the riparian lands which the water covers in cases of extraordinary rise. Civ. C. 2229, 2257.
559. If a river or a stream, navigable or not, carries away, owing to a sudden irruption, a considerable part of a riparian field which can be identified, and carries it towards a lower field or to the opposite bank, the owner of the part taken away can claim his property; but he is bound to bring his action within the year, after which time it shall not lie, unless the owner of the field to which the part carried away has been added has not yet taken possession of it. Civ. C. 538, 2227.

560. Islands, islets, accretions, which are formed in the beds of rivers or streams navigable for boats or rafts, belong to the State if there is no title or prescription to the contrary. Civ. C. 538, 2227.

561. Islands and accretions which are formed in rivers not navigable for boats or rafts, belong to the riparian owner on the side where the island is formed: if it is not formed on one side, it belongs to the riparian owners on both sides from the line supposed to be drawn in the middle of the river.

562. If a river or stream, by opening for itself a new arm, cuts away and surrounds the field of a riparian owner and makes an island of it, such owner retains the ownership of his field although the island is formed in a river or stream navigable for boats or rafts.

563. If a river or stream navigable for boats or rafts opens for itself a new bed by abandoning the old one, the owners of the land newly covered take by way of compensation the old bed which has been abandoned, each one in proportion to the land which has been taken away from him.

564. Pigeons, rabbits and fish which go to another
pigeon-house, warren or pond, belong to the owner thereof, unless they have been attracted by fraud or by some device. Civ. C. 524, 1382, 2268.

§ 2. Of the Right of Accession in connection with personal Property.

565. When the right of accession applies to two movable things belonging to two different owners, it is entirely governed by the principles of natural equity.

The following rules shall be used as examples to enable the Judge to decide unforeseen cases according to special circumstances. Civ. C. 528 et s., 2279.

566. When two things, belonging to different owners, have been so joined together as to form one whole, but, nevertheless, can be taken apart so that one may exist without the other, the whole belongs to the owner of the thing which forms the principal part, on condition of paying to the other owner the value of the thing thus added.

567. The part to which the other has been added, for the use, ornamentation or completion of the first, is considered the principal one.

568. Nevertheless, when the thing added is of much more value than the principal thing and when it has been added without the knowledge of the owner, the latter may ask that the thing added be removed, for the purpose of being returned to him, even if the thing to which it has been added might be damaged thereby. Civ. C. 815.

569. If of two things put together to make one whole, one cannot be considered as the accessory of the other, the one which has the greater value or volume is considered the principal thing, provided they are of about the same value.
570. If a mechanic or any other person whatever has used material which does not belong to him, for the purpose of making a thing of a new kind, whether or not the material can resume its original form, the person who was the owner thereof has the right to claim the thing which has been so made, by reimbursing the price of workmanship. Civ. C. 571, 1787 et s., 2073.

571. If, however, the workmanship is so important that it greatly exceeds the value of the material used, then the work shall be considered the principal part and the workman shall have the right to retain the thing upon which he has worked by reimbursing to the owner the price of the material.

572. When a person has made use partly of material belonging to himself, partly of material not belonging to himself, to make a thing of a new kind, and when neither of these two materials have been entirely destroyed but cannot be separated without disadvantage, the thing belongs in common to both owners, to the one on account of the material which belongs to him, and to the other on account both of the material belonging to him and the price of his workmanship. Civ. C. 815, 1686.

573. If a thing has been made by a mixture of several materials belonging to different owners but of which none can be considered as the principal material, the person without whose knowledge the materials have been mixed can ask that they be divided if they can be separated.

If the materials can no longer be separated without disadvantage, the owners acquire the property in common in proportion to the quantity, the quality and the value of the material belonging to each of them. Civ. C. 815, 1686.

574. If the material belonging to one of the owners
should be far superior to the other in quantity and value, then the owner of the material which is superior in value may claim the thing produced by the mixture, by reimbursing to the other the value of his material.

575. When a thing remains in common between the owners of the materials of which it has been made, it must be sold at auction for their common benefit. Civ. C. 815, 1686.

576. In all cases in which the owner of material which has been used without his knowledge to make a thing of a different kind has the right to claim the ownership of such thing, he can at his choice either ask that the material be returned to him in same kind, quantity, weight, measure and quality, or ask for the value thereof.

577. Those who have made use of materials belonging to others without their knowledge can also be ordered to pay damages if there is occasion therefor, without prejudice to the proceedings which may be brought by extraordinary means, should circumstances require it. Civ. C. 1149.
TITLE THIRD.

OF USUFRUCT, OF USE AND OF HABITATION.

(Passed 30th January, 1804; promulgated 9th February, 1804.)

CHAP. I.

OF USUFRUCT.

578. Usufruct is the right to enjoy things of which another has the ownership, in the same manner as the owner himself, but on condition of not altering the substance thereof. Civ. C. 587 et s., 600, 1658, 2108, 2118.

579. Usufruct is established by law or by a person's wish. Civ. C. 384, 754, 899, 917, 949, 1401, 1403, 1422, 1530, 1549.

580. Usufruct can be established absolutely, or upon a certain day, or conditionally. Civ. C. 1168.

581. It can be established on all kinds of personal property or real estate. Civ. C. 587, 588.

§ 1. Of the Rights of a Usufructuary.

582. A usufructuary has the right to the enjoyment of all kinds of fruits, whether natural, cultivated, or civil, which the thing of which he has the usufruct can produce. Civ. C. 578, 582, 583 et s., 1582.

583. Natural fruits are those which result from the
spontaneous production of the earth. The increase and young of cattle are also natural fruits.

Cultivated fruits of land are those obtained by cultivation. Civ. C. 547 et s., 1802, 1811.

584. Civil fruits are the rents of houses, the interest on sums due, and payments of annuities.

The prices of leases on shares are also included in the class of civil fruits. Civ. C. 1153, 1905, 1909, 1980.

585. Natural and cultivated fruits hanging from branches or standing upon roots when the usufruct begins, belong to the usufructuary.

Those which are in the same state when the usufruct comes to an end belong likewise to the owner, without compensation from either side for ploughing and sowing, but also without prejudice to the portion of fruits which might belong to the settler paying rent in kind if there was such a settler at the beginning or at the termination of the usufruct. Civ. C. 590, 1571.

586. Civil fruits are supposed to be gained day by day and belong to the usufructuary in proportion to the duration of his usufruct. This rule applies to the prices of leases on shares as well as to rents of houses and other civil fruits. Civ. C. 1571, 1905, 1909, 1980.

587. If a usufruct includes things which cannot be used without being consumed, such as money, grain, liquors, the usufructuary has the right to use them, but on condition of returning others in like quantity, quality and value, or their estimation at the end of the usufruct. Civ. C. 617, 1532.

588. A usufruct of a life annuity also gives to the usufructuary during the continuance of his usufruct the right to receive the payment of the annuities without being bound to return anything. Civ. C. 1586, 1968.
589. If the usufruct includes things which, without being consumed at once, are subject to be damaged little by little by use, such as clothes, articles of furniture, the usufructuary has the right to make use of them for the purpose for which they are intended and is only bound to return them at the end of the usufruct in the condition in which they are, unless damaged through his fault or neglect. Civ. C. 950, 1566.

590. If the usufruct includes underwood, the usufructuary is bound to follow the order and quantity of sections to be cut, in accordance with the arrangements or the uniform customs of the owners; but the usufructuary or his heirs are not entitled to any indemnity for the ordinary sections, either of underwood, staddles, or forest trees, which have not been cut during his enjoyment.

Trees which can be removed from a nursery without damaging it only form part of the usufruct on condition by the usufructuary of complying with the customs of the place in replacing them. Civ. C. 595, 1403.

591. A usufructuary also has the benefit, but always by following the periods and customs of the former owner, of all sections of forest trees which are regularly cut, whether the sections are cut periodically on a certain extent of land, or whether a certain quantity of trees is taken indiscriminately on the whole surface of the estate.

592. In all other cases a usufructuary cannot touch the forest trees: he can only use, for the purpose of making the repairs to which he is bound, the trees which have been torn down or broken by accident; he can even have trees cut down for that purpose, if necessary, provided he has had the necessity of so doing established with the owner.

593. He can take in the woods poles for vines; he can also take from the trees what they bear annually or periodi-
all of which shall be done in accordance with the customs of the country or the habits of the owners. Civ. C. 583.

594. Fruit trees which die, even those which are torn down or broken by accident, belong to the usufructuary, on condition of replacing them by others.

595. A usufructuary may keep the enjoyment to himself or lease it to others, or even sell or assign his right, without consideration. If he leases it, he must comply, as to the periods when the leases must be renewed and as to their duration, with the rules established for the husband with respect to the property of the wife under the Title Of Marriage Contracts, and of the Respective Rights of Husband and Wife. Civ. C. 1429, 1430.

596. A usufructuary has the enjoyment of the increase resulting from alluvion to the thing of which he has the usufruct. Civ. C. 556.

597. He has the enjoyment of the rights to servitutes, of the rights of way, and generally of all rights which an owner may enjoy, and he enjoys them in the same way as the owner himself. Civ. C. 578, 637 et s., 1122, 1223.

598. He also has the enjoyment, in the same way as the owner, of the mines and quarries which are being worked when the usufruct begins; but, nevertheless, if such working cannot be carried on without a concession, the usufructuary can only have the enjoyment thereof after he has obtained the permission of the King (President of the Republic).

He has no right to the mines and quarries which have not yet been opened, nor to the turf pits which have not yet been worked, nor to the treasure-trove which may be...
discovered during the continuance of the usufruct. Civ. C. 1403.

599. An owner cannot, by his acts or in any manner whatsoever, interfere with the rights of the usufructuary.

On the other hand, the usufructuary cannot ask for any indemnity at the end of the usufruct for the improvements which he might claim to have made, even if the value of the thing has been increased thereby.

Nevertheless, he or his heirs may remove the mirrors, pictures and other ornaments which he might have caused to be placed on the premises, but provided he restores the same to their former condition. Civ. C. 2236.

§ 2. Of the Obligations of Usufructuaries.

600. A usufructuary takes things in the condition in which they are: but he can only begin his enjoyment after having made an inventory of the movable articles and a description of the real estate subject to the usufruct in the presence of the landlord or he having been duly called. Civ. C. 1004, 1011, 1014, 1533, 1731.

601. He shall give security to act as a prudent owner, unless he has been exempted therefrom by the instrument creating the usufruct: nevertheless, the father and mother who have the legal usufruct of the property of their children, the vendor or donor who has retained the usufruct, are not obliged to give security. Civ. C. 578, 600, 951, 1094, 2018 et s., 2040 et s.

602. If a usufructuary cannot furnish security the real estate is leased or is sequestrated;

The sums included in the usufruct are invested;

The provisions are sold and the proceeds are likewise invested;
OF USUFRUCT, USE, AND HABITATION. 147

The interest of such sums and the rents belong in that case to the usufructuary. Civ. C. 1955, 2041.

603. If the usufructuary has not furnished security, the owner may demand that the furniture which is subject to be damaged by use be sold and the proceeds invested in the same way as for provisions; and then the usufructuary has the enjoyment of the interest during his usufruct: nevertheless, the usufructuary can ask, and the Judges may order, according to circumstances, that a part of the furniture required for his use shall be left to him on his own sworn guarantee and on condition of producing it at the expiration of the usufruct. Civ. C. 602.

604. Delay in furnishing security does not deprive the usufructuary of the fruits to which he may be entitled: they are due to him from the time the usufruct commences.

605. A usufructuary is only bound to keep the property in good repair.

Heavy repairs shall continue to be made by the owner, unless they have been occasioned by the fact that the property has not been kept in good repair since the beginning of the usufruct; in which case the usufructuary is also obliged to assume them. Civ. C. 578, 601, 1409.

606. Heavy repairs are those to main walls and to vaults, the replacing of beams and covering of roofs completely;

Also, rebuilding embankments, breast walls and boundary walls completely.

All other repairs are for keeping property in good order.

607. Neither the owner nor the usufructuary are obliged to rebuild what has crumbled away by age or what has been destroyed accidentally. Civ. C. 606, 623, 624, 1148, 1730, 1755.
608. A usufructuary is liable during the time of his enjoyment for all the annual charges upon the estate, such as taxes and others, which according to customs are considered as charges upon the revenue. Civ. C. 605, 635.

609. As to charges which may be laid upon the estate during the continuance of the usufruct, the usufructuary and the owner contribute to the same as follows:
The owner is obliged to pay them and the usufructuary must allow him interest;
If they are advanced by the usufructuary he has a claim therefor upon the capital at the expiration of the usufruct. Civ. C. 1617 et s.

610. A legacy made in a will of a life annuity or of an allowance for support must be paid wholly by the universal legatee of the usufruct and by the legatee under universal title in proportion to his enjoyment, without any right on the part of either to claim anything in return. Civ. C. 1003 et s., 1010 et s.

611. A usufructuary of a limited portion is not liable for the debts for which the estate is mortgaged: if he is forced to pay them he has his remedy against the owner, subject to what is stated in article 1020 of the Title Of Donations Inter Vivos and of Wills. Civ. C. 1020.

612. A universal usufructuary or a usufructuary under universal title must contribute with the owner to the payment of the debts as follows:
The value of the estate subject to the usufruct is appraised; the contribution to the debts is then determined in accordance with that value;
If a usufructuary chooses to advance the amount for which the property is liable, the principal is returned to him without any interest, at the end of the usufruct.
If the usufructuary is not willing to make that advance, the owner has the choice between either paying this sum, and in that case the usufructuary owes him interest during the continuance of the usufruct, or causing a portion of the property subject to the usufruct to be sold to the extent of what is due. Civ. C. 609, 611, 1024, 1153.

613. A usufructuary is only bound to pay the expenses of the suits relating to the enjoyment and the other amounts of judgments which might result from such suits.

614. If, during the continuance of the usufruct, a third party makes any encroachment upon the estate or interferes in any other way with the rights of the owner, the usufructuary is bound to denounce him to such owner: should he fail so to do, he is liable for any damages which may result therefrom to the owner, as he would be for dilapidations committed by himself. Civ. C. 1382, 1768.

615. If the usufruct bears upon an animal which dies, not owing to the fault of the usufructuary, he is not obliged to return another one, nor to pay the value thereof. Civ. C. 617, 623.

616. If the whole herd of cattle upon which the usufruct bears dies by accident or disease and not through the fault of the usufructuary, he is only bound towards the owner to account for the skins or their value.

If the whole herd does not die, the usufructuary is bound to replace the heads of cattle which have died to the extent of the new-born cattle.
§ 3. Of the Manner in which Usufruct expires.

617. Usufruct expires:
By the natural or civil (b) death of the usufructuary;
By the expiration of the time for which it was granted;
By the consolidation or vesting in the same person of the two capacities of usufructuary and owner;
By not making use of the right during thirty years;
By the total loss of the thing upon which the usufruct was established. Civ. C. 703, 1300, 2262.

618. Usufruct may also expire by the wrongful use which the usufructuary makes of his enjoyment, either by committing waste upon the estate, or by allowing it to deteriorate for want of repairs.

Creditors of the usufructuary may take part in controversies for the protection of their rights; they may offer to repair the damage done and to give guarantees for the future.

The Judges may, according to the importance of the circumstances, either order the absolute cancellation of the usufruct, or only that the owner recover the enjoyment of the thing subject thereto, on condition of paying annually to the usufructuary or to his legal representatives a fixed amount up to the time the usufruct should have expired. Civ. C. 601, 1167, 1882.

619. Usufruct which is not granted to private individuals only lasts thirty years. Civ. C. 617.

620. Usufruct granted until a third party reaches a given age lasts until that time, even if the third party dies before such age.

621. The sale of a thing subject to usufruct does not in

(b) Civil death was abolished by the law of 31st May, 1854.
any way alter the right of the usufructuary: he continues to have the enjoyment of his usufruct unless he has formally renounced it.

622. The creditors of the usufructuary can have the renunciation set aside, if it is prejudicial to them. Civ. Č. 1167.

623. If a part only of the thing subject to usufruct is destroyed, the usufruct continues on what remains. Civ. Č. 615.

624. If a usufruct only applies to a building and the same is destroyed by fire or some other accident, or if the building is so old that it falls down, the usufructuary shall not have the enjoyment of the land nor of the materials.

If the usufruct applied to an estate of which the building formed part, the usufructuary has the enjoyment of the land and of the materials. Civ. Č. 617.

CHAP. II.

OF USE AND HABITATION.

625. The rights of use and habitation are acquired and lost in the same manner as usufruct. Civ. Č. 570 et s., 617 et s.

626. A person is not entitled to their enjoyment, as in the case of usufruct, unless he has previously furnished security and drawn up statements and inventories. Civ. Č. 600 et s., 2011 et s.

627. A person having a use or right of habitation must
act as a prudent owner in the enjoyment thereof. Civ. C. 601 et s.

628. The rights of use and habitation are regulated by the deeds creating them and are more or less extensive according to the provisions thereof.

629. If the deed is not explicit as to the extent of these rights they are regulated as follows:

630. A person who has the use of the fruits of an estate can only demand what is necessary for his wants and those of his family.
   He can demand those which are necessary for the children born to him since the creation of the use.

631. A person having a use cannot transfer or let out his right to another person. Civ. C. 634.

632. A person who has a right of habitation in a house can live in it with his family although he was not married when this right was granted to him. Civ. C. 634.

633. The right of habitation is confined to what is necessary for the habitation of the person to whom the same is granted and of his family.

634. The right of habitation cannot be assigned or let. Civ. C. 631.

635. If a person having a use takes all the fruits of an estate, or if he occupies the whole house, he is bound to pay the expenses of cultivation, the repairs to keep the property in order and the taxes, in the same manner as a usufructuary.
If he only takes a part of the fruits or only occupies a part of the house he contributes thereto in proportion to what he has the enjoyment of.

TITLE FOURTH.
OF SERVITUDES OR LAND BURDENS.
(Passed 31st January, 1804; promulgated 10th February, 1804.)

637. A servitude is a charge laid on an estate for the use and advantage of an estate belonging to another owner. Civ. C. 526, 544, 545, 639, 640 et s., 647, 681, 686 et s., 1583, 1625.

638. A servitude does not establish any predominance of one tenement over the other.

639. It results either from the natural location of the premises or from obligations imposed by law or from agreements between the owners. Civ. C. 640 et s., 686 et s.

CHAP. I.
OF SERVITUDES RESULTING FROM THE LOCATION OF PREMISES.

640. Servient tenements are compelled with respect to dominant tenements to receive the waters flowing naturally therefrom, provided no manual labour has been used.

The owner of a servient tenement cannot raise a dam to stop the flow of water.

The owner of a dominant tenement cannot do anything
which would render the servitude of a servient tenement more burdensome. Civ. C. 545, 644, 645, 681, 701, 792.

641. A person who has a spring on his tenement can make use of it as he chooses, subject to the rights which the owner of the servient tenement might have acquired by deed or prescription. Civ. C. 552, 642, 644, 645, 690 et s., 703, 792.

642. Prescription in such case can only be acquired by an uninterrupted enjoyment during a period of thirty years from the time the owner of the servient estate has made and completed the visible works intended to improve the waterfall or make the water flow more easily through his tenement. Civ. C. 641, 644, 690, 701, 706, 712, 2226.

643. The owner of the spring cannot change its course when it supplies the inhabitants of a district, village, or hamlet with necessary water; but if the inhabitants have not purchased the use, or acquired it by prescription, the owner can claim an indemnity, which is fixed by experts. Civ. C. 544, 545, 552.

644. A person whose property is on the border of a stream which has not been declared to belong to the Public Domain by Article 538 of the Title Of Various Sorts of Property can use the water as it flows to irrigate his lands.

A person through whose tenement the water flows can even use it for the distance it runs through such tenement, provided it is put back in its ordinary channel when it leaves his tenement. Civ. C. 537, 544, 545, 640, 642, 645, 691 et s., 698, 701, 702, 714, 2219, 2226, 2229, 2232, 2238, 2262.

645. If a controversy arises between owners to whom these waters may be of use, the Tribunals in rendering their
decisions must reconcile the necessities of agriculture and the respect due to ownership; and in all cases the special and local regulations applying to streams and the use of water must be followed. Civ. C. 644.

646. Every owner may compel his neighbour to mark the boundaries of adjoining estates. Setting boundaries is done at joint expense. Civ. C. 1315, 1341, 1353.

647. Every owner can enclose his property, with the exception contained in article 682. Civ. C. 678 et s.

648. An owner who wishes to enclose his property loses his right to commonage and free pasturage in proportion to the land which he withdraws therefrom. Civ. C. 647.

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Chap. II.

Of Servitudes established by Law.

649. Servitudes established by law are those which apply to public use or the use of a District or of private individuals. Civ. C. 639.

650. Those established for public use or for the use of a District apply to the path along rivers navigable for boats or rafts, the construction or repairing of roads, and other public or municipal works.

Everything relating to such servitudes is regulated by law or special rules. Civ. C. 538, 556.

651. The law imposes upon owners various obligations towards each other independently of any agreement. Civ. C. 640, 647, 674, 1370.
652. Some of those obligations are regulated by the laws relating to rural police.

The others relate to party walls, to ditches in common, to cases in which a counter-mure is necessary, to the rights of light on the property of the neighbour, to the flowing of water from roofs, to the right of way. Civ. C. 653, 675, 681.

§ 1. Of Party Walls and Ditches in Common.

653. In cities and in the country, every wall forming the separation between buildings up to the point where the wall ceases to be a party wall or between courtyards and gardens, and even between enclosures in the fields, is supposed to be a party wall unless there is a deed or indication establishing the contrary. Civ. C. 675, 1350, 1352.

654. When the top of a wall is straight and perpendicular on one of its sides and slants on the other, it is an indication that it is not a party wall;

Even when there is only on one side either a coping or ridge of stones and corbels which have been placed there when the wall was constructed.

In such cases the wall is supposed to belong exclusively to the owner on whose side are placed the gutter or the corbels and ridge of stones. Civ. C. 676, 1350, 1352.

655. Repairs to a party wall or its reconstruction are paid for by all those who have a right thereto and in proportion to each one’s rights. Civ. C. 656 et s., 663, 664.

656. Nevertheless, every joint owner of a party wall may be exempted from contributing to the repairs and reconstruction thereof by abandoning his rights to such party wall, provided a building belonging to him does not rest on it. Civ. C. 699.
657. Every joint owner may build against a party wall and place beams or joists thereon, through the whole thickness of the wall, within 54 millimeters (two inches) of each other, without prejudice to the neighbour's right to have the beams shortened with the chisel up to half the thickness of the wall in case he should want himself to rest beams thereon, at the same place, or to build a chimney against it. Civ. C. 674, 675.

658. Every joint owner may raise a party wall, but he must pay alone the expense of raising it, the repairs to keep it in order above the level of the common enclosure, and also an indemnity for the charges resulting from the raising of the wall, according to its value. Civ. C. 660.

659. If a party wall is not in a condition to be raised, the person wishing to raise it must have the whole of it reconstructed at his expense, and the additional thickness must be taken on his side. Civ. C. 662.

660. A neighbour who has not contributed to have the wall raised can acquire joint rights thereto by paying one-half of the expense incurred and one-half of the value of the land used for the additional thickness, if there is any. Civ. C. 659.

661. Every owner adjoining a wall has also the right to make it a party wall, wholly or in part, by reimbursing to the proprietor of the wall half its value or half the value of the part over which he wishes to have a joint right and half the value of the soil on which the wall is built. Civ. C. 662, 675, 676, 678, 690, 702, 1625, 1641, 2232.

662. A neighbour cannot make a hole in a party wall or build or rest any construction thereon without the consent of the other, or, in case of his refusal, without having
experts determine the necessary measures to take so that the new construction shall not interfere with the rights of the other neighbour. Civ. C. 657 et s., 675.

663. Every one may in cities and suburbs compel his neighbour to contribute to the construction and to the repairs of enclosures which separate the houses, courtyards, and gardens situated in such cities and suburbs; the height of the enclosure shall be fixed according to the special regulations or the uniform customs established; and if no such customs or regulations exist, every boundary wall between neighbours which shall hereafter be constructed or repaired shall be of a height of at least 32 decimeters (10 feet) including the coping, in cities of 50,000 inhabitants and more, and of 26 decimeters (8 feet) in other cities. Civ. C. 545, 647, 655, 656.

664. When the various floors of a building belong to different owners, if the deeds do not determine the manner in which the repairs and reconstructions shall be undertaken they shall be made as follows:—

The main walls and the roof shall be paid for by all the owners, each one in proportion to the value of the floor belonging to him.

The owner of each floor makes the flooring upon which he walks.

The owner of the first floor makes the staircase leading thereto; the owner of the second floor makes the staircase leading to his floor from the first floor, and so on. Civ. C. 605, 606, 655.

665. When a party wall or a house is reconstructed, all the active or passive servitudes continue in favour of the new wall or house, provided they are not made more burdensome and the reconstruction takes place before prescription has produced its effect. Civ. C. 703, 704, 2262.
666. (Amended by Law of 20th August, 1881.)—Every enclosure separating estates is supposed to be held jointly, unless there is only one estate which is actually enclosed, or unless there is a deed, prescription, or indication to the contrary.

For ditches there is an indication that they are not held jointly when the embankment or heaping up of the earth is only on one side of the ditch.

The ditch is supposed to belong exclusively to the person on whose side the heaping up has taken place. Civ. C. 544, 1350, 1352.

667. (Amended by Law of 20th August, 1881.)—A common enclosure must be kept in repair at joint expense; but the neighbour may avoid this obligation by renouncing the joint ownership.

This right ceases if the ditch usually serves for draining waters.

668. (Amended by Law of 20th August, 1881.)—A neighbour whose estate adjoins a ditch or a hedge not held jointly cannot compel the owner of such ditch or hedge to grant him a joint right thereto.

The joint owner of a hedge can destroy it up to the limit of his estate, provided he builds a wall upon such limit.

The same rule applies to the joint owner of a ditch which is only used as an enclosure.

669. (Amended by Law of 20th August, 1881.)—So long as the hedge is jointly held, the owners are each entitled to half of what it produces.

670. (Amended by Law of 20th August, 1881.)—The trees which are in the hedge held jointly are also held jointly in the same manner as the hedge. The trees
planted on the line separating the two estates are also supposed to be held jointly. When they die or when they are cut or torn down, such trees are divided by halves. The fruits are gathered at joint expense and also divided by halves, whether they fall naturally or are made to fall, or have been plucked.

Each owner has the right to ask that the trees held jointly be uprooted. Civ. C. 1350, 1352.

671. (Amended by Law of 20th August, 1881.)—It is only allowed to have trees, shrubs or bushes near the limits of an adjoining estate at the distance specified by the special regulations at present in existence or by the uniform and acknowledged customs, and if there are no such regulations and customs, at a distance of two meters from the line separating the two estates, for plantations exceeding two meters in height, and at a distance of half a meter for other plantations.

Trees, shrubs and bushes of all kinds can be grown on each side along the wall separating the estates, and it shall not be necessary to take the distance into account, but they must not go beyond the ridge of the wall.

If the wall is not a party wall, the owner alone has the right to grow his trees against it.

672. (Amended by Law of 20th August, 1881.)—A neighbour can insist upon the trees, shrubs, or bushes planted at a smaller distance than that fixed by law, being uprooted or cut at the height mentioned in the foregoing article, unless there is a deed or a destination instituted by the previous owner, or prescription of thirty years.

If the trees die or are cut or uprooted, the neighbour can only replace them by keeping within the legal distances. Civ. C. 694, 2262.

673. (Amended by Law of 20th August, 1881.)—A
person on whose estate the branches of the neighbour's trees reach over can compel him to cut them. The fruits which have fallen naturally from these trees belong to him.

If the roots reach over on his estate, he has the right to cut them himself. The right to cut the roots or to have the branches cut cannot be outlawed.

§ 2. Of Distances and Intermediate Works Required for Certain Constructions.

674. He who causes a well or a cesspool to be dug out near a wall, whether it is a party wall or not;
   He who wishes to build a chimney or fire-place, a forge, an oven, or a furnace, at the same place;
   To erect a stable against it,
   Or to set up against it a magazine of salt or a heap of corrosive substances,
   Is bound to leave the distance required by the special regulations and customs applying to such things, or to make the works ordered by said regulations and customs, so as to avoid causing the neighbour any damage. Civ. C. 552, 662, 672, 675, 678, 1382.

§ 3. Of the Rights of Light on the Property of a Neighbour.

675. A neighbour cannot make any kind of window or opening in a party wall, without the consent of the other neighbour, even if the window does not open.

676. The owner of a wall immediately adjoining the estate of another person which is not a party wall can make in it openings or windows which do not open, with wire lattice.
   These windows must be provided with a lattice-work of iron of which the meshes shall have an opening of not over
one decimeter (about three inches and three-quarters) and with a frame which does not open. Civ. C. 654, 661, 677.

677. These windows or openings shall only be made at a height of twenty-six decimeters (eight feet) above the floor or ground of the room to which it is intended to give light, if such room is on the ground floor, and of nineteen decimeters (six feet) above the flooring on the upper floors.

678. One is not entitled to have a straight view, nor a window for sight, nor balconies or other such projections on the neighbour’s estate, whether they are enclosed or not, unless there is a distance of nineteen decimeters (six feet) between the wall in which they are made and the said estate. Civ. C. 552, 630, 672, 679, 686, 690, 701, 2232.

679. One is not entitled to have a side or oblique view on the same estate unless there is a distance of six decimeters (two feet). Civ. C. 552, 680, 701.

680. The distance which is mentioned in the two foregoing articles is counted from the outside face of the wall in which the opening is made, and if there are balconies or other light projections, from the exterior line to the line of separation of the two estates.

§ 4. Of the Flowing of Water from Roofs.

681. Every owner must make the roofs in such a way that the rain water shall flow on his land or on the public highway; he cannot allow it to flow on the neighbour’s estate. Civ. C. 544, 688, 690, 1382.
§ 5. Of Right of Way.

682. (Amended by Law of 20th August, 1881.)—An owner whose estates are surrounded and who has no outlet to the public highway or only one which is insufficient for the agricultural or manufacturing working of his estate can claim an outlet over the land of his neighbours, provided he pays an indemnity equivalent to the damage which he may occasion. Civ. C. 688, 691, 1561, 1615, 2255.

683. (Amended by Law of 20th August, 1881.)—The outlet must generally be made on the side where the distance from the estate surrounded to the public highway is the shortest.

Nevertheless, it shall be placed at the spot which causes the least damage to the person on whose property it is allowed. Civ. C. 701, 702, 703, 705, 1549, 1554.

684. (Amended by Law of 20th August, 1881.)—If an estate is surrounded because it has been divided in consequence of sale, exchange, division, or any other agreement, the outlet can only be claimed over the lands to which these operations apply. Nevertheless, when a sufficient outlet cannot be made over lands thus divided, article 682 shall apply.

685. (Amended by Law of 20th August, 1881.)—The basis and nature of a right of way in case an estate is surrounded, is fixed by a continuous use during thirty years.

An action for indemnity in the case provided by article 682 can be outlawed and the right of way can be continued, although the action for indemnity no longer lies. Civ. C. 688, 691, 2262.
OF SERVITUDES OR LAND BURDENS.

Chap. III.

Of Servitudes Established by the Act of Man.

§ 1. Of Various Kinds of Servitudes which can be established on Property.

686. Owners have the right to establish on their estates or in favour of their estates such servitudes as they deem proper, provided, however, the burdens are not established against a person or in favour of a person, but only on the estate and for the estate, and provided these burdens do not in any way interfere with public order.

The use and extent of servitudes thus established are regulated by the deed creating them; if there is no deed, by the following rules. Civ. C. 544, 637, 638, 687, 689, 690, 691, 692, 693, 701, 703, 704, 708, 1133, 2177.

687. Servitudes are established either for the advantage of buildings or of landed estates.

Those of the first kind are called urban servitudes, whether the buildings to which they apply are situated in a city or in the country.

Those of the second kind are called rural servitudes.

688. Servitudes are either continuous or discontinuous.

Continuous servitudes are those of which the use is or may be uninterrupted without the need of any act of man: such as water pipes, drains, views or others of this kind.

Discontinuous servitudes are those which require a positive act of man to be made use of: such as rights of way, drawing water, pasture, and others of the kind. Civ. C. 635 et s., 689, 691, 692, 706, 2229.

689. Servitudes are apparent or non-apparent.

Apparent servitudes are those which are perceptible by exterior works, such as a door, a window, an aqueduct.
Non-apparent servitudes are those which have no exterior sign of their existence, such for example as the prohibition of building on an estate or of only building up to a fixed height. Civ. C. 706 et s., 1638.

§ 2. _How Servitudes are Established._

690. Continuous and apparent servitudes are acquired by deed or a possession of thirty years. Civ. C. 640 et s., 688, 689, 2229, 2232 et s., 2264.

691. Continuous non-apparent servitudes and discontinuous servitudes, apparent or not, can only be established by deed.

Possession, even from time immemorial, is not sufficient to establish them, but servitudes of this kind already acquired by possession in countries where they could thus be acquired, cannot now be attacked. Civ. C. 737, 682, 688, 690, 702, 712, 2227, 2229.

692. Destination instituted by the previous owner is equivalent to a deed for continuous and apparent servitudes. Civ. C. 688, 689, 694.

693. Destination of the previous owner only exists when it is established that two estates, at present divided, have belonged to the same owner and when he is the one who has placed things in the condition from which the servitude results. Civ. C. 705.

694. If the owner of two estates between which exists an apparent indication of servitude, disposes of one of the estates and the deed does not contain any provision relating to the servitude, it continues to exist actively and passively in favour of the estate conveyed or upon the estate conveyed. Civ. C. 692, 693, 700, 1638.
695. A deed establishing a servitude as to such servitudes as cannot be acquired by prescription can only be replaced by a deed acknowledging the servitude and emanating from the owner of the estate subject to the servitude. Civ. C. 690, 691, 1337.

696. When a person establishes a servitude he is supposed to grant everything that is necessary to make use of it.

For instance, the servitude of drawing water from another person's fountain carries necessarily with it a right of way. Civ. C. 697 et s.

§ 3. Of the Rights of the Owner of the Tenement to which the Servitude is Due.

697. A person to whom a servitude is due has the right to make all necessary works to use and retain it. Civ. C. 698, 702.

698. These works shall be paid for by him and not by the owner of the tenement subject to the servitude, unless the deed establishing it states the contrary.

699. Even in case the owner of a tenement subject to a servitude should be compelled by deed to undertake at his own expense the necessary works for the use or preservation of the servitude, he can always exempt himself from this duty by abandoning the tenement subject thereto to the owner of the tenement to which the servitude is due. Civ. C. 656.

700. If the tenement upon which the servitude has been established should happen to be divided, the servitude remains due on each portion, provided the tenement subject to the servitude does not suffer any heavier burden thereby.

For instance, in case of a right of way, all the joint
owners are obliged to make use of it at the same place. Civ. C. 694, 724, 815.

701. The owner of a tenement which owes a servitude cannot do anything which would tend to impair its use or to make it less convenient.

For instance, he cannot change the condition of the premises, nor transfer the use of the servitude to a different spot from the one where such use has been originally established.

But, nevertheless, if this first designation should have become more burdensome to the owner of the tenement subject to the servitude, or if it prevented making advantageous repairs thereon, he might offer to the owner of the other tenement a more convenient spot for the use of his rights and the latter could not refuse. Civ. C. 683, 1328.

702. On his part, a person who is entitled to a servitude can only make use of it in accordance with his deed, and he cannot make any changes upon the tenement which owes the servitude or upon the tenement to which it is due which would render the position of the former more burdensome. Civ. C. 545, 640, 676, 686, 690, 691, 696, 701, 703, 1134.

§ 4. Of the Manner in which Servitudes Expire.

703. Servitudes stop when things are in such a condition that they can no longer be made use of. Civ. C. 545, 637, 665, 701, 702, 704.

704. They revive if things are re-established in such a way that they can be used; unless sufficient time has elapsed to establish the presumption that the servitude has expired, as is stated in article 707. Civ. C. 703, 2177.
705. Every servitude expires when the tenement to which it is due and the one which owes it fall into the same hands. Civ. C. 1300.


707. The thirty years begin to run, according to the different kinds of servitudes, either from the day when one has ceased to make use of them, with respect to discontinuous servitudes, or from the day when an act contrary to the servitude has been performed, with respect to continuous servitudes. Civ. C. 688 et s.

708. The mode of enjoyment of a servitude can be outlawed, as the servitude itself and in the same manner. Civ. C. 700, 767.

709. If the tenement in favour of which the servitude is established belongs to several persons jointly the enjoyment by one stops prescription against all. Civ. C. 710, 2251.

710. If among the joint owners there is one against whom prescription could not run, such as a minor, he keeps alive the rights of all the others. Civ. C. 888, 2252.
Book III.

OF THE DIFFERENT WAYS OF ACQUIRING PROPERTY.

GENERAL PROVISIONS.

(Passed 19th April, 1803; promulgated 29th of same month.)

711. The ownership of things is acquired and transmitted by succession, by donations inter vivos or mortis causa, and by the effect of obligations. Civ. C. 697 et s., 718 et s., 893 et s., 1001 et s.

712. Property is acquired also by accession or incorporation and by prescription. Civ. C. 546 et s., 2219 et s., 2279.

713. Things which have no owner belong to the State. Civ. C. 539 et s., 768.

714. There are things which belong to nobody and of which the enjoyment is common to all. The police laws regulate the mode of enjoyment thereof. Civ. C. 538 et s.

715. The right to hunt or fish is generally regulated by special laws. Civ. C. 544, 714.

716. The ownership of a treasure-trove belongs to the
person who has discovered it on his own property. If the
Treasure-trove is discovered on another person's property
one-half of it belongs to the finder and the other half to the
owner of the property.

A treasure-trove is any concealed or buried thing as to
which nobody can establish any right of ownership and
which is discovered by mere chance. Civ. C. 552.

717. Rights to flotsam and jetsam, of whatever nature
they may be, and rights to plants and herbs which grow on
the sea shore, are also regulated by special laws.
The same rule applies to lost things, of which the owner
TITLE FIRST.

OF SUCCESSIONS.

(Passed 9th April, 1803; promulgated 29th of same month.)

CHAP. I.

OF THE OPENING OF SUCCESSIONS AND OF THE SEIZIN OF HEIRS.

718. Successions become open by natural or civil death (a).

719 (b). A succession becomes open by civil death from the time this death takes place in accordance with the provisions of section 2 of Chapter II. of the Title Of the Enjoyment and Loss of Civil Rights.

720. If several persons respectively entitled to each other's succession die in the same event and it is not possible to establish which one died first, the presumption of survivorship is determined by the circumstances of the case, and otherwise by the strength, age, or sex. Civ. C. 1350, 1352.

721. If those who have died together were under fifteen years of age the eldest is supposed to have survived.

If all were over sixty years of age the youngest is supposed to have survived.

(a) Civil death was abolished by the law of 31st May, 1854.
(b) Repealed by the law of 31st May, 1854, which abolished civil death.
OF SUCCESSIONS.

If some were under fifteen and others over sixty years of age the first are presumed to have survived. Civ. C. 1350, 1352.

722. If those who have died together were over the full age of fifteen years and were less than sixty, the male is always presumed to have survived if the ages are the same or if the difference which exists does not exceed one year.

If they were of the same sex the presumption of survivorship which causes the succession to become open shall be followed according to the law of nature; thus the younger is presumed to have survived the elder. Civ. C. 1350, 1352.

723. The law regulates the order of succession for legitimate heirs. If there are none the property passes to the natural children, thereafter to the surviving husband or wife, and if there should not be any, to the State. Civ. C. 731 et s., 756 et s., 767, 768.

724. The property, rights, and actions of a deceased person vest absolutely in the legitimate heirs, under the obligation for them to satisfy all claims against the estate; natural children, the surviving husband or wife, and the State must cause themselves to be placed in possession by the Courts in the manner hereafter provided. Civ. C. 718, 723, 731 et s., 750, 755, 770 et s., 802 et s., 873, 1002 et s., 1220.
OF SUCCESSIONS.

Chap. II.

OF THE QUALIFICATIONS REQUIRED TO INHERIT.

725. In order to inherit, one must necessarily exist at the time of the opening of the succession. Thus, are incapable of inheriting:—
1. He who has not yet been conceived;
2. A child who cannot live at his birth;
3. He who is civilly dead (c). Civ. C. 315.

726. An alien can only inherit the property which his French or foreign relative owns on the territory of the Kingdom (Republic) in the cases and in the manner in which a Frenchman inherits property owned by a relative in the country of such alien, in accordance with the provisions of article 11 of the Title Of the Enjoyment and Loss of Civil Rights (d).

727. Are unworthy of inheriting, and, as such, excluded from successions:—
1. He who has been found guilty of having killed or attempted to kill the decedent;
2. He who has brought against the decedent a capital accusation deemed to be slanderous;
3. The heir of full age who, knowing of the murder of the decedent, has not denounced it to the officers of justice. Civ. C. 729, 898.

728. The failure to denounce cannot be opposed to the ascendants or descendants of the murderer, nor to his relatives by marriage of the same degree, nor to the husband or wife, brothers or sisters, uncles or aunts, nephews or nieces.

(c) Civil death was abolished by the law of 31st May, 1854.
(d) Repealed by the law of 14th July, 1819.
729. An heir who is excluded from a succession on account of unworthiness is bound to return any income and revenue of which he has had the enjoyment since the opening of the estate.

730. The children of the unworthy person who are entitled to the succession in their own behalf and not through representation are not excluded on account of their father's offence; but the latter cannot in any case claim on the property of the succession the usufruct which the law grants to fathers and mothers on the property of their children. Civ. C. 384 et s., 744, 787.

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**Chap. III.**

**Of Various Kinds of Successions.**

§ 1. *General Provisions.*

731. Successions are bestowed upon the children and descendants, the ascendants, and the collateral relatives of a decedent in the order and according to the rules hereafter mentioned. Civ. C. 723, 768, 910.

732. The law does not take into consideration the nature or the origin of property in regulating a succession. Civ. C. 745.

733. Any succession accruing to descendants or to collaterals is divided into two equal parts, one for the relatives in the paternal line, the other for those in the maternal line. The relatives of half blood in the maternal line or in the paternal line are not excluded by the relatives of full blood, but they only take in their line, with the exception of
what is stated in article 752. The relatives of full blood take in both lines.

Nothing devolves from one line on the other unless there is no ascendant or collateral in one of the two lines. Civ. C. 755.

734. This first division being made between the paternal and maternal lines, no other division is made between the various branches; but the half accruing to each line belongs to the heir or heirs who are nearest according to their degree, except in case of representation, as shall be hereafter stated. Civ. C. 739 et s.

735. The proximity of relationship is established by the number of generations; each generation is called a degree.

736. A series of degrees forms a line; the series of degrees between persons descending one from the other is called the direct line. The collateral line is the series of degrees between persons not descending from each other but who descend from a common progenitor.

The direct line is divided into the descending direct line and the ascending direct line.

The first is the one which connects the progenitor with those descending from him; the second is the one which connects a person with those from whom he descends.

737. In the direct line as many degrees are counted as there are generations between the persons; thus, a son is, with respect to his father, in the first degree; a grandson in the second; and vice versa the father and grandfather with respect to sons and grandsons.

738. In the collateral line degrees are counted by the generations from one of the relatives to and exclusive of the common progenitor, and from the latter to the other relative.
Thus, two brothers are related in the second degree, uncle and nephew in the third degree, first cousins in the fourth degree, and so on.

§ 2. Of Representation.

739. Representation is a fiction of the law of which the effect is to have the representatives take the place, the degree, and the rights of the person whom they represent. Civ. C. 740 et s., 787, 848.

740. Representation takes place without limit in the descending direct line.

It is admitted in all cases, whether the children of the decedent take with the descendants of a predeceased child, or whether, all the children of the decedent having died before him, the descendants of said children are of equal or unequal degrees among each other. Civ. C. 730, 737, 739, 745, 759, 1051.

741. Representation does not take place in favour of ascendants; the nearest in each of the two lines always excludes the one who is more remote. Civ. C. 735 et s., 746 et s.

742. In the collateral line, representation is admitted in favour of children and descendants of brothers or sisters of the decedent, whether they come to the succession together with uncles or aunts, or whether, all the brothers and sisters of the decedent having died before him, the succession devolves upon their descendants of equal or unequal degree. Civ. C. 750.

743. In all cases in which representation is admitted, the division takes place "per stirpes": if the same "stirps" has produced several branches, the sub-division also takes C.N.
place "per stirpes" in each branch, and the members of the same branch divide among each other "per capita." Civ. C. 753.

744. There is no representation of living persons, but only of those who have died, naturally or civilly (e).
He who has renounced the succession of another can still represent him. Civ. C. 784 et s.

§ 3. Of Successions devolving upon Descendants.

745. Children or their descendants inherit from their father and mother, grandfathers and grandmothers, and other ascendants, without distinction of sex nor of primogeniture, and even if they are born of different marriages.
They inherit in equal shares and "per capita" when they are all of the first degree and inherit in their own right: they inherit "per stirpes" when all or part of them take by representation. Civ. C. 787.

§ 4. Of Successions falling to Ascendants.

746. If a decedent has left no issue, no brothers or sisters or descendants of them, the succession is divided in halves between the ascendants of the paternal line and the ascendants of the maternal line.
The ascendant who is of the nearest degree takes the half allotted to his line to the exclusion of all others.
The ascendants of the same degree inherit "per capita." Civ. C. 735 et s., 765.

747. Ascendants inherit to the exclusion of all others all articles given by them to their children or descendants

(e) Civil death was abolished by the law of 31st May, 1854.
who have died without issue, when the articles given are found in kind in the succession.

If the articles have been conveyed, the ascendants take the proceeds which may be due. They also inherit the action for restitution which the donee might have had. Civ. C. 915, 951, 952.

748. When the father and mother of a person who has died without issue survive him, and he leaves brothers and sisters or descendants of them, the succession is divided into two equal portions, of which one only devolves upon the father and mother, who share it between them equally.

The other portion belongs to the brothers and sisters or their descendants, as shall be explained in section 5 of the present chapter. Civ. C. 733, 751.

749. In case a person who has died without issue leaves brothers and sisters or descendants of them, and the father and mother have died before him, the portion which would have devolved upon such father and mother, according to the previous article, is added to the half belonging to the brothers and sisters or their representatives, as shall be explained in section 5 of the present chapter. Civ. C. 751.

§ 5. Of Collateral Successions.

750. In case of the previous decease of the father and mother of a person who has died without issue, his brothers and sisters or their descendants are called to the succession to the exclusion of the ascendants or other collateral relatives.

They inherit either in their own right or by representation, as is provided in section 2 of the present chapter. Civ. C. 766.

751. If the father and mother of the person who has
died without issue have survived him, his brothers and sisters or their representatives are only entitled to one-half of the succession. If only the father or mother survives, they are entitled to take three-quarters. Civ. C. 766.

752. The division of the half or of the three-quarters belonging to the brothers and sisters, according to the provisions of the previous article, is made between them in equal portions if they are all of the same marriage; if they are of different marriages the division is made by halves between the two paternal and maternal lines of the deceased: those of full blood take in both lines and those on the mother's and those on the father's side each take in their line only; if there are brothers and sisters on one side only, they inherit the whole, to the exclusion of all relatives in the other line. Civ. C. 733, 750.

753. If there are no brothers or sisters or descendants of them, and no ascendants in one of the lines, one-half of the succession devolves upon the surviving ascendants, and the other half upon the nearest relatives in the other line.

If there are several collateral relatives of the same degree, they take "per capita." Civ. C. 320, 321, 322, 733 et s.

754. In the case mentioned in the foregoing article the father or mother who survives has the usufruct of a third of the property which he or she does not inherit in fee. Civ. C. 384 et s.

755. Relatives beyond the twelfth degree do not inherit.

If there are no relatives of a degree giving the right to inherit in one line, the relatives in the other line inherit the whole. Civ. C. 735.
OF SUCCESSIONS.

CHAP. IV.

OF IRREGULAR SUCCESSIONS.

§ 1. Of the Rights of Natural Children to the Property of their Father or Mother, and of Successions of Natural Children who have died without Issue.

756. Natural children are not heirs: the law only grants them rights to the property of their deceased father or mother when they have been lawfully acknowledged. It grants them no rights to the property of relatives of their father or mother. Civ. C. 334 et s., 723, 724, 769 et s., 913, 918, 921, 922.

757. The right of a natural child to the property of his deceased father or mother is regulated as follows:—

If the father or mother has left legitimate descendants, this right is to one-third of the hereditary portion which the natural child would have had if he had been legitimate: it is to one-half when the father or mother leaves no descendants but only ascendants or brothers or sisters: it is to three-quarters when the father or mother leaves no descendants, no ascendants, no brothers or sisters. Civ. C 742, 762, 908, 913.

758. A natural child is entitled to the whole property when his father or mother leaves no relatives of a degree entitling them to inherit. Civ. C. 723, 762, 769 et s., 908.

759. In case of predecease of a natural child, his children or descendants can claim the rights mentioned in the foregoing article. Civ. C. 739, 756.

760. A natural child or his descendants are bound to deduct from everything they are entitled to claim all they have already received from the father or mother whose
succession has become open and which would be subject to collation according to the provisions contained in section 2 of chapter VI. of the present Title. Civ. C. 843 et s., 852, 856, 908.

761. They are not entitled to maintain any claim when they have received during the lifetime of the father or mother the half which is allotted to them by the foregoing articles with an express declaration on the part of the father or mother that their intention was to reduce the natural child to the portion which they have assigned to him.

In case this portion is less than half of what should go to the natural child, he will only be entitled to claim the balance necessary to make up this half. Civ. C. 756, 757, 913.

762. The provisions of articles 757 and 758 do not apply to adulterous or incestuous children.

The law only grants them support. Civ. C. 208, 335, 763.

763. This support is allowed according to the means of the father or mother and to the number and kind of legitimate heirs. Civ. C. 208 et s.

764. When the father or mother of an adulterous or incestuous child have made him learn a mechanical trade or when one of them has secured support to him during his or her lifetime, the child cannot maintain any claim against their succession.

765. The succession of a natural child who has died without issue devolves upon the father or mother who has acknowledged him, or by halves to both if he has been acknowledged by the one and the other. Civ. C. 334, 746, 766.
766. In case of the previous decease of the father and mother of a natural child, the property which he had received from them goes to the legitimate brothers or sisters, if such property is found in kind in the succession: the actions for restitution, if they exist, or the proceeds of property conveyed, if they are still due, revert also to the legitimate brothers and sisters. All the other property goes to the natural brothers and sisters or to their descendants. Civ. C. 750 et s.

§ 2. Of the Rights of the Surviving Husband or Wife and of the State.

767. (Amended by Law of 9th March, 1891.)—When the decedent leaves no relatives of a degree entitling them to inherit, and no natural children, the property of the succession belongs absolutely to the surviving husband or wife not divorced and against whom no judgment of separation from bed and board has become final.

The surviving husband or wife not divorced who does not inherit the full ownership and against whom no judgment of separation from bed and board has become final has upon the succession of the predeceased wife or husband a right of usufruct which is:

Of one-quarter, if the decedent leaves one or several children born of the marriage;

Of the smallest portion of a legitimate child, which portion shall not exceed one-quarter, if the decedent has children born of a previous marriage;

Of one-half in all other cases, whatever may be the number and the kind of heirs.

The calculation shall be made upon a total composed of all the property existing at the death of the decedent, to which shall be fictitiously added the property which he has disposed of, either by instrument inter vivos or by will, for the benefit of persons entitled to inherit, not exempt from collation.
But the surviving husband or wife can only exercise his or her right against the property which the decedent has not disposed of by instrument inter vivos or by will without prejudice to the rights to the reserve and the rights of reversion.

He or she shall cease to exercise this right if he or she has received from the decedent advantages, even made by preciput and above the share, of which the amount reaches the proportion of the rights which the present law grants to him or her, and if this amount is less, he or she can only claim the balance of his or her usufruct.

Until the final division, the heirs can, by giving sufficient security, ask that the usufruct of the surviving husband or wife he changed into a corresponding annuity. If they disagree, the Tribunals may in their discretion order this change.

In case of a new marriage, the usufruct of the husband or wife ceases if there are descendants of the decedent.

768. If there is no surviving husband or wife, the succession escheats to the State. Civ. C. 138, 539, 713, 723, 724, 731, 767, 769, 811, 895, 967.

769. The surviving husband or wife and the Administration of Domains, when claiming to be entitled to the estate, shall be bound to have seals affixed and cause an inventory to be made in the manner required for the acceptanee of successions under benefit of inventory. Civ. C. 794.

770. They must ask to be placed in possession by the Tribunal of First Instance of the District in which the succession becomes open. The Tribunal can only decide upon the application after three publications and notices, according to the manner in use, and after having heard the King's Attorney (Republic's Attorney).
771. The surviving husband or wife is also bound to invest the personal property or to give sufficient security to ensure its restitution in case any heirs of the decedent should present themselves within a period of three years: after this period the surety is discharged. Civ. 805, 2040 et s.

772. The surviving husband or wife or the Administration of Domains can be ordered to pay damages for the benefit of the heirs, if any present themselves, when they have not complied with the formalities which are respectively required of them. Civ. C. 1149.

773. The provisions of articles 769, 770, 771 and 772, apply to natural children who take when there are no parents. Civ. C. 758.

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**Chap. V.**

Of the Acceptance and Repudiation of Successions.

§ 1. Of Acceptance.

774. A succession can be accepted absolutely, or under benefit of inventory. Civ. C. 790, 793 et s., 1043.

775. No one is bound to accept a succession which falls to him. Civ. C. 784, 795.

776. Married women cannot lawfully accept a succession without the consent of their husband or of the Court, in accordance with the provisions of chapter VI. of the Title Of Marriage.

Successions falling to minors or to interdicted persons can only be lawfully accepted in accordance with the provisions of the Title Of Minority, of Guardianship, and of Emancipation. Civ. C. 217, 461 et s.

778. Acceptance can be express or tacit: it is express when one assumes the title or quality of heir in a public or private instrument; it is tacit when the heir does an act which necessarily supposes his intention of accepting and which he would only have the right to do in his capacity of heir. Civ. C. 779, 789 et s., 794.

779. Acts of pure protection, of supervision, and of provisional administration, are not acts of acceptance of an inheritance if one has not assumed the title or quality of heir. Civ. C. 796.

780. A donation, sale, or assignment of his hereditary rights by an heir, either to a stranger or to all his co-heirs, or to some of them, carries with it on his part acceptance of the succession.

The same shall result:—

1. From the renunciation, even without consideration, made by an heir for the benefit of one or several of his co-heirs;

2. From the renunciation made by him, even for the benefit of all his co-heirs without distinction, when he receives the price of his renunciation. Civ. C. 778, 785, 1696.

781. When a person to whom a succession falls has died without having repudiated it, or without having accepted it, expressly or tacitly, his heirs can accept it or repudiate it in his stead. Civ. C. 724, 784, 790.

782. If these heirs do not agree as to accepting or repudiating the succession, it must be accepted under benefit of inventory. Civ. C. 793 et s.
783. A person of full age can only attack the express or tacit acceptance made by him of a succession in case the acceptance is the result of fraud committed upon him: he can never object on the ground of injury, except only in case the succession is absorbed or reduced more than one-half by the discovery of a will unknown at the time of the acceptance. Civ. C. 772, 774, 792 et s., 794, 802, 1109, 1116, 1235, 1302, 1305, 1313, 1377, 1455.

§ 2. Of Renunciation of Successions.

784. Renunciation of a succession cannot be presumed: it can only be made at the clerk's office of the Tribunal of First Instance in the District in which the succession becomes open, on a special register kept for that purpose. Civ. C. 780, 783, 785, 790, 888, 1043.

785. The heir who renounces is considered never to have been an heir. Civ. C. 777, 778, 845, 1167.

786. The share of the heir who renounces accrues to his co-heirs: if he is alone, it accrues to those of the next degree. Civ. C. 780, 781, 785, 1044, 1093, 1130, 1395.

787. One can never take by representation of an heir who has renounced: if the person renouncing is the only heir of his degree, or if all his co-heirs renounce, the children come in their own right and inherit per capita. Civ. C. 744, 786.

788. The creditors of one who renounces to the detriment of their rights, can apply to be authorized by the Court to accept the estate on behalf of their debtor, or in his place and stead.

In this case the renunciation is only annulled in favour of the creditors, and to the extent only of their claims: it is not annulled for the benefit of the heir who has renounced. Civ. C. 1167.
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OF SUCCESSIONS.

789. The right to accept or renounce a succession is outlawed by the length of time required for the longest prescription applying to rights to real estate. Civ. C. 777, 2262.

790. So long as prescription of the right to accept has not taken place against the heirs who have renounced, they still have the right to accept the succession, if it has not already been accepted by other heirs; without prejudice, nevertheless, to the rights which third parties may have acquired to the property of the succession, either by prescription, or by a valid instrument entered into between them and the curator of the vacant succession. Civ. C. 462, 1043, 2262.

791. One cannot, even by marriage contract, renounce the succession of a person living, or convey prospective rights which one may have to that succession. Civ. C. 125, 128, 711, 1082, 1097, 1130, 1152, 1304, 1353, 1389, 1395, 1599, 1600.

792. Heirs who have converted or concealed things forming part of a succession, forfeit the right to renounce it: they remain heirs absolutely, notwithstanding their renunciation, without having the right to claim any part of the things converted or concealed. Civ. C. 801, 1460, 1477.

§ 3. Of Benefit of Inventory, of its Effects, and of the Obligations of the Beneficiary Heir.

793. The declaration of an heir that he only intends to assume that capacity under benefit of inventory must be made at the Clerk's office of the Civil Tribunal of First Instance in the District in which the succession becomes open: it must be recorded on the register intended to
receive the certificates of renunciation. Civ. C. 1009, 1012.

794. This declaration does not produce any effect unless it has been preceded or followed by a true and exact inventory of the property of the succession, made in the manner prescribed by the laws of procedure, and within the time which shall be hereafter fixed. Civ. C. 792, 801.

795. An heir has three months from the day of the opening of the succession to make the inventory.
He also has a period of forty days to decide as to whether he will accept or renounce, which period shall commence to run from the day of the expiration of the three months allowed for the inventory, or from the day of the closing of the inventory, if it is finished before the three months. Civ. C. 797 et s., 800.

796. If, however, there are articles in the succession which are liable to depreciate, or which are costly to keep, the heir can, in his capacity of being entitled to inherit, and without an acceptance on his part being presumed, cause himself to be authorized by the Court to have these articles sold.
This sale shall be made by a public officer after the notices and publications required by the laws of procedure.

797. During the continuance of the time allowed to make the inventory and to deliberate, the heir cannot be compelled to assume that capacity, and no judgment can be obtained against him: if he renounces when the period has expired, or before that time, the expenses which he has legitimately incurred up to that time shall be paid out of the succession. Civ. C. 795, 2259.

798. After the expiration of the period aforesaid, the
heir can, in case proceedings are brought against him, ask for a new extension of time, which the Tribunal before which the controversy is brought shall grant or refuse according to circumstances. Civ. C. 800, 1458.

799. The expenses of the proceedings in the case mentioned in the foregoing article shall be paid by the succession, if the heir establishes either that he had no knowledge of the death, or that the time allowed has been insufficient, either on account of the location of the property, or on account of controversies which have arisen: if he does not establish this, he is personally liable for the expenses. Civ. C. 797.

800. The heir retains, nevertheless, after the expiration of the periods granted by article 795, and even of those allowed by the Judge in accordance with article 798, the right to still make an inventory and to become beneficiary heir, if he has not otherwise acted as heir, or if no final judgment exists rendered against him as absolute heir. Civ. C. 793 et s., 1350 et s.

801. An heir who has been guilty of concealing things, or who has knowingly and in bad faith neglected to include in the inventory things belonging to the succession, forfeits the benefit of inventory. Civ. C. 792, 794, 1460, 1477.

802. The effect of the benefit of inventory is to give the heir the advantage:

1. Of only being bound to pay the debts of the succession to the extent of the value of the property which he has received, and even of being able to dispense with paying the debts by abandoning to the creditors and legatees all the property of the succession;

2. Of not mixing his own individual property with the property of the succession, and of retaining against the succession the right to ask for the payment of his claims. Civ. C. 457, 461, 774, 783, 857, 875, 2258.
803. A beneficiary heir has charge of the administration of the property of the succession, and must render an account of his administration to the creditors and legatees. There is no remedy against his personal property until he has been summoned to present his account and has failed to meet this obligation.

After approval of his account he can only be compelled to pay out of his personal property to the extent of the sums which he may hold as balance. Civ. C. 806, 808, 873, 875, 1130, 1289, 1290, 1338, 2204.

804. He is only responsible for gross negligence in the administration of which he has charge. Civ. C. 1137.

805. He can only sell the personal property of the succession through a public officer at public sale, and after the usual notices and publications.

If he produces the personal property in kind, he is only responsible for the depreciation or for the damage caused by his negligence. Civ. C. 796.

806. He can only sell the real estate in the manner provided by the rules of procedure: he is bound to pay over the proceeds to the mortgagees who make themselves known.

807. He is bound, if the creditors or other interested persons require it, to give good and sufficient security for the amount of the personal property contained in the inventory, and for the portion of the proceeds of the real estate not assigned to the mortgagees.

In case he should fail to give such security, the personal property is sold and the proceeds are deposited, together with the portion of the proceeds of the real estate not paid over, to be used to satisfy the liabilities of the succession. Civ. C. 2040.
808. If there are creditors who have attached, the beneficiary heir can only pay in the order and manner fixed by the Judge.

If there are no attaching creditors, he pays the creditors and the legatees as they present themselves. Civ. C. 809, 2093, 2166.

809. Creditors who have not attached, and those who only present themselves after the approval of the accounts and the payment of the balance, can only exercise their remedies against the legatees.

In both cases the remedy is outlawed at the end of three years from the day of the approval of the accounts, or of the payment of the balance. Civ. C. 1020, 1024.

810. The expenses for the seals, if any have been affixed, those of the inventory and of the accounting, shall be paid by the succession. Civ. C. 797, 2001.

§ 4. Of Vacant Successions.

811. When, after the expiration of the period for making the inventory and deliberating, no one presents himself to claim the succession and no heir is known, or if the heirs known have renounced such succession, it is deemed to be vacant. Civ. C. 784, 793, 795, 2258.

812. The Tribunal of First Instance of the District in which the succession has become open appoints a curator upon the application of the interested persons, or upon the requisition of the King's Attorney (Republic's Attorney). Civ. C. 110.

813. A curator of a vacant succession is bound first of all to show its condition by an inventory: he exercises and enforces its rights: he defends to the actions brought
against it: he administers the succession with the obligation of depositing the monies belonging to it, and the proceeds and cash coming from the sale of the personal or real estate, in the hands of a receiver of the Royal Excise office, for the preservation of rights, and with the obligation of rendering accounts to whosoever it may belong.

814. The provisions of section 3 of the present chapter relating to the manner of making the inventory, the mode of administration, and the accounts to be rendered by the beneficiary heir, apply also to curators of vacant successions. Civ. C. 794, 803 et s., 808 et s.

Chap. VI.

Of Division and of Collations.

§ 1. Of the Action for Division and of its Form.

815. No one can be compelled to hold undivided property, and a division can always be brought about, notwithstanding prohibitions and agreements to the contrary.

An agreement can, however, be made to delay the division for a limited time: this agreement is not binding beyond five years, but it can be renewed. Civ. C. 578, 621, 686, 724, 827, 1166, 1178, 1184, 1226, 1871.

816. A division may be applied for, even when one of the heirs has had the separate enjoyment of a part of the property of the succession, if there has not been an instrument establishing the division or sufficient possession to cause prescription. Civ. C. 814, 815, 818, 1338, 1818, 2228, 2229, 2236, 2244, 2262.

817. An action for division with respect to heirs who

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are minors or are interdicted can be brought by their guardians, specially authorized by the family council.

If the co-heirs are absent the action belongs to the relatives who have been placed in possession. Civ. C. 113, 125, 465, 838, 882.

**818.** A husband may, without his wife's concurrence, apply for the division of the personal or real property coming to her which falls into the community: as to the things which do not fall into the community, the husband cannot demand the division thereof without the cooperation of his wife: he can only, if he has the right to enjoy her property, ask for a provisional division.

The co-heirs of the wife can only ask for a final division by joining the husband and wife in the suit. Civ. C. 215, 217, 1428, 1531, 1549.

**819.** If all the heirs are present and of full age, the affixing of seals on the property of the succession is not necessary and the division can be made in the manner and by such instrument as the interested parties deem proper.

If all the heirs are not present, or if there are minors or interdicted persons, seals must be affixed within the shortest time, either at the request of the heirs or upon the requisition of the King's Attorney (RepubUic's Attorney) of the Tribunal of First Instance, or of his own accord by the Justice of the Peace of the District in which the succession becomes open. Civ. C. 1031.

**820.** Creditors can also ask for the affixing of seals by virtue of an instrument entitled them to issue execution or by permission of the Judge. Civ. C. 821.

**821.** When seals have been affixed any creditor may issue an injunction, even if he has not the right to issue execution or has no permission from the Judge.
The formalities for removing the seals and making the inventory are regulated by the laws of procedure.

822. The action for division and the controversies arising during the proceedings are submitted to the Tribunal of the place where the succession becomes open.

It is before this Tribunal that the judicial sales are made and that the suits relating to the warranty of the shares between coparceners and those relating to the rescission of division must be brought. Civ. C. 110.

823. If one of the co-heirs refuses to consent to the division, or if controversies arise either as to the manner of proceeding or the way of terminating such division, the Tribunal decides as in an urgent case or appoints, if necessary for the proceedings of division, one of the Judges, on whose report the controversies are decided.

824. The appraisement of the real estate is made by experts chosen by the interested parties, or, upon their refusal, such experts are appointed by the Court, of its own accord.

The final official report of the experts must show the grounds of the appraisement; it must indicate whether the thing appraised can be conveniently divided; in what way; finally, in case of division, it must fix each share to be formed and its value.

825. The appraisement of the personal property, if no valuation has been given in the regular inventory, must be made by persons knowing about such things, at the exact price and without increase. Civ. C. 868.

826. Each of the co-heirs can claim his share of the personal or real estate of the succession in kind: nevertheless, if there are creditors who have attached or who have
issued injunctions, or if the majority of the heirs hold that a sale is necessary for the payment of the debts and liabilities of the succession, the personal property shall be sold publicly in the usual manner.

827. If the real estate cannot be conveniently divided, a judicial sale must take place before the Tribunal.

Nevertheless, the parties, if they are all of full age, may consent that the judicial sale be conducted before a notary, upon whose selection they agree. Civ. C. 819, 826, 831, 882, 1166, 1686.

828. After the personal and real property has been appraised and sold, the delegated Judge, if necessary, sends the parties before a notary, upon whom they agree or whom he has already appointed of his own accord if the parties do not agree upon the choice of such notary.

The accounts are made up before this officer according to what the parties owe each other, and the general assets, the composition of the shares, and the shares to be given to each one are likewise determined.

829. Each co-heir returns to the succession, according to the rules which shall be hereafter established, the donations which have been made to him and the sums which he owes. Civ. C. 843 et s.

830. If the return is not made in kind, the heirs to whom it is due take an equal portion out of the bulk of the succession.

The deductions are made as much as possible from things of the same kind, quality and value as those not returned in kind. Civ. C. 828 et s., 856, 865.

831. After these deductions are made, what remains of the bulk is divided into as many equal shares as there are heirs or branches taking part in the division.
832. All possible care shall be taken in forming and composing the shares, so as to avoid cutting up the estate and dividing works, and it is proper to include in each share, if possible, the same quantity of personal and real property, and of rights or claims of the same nature and value. Civ C. 826, 866, 872, 1220.

833. Any inequality in the shares in kind is compensated by a return made either by an annuity or in money. Civ. C. 2103 §3, 2109.

834. The shares are made up by one of the heirs, if they can agree between them as to his selection, and if the one chosen accepts such duty: otherwise the shares are made up by an expert whom the delegated Judge appoints. Thereafter the lots are drawn. Civ. C. 826, 827, 833,835.

835. Before drawing the lots each coparcener is entitled to present his objections to their formation.

836. The rules established for the division to be made of the bulk of the estate shall also be followed in the subdivisions to be made between the branches taking part in the division. Civ. C. 815 et s., 840.

837. If, in the proceedings carried on before a notary, any disagreement arises, the notary shall draw up an official report of the controversies and respective statements of the parties, and shall send the parties before the delegated Judge appointed for the division: in other respects the rules provided by the laws of procedure shall be followed.

838. If all the heirs are not present, or if among them there are interdicted persons or minors, even emancipated, the division shall take place before the Court in accordance with the rules provided by article 819 et s., up to and
including the foregoing article. If there are several minors having different interests in the division, a special and distinct guardian shall be given to each of them. Civ. C. 465, 466 et s., 509.

839. If a judicial sale of real estate takes place in the case mentioned in the foregoing article, it can only be made before the Court and in accordance with the rules provided for the conveyance of property of minors. Outsiders are always admitted. Civ. C. 1686 et s.

840. Divisions made in accordance with the rules above provided, either by guardians with the consent of the family council or by emancipated minors with the assistance of their curators, or in the name of absentees or persons not present, shall be final: they shall only be provisional if the rules set down have not been followed. Civ. C. 466, 1314.

841. Any person, even one related to the decedent who does not inherit from him and to whom a co-heir has assigned his right to the succession, can be excluded from the division, either by all the co-heirs or by one of them, by the return to such person of the amount paid upon the assignment. Civ. C. 756, 1699, 1705, 1984.

842. After the division, each heir shall receive the special deeds appertaining to the property which has come to him.

The title-deeds of a piece of property which has been divided shall remain with the one who has the largest portion, with the obligation for him to assist those of his coparceners who are interested therein, when he is requested so to do.

The title-deeds relating to the whole estate shall be delivered to the one whom the heirs have chosen to receive them on deposit, with the obligation to help the coparceners whenever requested.
If there is any disagreement as to the selection, it is
made by the Judge.

§ 2. Of Collations.

843. Every heir, even a beneficiary heir, coming into a
succession shall return to his co-heirs everything he has
received from the decedent, directly or indirectly, by donation
\textit{inter vivos}: he cannot keep the donations nor claim the lega-
cies left to him by the decedent unless these donations and
legacies have been made to him expressly by preciput and
above his share or with exemption from collation. Civ. C.
829, 845, 852, 853, 858, 888, 889, 894, 918, 919, 922, 966,
1341, 1573.

844. Even in case the donations or legacies should have
been made by way of preciput and with exemption from
collation, the heir taking part in a division can only keep
them to the extent of the portion which can be disposed of:
the surplus is subject to collation. Civ. C. 913, 920 \textit{et s}.

845. An heir who renounces the succession can, never-
theless, retain the donation \textit{inter vivos} or claim the legacy
made to him, to the extent of the portion which can be

846. A donee who was not a presumptive heir at the time
of the donation, but who inherits at the time of the opening
of the succession, is also bound to collate, unless the donor
has exempted him therefrom. Civ. C. 919.

847. Donations and legacies made to the son of a person
who is a successor at the time of the opening of the succes-
sion are always supposed to be made with exemption from
collation.

A father coming to the succession of the donor is not
obliged to collate them. Civ. C. 857, 919.
848. Likewise, a son coming in his own right to the succession of the donor is not bound to collate the donation made to his father, even if he has accepted the latter's succession; but if the son only comes by representation he must collate what had been given to his father, even if he has repudiated his succession. Civ. C. 739, 857.

849. Donations and legacies made to the husband or wife of a person who inherits are considered as having been made with exemption from collation.

If the donations and legacies are made jointly to a husband and wife of whom only one inherits, this one collates the half: if the donations are made to a husband or wife who inherits, he or she collates the whole. Civ. C. 857, 1350.

850. Collation is only made to the succession of the donor. Civ. C. 843, 857, 865, 882, 1469, 1474, 1492, 2093, 2094.

851. Collation is due for what has been used for the establishment of one of the co-heirs or for the payment of his debts. Civ. C. 843, 855, 868, 1573.

852. The expense of support, maintenance, tuition, apprenticeship, the ordinary expenses of fitting out, those for weddings and usual gifts, shall not be collated. Civ. C. 203, 1409.

853. It is the same for the profits which the heir may have made out of agreements entered into with the decedent, if these agreements did not confer any indirect advantage when they were made. Civ. C. 918, 922, 1099, 1525.

854. Likewise, no collation is due for the co-partnerships
contracted without fraud between the decedent and one of his heirs, when the conditions thereof have been settled by an instrument in public form. Civ. C. 843, 849, 893, 894, 919, 1317.

855. A building which has been destroyed accidentally and not owing to the negligence of the donee shall not be subject to collation. Civ. C. 1302.

856. The revenue and interest of things subject to collation are only due from the day of the opening of the succession. Civ. C. 843, 928, 1936.

857. Collation is only due by co-heir to co-heir. It is not due to legatees nor to creditors of the succession. Civ. C. 802, 913, 921, 922.

858. Collation is made in kind or by taking less. Civ. C. 868, 869.

859. It can be enacted in kind as regards real estate whenever the real estate given has not been conveyed by the donee and there is no real estate in the succession of the same kind, value or importance of which shares could be made about equal for the other heirs. Civ. C. 865.

860. Collation is only made by taking less when the donee has conveyed the real estate before the opening of the succession: it is due according to the value of the real estate at the time of the opening. Civ. C. 843.

861. In all cases, the expenses which the donee has incurred to improve the property shall be taken into account, according to the increase in the value at the time of the division. Civ. C. 867.

862. In like manner, the necessary expenses which the
donee has made for the preservation of the property shall be taken into account, even if they have not improved it. Civ. C. 864, 867.

863. The donee, on his part, must account for the dilapidations and damages which have diminished the value of the real estate by his own act or through his fault and negligence. Civ. C. 1382 et s.

864. In case the real estate has been conveyed by the donee, the improvements made or damages caused by the purchaser shall be charged in accordance with the three foregoing articles.

865. When collation is made in kind, the property is added to the bulk of the succession free and exempt from all charges created by the donee; but creditors having a mortgage can participate in the division, to prevent the collation from taking place in a manner to defraud them of their rights. Civ. C. 882, 1167, 2125.

866. When a donation of real estate made to a person capable of inheriting and which is exempt from collation exceeds the portion which can be disposed of, the collation of the surplus is made in kind, if this surplus can be conveniently taken off.

Otherwise, if the excess is greater than one-half of the value of the real estate, the donee must collate the whole real estate, but may take out of the bulk of the property the value of the portion which can be disposed of: if this portion exceeds one-half of the value of the real estate the donee can retain the whole of the real estate, either by taking less or by compensating the heirs in cash or otherwise. Civ. C. 832, 844, 913 et s., 918, 924.

867. An heir who returns a piece of real estate in kind
can retain the enjoyment thereof until the full reimbursement of the sums due to him for expenses or improvements. Civ. C. 861.

868. Collation of personal property is only made by taking less. It is effected on the basis of the value of the personal property at the time of the donation according to the appraisement annexed to the instrument, and, in the absence of such appraisement, by an appraisement made by experts at the exact price and without increase. Civ. C. 825.

869. Collation of money given is made by taking less out of the funds of the succession.

In case of insufficiency, the donee can free himself from collating the money by abandoning personal property in proportion to the amount due, or in the absence of personal property, real estate of the succession. Civ. C. 868.

§ 3. Of the Payment of Debts.

870. The co-heirs contribute among themselves to the payment of the debts and liabilities of the succession, each one proportionately to what he takes. Civ. C. 802, 873, 1017, 1202, 1220, 1221, 1233, 1476, 2083.

871. A legatee under universal title contributes with the heirs pro rata to what he takes, but a special legatee is not liable for the debts and expenses, with the exception of the action upon a mortgage which may lie against the real estate devised. Civ. C. 802, 808, 1009, 1012, 1024, 2114.

872. When the real estate of a succession is encumbered by annuities resulting from a special mortgage, each co-heir can demand that the annuities be reimbursed and the real estate freed before the formation of the shares takes place.
If the co-heirs divide the succession in the condition in which it is, the encumbered real estate shall be appraised at the same value as the other real estate: the capital of the annuity is deducted from the total value: the heir to whose share this piece of property falls shall alone remain responsible for the payment of the interest and he must guarantee his co-heirs therefor. Civ. C. 1221, 1223.

873. The heirs are liable for the debts and expenses of the succession personally upon their portion and equal share and by way of mortgage for the whole, subject to their remedy either against the co-heirs or the universal legatees on account of the part for which the latter must contribute thereto. Civ. C. 1009, 1012, 1221, 2166.

874. A special legatee who has paid the debt with which the real estate devised was encumbered is subrogated to the rights of the creditor against the heirs and successors under universal title. Civ. C. 611, 871, 1020, 1024, 1251.

875. A co-heir or successor under universal title who, owing to a mortgage, has paid more than his share of the common debt, only has a remedy against the other co-heirs or successors under universal title for the part which each of them must personally bear, even in case the co-heir who has paid the debt has caused himself to be subrogated to the rights of the creditors; without prejudice, nevertheless, to the rights of the co-heir who, by the effect of benefit of inventory, has retained the privilege of claiming the payment of his personal claim as any other creditor. Civ. C. 1009, 1017, 1213, 2033.

876. In case one of the heirs or successors under universal title should be insolvent, his share of the debt covered by mortgage is apportioned pro rata among all the others. Civ. C. 855, 1214, 2026.
877. Instruments entitling to execution against the decedent have the same force against the heir personally; but the creditors cannot, nevertheless, proceed with the execution until eight days after these instruments have been served upon the heir personally or at his domicil. Civ. C. 2244.

878. They can always, in all cases and against all creditors, ask for a separation of the property of the decedent from that of the heir. Civ. C. 802, 873, 879, 880, 2111.

879. This right, however, can no longer be made use of in case of novation in the claim against the decedent by the acceptance of the heir as debtor. Civ. C. 873, 878, 1271 et s.

880. It is outlawed with respect to personal property at the expiration of three years.

With respect to real estate the claim can only be maintained so long as such real estate remains in the hands of the heir. Civ. C. 802, 878.

881. The creditors of the heir are not allowed to ask for the separation of the estates against the creditors of the succession.

882. The creditors of a coparcener can object to a division being made outside of their presence, to avoid being defrauded of their rights: they can take part therein at their own expense, but they cannot attack a division once terminated, unless, however, it should have been made without them, notwithstanding an injunction issued by them. Civ. C. 816, 821, 883, 1167, 2166.
§ 4. Of the Effects of Division and of the Warranty of Shares.

883. Each heir is supposed to have inherited alone and immediately all the things comprised in his share or allotted to him by judicial sale and never to have had the ownership of the other things of the succession. Civ. C. 882, 888, 889, 1184, 1220, 1563, 1654, 1686, 1872, 2103, 2108, 2109, 2113, 2125, 2166.

884. The heirs remain respectively responsible to each other for trespasses and ejectments occasioned only by a cause prior to the division.

The guarantee does not exist if the kind of ejectment suffered has been excepted by a special and express clause in the instrument of division: it ceases if the heir is subjected to ejectment owing to his own fault. Civ. C. 887, 1109, 1626, 1640.

885. Each co-heir is personally liable in proportion to his hereditary share to indemnify his co-heir for the loss which the ejectment has caused him.

If one of the co-heirs is insolvent, the share for which he is responsible shall also be apportioned equally between the guarantee and all the co-heirs who are solvent. Civ. C. 876, 2103 et s.

886. The guarantee of solvency of the debtor of an annuity can only be made use of within the five years following the division.

No guarantee shall exist on account of insolvency of the debtor, when the same has only taken place since the division was terminated. Civ. C. 876, 1693 et s.
§ 5. Of the Rescission of Division.

887. Divisions can be rescinded on account of violence or of fraud.

Rescission can also take place when one of the heirs establishes that he has been damaged to the extent of more than one-quarter. The simple omission of an article of the succession does not give rise to the action for rescission, but only to an addition to the instrument of division. Civ. C. 890, 891, 1079, 1100 et s., 1217, 1304, 1305, 1677, 1678.

888. The action for rescission is open against any deed of which the object is to put an end to a joint tenancy between co-heirs, even if it is called a sale, an exchange, a compromise, or by any other name.

But after the division, or the making of a deed in its place, the action for rescission can no longer be maintained against the compromise effected on the real difficulties which the first deed contained, even if no suit had been commenced in this connection. Civ. C. 887, 889, 1408, 2044, 2052.

889. The action shall not lie against a sale of rights to a succession made without fraud to one of the co-heirs at his risk and peril by his co-heirs or one of them. Civ. C. 887, 888.

890. To decide whether any damage has been suffered or not, the things are appraised according to their value at the time of the division. Civ. C. 1675.

891. A defendant in an action for rescission can stop it and prevent a new division by offering and delivering to the plaintiff the balance of his hereditary share, either in cash or in kind. Civ. C. 826, 840, 1681.
892. A co-heir who has conveyed his share, wholly or in part, is no longer allowed to bring an action for rescission on account of fraud or violence, if the conveyance which he has made is subsequent to the discovery of the fraud or the discontinuance of the violence. Civ. C. 887, 1115, 1304, 1338.
TITLE SECOND.

OF DONATIONS INTER VIVOS, AND OF WILLS.
(Passed 3rd May, 1803; promulgated 13th of same month.)

CHAP. I.

GENERAL PROVISIONS.

893. A person can only dispose gratuitously of his property by way of donation inter vivos or by will in the manner hereinafter set forth. Civ. C. 894, 901 et s., 911, 913, 916, 918, 920, 921, 922, 931, 932, 938, 967 et s., 1282, 1924, 1937, 1939, 2279.


895. A will is an instrument by which a testator disposes, for the time when he will no longer be living, of the whole or part of his property, and which he can revoke. Civ. C. 893, 959, 967, 969, 970, 1002, 1003, 1014, 1035, 1104, 1110, 1318, 1347, 1964.

896. Entails are prohibited.

Every provision by which a donee, an heir appointed, or a legatee shall be required to keep property and to return it to a third party shall be void, even as against the donee, the heir appointed or the legatee.

C.N.
Nevertheless, property which is free and which forms part of the endowment of a hereditary title which the King has created in favour of a Prince or of the head of a family can be transmitted by way of inheritance, as is provided by the Imperial Act of the 13th March, 1806, and by the senatus consultum of the 14th August following (g).

897. Are excepted from the first two paragraphs of the foregoing article the provisions which fathers and mothers, brothers and sisters, are allowed to make under chapter VI. of the present Title.

898. The provisions by which a third party is called to take a donation, an inheritance, or a legacy in case a donee, an heir appointed, or a legatee should not take it, shall not be considered as an entail and shall be valid. Civ. C. 1082.

899. The same rule shall apply to a donation inter vivos or to a will by which the usufruct is given to one person and the full ownership to another. Civ. C. 849.

900. In all provisions inter vivos or wills, conditions which are impossible or those which are contrary to law or good morals shall be considered as not written. Civ. C. 6, 1021, 1130, 1133, 1176, 1387, 1600.

(g) This last paragraph was repealed by the laws of 12th May, 1835, and 7th May, 1849.
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CHAP. II.

OF THE CAPACITY OF DISPOSING OR OF RECEIVING BY DONATION INTER VIVOS OR BY WILL.

901. To make a donation inter vivos or a will one must be of sound mind. Civ. C. 504, 895, 909, 967, 1009, 1116.

902. All persons can dispose of or receive property by donation inter vivos or by will excepting those whom the law declares incapable of so doing. Civ. C. 502 et s., 895, 901, 903 et s., 906, 911, 967, 969, 970, 1046, 1422, 1555, 1556.

903. A minor under sixteen years of age cannot in any way dispose of his property, with the exception of what is provided in chapter IX. of the present Title. Civ. C. 904, 1095, 1096.

904. A minor who has reached the age of sixteen years can dispose of his property by will, but only to the extent of one-half of what the law allows a person of full age to dispose. Civ. C. 1094, 1098.

905. A married woman cannot make a donation inter vivos without the special assistance or consent of her husband, or without having been authorized by the Court in accordance with what is provided by articles 217 and 219 of the Title Of Marriage.

She does not require the consent of her husband, nor the authorization of the Court, to dispose of property by will. Civ. C. 1096, 1338.

906. To be capable of receiving a donation inter vivos it is necessary that one should be conceived at the time of the donation.
OF DONATIONS INTER VIVOS, AND WILLS.

To be capable of receiving under a will it is sufficient that one should be conceived at the time of the death of the testator.

Nevertheless, the donation or the will only bears effect in case the child born can live. Civ. C. 725, 1048.

907. A minor, although he has reached the age of sixteen years, cannot dispose of his property in favour of his guardian, even by will.

A minor who has become of age cannot dispose of his property, either by donation inter vivos or by will, for the benefit of the person who has been his guardian, if the final guardianship accounts have not been previously rendered and approved of.

In the above two cases the ascendants of minors who are or have been their guardians are excepted. Civ. C. 472, 475, 911, 1304.

908. Natural children cannot receive by donation inter vivos or by will more than what the law grants them under the Title Of Successions. Civ. C. 756, 757, 1338.

909. Doctors or surgeons, health officers and druggists, who have taken care of a person during the illness of which he dies, shall not be entitled to the donations inter vivos or bequests by will which he had made in their favour during the course of such illness.

Are excepted:—

1. The special provisions for compensation taking into account the means of the one who has made them and the services rendered;

2. The universal provisions in case of relationship up to the fourth degree inclusively, provided, however, the decedent has no heirs in the direct line, unless the person in whose favour the provisions have been made is himself one of such heirs.
The same rules apply to ministers of the Gospel. Civ. C. 911, 1002 et s.

910. Donations *inter vivos* or wills in favour of hospitals of the poor of a county or of establishments of public use can only bear effect if they have been authorized by an *Imperial* decree. Civ. C. 906, 911, 932, 937, 1340.

911. All provisions in favour of a person who is incapable of taking shall be void if they are concealed under the form of a contract for consideration or if they are made in the name of intermediaries.

Are considered intermediaries:—
The fathers and mothers, the children and descendants, and the husband or wife of the person who is incapable of taking. Civ. C. 895, 902, 906, 967, 1099, 1100, 1338, 1341, 1346, 1350, 1353.

912. *One cannot dispose in favour of an alien unless the latter can dispose in favour of a Frenchman* (*h*).

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**Chap. III.**

**Of the Portion of Property which can be Disposed of, and of Reduction.**

§ 1 *Of the Portion of Property which can be Disposed of.*

913. Advantages resulting from donations *inter vivos* or from wills cannot exceed one-half of the property of the person who has made such dispositions, if he leaves only one legitimate child at his death; one-third if he leaves two children; one-fourth if he leaves three or a greater number. Civ. C. 926 et s., 1004, 1090, 1094 et s.

(*h*) This article was repealed by the law of the 14th July, 1819.
914. Are included in the foregoing article under the name of children, descendants of whatever degree; nevertheless, they are only counted for the child whom they represent in the succession of the person who has disposed of the property. Civ. C. 739 et s.

915. Advantages resulting from donations inter vivos or from wills cannot exceed one-half of the property if, in case there are no children, the decedent leaves one or more ascendants in each of the paternal and maternal lines, and three-quarters if he leaves ascendants in one line only.

The property thus reserved for the benefit of ascendants shall be taken by them in the order in which the law calls them to inherit; they shall alone be entitled to this reserve in all cases in which a division with collaterals would not give them the portion of the property secured by such reserve. Civ. C. 746, 750, 765, 785, 904, 1094.

916. If there are no ascendants and descendants, advantages by donations inter vivos or by wills can exhaust all the property.

917. If the provision resulting from a donation inter vivos or a will grants a usufruct or a life annuity of which the amount exceeds the portion of property which can be disposed of, the heirs in whose favour the law allows a reserve may, at their option, either carry out the provision, or abandon the portion of the property which can be disposed of. Civ. C. 949, 1094, 1098, 1970.

918. The value of property in full ownership conveyed, either on condition of a life annuity or absolutely or with the restriction of a usufruct, to one of the successors in the direct line, shall be taken out of the portion which can be disposed of, and the surplus, if there is any, shall be returned to the estate. This calculation and this return
cannot be demanded by those of the other successors in the direct line who might have consented to such conveyances, and in no case by the successors in the collateral line. Civ. C. 771, 843 et s., 1130.

919. The portion of property which can be disposed of may be given in whole or in part either by donation inter vivos or by will to the children or other successors of the donor without having to be returned by the donee or the legatee who takes a part of the succession, provided the provisions have been expressly made by way of preciput and above the share.

The declaration that the donation or legacy is by way of preciput and above the share can be made either in the instrument containing the provisions or subsequently in the manner provided for donations inter vivos or wills. Civ. C. 843, 912, 913, 620 et s., 931 et s.

§ 2. Of the Reduction of Donations and Legacies.

920. Donations, either inter vivos or mortis causa, which exceed the portion of property which can be disposed of, shall be reduced to that portion when the succession becomes open. Civ. C. 464, 922, 1090.

921. The reduction of donations inter vivos can only be demanded by those for whose benefit the law allows a reserve or by their heirs or legal representatives; the donees, legatees, and creditors of the decedent cannot demand this reduction or take advantage of it. Civ. C. 845, 913 et s., 920, 922, 924, 1131, 1167, 1340.

922. The reduction is made by forming one mass of all the property existing at the death of the donor or testator. Such property as he has disposed of by donations inter vivos, according to the statement thereof at the time of the dona-
tions, and of the value at the time of the death of the donor, is fictitiously added. After having deducted the debts, a calculation is made on all this property as to what may be the portion which he could dispose of owing to the kind of heirs he leaves. Civ. C. 843, 848, 857, 913, 920, 1075, 1076, 1077.

923. Donations *inter vivos* shall never be reduced until the whole value of the property disposed of under the will has been exhausted; and when this reduction is to take place, it shall commence with the last donation and so on, starting from the last to the first. Civ. C. 921.

924. If a donation *inter vivos* subject to reduction has been made to one of the successors, he can retain, out of the property given, the value of the portion which would belong to him as heir in the property which could not be disposed of, if it is of the same kind. Civ. C. 832, 859, 866 et s.

925. When the amount of the donations *inter vivos* exceeds or is equal to the portion which can be disposed of, all the testamentary dispositions shall lapse. Civ. C. 1039 et s.

926. When the testamentary dispositions exceed either the portion which can be disposed of or such part thereof as remains after deducting the amount of the donations *inter vivos*, the reduction shall take place *pro rata*, without any distinction between the universal and specific legacies. Civ. C. 871, 927, 1003, 1009, 1024.

927. Nevertheless, in all cases when the testator has expressly declared that he intends that a certain legacy should be paid in preference to others, this preference shall be carried out and the legacy to which it applies shall only
be reduced if the amount of the others does not complete the legal reserve. Civ. C. 1009, 1024.

928. The donee shall return the revenues of what exceeds the portion which can be disposed of from the day of the death of the donor, if the action for reduction has been brought within the year; if not, from the day of the complaint. Civ. C. 856, 1005, 2277.

929. The real estate to be recovered owing to the reduction shall not be encumbered by any debts or mortgages created by the donee. Civ. C. 2125.

930. The action for reduction or restitution can be instituted by the heirs against third parties holding the real estate which forms part of the donations and has been conveyed by the donee, in the same manner and in the same order as against the donees themselves, a seizure having previously been made of their property. This action shall be brought according to the order of dates of the conveyances, beginning with the most recent one. Civ. C. 929, 2022, 2062.

Chap. IV.
Of Donations Inter Vivos.

§ 1. Of the Form of Donations inter vivos.

931. All instruments containing a donation inter vivos shall be executed before notaries in the ordinary form of contracts, and the original shall remain with them, or otherwise such instruments shall be void. Civ. C. 894, 948, 949, 1339, 1340.

932. A donation inter vivos shall not be binding upon
the donor and shall not produce any effect until the time when it has been accepted in express terms.

The acceptance may be made during the lifetime of the donor by a subsequent public instrument, of which the original shall remain (with the notary); but then the donation shall not have any effect with respect to the donor until the time when notice has been given to him of the instrument containing such acceptance. Civ. C. 780, 1076, 1087, 1121, 1317.

933. If the donee is of full age, the acceptance shall be made by him or in his name by the person holding his power of attorney giving power to accept the donation made or a general power to accept donations which have or might have been made.

This power shall be executed before notaries and a certified copy thereof shall be annexed to the original of the donation or to the original of the acceptance, if made by separate instrument.

934. A married woman cannot accept a donation without her husband's consent, or in case of refusal of the husband, without the permission of the Court, in accordance with what is stated in articles 217 and 219, of the Title Of Marriage. Civ. C. 225, 935, 938, 942, 1087, 1125.

935. A donation made to a minor who is not emancipated, or to an interdicted person, must be accepted by his guardian, in accordance with article 463 of the Title Of Minority, of Guardianship, and of Emancipation.

An emancipated minor can accept with the assistance of his curator.

Nevertheless, the father and mother of the minor, whether he is emancipated or not, or the other ascendants, even during the lifetime of the father and mother, although
they are not the guardians or curators of the minor, can accept for him. Civ. C. 58, 457, 463, 942, 1087.

936. A deaf and dumb person, who knows how to write, can accept, either personally or by attorney-in-fact.

If he does not know how to write, the acceptance must be made by a curator appointed for that purpose, in accordance with the rules set down in the Title Of Minority, of Guardianship, and of Emancipation.

937. Donations made in favour of hospitals of the poor of a county, or of institutions of public use, can be accepted by the administrators of these counties or institutions, after having been duly authorized. Civ. C. 910.

938. A donation duly accepted shall be complete by the sole consent of the parties: the ownership of the things given shall be transferred to the donee without any delivery being necessary. Civ. C. 711, 932, 1138.

939. When a donation is made of property which can be mortgaged, the transcription of the deeds containing the donation and the acceptance and notice of acceptance which might have taken place by a separate instrument, shall be made at the bureau of mortgages in the District where the property is situated. Civ. C. 938, 941, 1069, 2118.

940. Such transcription shall take place at the requisition of the husband when the property has been given to his wife, and if the husband does not fulfil this formality, the wife can have it fulfilled without his consent.

When a donation is made to minors, interdicted persons or public institutions, the transcription shall take place at the requisition of the guardians, curators or administrators. Civ. C. 942, 2138, 2139.

941. Failure to make the transcription can be set up by
all persons having an interest in so doing, excepting, however, those who have charge of having the transcription made, or their representatives, and the donor. Civ. C. 938, 939, 940, 1070, 1072, 1076, 2136 et s., 2181, 2182.

942. Minors, interdicted persons, married women, shall not be reinstated in case of want of acceptance or omission to make the transcription, but they have their remedy against their guardians or husbands, if necessary, and they shall not be reinstated, even if the said guardians or husbands were insolvent. Civ. C. 935, 938, 1070 et s., 1428, 2121.

943. A donation inter vivos can only include the present property of the donor; if it includes future property, it shall be void as regards the same. Civ. C. 894, 944, 947, 948, 1076, 1329.

944. Every donation inter vivos made under conditions of which the realisation depends alone on the will of the donor, shall be void. Civ. C. 947, 1086, 1174.

945. A donation shall likewise be void if it has been made upon condition of paying other debts or liabilities than those which existed at the time of the donation, or which are expressed either in the instrument of donation or in the statement which should be annexed thereto. Civ. C. 947, 1084, 1085, 1134, 1394, 1395, 1396.

946. In case the donor should reserve to himself the right to dispose of an article included in the donation, or of a specific amount out of the property given, if he dies without having disposed thereof the said article or the said amount shall belong to the heirs of the donor, notwithstanding all conditions and stipulations to the contrary. Civ. C. 947, 1086.
947. The four foregoing articles do not apply to the donations which are mentioned in chapters VIII. and IX. of the present Title. Civ. C. 1082 et s.

948. Every instrument containing a donation of articles of personal property shall only be valid as regards the articles of which an estimate has been made, signed by the donor and the donee or those who accept for the latter and annexed to the original instrument containing the donation. Civ. C. 535, 1084.

949. The donor has the right to reserve to himself, or to dispose in favour of another person, of the enjoyment or the usufruct of the personal property or real estate given. Civ. C. 899.

950. When a donation of personal property has been made and the usufruct reserved, the donee shall be bound, at the expiration of the usufruct, to take the articles given, which are found in kind, in the condition in which they are, and he shall be entitled to an action against the donor or his heirs on account of the articles which do not exist to the extent of the value which has been given to them in the statement of appraisal. Civ. C. 589, 615.

951. A donor may stipulate a right to the return of the articles given, either in case of the previous death of the donee alone or in case of the previous death of the donee and of his descendants.

This right can only be stipulated in favour of the donor alone. Civ. C. 351, 747, 766, 900, 953, 1134, 1176.

952. The effect of the right to have the things returned shall be to cancel all transfers of the property given and to make these things revert to the donor free and unencumbered by any liabilities and mortgages, with the
exception, nevertheless, of the mortgage applying to the
dowry and to matrimonial agreements if the other property
of the husband who is the donee is not sufficient, and in
case only the donation should have been made in the same
marriage contract from which these rights and mortgages
result. Civ. C. 1167, 1183.

§ 2. Of Exceptions to the Rule of Irrevocability of
Donations Inter Vivos.

953. A donation *inter vivos* can only be revoked for non-
execution of the conditions under which it was made, on
account of ingratitude, or if children have been born to
the person. Civ. C. 1096.

954. In case of revocation on account of non-execution
of the conditions, the property shall return to the donor free
from all charges and unencumbered by any mortgages
eemanating from the donee, and the donor shall have, against
third parties in possession of the real estate given, all the
rights which he would have against the donee himself.
Civ. C. 2125.

955. A donation *inter vivos* can only be revoked on
account of ingratitude in the following cases:
1. If the donee has sought to take the life of the donor;
2. If he has been guilty towards him of cruelty, of
felonies, or of serious wrongs;
3. If he refuses to give him support. Civ. C. 1046.

956. A revocation on account of non-execution of condi-
tions, or on account of ingratitude, shall never take place as
a matter of right. Civ. C. 1046, 1184.

957. An action for revocation on account of ingratitude
shall be brought within one year from the day of the offence
with which the donee is charged by the donor, or from the day the offence may have been known by the donor.

This revocation cannot be applied for by the donor against the heirs of the donee, nor by the heirs of the donor against the donee, unless in the latter case the action should have been commenced by the donor, or he should have died within one year from the time of the offence. Civ. C. 1047, 2253.

958. A revocation on account of ingratitude shall not affect the conveyances made by the donee, nor the mortgages or other real encumbrances which he may have consented to on the property forming part of the donation, provided they are all previous to the inscription which may have been made of the extract of the complaint for revocation in the margin of the transcription ordered by article 939.

In case of revocation, the donee shall be ordered to return the value of the property conveyed, taking into account the time when the action was brought and the revenues from such time. Civ. C. 2125.

959. Donations in view of marriage shall not be revoked on account of ingratitude. Civ. C. 1081, 1091 et s.

960. All donations *inter vivos* made by persons who had no children or descendants actually living at the time of the donation shall be revoked as a matter of right upon the birth of a legitimate child of the donor, even if posthumous, or in case of the legitimation of a natural child by subsequent marriage, if born since the donation, of whatever value these donations may be and for whatever cause they may have been made, even if they were mutual or remunerative, and even if they were made in view of marriage by persons other than ascendants to the husband or
wife, or by the husband or wife to each other. Civ. C. 331 et s., 966, 1096.

961. This revocation shall take place even if the child of the donor had been conceived previously to the donation.

962. A donation is likewise revoked even if the donee should have taken possession of the property given and should have been allowed by the donor to retain the same after the birth of a child; but the donee shall not be bound to return the revenues collected by him, of whatever nature they may be, except from the day of the birth of the child or of his legitimation by subsequent marriage, of which notice has been served upon him by writ or by an instrument in due form, and even if the action to recover the property given has only been brought subsequently to such notice. Civ. C. 549, 550, 960.

963. The property forming part of the donation which has been revoked as a matter of right shall return to the estate of the donor free from all encumbrances and mortgages on the part of the donee, and this property shall not be applied, even as collateral, to the repayment of the dowry of the wife of such donee, nor of what she is entitled to take back, nor of other matrimonial agreements; and this rule shall apply, even if the donation has been made in view of the marriage of the donee and has been inserted in the contract, and if the donor has bound himself as surety in the donation for the execution of the marriage contract. Civ. C. 2125.

964. Donations which have been revoked in this way cannot be revived or produce any effect anew, either by the death of the donor’s child, or by any other instrument confirming them; and if the donor wishes to give the same property to the same donee, either before or after the
death of the child on account of whose birth the donation has been revoked, he can only do so by a new act. Civ. C. 1339.

965. Every clause or agreement by which the donor might have renounced the right of revocation of the donation on account of the birth of a child shall be considered as void and shall not produce any effect. Civ. C. 6, 900.

966. The donee, his heirs or representatives, or other persons in possession of the property given, cannot set up prescription to maintain the validity of the donation revoked owing to the birth of a child, until after having been in possession for thirty years, which shall only commence to run from the day of the birth of the last child of the donor, even if posthumous, and without prejudice to the interruptions resulting from the law. Civ. C. 2242 et s.

CHAP. V.

OF TESTAMENTARY DISPOSITIONS.

§ 1. Of General Rules applying to the form of Wills.

967. Every person can dispose of his property by will, either in the form of an appointment of an heir or of the making of a legacy or under any other denomination sufficient to express his wish. Civ. C. 901 et s., 1002 et s., 1014, 1035.

968. A will cannot be made in the same instrument by two or several persons, either in favour of a third party, or by way of mutual and reciprocal dispositions. Civ. C. 1001, 1097.
969. A will can be holographic, or can be made as a public instrument, or in the mystic form.

970. A holographic will shall not be valid unless it is wholly written, dated, and signed, in the hand of the testator. It is not subject to any other formality. Civ. C. 999, 1001, 1007, 1035.

971. A will made in the public form shall be received by two notaries in the presence of two witnesses, or by one notary in the presence of four witnesses. Civ. C. 972, 973, 975, 980, 1001.

972. If a will is received by two notaries, it shall be dictated by the testator and shall be written out by one of the notaries as it is dictated.

If there is only one notary, it shall also be dictated by the testator and written out by such notary.

In both cases it shall be read over to the testator in the presence of the witnesses.

All of which shall be expressly mentioned. Civ. C. 1001.

973. Such will shall be signed by the testator: if he declares that he cannot or does not know how to sign, his declaration shall be expressly mentioned in the instrument, as well as the cause preventing him from signing. Civ. C. 974, 1001.

974. The will shall be signed by the witnesses: nevertheless, in the country the signature of one of the two witnesses shall be sufficient if the will is received by two notaries, and the signatures of two out of the four witnesses shall be sufficient if it is received by one notary. Civ. C. 971, 973, 980, 1001.

975. The legatees, of whatever kind they may be, and
their blood relatives, or relatives by marriage up to the fourth degree inclusively, and the clerks of the notaries who have received the instrument, cannot be taken as witnesses of a will made in the public form. Civ. C. 735 et s., 980, 1001.

976. When a testator desires to make a mystic or secret will, he shall be obliged to sign the instrument, whether he has written it himself or whether he has caused it to be written out by another person. The paper containing his will, or the paper used as an envelope, if there is one, shall be closed and sealed. The testator shall present it thus closed and sealed to the notary and to six witnesses at least, or he shall have it closed and sealed in their presence; and he shall declare that the contents of this paper are his will, written and signed by him, or written out by another person and signed by him: the notary shall draw up a certificate of superscription which shall be written out on this paper, or on the sheet used as an envelope; such certificate shall be signed as well by the testator as by the notary, and also by the witnesses. All of which shall be done without interruption and without attending to other business; and in case the testator should not be able to sign the certificate of superscription owing to a cause having arisen since the signing of the will, the declaration which he makes thereof shall be mentioned, and in such case it shall not be necessary to increase the number of witnesses. Civ. C. 977, 978, 1001, 1008.

977. If the testator does not know how to sign, or could not sign, when he has had his will written out, a witness, in addition to the number of witnesses mentioned in the foregoing article, shall be called for the certificate of superscription, and shall sign the same with the other witnesses; and the cause for which this witness has been called shall be mentioned. Civ. C. 1001.
978. Those who cannot, or do not know how to read, cannot make a will in the mystic form. Civ. C. 1001.

979. In case the testator should not be able to speak, but can write, he may make a mystic will, provided the will is entirely written, dated and signed in his hand, and the same is presented to the notary and to the witnesses, and provided he writes at the top of the certificate of superscription, in the presence of the witnesses, that the paper which he presents is his will; after which the notary shall write out the certificate of superscription in which he shall mention that the testator has written these words in the presence of the notary and of the witnesses, and everything that is specified in article 976 shall likewise be followed. Civ. C. 1001.

980. The witnesses called to be present at the making of wills shall be males of full age, subjects of the King (citizens of the Republic) who have the enjoyment of their civil rights. Civ. C. 975, 1001.

§ 2. Of special rules applying to the forms of certain Wills.

981. (Amended by Law of 8th June, 1893.)—Wills of soldiers and sailors of the State, and of persons employed in the armies, may be received, in the cases and under the conditions specified in article 93, either by a field officer in the presence of two witnesses, or by two employees of the commissariat, or by officers of the commissaryship, or by one of these employees or officers in the presence of two witnesses, or finally, in a separate detachment, by the officer commanding this detachment, with the assistance of two witnesses, if there does not exist in the detachment any field officer, employees of the commissariat, or officer of the commissaryship.

The will of the officer commanding a separate detachment,
may be received by the one coming after him in rank. Civ. C. 1001.

982. (Amended by Law of 8th June, 1893.)—The wills mentioned in the foregoing article can also be received in hospitals or military field ambulances, if the testator is ill or wounded, by the head physician, with the assistance of the officer having charge of the management of the same.

If there is no officer in charge of the management of the same, the presence of two witnesses shall be necessary. Civ. C. 998, 1001.

983. (Amended by Law of 8th June, 1893.)—In all cases a duplicate of the wills mentioned in the two foregoing articles shall be made.

If this formality could not be complied with owing to the state of health of the testator, a certified copy of the will shall be made to take the place of the duplicate: this certified copy shall be signed by the attesting witnesses and officers. The causes which have prevented the duplicate from being made shall be mentioned.

So soon as communications are re-established, and within the shortest time, the two originals, or the original and the certified copy of the will, shall be addressed separately and by different mails, under closed and sealed cover, to the Minister of War or of the Navy, to be filed with the notary mentioned in the will, and in case none should be mentioned, with the President of the Notaries' Association of the District of the last domicil.

984. (Amended by Law of 8th June, 1893.)—A will made in the manner above set forth shall become void six months after the testator has returned to a place where he is able to comply with the ordinary formalities, unless, before the expiration of such time, he should again come under one of the special cases specified in article 93.
will shall then be valid during the time he is so situated, and during a new period of six months after its expiration.

985. Wills made in a place with which all communications are intercepted, on account of a plague or other contagious disease, may be made before the Justice of the Peace, or before one of the municipal officers of the District, in the presence of two witnesses.

986. This provision shall apply as well to those who are suffering from such diseases as to those who are in the places thus stricken, even if such persons are not actually ill.

987. The wills mentioned in the two foregoing articles shall become void six months after communications have been re-established with the place where the testator is, or six months after he has gone to another place where they are not intercepted.

988. (Amended by Law of 8th June, 1893.)—During the course of a sea voyage, either at sea or during a stoppage in port, if it is impossible to have any communication with land, or if the port being in a foreign country, there is no French diplomatic or consular agent performing the duties of a notary, the wills of the persons present on board shall be received in the presence of two witnesses, on the ships of the navy by the paymaster, or in his absence by the commander or the officer acting as such, and on other ships by the captain, commander or master, with the assistance of the first mate of the ship, and in their absence by those who replace them.

The instrument shall mention such of the circumstances above set forth under which it has been drawn up. Civ. C. 980, 989 et s., 996, 998, 1001.
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989. (Amended by Law of 8th June, 1893.)—On the ships of the State, the will of the paymaster shall, under the circumstances mentioned in the foregoing article, be received by the commander or by the officer acting as such, and if there is no paymaster the will of the commander shall be received by the one coming after him in rank.

On other ships, the will of the captain, commander or master, or of the first mate, shall, under the same circumstances, be received by those next after them in rank.

990. (Amended by Law of 8th June, 1893.)—In all cases a duplicate of the wills mentioned in the two foregoing articles shall be made.

If this formality could not be complied with on account of the state of health of the testator, a certified copy of the will shall be drawn up to take the place of the duplicate; this certified copy shall be signed by the witnesses and the attesting officers. The causes which have prevented the duplicate from being made shall be mentioned.

991. (Amended by Law of 8th June, 1893.)—At the first stoppage in a foreign port where a French diplomatic or consular agent is to be found, one of the originals, or the certified copy of the will, shall be delivered, under closed and sealed cover, to this official, who shall forward it to the Minister of the Navy, in order that it may be filed, as is stated in article 983.

992. (Amended by Law of 8th June, 1893.)—Upon the arrival of the ship in a French port, the two originals of the will, or the original and the certified copy, or the original which remains in case of transmission or delivery during the course of the voyage, shall be filed, under closed and sealed cover, for the ships of the State, at the office of Equipment, and for the other ships, at the office of Maritime
Inscriptions. Each of these papers shall be addressed, separately and by different mails, to the Minister of the Navy, who shall forward them as is stated in article 983.

993. (Amended by Law of 8th June, 1893.)—The delivery of the originals or certified copies of the will made in accordance with the provisions of the foregoing articles, at the consulate, at the office of Equipment, or at the office of Maritime Inscriptions, shall be mentioned on the roll of the ship opposite the name of the testator.

994. (Amended by Law of 8th June, 1893.)—A will made during the course of a sea voyage in the manner specified in articles 988 et seq., shall only be valid if the testator dies on board, or within six months after landing in a place where he could have made it over again in the usual form.

Nevertheless, if the testator undertakes a new sea journey before the expiration of that time, the will shall be valid during the continuance of such voyage, and during a new period of six months after the testator has landed again. Civ. C. 969, 999.

995. (Amended by Law of 8th June, 1893.)—The provisions contained in a will made during the course of a sea voyage in favour of the officers of the ship other than those who are blood relatives or relatives by marriage of the testator, shall be null and void.

The same rule shall apply whether the will is made in the holographic form, or is made in accordance with articles 988 et seq. Civ. C. 975.

996. (Amended by Law of 8th June, 1893.)—The provisions of articles 984, 987, or 904, according to circumstances, shall be read to the testator in the presence of the
witnesses, and it shall be mentioned in the will that the same have been so read.

997. (Amended by Law of 8th June, 1893.)—The wills referred to in the foregoing articles of the present section shall be signed by the testator, by those who have received them, and by the witnesses.

998. (Amended by Law of 8th June, 1893.)—If the testator declares that he cannot or does not know how to sign, his declaration shall be mentioned, and also the cause which has prevented him from signing.

In the cases in which the presence of two witnesses is required, the will shall be signed by one of them at least, and the cause for which the other has not signed shall be mentioned. Civ. C. 973, 974, 1001.

999. A Frenchman who is in a foreign country can make his will by an instrument under private signature, as is specified in article 970, or by a public instrument, according to the form in use in the place where such instrument shall be made.

1000. Wills made in a foreign country can only be enforced as to the property situated in France when they have been registered at the office of the testator’s domicile, if he has retained one, and if not, at the office of his last known domicile in France; and in case the will contains provisions relating to real estate which is situated in France, it shall also be registered at the office of the place where such real estate is situated, but no double tax shall be charged. Civ. C. 102 et s.

1001. Unless the formalities to which the various kinds of wills are subject by the provisions of the present and foregoing sections have been complied with, the wills shall be void.
§ 3. Of the Appointment of Heirs and of Legacies in General.

1002. Testamentary dispositions are either universal, or under universal title, or under special title.

Each disposition of this kind, whether made in the form of the appointment of an heir, or in the form of a legacy, shall produce its effects according to the rules hereafter established for universal legacies, legacies under universal title, or special legacies. Civ. C. 1003, 1010, 1014.

§ 4. Of Universal Legacies.

1003. A universal legacy is a testamentary disposition by which the testator gives to one or several persons the whole of the property which he may leave at his death. Civ. C. 790, 904, 967, 1004, 1006, 1010, 1014, 1043, 1044.

1004. When, at the death of the testator, there are heirs to whom a part of his property is reserved by law, such heirs are seized by right upon his death of all the property of the succession; and the universal legatee is obliged to demand of them the delivery of the property included in the will. Civ. C. 724, 1005, 1011, 1014.

1005. Nevertheless, in the same cases the universal legatee shall have the enjoyment of the property included in the will from the day of the death, if the demand for delivery has been made within one year from that time; and if not, such enjoyment shall only commence from the day an action has been brought in court or from the time the delivery may have been voluntarily consented to.

1006. When, at the death of the testator, there are no heirs to whom a portion of the property is reserved by law,
the universal legatee shall be seized by right of the property at the death of the testator, without being bound to demand the delivery. Civ. C. 1003, 1008.

1007. Every holographic will shall, before it is enforced, be presented to the Presiding Justice of the Tribunal of First Instance of the District in which the succession becomes open. The will shall be opened, if it is sealed. The Presiding Justice shall draw up an official report of the presentation, of the opening, and of the condition of the will, and he shall order that the same be deposited in the hands of a notary appointed by him.

If the will is in the mystic form, its presentation, its opening, the description thereof, and its deposit, shall be made in the same manner; but the opening can only take place in the presence of the notaries and witnesses having signed the certificate of superscription who may be found at the place, or who may be cited. Civ. C. 970, 976, 1008.

1008. If the will is holographic, or mystic, in the case provided by article 1006, the universal legatee shall be bound to obtain possession upon an order of the Presiding Justice, placed at the foot of the petition, to which shall be annexed the certificate of deposit. Civ. C. 970, 976, 1006, 1007, 1313, 1315, 1323, 2123.

1009. The universal legatee who takes with an heir to whom the law reserves a portion of the property shall be liable personally to the extent of his share, and by way of mortgage upon the whole property, for the debts and charges of the testator's succession; and he shall be bound to pay all the legacies, excepting in case of a reduction, as is explained in articles 926 and 927. Civ. C. 793, 870, 873, 1003, 1012.
§ 5. Of Legacies under Universal Title.

1010. A legacy under universal title is one by which the testator bequeaths a certain portion of the property of which the law allows him to dispose, such as a half, a third, or all his real estate, or all his personal estate, or a given portion of all his real estate, or of all his personal property.

Any other legacy only constitutes a disposition under special title. Civ. C. 832, 913 et s., 1012, 1019.

1011. Legatees under universal title are bound to demand delivery from the heirs to whom a portion of the property is reserved by law: if there are no such heirs, they shall make the demand to the universal legatees, or if there are none, to the heirs having rights in the order established in the Title Of Successions. Civ. C. 731, 913 et s., 1003, 1014.

1012. A legatee under universal title is liable in the same manner as a universal legatee for the debts and charges of the testator's succession personally to the extent of his part and share, and by way of mortgage upon the whole. Civ. C. 870 et s., 926.

1013. When a testator has only bequeathed a part of the portion which he can dispose of, and has done so by universal title, the legatee shall be bound to pay the specific legatees pro rata with the natural heirs. Civ. C. 871, 913 et s., 1017.

§ 6. Of Specific Legacies.

1014. Any ordinary legacy shall give to the legatee, from the day of the testator's death, a right to the thing bequeathed, which right can be transmitted to his heirs or legal representatives.

Nevertheless, the specific legatee cannot take possession of the thing bequeathed, nor claim the revenue or the interest thereof, before the time when he has made his demand
for delivery according to the manner specified by article 1011, or from the time when such delivery has been volun-
tarily consented to. Civ. C. 910, 1018, 1041, 1180, 1181.

1015. The interest or income of the thing bequeathed shall accrue to the legatee from the day of the death and without any action having been brought by him in court,

1. When the testator has expressly declared his wish to that effect in the will;

2. When an annuity or a pension has been bequeathed for support. Civ. C. 1014.

1016. The expenses of the action for delivery shall be paid by the succession, but nevertheless, the legal reserve shall not be reduced in consequence thereof.

The taxes for registration shall be due by the legatee.

All of which shall be done, unless otherwise directed by the will.

Each legacy can be registered separately, but such re-
gistration can only benefit the legatee or his legal represen-
tatives, and nobody else.

1017. The heirs of the testator, or other persons liable for a legacy, are personally responsible for its payment, each one pro rata according to the part or share which he takes in the succession.

They shall be liable by way of mortgage for the whole to the extent of the value of the real estate of the succession which they may hold. Civ. C. 870 et s., 1009, 1022, 1220, 1221.

1018. The thing bequeathed shall be delivered with its necessary accessories, and in the condition in which it is found at the time of the death of the testator. Civ. C. 522, 546, 1064.

1019. When the person who has bequeathed the owner-
ship of a piece of real estate has added to it thereafter by acquisitions, these acquisitions, even if they adjoin the property, shall not be considered as forming part of the legacy, unless there is a new bequest.

Such shall not be the case if improvements or new constructions have been made upon the estate bequeathed, or if there is an enclosure of which the testator has increased the circumference. Civ. C. 1010, 1018.

1020. If, before or since the will was made, the property bequeathed has been mortgaged for a debt of the succession, or even for the debt of a third party, or if it is subject to a usufruct, the person who is bound to pay the legacy is not obliged to free it from the encumbrance unless he has been commissioned so to do by an express provision made by the testator. Civ. C. 611, 809, 872, 874.

1021. When the testator has bequeathed a thing belonging to another person, the legacy is void, whether or not the testator knew that the thing did not belong to him. Civ. C. 1038.

1022. When the legacy shall be of an undefined thing, the heir shall not be obliged to give it of the best quality, and he cannot offer it of the worst. Civ. C. 1190, 1246.

1023. A legacy made to a creditor shall not be considered as compensation for his claim, nor a legacy made to a servant as compensation for his wages. Civ. C. 1289, 1350, 1352.

1024. A legatee under special title is not liable for the debts of the succession, subject to the reduction of the legacy, as is stated hereabove, and subject to the action upon mortgage in favour of the creditors. Civ. C. 809, 871.
§ 7. *Of Testamentary Executors.*

1025. A testator may appoint one or several testamentary executors. Civ. C. 1026, 1028, 1031.

1026. He may give them the seizin of all or only a part of his personal property; but such seizin shall not last for more than one year and one day from his death.

If he has not given it to them, they cannot demand it. Civ. C. 535, 1006, 1027.

1027. The heir can stop the seizin by offering to remit to the testamentary executors an amount sufficient to pay the legacies of personal property, or by establishing that he has paid them.


1029. A married woman can only accept to be a testamentary executrix with the consent of her husband.

If she is separated as to property, either by marriage contract or by judgment, she may accept with the consent of her husband, or in case of his refusal, by order of the Court, in accordance with what is specified in articles 217 and 219 of the Title *Of Marriage.*

1030. A minor cannot act as testamentary executor, even with the consent of his guardian or curator. Civ. C. 481 et s., 1990.

1031. Testamentary executors shall have seals affixed if some of the heirs are minors, interdicted persons, or absentees.

They shall cause an inventory of the property of the succession to be made in the presence of the presumptive heir, or he having been duly cited.
They shall cause the personal property to be sold if there is not sufficient money to pay the legacies.

They shall see that the will is carried out; and in case of dispute as to carrying it out, they can intervene to defend its validity.

At the expiration of one year from the testator's death, they shall render an account of their management. Civ. C. 819, 1006, 1026, 1034.


1033. If several testamentary executors have accepted, a single one may act in default of the others; and they shall be jointly responsible for the amount of the personal property which has been entrusted to them, unless the testator has divided their duties and each of them has confined himself to the duties which have been confided to him. Civ. C. 1995.

1034. The expenses incurred by the testamentary executor for affixing seals, for the inventory, the accounting, and the other expenses connected with his duties, shall be paid by the succession. Civ. C. 2101.

§ 8. Of the Revocation of Wills and of their Avoidance.

1035. Wills can only be revoked in whole or in part by a subsequent will or by an instrument executed in the presence of notaries, and declaring a change in the person's intentions. Civ. C. 895, 970, 972, 1001, 1007, 1036, 1037, 1338.

1036. Subsequent wills which do not revoke previous wills in an express manner, only annul the provisions therein contained which are in conflict with the new ones, or which are contrary thereto. Civ. C. 1035.
1037. A revocation made in a subsequent will shall produce its full effect, even if the new will remains inoperative owing to the incapacity of the heir appointed, or of the legatee, or to their refusal to take. Civ. C. 906 et s., 909, 1039 et s.

1038. Every conveyance made by the testator of all or part of the thing bequeathed, even by a sale with power of redemption, or by way of exchange, shall cause the revocation of the legacy for everything that has been conveyed, even if the subsequent conveyance is void and the thing has gone back into the hands of the testator. Civ. C. 1659, 1702.

1039. Every testamentary provision shall lapse if the person in whose favour it has been made does not survive the testator. Civ. C. 720, 1089.

1040. Every testamentary provision made under a condition depending upon an uncertain event, and such that in the intention of the testator this provision should only be carried out if an event takes place or does not take place, shall lapse if the heir appointed or the legatee dies before the condition has been fulfilled. Civ. C. 900, 1168, 1183.

1041. A condition which, according to the testator's intention, only suspends the fulfilment of a provision, does not prevent the heir appointed, or the legatee, from being entitled to an acquired right which can be transmitted to his heirs. Civ. C. 1181, 1185.

1042. A legacy shall lapse if the thing bequeathed has been totally destroyed during the life of the testator.

The same rule shall apply if it has been destroyed since his death, not through any act or owing to the fault of the heir, although he may have been late in delivering it, if it
would likewise have been destroyed in the hands of the legatee. Civ. C. 1139, 1148, 1302 et s.

1043. A testamentary provision shall lapse when the heir appointed, or the legatee, refuses it or is incapable of taking. Civ. C. 784, 790, 906.

1044. Legatees shall be entitled to accretion in case the legacy is made to several of them jointly. A legacy shall be considered as having been made jointly when it is made by one and the same provision, and when the testator has not specified the share of each of the legatees in the thing bequeathed. Civ. C. 786, 1003, 1014.

1045. It shall likewise be considered as having been made jointly when a thing which is not susceptible of being divided without being damaged has been given by the same instrument to several persons, even separately. Civ. C. 1217, 1218.

1046. The same causes which, according to article 954, and the two first provisions of article 955, give right to an action for revocation of a donation inter vivos, shall give right to an action for revocation of testamentary provisions. Civ. C. 956 et s.

1047. If this action is based upon a gross insult to the memory of the testator, it shall be brought within a year from the day of the misdemeanor. Civ. C. 956, 957.
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CHAP. VI.

Of Provisions allowed in favour of Grandchildren of the Donor or Testator, or of Children of his Brothers and Sisters.

1048. The property of which fathers and mothers have the right to dispose can be given by them in whole or in part, to one or several of their children by an instrument inter vivos or by will, with the obligation of returning the same to the children born and which may thereafter be born in the first degree only of said donees.

1049. A provision made by a decedent by an instrument inter vivos or by a will, for the benefit of one or several of his brothers or sisters, of all or part of the property composing the succession which is not reserved by law, with obligation to return the same to the children born or which may thereafter be born in the first degree only of the said brothers and sisters who are donees, shall be valid in case the decedent dies without issue. Civ. C. 897, 906.

1050. The provisions allowed by the two foregoing articles shall only be valid if the obligation to return is made for the benefit of all the children born or who may thereafter be born of the heir subject thereto, without exception or preference on account of age or sex. Civ. C. 896.

1051. If, in one of the cases above mentioned, the heir subject to restitution in favour of his children, dies leaving children in the first degree and descendants of a child who has died before him, the latter take by representation the portion of the deceased child. Civ. C. 739 et s.

1052. If a child, a brother, or a sister, to whom property has been given by instrument inter vivos without
obligation to return the same, accept a new gift, made
by instrument inter vivos or by will, under condition that
the property previously given should be subject to that
obligation, they shall no longer be allowed to divide the
two gifts made for their benefit and to renounce the second
for the purpose of taking the first, even should they offer to
return the property included in the second gift.

1053. The rights of the beneficiaries shall take effect
from the time when, for any cause, whatever it may be, the
enjoyment of the child, of the brother, or of the sister,
subject to restitution shall cease: the abandonment of the
enjoyment for the benefit of the beneficiaries made by way
of anticipation, shall not affect the creditors of the person
subject to restitution whose rights are previous to the

1054. The wives of persons subject to restitution are
only entitled to collateral remedies against the property to
be returned when the property unencumbered is insufficient
for the payment of the capital of dotal funds, and only if
the testator has expressly so directed. Civ. C. 1540, 1564,
1572, 2121, 2135.

1055. A person who makes the dispositions authorized
by the foregoing articles may, in the same instrument or by
a subsequent instrument in public form, appoint a guardian
to carry out the same: this guardian can only be excused
for one of the causes expressed in section 6 of Chapter II.
of the Title Of Minority, of Guardianship and of Emanci-

1056. In case there is no such guardian, a guardian
shall be appointed upon the application of the person
subject to restitution, or of his guardian if he is a minor,
within a period of one month from the day of the death of
the donor or testator, or from the day the instrument con-
taining the gift or bequest has become known since such death. Civ. C. 405 et s.

1057. The person subject to restitution who has not complied with the foregoing article shall lose the advantages resulting from such disposition, and in such case the rights thereunder may be declared to be open for the benefit of the beneficiaries upon the application of the beneficiaries, if they are of full age, or of their guardian or curator if they are minors or interdicted persons, or of any relative of the beneficiaries, whether they are of full age, minors or interdicted persons, or even upon the application of the King’s Attorney (Republic’s Attorney) of the Tribunal of First Instance of the place where the succession has become open, made of his own accord. Civ. C. 110, 450, 1053.

1058. After the death of the person who has disposed of property with the obligation of returning it, an inventory of all the property and effects composing his succession shall be made in the ordinary manner, excepting, nevertheless, in case the legacy is a specific one. This inventory shall contain an estimate at the exact price of the personal property and movable articles.

1059. It shall be made at the request of the person who is subject to restitution and within the time fixed under the Title Of Successions, in the presence of the guardian appointed for the execution thereof. The expenses shall be paid out of the property contained in the disposition. Civ. C. 795 et s.

1060. If the inventory has not been made at the request of the person subject to restitution within the time above set forth, it shall be proceeded with within the following month, upon the application of the guardian appointed for the fulfilment of the restitution, in the presence of the person subject to restitution or of his guardian.
1061. If the two foregoing articles have not been complied with, the same inventory shall be made upon the application of the persons mentioned in article 1057 by citing the person subject to restitution or his guardian, and the guardian appointed for the fulfilment thereof.

1062. A person subject to restitution shall be bound to make a sale after publication and at auction of all the furniture and articles contained in the disposition, with the exception, nevertheless, of those which are mentioned in the two following articles.

1063. The furnishing movables and other movable articles which were included in the disposition under the express condition of keeping them in kind, shall be returned in the condition in which they are at the time of the restitution. Civ. C. 534, 535.

1064. Cattle and implements used for cultivating land shall be considered as included in the donations inter vivos or wills disposing of such land, and the person subject to restitution shall only be obliged to have them appraised and estimated for the purpose of returning an equivalent amount at the time of the restitution. Civ. C. 524, 1018.

1065. A person subject to restitution shall, within six months from the day the inventory is closed, invest the amount in cash representing the proceeds of the personal property and effects which have been sold and of what has been received of the assets.
   This period can be extended if required. Civ. C. 455 et s., 1067.

1066. A person subject to restitution shall likewise be bound to invest the funds coming from the assets recovered and the paying-off of annuities, which investment shall be
made within three months at the latest after he has received these funds.

1067. Such investment shall be made in accordance with the directions of the maker of the disposition or will if he has specified the nature of the property in which the investment is to be made; if not, it can only be made in real estate or with a lien on real estate.

1068. The investment ordered by the foregoing articles shall be made in the presence of and by the guardian appointed for the fulfilment thereof. Civ. C. 1055, 1056.

1069. Donations or wills providing for restitution shall be made public by the person subject thereto or by the guardian appointed for the fulfilment thereof, viz., in case of real estate, by a transcription of the deeds on the registers of the office of mortgages of the place where they are situated, and in case of sums invested with a lien upon real estate, by an inscription upon the property subject to such lien. Civ. C. 939 et s., 1070.

1070. The omission to transcribe the instrument containing the disposition can be set up, even against minors or interdicted persons, by the creditors and third parties who are purchasers, subject to the remedy existing against the person subject to restitution and the guardian for the fulfilment thereof; but the minors or interdicted persons cannot be reinstated in case of such omission to transcribe, even if the person subject to restitution and the guardian should be insolvent. Civ. C. 941 et s., 1071, 1074.

1071. The omission to transcribe cannot be made good or considered as excused by the knowledge which the creditors or third parties who are purchasers might have
had of the disposition in other ways than by the transcription.

1072. The donees, the legatees, and even the lawful heirs of the person who has made the disposition, and likewise their donees, legatees or heirs, cannot in any case set up against the beneficiaries the omission to transcribe or inscribe. Civ. C. 941.

1073. A guardian appointed for such fulfilment shall be personally responsible if he has not in all respects complied with the rules hereabove established for defining the property, for the sale of the personal property, for the investment of the funds, for the transcription and inscription, and generally, if he has not taken all the necessary steps in order that the requirements resulting from the obligation to return should be well and faithfully carried out. Civ. C. 941, 1056 et s.

1074. If the person subject to restitution is a minor, he cannot, even in case his guardian should be insolvent, be reinstated if the rules specified in the articles of the present chapter have not been complied with.

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Chap. VII.

Of Divisions made by the Father, Mother or other Ascendants among their Descendants.

1075. Fathers and mothers and other ascendants may make a distribution and division of their property among their children and descendants. Civ. C. 1076 et s.

1076. These divisions may be made by donations or by wills, in accordance with the formalities, conditions and rules enacted for donations inter vivos and wills.
The divisions made by donations *inter vivos* can only apply to present property. Civ. C. 826, 832 et s., 873, 883, 900, 943, 953, 968, 1021, 1075, 1083, 1133, 1172, 1423, 1453, 1558, 2109.

1077. If all the property which an ascendant leaves at the time of his death has not been included in the division, such property as has not been included shall be divided according to law. Civ. C. 815 et s., 887 et s.

1078. If the division is not made among all the children living at the time of the death and the issue of those who have died previously, it shall be void as to the whole. A new one can be applied for in the legal form, either by the children or the issue of the same who have not received any share, or even by those among whom the division has been made. Civ. C. 815 et s., 1076.

1079. A division made by an ascendant can be attacked in case of an advantage of more than one-fourth: it can also be attacked in case it should result from the division or from the provisions made by way of preciput that one of those who has shared in the division has received a larger portion than the law allows. Civ. C. 887, 890, 892, 922, 1075, 1304, 1338, 1340, 1677, 2262.

1080. A child who attacks the division made by an ascendant for one of the causes expressed in the foregoing article shall advance the costs of the appraisal, and they shall finally be borne by him, together with the costs of the litigation, if the claim is not admitted.
OF DONATIONS INTER VIVOS, AND WILLS.

CHAP. VIII.

Of Donations made by Marriage Contract to the Husband or Wife and to the Children which may be born of the Marriage.

1081. Every donation inter vivos of present property to the husband and wife or to one of them, even if made in a marriage contract, shall be subject to the general rules applying to donations made in that manner. It cannot be made in favour of children which may thereafter be born, excepting in the cases specified in Chapter VI. of the present Title. Civ. C. 894, 959, 1048 et s., 1082, 1093.

1082. Fathers and mothers, other ascendants, collateral relatives of the husband and wife, and even strangers, can dispose of all or part of the property which they may leave at the time of their death, by marriage contract, as well for the benefit of the said husband and wife as for the benefit of the children which may thereafter be born of the marriage, in case the donor should survive the husband or wife who is the donee.

A similar donation, even if made for the benefit only of the husband and wife, or of one of them, shall always be considered to have been made for the benefit of the children and issue which may thereafter be born of the marriage, if the donor should survive as aforesaid. Civ. C. 894, 911, 913, 920, 944, 1002, 1048, 1083, 1089, 1093, 1438.

1083. A donation made in the manner specified in the foregoing article shall be irrevocable in this way only, that the donor shall not be able to dispose gratuitously of the property contained in the donation, excepting of small sums given as reward or otherwise. Civ. C. 692, 693, 791, 913, 920, 944, 1082, 1093, 1130, 1600.
1084. A donation by marriage contract may be made cumulatively of present and future property and for the whole or part thereof, provided a statement of the debts and charges of the donor existing at the time of the donation is annexed to the instrument: in such case the donee shall be at liberty at the death of the donor to take the present property by abandoning his right to the balance of the donor's property. Civ. C. 943, 947, 948, 1081, 1082, 1083, 1085.

1085. If the statement mentioned in the foregoing article has not been annexed to the instrument containing the donation of the present and future property, the donee shall be obliged to accept or to refuse the whole donation. In case of acceptance, he can only claim the property existing at the time of the donor's death, and he shall be obliged to pay all the debts and charges of the estate. Civ. C. 939, 948.

1086. A donation by marriage contract for the benefit of the husband and wife and of the children which may thereafter be born of their marriage can be made under condition of paying indiscriminately all the debts and charges of the succession of the donor, or under other conditions of which the execution depends upon his wish, whoever may be the person by whom the donation is made: the donee shall be bound to fulfil these conditions unless he prefers to abandon the donation; and if the donor has reserved to himself in the marriage contract the right to dispose of an article contained in the donation of his present property or of a specified sum to be taken out of such property, the article or the sum shall be considered as contained in the donation and shall belong to the donee or his heirs if the donor dies without having disposed of the same. Civ. C. 913, 920, 943, 944, 1087 et s., 1093.
1087. Donations made by marriage contract cannot be attacked nor be declared to be void for the reason that they have not been accepted. Civ. C. 932 et s.

1088. Every donation made in view of a marriage shall lapse if the marriage does not take place. Civ. C. 956, 1181.

1089. Donations made to the husband or to the wife in the manner prescribed by the foregoing articles 1082, 1084 and 1086, shall lapse if the donor survives the husband or wife who is the donee, and his or her issue. Civ. C. 1039.

1090. All donations made to the husband and wife by their marriage contract shall be reduced to the portion which the law allows the donor to dispose of when his succession becomes open. Civ. C. 913, 920.

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**Chap. IX.**

**Of Donations between Husband and Wife, either by Marriage Contract or during the Marriage.**

1091. Husband and wife may, by their marriage contract, make to each other, reciprocally or the one to the other, such donations as they may deem proper, subject to the rules hereafter expressed. Civ. C. 894, 1083, 1084, 1092, 1093, 1094, 1480, 1516, 1525, 2121, 2135.

1092. Every donation *inter vivos* of present property made between husband and wife by marriage contract shall not be supposed to be made under condition that the donee should survive unless this condition be formally expressed; and it shall be subject to all the rules and the requirements above specified for such sorts of donations. Civ. C. 894, 1339.
1093. A donation of future property, or of present and future property, made between husband and wife by marriage contract, either the one to the other or reciprocally, shall be subject to the rules established in the foregoing chapter for similar donations made to them by a third party, excepting that it shall not go down to the children born of the marriage in case of the death of the husband or wife who is the donee previously to the one who is the donor. Civ. C. 1082, 1083.

1094. The husband or wife may, either by the marriage contract or during the marriage, in case he or she leaves no children or descendants, dispose in favour of the other in full ownership of all which he or she could dispose of in favour of a stranger, and besides, of the usufruct of the whole portion of which the law does not allow the disposal to the detriment of heirs.

And in case the husband or wife who is the donor leaves children or descendants, he or she may give to the other either a quarter in full ownership and the usufruct of another quarter, or only the usufruct of one half of all his or her property. Civ. C. 913 et s., 915, 922, 1098.

1095. A minor cannot give by marriage contract to his wife or her husband by way of donation, whether reciprocal or not, without the consent and the assistance of those whose consent is required for the validity of the marriage, and with such consent he or she may give everything the law allows a husband or wife of full age to give to the other. Civ. C. 148 et s., 160, 903, 1309, 1398.

1096. All donations made between husband and wife during the marriage, although called inter vivos, shall always be revocable.

The revocation can always be made by the wife without being authorized by her husband or by the Court.

1097. Married persons cannot make to each other during the marriage, either by way of donation or by will, any mutual and reciprocal donation by one and the same instrument. Civ. C. 900, 968, 1091.

1098. A man or a woman who, having children by a former marriage, contracts a second or subsequent marriage, can only give to the new wife or husband the share of a legitimate child taking the smallest portion, and in no case shall these donations exceed one-fourth of the property. Civ. C. 913, 1496, 1527.

1099. Married persons cannot give to each other indirectly more than is allowed by the foregoing provisions.

Any donation which is disguised or is made to intermediaries is void. Civ. C. 911, 1098, 1100, 1496, 1525, 1527, 1595.

1100. Donations of the husband and wife to the children or to one of the children of the other born of another marriage, and those made by the donor to relatives of whom the husband or wife shall be the presumptive heir at the time of the donation, shall be considered as made to intermediaries, even if such husband or wife has not survived the donee who was his relative. Civ. C. 1350, 1352.
TITLE THIRD.

OF CONTRACTS OR CONVENTIONAL OBLIGATIONS IN GENERAL.

(Passed 7th February, 1804; promulgated 17th of same month.)

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Chap. I.

Preliminary Dispositions.

1101. A contract is an agreement by which one or several persons bind themselves towards one or more other persons to give, to do, or not to do a certain thing. Civ. C. 1108, 1121, 1136, 1134, 1234, 1315, 1341.

1102. A contract is synallagmatic or bilateral when the contracting parties bind themselves reciprocally towards each other. Civ. C. 1184, 1325, 1582, 1702, 1708.

1103. It is unilateral when one or more persons are bound towards one or more other persons without any engagement on the part of the latter. Civ. C. 1326, 1892.

1104. It is commutative when each of the parties binds himself to give or to do a thing which is considered the equivalent of what is given to or of what is done for him.

When the equivalent consists in the chance of profit or of loss for each of the parties according to an uncertain event, the contract is aleatory. Civ. C. 1964.

1105. A contract of beneficence is one by which one of
the parties procures for the other an advantage which is purely gratuitous. Civ. C. 893, 1874, 1915, 1984, 2011.

1106. An onerous contract is one which binds each of the parties to give or do a certain thing. Civ. C. 1582, 1702, 1708.

1107. Contracts, whether they have a special denomination or not, are subject to the general rules which are contained in the present Title.

The special rules applying to certain contracts are set forth in the Titles relating to each of them; and the special rules applying to commercial operations are established by the laws relating to commerce.

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Chap. II.

Of the Conditions essential for the Validity of Contracts.

1108. Four conditions are essential for the validity of a contract:

The consent of the party who binds himself;
The capacity to contract;
A special object forming the substance of the agreement;
A licit cause for the obligation. Civ. C. 1109 et s., 1123 et s., 1126 et s., 1131 et s.

§ 1. Of Consent.

1109. There is no valid consent if the consent has only been given by error or if it has been obtained by violence or procured by fraud. Civ. C. 1110, 1117, 1235, 1304, 1377, 1641.
1110. Error is not a cause of avoidance of a contract unless it rests upon the very substance of the thing which is the basis thereof.

It is not a cause of avoidance when it rests only upon the person with whom one has the intention of contracting, unless the person himself is the principal cause of making the contract. Civ. C. 180, 1117, 1304, 1356, 1376, 2053.

1111. The use of violence against the person who has contracted the obligation is a cause of avoidance, even if the same has been practised by a different person from the one for whose benefit the contract has been made. Civ. C. 180, 387, 1117, 1304.

1112. There is violence when it is of a nature to produce an impression upon a reasonable person and when it can create a fear of exposing his person or fortune to a considerable and present evil.

In such a case the age, the sex, and the condition of the person are taken into account. Civ. C. 1113, 1114, 1115.

1113. Violence is a cause of avoidance of a contract not only when it is made use of against the contracting party, but also when it has been made use of towards her husband or his wife or the descendants or ascendants.

1114. Reverential fear alone towards the father or mother or other ascendant, without the use of any violence, is not sufficient to annul a contract.

1115. A contract can no longer be attacked on account of violence if, since the violence has ceased, the contract has been either expressly or tacitly approved, or if the time fixed by law for restitution has been allowed to pass. Civ. C. 892, 1117, 1304, 1338.

C.N.
1116. Fraud is a cause of avoidance of a contract when the contrivances made use of by one of the parties are such that it is evident that without them the other party would not have made the contract.

Fraud is not presumed and must be proved. Civ. C. 1109, 1117, 1319, 1320, 1338, 1341, 1353, 1382, 2268.

1117. A contract made by error, violence or fraud is not void by right; it only gives rise to an action for avoidance or rescission in the cases and in the manner explained in section 7 of Chapter V. of the present Title. Civ. C. 1304, 2268.

1118. Lesion only vitiates agreements in certain contracts or with respect to certain persons, as shall be explained in the same section.


1120. Nevertheless, a person can answer for a third party promising that the latter shall do a thing, subject to damages against the person who has so answered for another, or who has promised to obtain another's ratification, if the third party refuses to keep the engagement. Civ. C. 1166, 1338, 1998.

1121. A person may likewise stipulate for the benefit of a third party when such is the condition of the stipulation that the person makes for himself or of the donation which he makes to another person. The person who has made the stipulation cannot revoke it, if the third party has declared that he wished to take advantage of it. Civ. C. 1165, 1275, 1690, 1973, 2148.
1122. A person is supposed to have stipulated for himself and his heirs and legal representatives unless the contrary is expressed or should result from the nature of the contract. Civ. C. 724, 1119, 2235.

§ 2. Of the Capacity of Contracting Parties.

1123. Every person can make a contract unless he has been declared to be incapable by law. Civ. C. 1108.

1124. Are incapable of contracting:
Minors,
Interdicted persons,
Married women, in the cases provided by law,
And generally all those whom the law does not allow to make certain contracts. Civ. C. 215, 217, 489, 509, 513.

1125. Minors, interdicted persons, and married women can only attack their contracts on account of incapacity in the cases provided by law.
Persons who are capable of binding themselves cannot set up the incapacity of a minor, of an interdicted person, or of a married woman with whom they have made a contract. Civ. C. 1305 et s.

§ 3. Of the Object and Substance of Contracts.

1126. Every contract has for object a thing which a person binds himself to give, or which a person binds himself to do or not to do. Civ. C. 1101, 1108.

1127. The simple use or the simple possession of a thing can, in the same manner as the thing itself, be the object of a contract. Civ. C. 625, 1709, 1874, 2071 et s.
1128. Things which are in trade (i) are the only ones which can form the object of contracts. Civ. C. 538 et s., 1131, 1133, 1134, 1598, 2226.

1129. An obligation must have for object a thing more or less specified as to its nature.
   The part of the thing may be uncertain, provided it can be determined. Civ. C. 1108.

1130. Future things can form the object of an obligation.
   It is not allowed, however, to renounce a succession which has not become open, nor to make any stipulation with respect to such succession, even with the consent of the person whose succession is in question. Civ. C. 791, 1113, 1235, 1598, 1600.

§ 4. Of the Cause.


1132. An agreement is not less valid although the cause has not been expressed.

1133. A cause is illicit when it is prohibited by law, when it is contrary to good morals or to public order. Civ. C. 6, 900, 1108, 1172, 1235, 1376, 2220.

(i) The word "trade" must be taken in a broad sense, and applies to property of private individuals in contradistinction to public property.
Chap. III.

Of the Effect of Obligations.


1134. Contracts lawfully entered into take the place of the law for those who have made them.

They cannot be cancelled unless it is by mutual consent or for causes allowed by law.

They must be performed in good faith. Civ. C. 1145, 1234, 1239, 1247, 2268.

1135. Contracts are binding not only as to what is therein expressed, but as to all the consequences which equity, custom or law impose upon an obligation, according to its nature. Civ. C. 1156.

§ 2. Of the Obligation to Give.

1136. The obligation to give carries with it the obligation to deliver the thing and to keep it until delivery, under penalty of damages against the creditor. Civ. C. 1146, 1302, 1604.

1137. The obligation to look after the preservation of a thing, whether the agreement is for the advantage of one of the parties or for their joint advantage, compels the one who has charge thereof to give it all the care of a prudent owner.

This obligation is more or less general, according to certain contracts, of which the effects in this respect are explained under the Titles relating to them. Civ. C. 601, 804, 1146, 1374, 1728, 1928, 1991, 2080, 2102.

1138. The obligation to deliver a thing is complete by the sole consent of the contracting parties.
It bestows ownership upon the creditor and places the thing at his risk from the time it should have been delivered, even if the delivery has not taken place, unless a demand has been made upon the debtor to deliver it, in which case the thing remains at the risk of the latter. Civ. C. 711, 1302, 1583.

1139. A demand is made upon the debtor either by writ or by any other instrument which is equivalent thereto, or by the effect of the agreement when it provides that the debtor shall be compelled to make delivery without any notice and by the simple expiration of the time therefor. Civ. C. 1138, 1146, 1230, 1656.

1140. The effects of an obligation to give or deliver real estate are regulated in the Title Of Sales and in the Title Of Privileges and Mortgages. Civ. C. 1604 et s., 2103 et s.

1141. If a thing which a person has undertaken successively to give or to deliver to two persons is purely personal property, the one of the two who has been placed in actual possession is preferred and remains the owner, even should his title be subsequent as to date, provided, however, he possesses in good faith. Civ. C. 1583, 1606, 2279.

§ 3. Of the Obligation to do or not to do.

1142. Every obligation to do or not to do resolves itself in damages in case of non-performance on the part of the debtor. Civ. C. 1108, 1133, 1134, 1146, 1147, 1149, 1189, 1192, 1237.

1143. Nevertheless, a creditor has the right to demand that what has been done in violation of the agreement shall be destroyed, and he can cause himself to be autho-
rized to destroy what has been so done, at the expense of the debtor, without prejudice to damages if there is occasion therefor. Civ. C. 1146.

1144. A creditor may also, in case of non-performance, be authorized to carry out the obligation himself at the debtor's expense. Civ. C. 1142.

1145. If the obligation consists in not doing a thing, the person who violates it owes damages on account of the simple fact of the violation.

§ 4. Of Damages resulting from the Non-performance of an Obligation.

1146. Damages are only due when the debtor is duly bound to fulfil the obligation, excepting, nevertheless, when the thing which the debtor had undertaken to give or to do could not be given or done before a certain time, which he has allowed to pass. Civ. C. 1139, 1142, 1184, 1229, 1382, 1611.

1147. A debtor shall be ordered to pay damages, if there is occasion therefor, either on account of non-performance of the obligation or on account of delay in performing it, whenever he does not establish that the non-performance is due to an outside cause which cannot be charged to him, provided there is no bad faith on his part. Civ. C. 1229.

1148. No damages shall be due when the debtor has been prevented from giving or doing what he had bound himself to do, or has done what was prohibited, in consequence of superior force or a fortuitous event. Civ. C. 607, 855, 1302, 1722, 1733, 1772, 1881 et s., 1929.

1149. The damages due to the creditor are generally for
the loss which he has made or the profit which he has been deprived of, subject to the exceptions and restrictions hereinafter contained. Civ. C. 1147, 1150, 1151, 1633.

1150. A debtor is only liable for the damages which have been foreseen or which could have been foreseen at the time of the contract, when it is not owing to fraud on his part that the obligation is not performed. Civ. C. 1116, 1151.

1151. Even in case the non-performance of the agreement should result from the debtor's fraud, the damages shall only include what is the immediate and direct consequence of the non-performance of the agreement in connection with the loss sustained by the creditor or the profit which he has been deprived of. Civ. C. 1150.

1152. When the agreement provides that the party who fails to perform it shall pay a certain amount as damages, no larger or smaller amount can be awarded to the other party. Civ. C. 1229.

1153. In the obligations which are limited to the payment of a certain sum, the damages resulting from delay in the performance shall only consist in a judgment for the interest allowed by law, subject to the special rules applying to commerce and to security (k).

These damages are due without the creditor being obliged to show any loss.

They are only due from the day of the demand, except in the cases in which the law makes them run as a matter of right. Civ. C. 456, 474, 549, 550, 583, 584, 586, 609, 792, 856, 928, 1154, 1155, 1207, 1378, 1440, 1445, 1473, 1477, 1548, 1579, 1652, 1872, 1904, 1932, 1936, 1991, 1996, 2001, 2028.

(k) See art. 2011.
1154. The interest due upon a capital can produce interest, either by a judicial demand or by special agreement, provided the interest claimed by the demand or by virtue of the agreement shall be due at least for one whole year. Civ. C. 1153, 1155, 1378.

1155. Nevertheless, the revenues due, such as farm rents, rents, perpetual or life annuities, bear interest from the day of the demand or of the agreement.
   The same rule applies in case the revenues are returned or in case interest is paid by a third party to a creditor in the name of the debtor. Civ. C. 549, 1153, 1154, 1652.

§ 5. Of the Interpretation of Contracts.

1156. The common intention of the contracting parties should be sought in contracts rather than taking the literal meaning of the words. Civ. C. 1109, 1134, 1135, 1175, 2053.

1157. When a clause is susceptible of two interpretations, it shall be construed in preference according to the meaning which may produce some effect rather than according to the meaning which would produce none.

1158. The words susceptible of two interpretations shall be taken in the meaning which best suits the subject of the contract.

1159. What is ambiguous shall be interpreted according to the customs of the country in which the contract was made. Civ. C. 671, 1753, 1758.

1160. The clauses which are customary in a contract shall be supplied, although they have not been expressed therein. Civ. C. 1135.
1161. All the clauses of contracts are interpreted in connection with each other by giving to each one the meaning which results from the whole instrument.

1162. In case of doubt, a contract shall be interpreted against the party who has made the stipulation and in favour of the one who has assumed the obligation. Civ. C. 1602.

1163. However general may be the terms in which a contract is worded, it shall only apply to the things which the parties appear to have intended to deal with. Civ. C. 2048.

1164. When, in a contract, a case has been mentioned to explain the obligation, it shall not be supposed that it was thereby intended to restrict the extent of the contract, which by right applies to cases not specified.

§ 6. Of the Effect of Contracts with respect to Third Parties.

1165. Contracts only produce effects between the contracting parties. They do not affect third parties and do not benefit them, except in the case provided by article 1121. Civ. C. 1134, 2009, 2051.

1166. Nevertheless, creditors can make use of all the rights and actions which belong to their debtor, with the exception of those which are exclusively reserved to the person. Civ. C. 618, 622, 788, 865, 878, 882, 921, 957, 1446, 1464, 1558, 1560, 2081, 2085, 2102, 2105, 2225.

1167. They can also attack in their own name the acts performed by their debtor whereby they are defrauded of their rights.
They must, nevertheless, with respect to the rights belonging to them and mentioned in the Title Of Successions and in the Title Of Marriage Contracts and of the Respective Rights of Husband and Wife, comply with the rules which are therein set forth. Civ. C. 184, 191, 622, 788, 857, 865, 878, 882, 921, 1053, 1328, 1394, 1447, 1464, 2184, 2185, 2186, 2225.

CHAP. IV.

OF THE VARIOUS KINDS OF OBLIGATIONS.

§ 1. Of Conditional Obligations.

Sub-sect. 1. Of Conditions in General and of their Various Kinds.

1168. An obligation is conditional when it is made to depend upon a future and uncertain event, either in case it is suspended until the event happens, or in case it is to be cancelled whether the event takes place or does not take place. Civ. C. 1181, 1183.

1169. A casual condition is one which depends upon chance and is in no way in the power of the creditor or of the debtor.

1170. A potestative condition is one which makes the execution of a contract depend upon an event which one or the other of the contracting parties has the power to bring about or to prevent. Civ. C. 1174.

1171. A mixed condition is one which depends at the same time upon the will of the contracting parties and upon the will of a third party.
1172. Every condition of an impossible thing or which is contrary to good morals or prohibited by law, is void and renders void the contract which is based thereon. Civ. C. 900, 1133, 1387.

1173. A condition not to do an impossible thing does not vitiate the obligation contracted under such condition.

1174. Every obligation is void when it has been contracted under a potestative condition on the part of the person who binds himself. Civ. C. 1170, 1171, 1583, 1591.

1175. Every condition must be fulfilled in the manner in which the parties have, in all likelihood, desired and intended that it should be. Civ. C. 1156.

1176. When an obligation is contracted under condition that an event shall happen within a stated time, such condition is supposed not to have been fulfilled when the time has elapsed without the event having taken place. If no time has been fixed the condition can always be fulfilled, and it is only supposed not to have been fulfilled when it has become certain that the event will not take place.

1177. When an obligation is contracted under condition that an event shall not take place within a stated time, such condition is fulfilled when the time has expired without the event having taken place. It is also fulfilled if, before such time, it has become certain that the event will not take place; and if no time has been fixed, it is only fulfilled when it has become certain that the event will not happen.

1178. A condition is supposed to be fulfilled when the debtor who is bound under such condition is the one who has prevented it from being fulfilled. Civ. C. 1174.
1179. A condition which is fulfilled has a retroactive effect to the day upon which the obligation was contracted. If the creditor dies before the condition is fulfilled his rights descend to his heir.

1180. The creditor may, before the condition is fulfilled, take all the necessary steps for the preservation of his rights.

Sub-sect. 2. Of Suspensive Conditions.

1181. An obligation assumed under a suspensive condition is one which depends either upon a future and uncertain event, or upon an event which has actually taken place but is still unknown to the parties.

In the first case the obligation can only be enforced after the event.

In the second case the obligation becomes binding from the time it has been assumed. Civ. C. 1168, 1176, 1182, 1185, 1583, 1588, 2125, 2157.

1182. When an obligation has been contracted under a suspensive condition, the thing which forms the object of the contract remains at the risk of the debtor, who has only bound himself to deliver it in case the condition is fulfilled.

If the thing has been entirely destroyed, not through any fault of the debtor, the obligation ceases.

If the thing has been damaged not through any fault of the debtor, the creditor has the choice either to cancel the obligation or to ask for the thing in the condition in which it is, without reduction in the price.

If the thing has been damaged owing to the fault of the debtor, the creditor has the right either to cancel the obligation or to claim the thing in the condition in which it is, with damages. Civ. C. 1146, 1302.
Sub-sect. 3. Of Resolutive Conditions.

1183. A resolutive condition is one which, when it is fulfilled, brings about the cancellation of the obligation and puts things back in the same state as if the obligation had not existed.

It does not suspend the execution of the obligation: it only binds the creditor to return what he has received in case the event foreseen under the condition takes place. Civ. C. 1176, 1584, 2125.

1184. A resolutive condition is always implied in synallagmatic contracts in case one of the two contracting parties does not carry out what he has undertaken.

In such case the contract is not cancelled by right. The party towards whom the obligation has not been carried out has the choice either between compelling the other party to carry out the agreement, when it is possible, or demanding its rescission, with damages.

The rescission must be applied for in court and the defendant may be allowed time according to circumstances. Civ. C. 952, 954, 1248, 1654, 1656, 1741.

§ 2. Of Obligations depending on Time.

1185. Time differs from a condition in that it does not suspend the obligation but only delays its fulfilment. Civ. C. 1188, 1888, 2257.

1186. What is only due at a certain time cannot be claimed before the expiration of such time, but what has been paid in advance cannot be claimed back. Civ. C. 1899, 1944.

1187. Time is always presumed to be stipulated in favour of the debtor, unless it results from the stipulation or from
circumstances that it has also been consented to in favour of the creditor. Civ. C. 1258.

1188. A debtor can no longer claim the benefit of time when he has become bankrupt or when, owing to his act, he has diminished the safeguards which he had given to the creditor by the contract. Civ. C. 1184, 1244, 1613, 1741, 1912, 1913, 2032, 2102, 2114, 2161.

§ 3. Of Alternative Obligations.

1189. The debtor of an alternative obligation is released by the delivery of one of the two things which were included in the obligation.

1190. The choice belongs to the debtor, unless it has been expressly granted to the creditor.

1191. The debtor can exonerate himself by delivering one of the two things promised; but he cannot compel the creditor to receive a part of one and a part of the other. Civ. C. 1220, 1244, 1604 et s.

1192. An obligation is purely simple, although contracted in the alternative form, if one of the two things promised could not form the object of the obligation. Civ. C. 1128.

1193. An alternative obligation becomes purely simple if one of the things promised is destroyed and can no longer be delivered, even owing to the fault of the debtor. The price of such thing cannot be offered in its stead.

If both things have been destroyed and the debtor is at fault with respect to one of them, he must pay the price of the one which has last been destroyed. Civ. C. 1302, 1601.

1194. When, in the cases provided by the previous
article, the choice has been left to the creditor under the agreement:

Either one of the things only has been destroyed; and then, if the debtor is not at fault, the creditor must receive the one which remains; if the debtor is at fault, the creditor can ask for the thing which remains, or the price of thing which has been destroyed:

Or both things have been destroyed; then, if the debtor is at fault with respect to both, or even only with respect to one, the creditor may ask for the price of one or the other at his choice. Civ. C. 1302.

1195. If the two things have been destroyed, not owing to the fault of the debtor, and before a demand has been made upon him, the obligation expires in accordance with article 1302.

1196. The same principles apply in case there should be more than two things included in the alternative obligation.

§ 4. Of Joint and Several Obligations.

Sub-sect. 1. Of Joint and Several Liability among Creditors.

1197. An obligation is joint and several among several creditors when the instrument gives to each one of them expressly the right to demand payment of the whole claim, and payment made to one of them exonerates the debtor, even if the benefit derived from the obligation is to be apportioned or divided among the various creditors. Civ. C. 1224.

1198. The debtor can pay at his choice one or the other of the creditors under a joint and several obligation so long as he has not been given notice by the proceedings of one of them.

Nevertheless, a release which is only given by one of
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the creditors under a joint and several obligation only releases the debtor for the share of such creditor. Civ. C. 1224, 1284, 1365.

1199. Every act which suspends prescription with respect to one of the creditors under a joint and several obligation has the same effect as regards the others. Civ. C. 1206, 2242 et s., 2249.

Sub-sect. 2. Of Joint and Several Liability on the part of Debtors.

1200. There is a joint and several liability on the part of debtors when they are bound to a same thing in such a way that each one of them may be held for the whole and the payment made by a single one releases the others with respect to the creditor. Civ. C. 1219, 1222, 1280, 1281, 1284, 1285, 1294, 1301, 1365, 2249.

1201. An obligation may be joint and several although one of the debtors is bound to the payment of the same thing in a different manner: for instance, if one is only bound conditionally, whereas the obligation of the other is purely simple, or if one has been given time which has not been granted to the other.

1202. A joint and several liability cannot be presumed: it must be expressly stipulated.


1203. A creditor of an obligation contracted jointly and severally can make his claim upon such one of the debtors whom he chooses to select, and the latter cannot
set up the benefit of division. Civ. C. 1210, 1225, 2025.

1204. The proceedings brought against one of the debtors do not prevent a creditor from instituting similar ones against the others. Civ. C. 1200.

1205. If the thing due has been destroyed owing to the fault of one or more of the debtors jointly and severally liable, or after a demand has been made, the other co-debtors are not released from the obligation to pay the price of the thing; but they are not liable to damages. The creditor can only obtain damages as well from the debtors owing to whose fault the thing has been destroyed as from those upon whom a demand has been made. Civ. C. 1146, 1302.

1206. Proceedings instituted against one of the debtors jointly and severally liable suspend prescription with respect to all. Civ. C. 1199, 2242 et s., 2249.

1207. A demand for interest made upon one of the debtors jointly and severally liable causes interest to run against all. Civ. C. 1139, 1153 et s.

1208. A co-debtor jointly and severally liable against whom proceedings have been brought by a creditor can set up all the defences resulting from the nature of the obligation and all those which are personal to him, as well as those which are common to all the co-debtors. He cannot set up the defences which are purely personal to some of the other co-debtors. Civ. C. 1213, 1285, 1294, 1365.

1209. When one of the debtors becomes the sole heir of the creditor, or when the creditor becomes the sole heir of
one of the debtors, the merger only wipes out the claim jointly and severally due to the extent of the part and portion of such debtor or creditor. Civ. C. 1300, 1301, 2035.

1210. The creditor who consents to a division of the debt with respect to one of the co-debtors retains the action upon the joint and several liability against the others, but only after deducting the share of the debtor whom he has exempted from the joint and several liability. Civ. C. 1184, 1224, 1244.

1211. The creditor who receives separately the share of one of the debtors without reserving in his receipt the joint and several liability, or his rights in general, only renounces the joint and several liability with respect to such debtor.

The creditor is not supposed to release the debtor from the joint and several liability when he receives from him a sum equal to the share for which he is liable, if the receipt does not show that it is for his share.

The same rule applies to a simple action brought against one of the co-debtors for his share, if such co-debtor has not admitted the claim, or if a judgment has not been rendered against him. Civ. C. 1350, 1352.

1212. A creditor who receives separately and without reserve from one of the co-debtors a portion of the arrears or interest of the debt, only loses his rights to the joint and several liability for the arrears or interest due, and not for those to become due, and does not lose his right to such liability with respect to the capital, unless the separate payments have been continued during ten consecutive years. Civ. C. 1350, 1352.

1213. An obligation contracted jointly and severally towards a creditor is divided by right between the debtors, who are only liable among themselves each one for his share or part. Civ. C. 875, 1220, 1221, 2249.
1214. The co-debtor of a debt jointly and severally due who has paid it in full can only claim from the others the parts or shares of each one of them. If one of them is insolvent, the loss occasioned by his state of insolvency is apportioned pro rata among all the other co-debtors who are solvent and the one who has made the payment. Civ. C. 875, 876, 885, 2026.

1215. In case the creditor has renounced the action upon the joint and several liability with respect to one of the debtors, if one or more of the other co-debtors become insolvent, the shares of those who are insolvent shall be apportioned pro rata among all the debtors, even among those who have been previously released by the creditor from the joint and several liability. Civ. C. 876, 2027.

1216. If the matter for which the debt has been contracted jointly and severally only concerned one of the debtors jointly and severally liable, such debtor shall be liable towards the other co-debtors for the whole debt, and they shall only be considered with respect to him as his sureties. Civ. C. 1200, 1431, 2011, 2028 et s.

§ 5. Of Divisible and Indivisible Obligations.

1217. An obligation is divisible or indivisible according to whether its object is a thing which in its delivery, or a fact which in its fulfilment, is susceptible of a material or intellectual division. Civ. C. 1202, 1218, 1219, 1220, 1221, 1267, 1305, 1313, 1583, 1668, 2083, 2183, 2249.

1218. An obligation is indivisible although the thing or the fact which forms its object is divisible by its nature, if the manner in which it is considered as to the obligation does not render a partial fulfilment possible. Civ. C. 2083.
1219. A stipulation of joint and several liability does not confer upon the obligation the character of indivisibility. Civ. C. 1200, 1222.

Sub-sect. 1. Of the Effects of Divisible Obligations.

1220. An obligation which is susceptible of being divided must be carried out between creditor and debtor as if it was indivisible. The divisibility only takes effect with respect to their heirs, who can only claim the debt, or are only bound to pay it to the extent of the parts which they hold or for which they are liable as representing the creditor or the debtor. Civ. C. 724, 832, 870 et s., 883, 1939.

1221. The principle established in the foregoing article is subject to exceptions with respect to the heirs of the debtor:—

1. When the debt is secured by a mortgage;
2. When it is for a special thing;
3. In case of an alternative debt for things at the choice of the creditor, of which one is indivisible;
4. When one of the heirs alone is charged by the instrument with the fulfilment of the obligation;
5. When it results, either from the nature of the agreement, or from the thing forming the object thereof, or from the end aimed at by the contract, that the intention of the contracting parties was that the debt should not be partially satisfied.

In the three first cases the heir who owns the thing due, or the property mortgaged for the debt, can be sued for the whole as to the thing due or the property mortgaged, subject to his remedy against his co-heirs. In the fourth case the heir who is alone made liable for the debt, and in the fifth case each heir can be sued for the whole, subject to his remedy against his co-heirs. Civ. C. 872, 1020, 1135, 1192, 1245, 1302, 1939, 2103, 2114.
Sub-sect. 2. Of the Effects of Indivisible Obligations.

1222. Each one of those who have jointly contracted an indivisible debt is liable for the whole, although the obligation has not been contracted jointly and severally. Civ. C. 1668, 2083, 2114, 2249.

1223. The same rule applies with respect to the heirs of the person who has contracted such an obligation. Civ. C. 872, 1213, 1939.

1224. Each heir of the creditor can claim that the whole of the indivisible obligation be carried out.

He cannot alone give up the whole debt: he cannot alone receive the price instead of the thing itself. If one of the heirs has alone given up the debt or received the price of the thing, his co-heir can only claim the indivisible thing by taking into account the part of the co-heir who has given the release or received the price. Civ. C. 1210, 1239, 1668, 1939.

1225. An heir of the debtor who is sued for the whole obligation can ask for time to join his co-heirs in the action, unless the debt is of such a nature that it can only be satisfied by the heir who has been sued, and against whom alone a judgment can then be rendered, subject to his remedy for an indemnity against his co-heirs. Civ. C. 1670.

§ 6. Of Obligations with Penalties.

1226. A penalty is a clause by which a person, to secure the fulfilment of an agreement, binds himself to something in case it is not fulfilled. Civ. C. 1152, 1227, 1230, 1231, 1978, 2047.

1227. The avoidance of the principal obligation carries with it the avoidance of the penalty.
The avoidance of the penalty does not carry with it the avoidance of the principal obligation. Civ. C. 791, 1130, 1152, 1599, 1600.

1228. A creditor, instead of claiming the penalty stipulated against the debtor, upon whom a demand has been made, can proceed to obtain the fulfilment of the principal obligation. Civ. C. 1144.

1229. A penalty is compensation for the damages which the creditor sustains on account of the non-fulfilment of the principal obligation.

He cannot at the same time claim the principal and the penalty, unless it has been stipulated simply for delay. Civ. C. 1146 et s., 1382, 1610.

1230. Whether the original obligation fixes a time within which it must be carried out or whether it does not, the penalty is only due when a demand has been made upon the person who has undertaken either to make delivery, or to receive or to do a certain thing. Civ. C. 1139.

1231. The penalty can be changed by the Judge when the principal obligation has been partially carried out. Civ. C. 1152.

1232. When the original obligation contracted with a penalty is for an indivisible thing the penalty is due in case of a violation of the agreement by one of the heirs of the debtor alone, and it can be claimed either for the whole from the one who has violated the agreement, or from each of the co-heirs for his share and part, or for the whole upon the mortgage, subject to the remedy against the one who has caused the penalty to be incurred. Civ. C. 1222 et s., 2114.
1233. When the original obligation contracted with a penalty is divisible, the penalty is only incurred by the heir of the debtor who has violated the obligation, and only for the share for which he was liable in the principal obligation, and no action shall lie against those who have fulfilled it.

An exception is made to this rule when the penalty having been added with the intention that the payment should not be made partially, a co-heir has prevented the obligation from being wholly fulfilled. In such case the entire penalty can be claimed from him, and from the other heirs only for their part, subject to their remedy. Civ. C. 1218.

CHAP. V.

OF THE EXTINCTION OF OBLIGATIONS.

1234. Obligations are extinguished:—

By payment,
By novation,
By voluntary release,
By compensation,
By merger,
By the loss of the thing,
By avoidance or rescission,
By the effect of a resolutive condition, as explained in the foregoing chapter,

And by prescription, which forms the object of a special Title. Civ. C. 1235 et s., 1271 et s., 1282 et s., 1289 et s., 1300 et s., 1302 et s., 1304 et s., 1347, 1353, 2219 et s.
§ 1. Of Payment.

Sub-sect. 1. Of Payment in General.

1235. Every payment supposes a debt; what has been paid without being due is subject to be reclaimed.

One is not allowed to reclaim payment in case of natural obligations which have been voluntarily paid. Civ. C. 1110, 1131, 1133, 1304, 1376, 1377, 1378, 1967, 2186, 2198.

1236. An obligation can be paid by any person who has an interest therein, such as a co-obligee or a surety.

The obligation can even be paid by a third party who has no interest therein, provided such party acts in the name of and for the purpose of releasing the debtor, or if he acts in his own name, provided he is not subrogated to the rights of the creditor. Civ. C. 1119, 1250.

1237. The obligation to do a thing cannot be satisfied by a third party against the wish of the creditor, when the latter is interested in having it fulfilled by the debtor himself. Civ. C. 1142, 1763 et s., 1793, 1795.

1238. In order to make a valid payment, one must be the owner of the thing given in payment, and be capable of conveying it.

Nevertheless, the payment of a sum of money or of any other thing which is consumed by use, cannot be reclaimed from the creditor who has consumed it in good faith, although the payment has been made by a person who was not the owner, or who was not capable of conveying it. Civ. C. 1376.

1239. A payment must be made to the creditor, or to somebody empowered by him or authorized by the Court or by law to receive it in his behalf.

A payment made to a person who had no power to receive
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it for the creditor is valid if the creditor ratifies it, or has had the benefit of it. Civ. C. 389, 420, 450 et s., 509, 537, 1239, 1247, 1257 et s., 1283, 1305, 1347, 1353, 1421 et s., 1428, 1449, 1531, 1549, 1961, 1984, 1985.

1240. A payment made in good faith to the person who is in possession of the claim is valid, even if the possessor is afterwards evicted. Civ. C. 1239, 1377, 1690.

1241. A payment made to a creditor is not valid if he was incapable of receiving it, unless the debtor proves that the thing paid has turned to the advantage of the creditor. Civ. C. 482, 509, 513, 1124, 1312.

1242. A payment made by a debtor to his creditor notwithstanding an attachment or an injunction, is not valid against creditors who have issued the attachment or injunction; such creditors may, according to their rights, compel him to pay a second time, subject only in such case to his remedy against the creditor. Civ. C. 1298, 1944.

1243. A creditor cannot be compelled to receive a thing different from the one which is due to him, although the value of the thing offered is equal or even greater. Civ. C. 1895, 1932.

1244. A debtor cannot compel his creditor to receive partially the payment of a debt, even when divisible.

The Judges may, however, in consideration of the debtor's position, and by making use of such power with great reserve, grant moderate delays for the payment, and stay the proceedings, everything remaining in the state in which it is. Civ. C. 1184, 1188, 1900.

1245. A debtor of a special and fixed thing is released by the delivery of the thing in the condition in which it is
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at the time of delivery, provided the damage it has suffered was not occasioned by his act or through his fault, nor by the act or through the fault of the person for whom he is responsible, or unless a demand has been made upon him before such damage took place. Civ. C. 1138, 1302, 1933.

1246. If the debt is for a thing that is only specified as to its kind, the debtor, in order to be released, is not obliged to deliver one of the best kind, but he cannot offer one of the worst kind. Civ. C. 1022.

1247. The payment must be made at the place designated in the agreement. If the place has not been designated therein, the payment, if it is for a special and fixed thing, shall be made at the place where the thing forming the object of the obligation was at the time such obligation was contracted.

With the exception of these two cases, the payment shall be made at the domicil of the debtor. Civ. C. 1135, 1187, 1258, 1264, 1609, 1651, 1942.

1248. The expenses connected with the payment are borne by the debtor. Civ. C. 1260, 1608.

Sub-sect. 2. Of Payment with Subrogation.

1249. Subrogation to the rights of a creditor for the benefit of a third person who pays him is either conventional or legal.

1250. Such subrogation is conventional:
1. When the creditor receiving payment from a third person subrogates him to his rights, actions, privileges or mortgages against the debtor: such subrogation must be express and made at the same time as the payment;
2. When the debtor borrows a sum for the purpose of
paying his debt and of subrogating the lender to the rights of the creditor. In order that such a subrogation should be valid, it is necessary that the instrument by which the loan is made and the receipt therefor should be drawn up before notaries; that in the instrument for the loan it shall be declared that the sum has been borrowed to make the payment and that in the receipt it shall be declared that the payment has been made with the monies furnished for that purpose by the new creditor. Such subrogation takes place independently of the wish of the creditor. Civ. C. 1236, 1251, 1322, 1328, 1693, 1989, 2102, 2103.

1251. Subrogation takes place by right:
1. For the benefit of the person who, being himself a creditor, pays another creditor, who is preferred to him on account of his privileges or mortgages;
2. For the benefit of the purchaser of a piece of real estate who applies the price of his purchase to the payment of the creditors to whom this hereditament was mortgaged;
3. For the benefit of the person who, being bound with others or for others to the payment of the debt, had an interest in satisfying it;
4. For the benefit of the heir with benefit of inventory who has paid with his monies the debts of the succession. Civ. C. 874, 1249, 1250, 1252, 1289, 1324, 1376, 2114, 2178, 2191.

1252. The subrogation established by the foregoing articles takes place as well against the sureties as against the debtors: it cannot prejudice the creditor when he has only been paid in part; in such case he can enforce his rights for what remains due to him in preference to the person from whom he has only received partial payment. Civ. C. 1165, 2011, 2028.
Sub-sect. 3. Of Imputation of Payments.

1253. A debtor of several debts has the right when he pays to declare what debt he means to discharge. Civ. C. 1234, 1256, 1848.

1254. A debtor of a debt which bears interest or produces a revenue cannot, without the consent of the creditor, impute the payment which he makes to the reduction of the capital in preference to the revenue or interest: the payment made on the capital and interest but which is not entire, shall first be imputed to the payment of the interest. Civ. C. 1289, 1291, 1540, 1906, 2081.

1255. When the debtor of several debts has accepted a receipt by which the creditor has imputed what he has received to one of such debts specially, the debtor can no longer ask that the imputation be made to a different debt, unless there has been fraud or surprise on the part of the creditor.

1256. When the receipt does not bear any imputation the payment shall be imputed to the debt which the debtor had at that time the greatest interest in satisfying among those which were likewise due: if not, then to the debt due, although it may be less burdensome than those which are not due.

If the debts are of the same nature, the imputation is made to the one which has been the longest due: if all things are equal, it is made proportionately. Civ. C. 1253, 1255.

Sub-sect. 4. Of Tenders of Payment and of Consignation.

1257. When a creditor refuses to receive his payment, the debtor can make him an actual tender, and upon the
refusal of the creditor to accept it, he may deposit the sum or the thing offered.

Actual tenders, followed by a consignment, release the debtor: they take the place of payment with respect to him when they have been legally made and the thing so deposited remains at the risk of the creditor. Civ. C. 1134, 1258, 1259, 1662, 2160, 2180.

1258. In order that an actual tender be valid, it is necessary:

1. That it should be made to a creditor who has the capacity of receiving it, or to a person who has power to receive it for him;

2. That it should be made by a person who is capable of making the payment;

3. That it should be for the entire sum due, with the revenue or interest due, the liquidated costs, and a sum for the unliquidated costs, to be completed if necessary;

4. That the time of maturity should have come, if any stipulation has been made in favour of the creditor;

5. That the condition under which the debt has been contracted should have been fulfilled;

6. That the tender should be made at the place which is agreed upon for the payment, and if no special stipulation has been made as to the place of payment, that the tender be made to the creditor personally or at his domicile or at the domicile which he has elected for the fulfilment of the agreement;

7. That the tender should be made by a public officer who has the necessary capacity for such sorts of writs. Civ. C. 111, 450, 464, 1181, 1236, 1239, 1247, 1259, 1606, 1887, 2186.

1259. To make the consignment valid it is not necessary that it should have been authorized by the Judge; it shall be sufficient:
1. That a writ served upon the creditor should have preceded it, which shall contain an indication of the day, the hour, and the place where the thing offered will be deposited;

2. That the debtor should have parted with the thing tendered by placing it in the spot provided by law to receive consignations, together with the interest up to the date of deposit;

3. That an official report should be drawn up by a public officer, of the nature of the things tendered, of the refusal made by the creditor to receive them, or of his non-appearance, and finally of the deposit;

4. That in case of non-appearance on the part of the creditor, the official report of deposit should have been served upon him with a writ demanding that he should take the thing deposited.

1260. The expense of an actual tender and of a consignment shall be borne by the creditor, if the same are valid.

1261. So long as the consignment has not been accepted by the creditor, the debtor may withdraw it; and if he withdraws it, his co-debtors or his sureties are not released. Civ. C. 1262, 2034.

1262. When a debtor has himself obtained a judgment which has become final and which declares that his tender and consignment are good and valid, he cannot any longer, even with the consent of the creditor, withdraw his consignment to the detriment of his co-debtors or his sureties. Civ. C. 1351, 2034.

1263. A creditor who has consented to allow the debtor to withdraw his consignment after it has been declared valid by a judgment which has become final, can no longer
enforce the privileges or mortgages which belong thereto, for the payment of his claim: he is only entitled to a mortgage from the time when the instrument by which he has consented to the withdrawal of the consignation has been clothed with the necessary requirements to carry with it a mortgage. Civ. C. 1351.

1264. If the thing due is a special corpus which must be delivered at the place where it is, the debtor must have a writ of demand issued against the creditor to take away the thing, which shall be served upon him personally, or at his domicile, or at the domicile elected for the fulfilment of the agreement. When the writ has been served, if the creditor does not take the thing away and the debtor requires the spot in which it has been placed, he can obtain from the Court permission to deposit it in some other spot. Civ. C. 111, 1247, 1609.

Sub-sect. 5. Of Assignment of Property.

1265. An assignment of property is the abandonment made by a debtor of all his property in favour of his creditors when he finds himself unable to pay his debts. Civ. C. 1270.

1266. An assignment of property is voluntary or judicial.

1267. A voluntary assignment of property is one which creditors accept voluntarily and which has no other effect than the one resulting from the very conditions of the contract entered into between them and the debtor. Civ. C. 1134.

1268. A judicial assignment is an advantage which the law grants to a debtor who has been unfortunate and has acted in good faith; he is allowed to make in court to his
creditors the abandonment of all his property, notwithstanding any stipulation to the contrary for the purpose of securing the liberty of his person (l).

1269. A judicial assignment does not confer ownership upon the creditors: it only gives them the right to have the property sold for their benefit and to collect the income up to the time of the sale.

1270. Creditors cannot refuse a judicial assignment outside of the cases excepted by law.

The assignment carries with it the release of the execution against the person.

Otherwise, it only releases the debtor to the extent of the value of the property abandoned; and in case such property is insufficient, if he acquires more property he is obliged to abandon it until full payment has been made.

§ 2. Of Novation.

1271. Novation takes place in three ways:

1. When the debtor contracts towards his creditor a new debt which is substituted for the old one and extinguishes it;

2. When a new debtor is substituted for the old one, who is released by the creditor;

3. When, owing to a new agreement, a new creditor is substituted for the old one, as to whom the debtor is released. Civ. C. 878, 879, 1273, 1281, 1654, 1690, 1965.

1272. Novation can only take place among persons who have the capacity of contracting. Civ. C. 1124.

(l) The law of 22 July, 1867, has abolished execution against the person in commercial and civil matters and against foreigners.

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1273. Novation cannot be presumed. The wish to create it must clearly result from the instrument. Civ. C. 1256, 1271, 1338, 1347, 1353.

1274. Novation, by substitution of a new debtor, can take place without the cooperation of the first debtor.

1275. An assignment by which a debtor gives to a creditor another debtor, who binds himself towards the creditor, does not create novation, unless the creditor has expressly declared that he intended to release his debtor who has made the assignment. Civ. C. 1120, 1121, 1273 et s., 1277, 1690, 2112, 2148.

1276. A creditor who has released a debtor by whom an assignment has been made has no remedy against such debtor if the assignee becomes insolvent, unless the instrument contains an express reserve, or unless the assignee has already openly failed or is in a state of insolvency at the time of the assignment. Civ. C. 1295.

1277. A simple indication made by the debtor of a person who is to pay in his stead does not create novation.

The same rule applies in case of a simple indication made by a creditor of a person who is to receive in his stead. Civ. C. 1121.

1278. The privileges and mortgages belonging to an old claim do not pass over to the one which is substituted for it, unless the creditor has expressly reserved them.

1279. When novation takes place by the substitution of a new debtor, the original privileges and mortgages of the claim cannot extend to the property of the new debtor.
1280. When novation takes place between the creditor and one of the joint debtors, the privileges and mortgages of the former claim can only be reserved as to the property of the person who contracts the new debt. Civ. C. 1208, 1278.

281. All the co-debtors are released by novation which has taken place between the creditor and one of the joint debtors.

Novation which takes place with respect to the principal debtor releases the sureties.

Nevertheless, if the creditor in the first case has insisted upon the adhesion of the co-debtors or if in the second case he has insisted upon the adhesion of the sureties, the whole claim subsists, if the co-debtors or the sureties refuse to accept the new arrangement. Civ. C. 1200, 2034, 2037.

§ 3. Of Remission of Debt.

1282. A voluntary surrender of an original instrument under private signature by a creditor to a debtor is proof of release. Civ. C. 1315, 1350.

1283. A voluntary surrender of an exemplified copy of the evidence of debt in form for execution establishes a presumption of release from the debt or of payment, without prejudice to the proof of the contrary. Civ. C. 1315, 1350, 1352.

1284. A surrender of an original instrument under private signature or of a certified copy of an instrument in form for execution to one of the joint debtors has the same effect for the benefit of his co-debtors. Civ. C. 1208, 1282, 1350, 1352.

1285. A conventional remission or discharge in favour
of one of the joint debtors releases all the others, unless the creditor has expressly reserved his rights against the latter.

In this last case, he can only claim the debt subject to the deduction of the share of the person to whom he has made the remission. Civ. C. 1208.

1286. The return of a thing given as pledge is not sufficient to establish a presumption of remission of debt. Civ. C. 2071 et s.

1287. A conventional remission or discharge granted to the principal debtor releases the sureties;
   When granted to a surety it does not release the principal debtor;
   When granted to one of the sureties it does not release the others. Civ. C. 1285, 2021, 2025, 2034.

1288. What a creditor has received from a surety to release his undertaking shall be deducted from the debt and shall go towards the release of the principal debtor and the other sureties. Civ. C. 1253.

§ 4. Of Compensation.

1289. When two persons are indebted to each other, compensation takes place between them which wipes out both debts in the manner and in the cases hereafter mentioned. Civ. C. 803, 1165, 1290, 1338.

1290. Compensation takes place by right by the sole effect of the law, even without the knowledge of the debtors; the two debts are reciprocally wiped out from the moment they happen to exist at the same time, to the extent of the respective amounts thereof. Civ. C. 1289, 1291.
1291. Compensation only takes place between two debts of which the object is likewise a sum of money or a certain quantity of consumable things of the same kind which are also liquidated and due.

Prestations in grain or provisions which are not contested and of which the price is regulated by lists of averages can be compensated with sums which are liquidated and due. Civ. C. 1289, 1565, 1722, 2166 et s.

1292. Days of grace are not an obstacle to compensation. Civ. C. 1244.

1293. Compensation takes place whatever may be the causes of one or the other of the debts, except in case:
1. Of an action for restitution of a thing of which the owner has been unjustly deprived;
2. Of an action for restitution of a deposit or of a loan for use;
3. Of a debt of which the cause is support, declared not liable to attachments. Civ. C. 1291, 1885, 1932, 2093.

1294. A surety can set up compensation for what the creditor owes the principal debtor;

But a principal debtor cannot oppose compensation for what the creditor owes the surety.

In like manner a debtor jointly and severally liable cannot set up compensation for what a creditor owes his co-debtor. Civ. C. 1208, 2036.

1295. A debtor who has accepted absolutely the assignment made by a creditor to a third party of his rights, can no longer set up against the assignee the compensation which he might before the acceptance have set up against the assignor.

An assignment which has not been accepted by the debtor, but notice of which has been served upon him, only
prevents compensation as to claims subsequent to such notice. Civ. C. 1275, 1690.

1296. When the two debts are not payable at the same place, compensation can only be set up by making good the expenses of delivery. Civ. C. 1247.

1297. When several debts which can be compensated are due by the same person, the same rules are followed for compensation as those of article 1256 for imputation.

1298. Compensation does not take place when prejudicial to rights acquired by a third party. For instance, a person who, being a debtor, has become a creditor since an attachment has been made in his hands by a third party, cannot set up compensation to the prejudice of the attaching creditor. Civ. C. 1242.

1299. A person who has paid a debt which by right was wiped out by compensation cannot any longer, by bringing up the claim for which he has not set up compensation, take advantage of the privileges or mortgages belonging thereto to the detriment of third parties, unless he had good cause for not knowing of the claim with which his debt should have been compensated. Civ. C. 1278, 2180.

§ 5. Of Merger.

1300. When the capacities of creditor and debtor are joined in the same person, merger takes place by right and wipes out both claims. Civ. C. 1185, 1209, 2180.

1301. Merger which takes place in the person of the principal debtor extends to his sureties;
When it takes place in the person of the surety, it does not occasion the extinction of the principal obligation;
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When it takes place in the person of the creditor, it only extends to his co-debtors jointly and severally liable to the extent of the portion which he owed. Civ. C. 1209, 2035.

§ 6. *Of the Loss of a Thing Due.*

1302. When a certain and specific thing forming the object of an obligation is destroyed, can no longer be used in trade (m), or is lost in such a way that its existence is absolutely unknown, the obligation ceases if the thing has been destroyed or lost not through the fault of the debtor and before a demand has been made upon him.

Even when a demand has been made upon the debtor, the obligation ceases if he has not assumed the cases of accident, provided the thing would likewise have been destroyed in the possession of the creditor if it had been delivered to him.

The debtor is obliged to prove the case of accident which he alleges.

In whatever manner a thing which has been stolen may have been destroyed or lost, its loss does not exonerate the person who has taken it away from returning its value. Civ. C. 1138, 1150, 1193 et s., 1601, 1741, 1788, 1810, 1882.

1303. When a thing has been destroyed, can no longer be used in trade (m) or has been lost, not through the fault of the debtor, the latter, if he is entitled to any rights or actions for indemnity with respect to such thing, is bound to assign them to his creditor. Civ. C. 1934.

(m) The word trade is taken here in a broad sense, and applies to property belonging to private individuals, in contradistinction to public property.
§ 7. Of the Action for Avoidance or Rescission of Contracts.

1304. In all cases in which an action for avoidance or rescission of a contract is not limited to a shorter time by a special law, such action is maintainable during ten years.

In case of duress, the time only runs from the day upon which such duress has ceased; in case of error or of fraud, from the day upon which the same has been discovered; and for instruments executed by married women, not authorized, from the day of the dissolution of the marriage.

As regards contracts entered into by interdicted persons, the time only runs from the day the interdiction is raised; and as regards those entered into by minors, from the day they have become of age. Civ. C. 475, 791, 886, 887, 1108 et s., 1115, 1130.

1305. A simple lesion occasions rescission in favour of a minor not emancipated with respect to all sorts of contracts, and in favour of an emancipated minor with respect to all contracts which exceed the limits of his capacity, as is specified in the Title Of Minority, of Guardianship and of Emancipation. Civ. C. 450, 482 et s., 1124, 1125, 1304.

1306. A minor is not relieved on account of lesion when it only results from a casual and unforeseen event.

1307. A simple declaration made by the minor that he has become of age does not prevent him from being relieved.

1308. A minor who is a trader, a banker or a workman is not relieved of the engagements which he has made on account of his trade or of his work. Civ. C. 487.

1309. A minor is not relieved from the conditions inserted in his marriage contract when they have been
made with the consent and assistance of those whose consent was necessary for the validity of his marriage. Civ. C. 1095, 1398.

**1310.** He is not relieved from the obligation resulting from a tort or quasi-tort. Civ. C. 1305, 1312, 1382 et s.

**1311.** He is not allowed to repudiate an agreement which he had entered into during his minority, when he has ratified it after his coming of age, whether such agreement is null owing to its form or whether it was only avoidable. Civ. C. 1338.

**1312.** When minors, interdicted persons, or married women, are allowed in such capacities to be relieved of their agreements, the repayment of what may have been paid in consequence of such agreements during the minority, the interdiction, or the marriage, cannot be claimed unless it is proved that what has been paid has turned out to their benefit. Civ. C. 217, 225, 484, 499, 513, 1241.

**1313.** Persons of full age are only relieved on account of lesion under the conditions specially set forth in the present Code.

**1314.** When the formalities required with respect to minors or interdicted persons, either for the conveyance of real estate, or upon the division of a succession, have been fulfilled, they are considered, with respect to such operations, as having been made after the person has become of age or before interdiction. Civ. C. 457, 458, 466, 484, 840.
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CHAP. VI.

OF THE PROOF OF OBLIGATIONS AND THAT OF PAYMENT.

1315. A person who claims the fulfilment of an obligation must prove it.

Reciprocally, a person who claims to be released, must prove payment or the fact which has caused the obligation to be wiped out. Civ. C. 646, 1341, 1353, 1355, 1614.

1316. The rules relating to documentary evidence, oral evidence, presumptions, the admissions of the party, and oaths, are explained in the following sections. Civ. C. 1317 et s., 1341 et s., 1349 et s., 1354, 1357.

§ 1. Of Documentary Evidence.

Sub-sect. 1. Of Public Instruments.

1317. A public instrument is one which has been made by public officers having the right to draw up instruments in the place where the instrument has been prepared and with the formalities required. Civ. C. 1690 et s., 2127, 2129.

1318. An instrument which is not authentic owing to the incompetency or incapacity of the officer, or an irregularity in its form, is good as a private instrument if it has been signed by the parties.

1319. A public instrument is full proof of the agreement which it contains against the contracting parties and their heirs or legal representatives.

Nevertheless, in case of a direct complaint for forgery, the performance of the instrument alleged to have been forged shall be suspended by the indictment, and in case of
a complaint for forgery made incidentally, the Courts may, according to the circumstances, suspend temporarily the performance of the instrument. Civ. C. 457, 901, 1165, 1167, 1310, 1317, 1320, 1322, 1341, 1353.

1320. An instrument, whether public or under private signature, is full proof between the parties, even of what is only expressed therein in enunciative terms, provided the enunciation directly applies to the clause. The enunciations which do not relate to the clause can only be used as a commencement of proof. Civ. C. 1341, 1347.

1321. Defeasances only produce effect between the contracting parties: they produce no effect against third parties. Civ. C. 1165, 1319, 1322, 1328.

Sub-sect. 2. Of Instruments under Private Signature.

1322. An instrument under private signature admitted as binding by the person against whom it is set up or lawfully held as such, has, with respect to those who have signed it, their heirs and legal representatives, the same force as a public instrument. Civ. C. 1319, 1328, 1341.

1323. A person against whom an instrument under private signature is set up is bound formally to admit or repudiate his handwriting or his signature.

His heirs or legal representatives may limit themselves to declaring that they do not know the handwriting or the signature of the principal. Civ. C. 1324.

1324. In case the party repudiates his writing or signature, and in case his heirs or legal representatives declare that they do not know the same, a verification shall be ordered by the Courts.

1325. Instruments under private signature which contain
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a synallagmatic contract are only valid if they are made in as many originals as there are parties having a distinct interest.

One original is sufficient for all the persons who have the same interest.

Each original must contain a statement of the number of originals which have been made.

Nevertheless, the omission to mention that the originals have been made in duplicate, triplicate, &c., cannot be set up by the person who has performed his part of the contract contained in the instrument. Civ. C. 1102, 1338, 1547, 1589, 2011, 2044.

1326. A note or a promise under private signature by which a single party binds himself to another to pay a sum of money or an appreciable thing, must be wholly written in the hand of the person who signs it, or at least, it is necessary that, besides his signature, he should have written in his own hand Good for, or Approved, with the sum or the quantity of the thing written out in full;

Except in case the instrument emanates from traders, workmen, farm labourers, vine-dressers, labourers hired by the day, and servants. Civ. C. 1341, 1347, 1353.

1327. When the sum expressed in the body of the instrument is different from the one mentioned after the words Good for, the obligation is only presumed to be for the smaller amount, even if the instrument and the words Good for, &c., are written entirely in the hand of the person who has bound himself, unless it is established on which side the error lies. Civ. C. 1162.

1328. Instruments under private signature only have a date with respect to third parties from the day upon which they have been recorded, from the day of the death of the person or of one of the persons who have signed them, or
from the day their contents are set down in instruments drawn up by public officers, such as official reports of the affixing of seals or of the making of inventories. Civ. C. 690, 695, 1315, 1322, 1690, 1998.

1329. The books of merchants shall not be taken as proof against persons who are not traders for the articles therein mentioned, with the exception of what is stated with respect to oaths. Civ. C. 1366.

1330. The books of merchants shall be held as proof against themselves, but the person who wishes to derive an advantage from them cannot divide them as to the contents which may be in opposition to his claim.

1331. Books and private papers do not constitute a title for those who have written them. They are proof against them: 1. In all cases in which they formally recite a payment received; 2. When they contain the express statement that the entry has been made to take the place of an instrument for the benefit of the person in favour of whom they recite an obligation. Civ. C. 1353, 1357.

1332. What has been written by a creditor at the end, in the margin, or upon the back of an instrument which has always remained in his possession constitutes a proof, although he has not signed or dated the same, whenever such writing tends to show that the debtor has been released.

The same rule applies to what has been written by the creditor on the back, or in the margin, or at the end of the duplicate of an instrument or of a receipt, provided such duplicate is in the hands of the debtor. Civ. C. 1354.
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Sub-sect. 3. Of Tallies.

1333. Tallies which agree with each other are proof among people who are in the habit of thus counting the articles which they furnish or receive by retail.

Sub-sect. 4. Of Copies of Instruments.

1334. Copies, when the original instrument exists, are only a proof of what is contained in the instrument, the production of which can always be demanded.

1335. When the original instrument no longer exists, copies are proof with the following distinctions:

1. Exemplified copies or first certified copies have the same weight as the original: copies which have been made by order of a Judge, the parties being present or having been duly summoned, or those which have been made in the presence of the parties and by their mutual consent, have also the same weight.

2. Copies which have been made from the original instrument by the notary who has received it, or by one of his successors, or by public officers who, in such capacity, are the keepers of the originals, but without the order of the Judge or the consent of the parties, and since the exemplified copies or first certified copies have been delivered, can, in case of loss of the original, have the same weight when they are old.

They are considered as being old when they date more than thirty years back.

If they date less than thirty years back they can only be used as commencement of written proof.

3. When the copies taken from the original of an instrument deposited with a notary have not been made by the notary who received the instrument or by one of his successors or by public officers who, in such capacity, are the
keepers of the originals, such copies can only be used, however old they may be, as commencement of written proof.

4. Copies of copies may, according to circumstances, be considered as mere information. Civ. C. 691, 1334, 1347.

1336. The transcription of an instrument on the public registers can only be used as commencement of written proof, and for that purpose it shall even be necessary:—

1. That it be certain that all the originals filed with the notary during the year in which the instrument appears to have been made are lost or that it be proved that the loss of the original of such instrument has occurred by special accident.

2. That an index of the notary in proper order should exist showing that the instrument was made upon that date.

When, owing to the concurrence of these two circumstances, the proof can be made by witnesses, it shall be necessary that those who have been witnesses to the instrument be heard, if they still exist. Civ. C. 1347, 1353.

Sub-sect. 5. Of Instruments acknowledging or confirming a thing.

1337. Instruments acknowledging a thing do not make away with the necessity of producing the original instrument, unless its terms are expressly recited therein.

What they may contain in addition to the primary instrument, or what is different therein, has no effect.

Nevertheless, if there were several acknowledgments in like form, strengthened by possession, and of which one dates more than thirty years back, the creditor may be exempted from producing the primary instrument. Civ. C. 1334, 2263.

1338. An instrument confirming or ratifying an obli-
gation against which the law allows an action for avoidance or rescission is only valid when the substance of the obligation is contained therein and the motive of the action for rescission and the intention to make good the flaw upon which such action is based are mentioned.

In the absence of an instrument of confirmation or ratification it is sufficient that the obligation should voluntarily be performed after the time when the obligation could be lawfully confirmed or ratified.

Confirmation, ratification or voluntary performance in the form and at the time mentioned by law carries with it the renunciation of the defences and exceptions which could be opposed to this instrument, without prejudice, however, to the rights of third parties. Civ. C. 724, 816, 888, 1109, 1115, 1120, 1131, 1304, 1311, 1339, 1340, 1554, 1583, 1998, 2012, 2036, 2134, 2135.

1339. A donor cannot by any act of confirmation make good the flaws of a donation inter vivos; if it is void as to its form, it must be re-made in legal form. Civ. C. 816, 892, 931 et s., 1081, 1092.

1340. Confirmation, or ratification, or voluntary performance of a donation by the heirs or legal representatives of a donor after his death carries with it their renunciation of setting up either irregularities of form or any other exception. Civ. C. 1338.

§ 2. Of Oral Evidence.

1341. It shall be necessary to execute an instrument drawn up in the presence of notaries or made under private signature for all things of which the sum or value exceeds one hundred and fifty francs, even in case of a voluntary deposit, and no proof by witnesses in favour or against the contents of the instrument, nor as to what is alleged to
have been said previously, at the time, or since the making of the same, shall be allowed, even if the sum or value in dispute is less than one hundred and fifty francs:

All of which is without prejudice to what is mentioned in the laws relating to commerce. Civ. C. 1116, 1131, 1319, 1320, 1347, 1348, 1353, 1372, 1715, 1834, 1923, 2015, 2052.

1342. The above rule applies in case the action is brought, besides the payment of a capital, for the payment of interest, which, added to the capital, exceeds the sum of one hundred and fifty francs.

1343. A person who has brought an action for more than one hundred and fifty francs is no longer allowed to produce oral evidence, even by reducing his original claim.

1344. Oral testimony cannot be allowed, even in an action for a sum less than one hundred and fifty francs, when such sum is declared to be a balance, or to form part of a larger claim which is not proved in writing.

1345. If, in the same action, a party asks for several things for which he has no writing, and which added together exceed the sum of one hundred and fifty francs, no oral testimony can be allowed, even if the party alleges that the claims come from different causes, and have arisen at different times, unless such rights are derived from a succession, donation, or otherwise, from different persons.

1346. All actions, for whatever cause, which are not entirely established by writings, shall be brought by the same writ, after which the other actions in which there are no written proofs shall not be maintainable.

1347. The above rules are subject to exception when there exists a commencement of written proof.

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Any instrument in writing which emanates from the person against whom the action is brought, or from the person he represents, and which tends to make the alleged fact probable, is called a commencement of written proof. Civ. C. 324, 1320, 1329, 1335 et s., 1341, 1353, 1356, 1360, 1985.

1348. They are also subject to exception whenever it has not been possible for the creditor to procure written proof of the obligation which has been contracted towards him.

This second exception applies:—
1. To obligations arising from quasi-contracts, and torts or quasi-torts;
2. To obligatory deposits made in case of fire, destruction, disturbance or wreck, and to those made by travellers when stopping in an hotel, all of which shall be according to the standing of the persons and the circumstances surrounding the facts;
3. To obligations contracted in case of unforeseen accidents, when instruments in writing could not have been made;
4. In case the creditor has lost the instrument which served as written proof in consequence of an unforeseen accident resulting from superior force. Civ. C. 1131, 1341, 1353, 1371, 1382 et s., 1949 et s.

§ 3. Of Presumptions.

1349. Presumptions are consequences which the law or the Judge draws from a known fact to an unknown fact.

Sub-sect. 1. Of Presumptions established by Law.

1350. A legal presumption is one which a special law applies to certain acts or certain facts; such are:—
1. Acts which the law declares to be null as supposed to have taken place in violation of its provisions from their very nature;
2. Cases in which the law declares that ownership or exoneration results from certain special circumstances;
3. The weight which the law gives to a res adjudicata;
4. The weight which the law gives to an admission of a party or to his oath. Civ. C. 553, 653, 720, 911, 1099 et s., 1282, 1330, 1525, 1569, 1908.

1351. The weight of a res adjudicata only extends to what forms part of the judgment. The thing sued for must be the same; the action must be based on the same cause; the action must be between the same parties, and brought by the same parties against the same parties in the same capacity. Civ. C. 802, 840, 843, 1109, 1110, 1147, 1165, 1220, 1221, 1235, 1350, 1376, 1654, 1802, 1844, 2033, 2243, 2262.

1352. Legal presumption makes away with the necessity for any proof on the part of the person in whose favour it exists.

No proof is allowed against a presumption of the law, when, upon the basis of such presumption, the law annuls certain acts, or defeats the action in court, unless the law reserves the right to prove the contrary, subject to what shall be stated with respect to oaths and judicial admissions. Civ. C. 312 et s., 911, 1099, 1351.

Sub-sect. 2. Of Presumptions which are not established by Law.

1353. Presumptions which are not established by law are left to the learning and prudence of the Judge, who shall only admit presumptions which are serious, exact and consistent, and only in the cases in which the law admits oral proofs, unless the instrument is attacked on
account of fraud or deceit. Civ. C. 913, 1116, 1134, 1239, 1315, 1319, 1341, 1347, 1348, 1356, 2085.

§ 4. Of Admissions of the Party.

1354. An admission which is set up against a party is either extra-judicial or judicial.

1355. The allegation of an extra-judicial admission which is purely verbal is useless whenever the action is one in which oral evidence would not be received. Civ. C. 1341.

1356. A judicial admission is a declaration made in court by the party or his special attorney-in-fact.
   It produces full force against the person who has made it.
   It cannot be divided against such person.
   It cannot be revoked unless it is proved that it results from an error of fact. It could not be revoked on the ground of an error of law. Civ. C. 1108, 1109, 1330, 1353, 1923, 1924, 1993, 1998.

§ 5. Of Oaths.

1357. Judicial oaths are of two kinds:
   1. Those which one of the parties proffers to the other to make the judgment in the case depend upon them. They are called decisive oaths;
   2. Those which are proffered by the Judge of his own accord to either of the parties. Civ. C. 1358, 1359, 1360, 1361, 1366, 1367.

Sub-sect. 1. Of Decisive Oaths.

1358. A decisive oath can be proffered in all kinds of controversies whatsoever. Civ. C. 1359, 1360, 1361, 1366, 1715, 2275.
1359. It can only be proffered with respect to a fact which is personal to the party to whom it is proffered. Civ. C. 1362.

1360. It can be proffered at all stages of the case, and even if there does not exist a commencement of proof of the claim, or of the exception in connection with which it is proffered. Civ. C. 1347, 1364.

1361. A person to whom an oath is proffered and who refuses to take it, or who does not consent to have it taken by his opponent, or an opponent to whom it has been left to take the oath and who refuses to take it, shall be defeated in his claim or in his exception. Civ. C. 1350, 1358, 1368.

1362. An oath cannot be proffered back when the act to which it relates has not been performed by both parties, but is purely personal to the one to which the oath had been proffered. Civ. C. 1359.

1363. When an oath proffered or proffered back has been taken, the adversary is not allowed to prove that it is false. Civ. C. 1350 et s., 1358, 1365.

1364. A party to whom the oath is proffered, or who leaves it to the other to take it, cannot withdraw when his adversary declares that he is ready to make oath.

1365. The oath taken only constitutes a proof for the benefit of the person who has proffered it or against him, and for the benefit of his heirs or legal representatives or against them.

Nevertheless, the oath proffered to a debtor by one of the creditors, towards whom he is jointly and severally liable, only releases the former as to the portion of such creditor.

The oath proffered to the principal debtor also releases the sureties.
The oath proffered to one of the debtors jointly and severally liable benefits the co-debtors.
And the oath proffered to the sureties produces its effect with respect to the principal debtor.
In the two last cases the oath of the co-debtor jointly and severally liable, or of the sureties, only produces its effect with respect to the other co-debtors, or to the principal debtor, when it has been proffered as to the debt, and not as to the fact of the joint and several liability, or of the security. Civ. C. 1208, 1287, 2034.

Sub-sect. 2. Of Oaths administered by the Court of its own accord.

1366. A Judge may proffer an oath to one of the parties, either to make the decision of the case result from it, or only to fix the amount of the judgment. Civ. C. 1315, 1341, 1353, 1367, 1716, 1924.

1367. A Judge can only of his own accord proffer an oath, either upon the claim or upon the exception set up, under the two following conditions; it is necessary:—
1. That the claim or the exception should not be fully established;
2. That it should not be wholly without proof.
Outside of these two cases the Judge must either admit or reject the claim absolutely.

1368. An oath proffered by a Judge to one of the parties of his own accord, cannot be left by such party to be taken by the other.

1369. An oath as to the value of a thing claimed can only be proffered to the plaintiff by the Judge when it is impossible to establish its value in a different way.
The Judge must even in such case fix the amount to the extent of which the plaintiff shall be believed on his oath.
TITLE FOURTH.

OF AGREEMENTS WHICH ARE FORMED WITHOUT CONTRACT.

(Passed 9th February, 1804; promulgated 19th of same month.)

1370. Certain agreements are formed without any contract being made, either on the part of the party who binds himself, or on the part of the one towards whom such party is bound.

Some of them result from the operation of the law alone; others arise in connection with a fact which is personal to the party who is bound.

The former ones are the agreements entered into involuntarily, such as those between neighbouring landowners, or those of guardians, or other administrators who cannot refuse the duties imposed upon them.

Agreements arising in connection with a fact which is personal to the party who is bound result either from quasi-contracts or from torts or quasi-torts; they form the subject of the present Title. Civ. C. 419, 450, 637 et s., 1371, 1382 et s.
OF AGREEMENTS WITHOUT CONTRACT.

CHAP. I.

OF QUASI-CONTRACTS.

1371. Quasi-contracts are the purely voluntary acts of an individual from which a certain agreement results in favour of a third party, and sometimes a reciprocal agreement between two parties.

1372. When a person voluntarily manages another's business, whether the owner knows of such management or whether he does not, the person who manages such business contracts the tacit agreement to continue the management which he has commenced and to carry it on until the owner is in a position to look after the business himself. He must also take charge of everything connected therewith. He submits to all the obligations which would result from an express power of attorney which the owner might have given him. Civ. C. 1341, 1984, 1991, 1993, 2007.

1373. He is obliged to continue his management, even if the owner dies before the business is ended, up to the time the heir has been able to assume the management thereof. Civ. C. 1991.

1374. He is obliged to devote to the management of the business all the care of a prudent owner.

Nevertheless, the circumstances which have led him to take charge of the business may authorize the Judge to diminish the damages which might result from the laches or negligence of the manager. Civ. C. 1137, 1382.

1375. An owner whose business has been properly managed must fulfil the agreements which the manager has entered into in his name; he must hold him harmless for all the personal agreements which he has assumed

1376. A person who receives by mistake or knowingly what is not due to him binds himself to return it to the individual from whom he has unduly received it. Civ. C. 1235, 1906.

1377. When a person thought by mistake he owed a debt and has paid it, he has the right to claim it back from the creditor.

Nevertheless, this right ceases in case the creditor has suppressed his written proof in consequence of the payment, subject to the remedy of the person who has paid against the real debtor. Civ. C. 1906, 1967.

1378. If there has been bad faith on the part of the person who has received payment he is bound to restore the capital, together with the interest or the revenue, from the day of the payment. Civ. C. 549, 550, 1153, 1381, 1382, 1579, 1635, 2262.

1379. If the thing unduly received is real estate or corporeal personal property, the person who has received it binds himself to restore it in kind, if it exists, or its value if it has been destroyed or damaged owing to him; he is also answerable for its loss by accident if he has received it in bad faith. Civ. C. 1137, 2268.

1380. If the person who has received the thing in good faith has sold it he is only obliged to return the price of the sale. Civ. C. 1238, 1935, 2268.

1381. The person to whom the thing is returned must make good, even to the possessor in bad faith, all the
necessary or useful expenses which have been incurred for the preservation of the thing. Civ. C. 1378, 1886, 1890, 2102, 2103.

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Chap. II.

Of Torts and Quasi-Torts.

1382. Every act whatever of an individual which causes injury to another obliges the one owing to whom the same has occurred to make it good. Civ. C. 1142, 1146, 1149, 1310.

1383. Every one is responsible for the injury which he has caused not only owing to his own act, but owing to his negligence or his imprudence. Civ. C. 1146.

1384. A person is responsible not only for the injuries which he causes owing to his own act, but also for those which are caused by the acts of persons for which he is answerable or by things which are under his care.

The father, and the mother after the death of the husband, are responsible for injuries caused by their minor children living with them.

Masters and employers are responsible for injuries caused by their servants and employees in connection with the duties for which they are employed.

Schoolmasters and mechanics are responsible for injuries caused by their pupils and apprentices during the time they are under their supervision. The above liability exists unless the father, the mother, the schoolmasters or mechanics prove that they were unable to prevent the act which gives rise to such liability. Civ. C. 372, 1953, 1997.
1385. The owner of an animal, or the person who uses it while he has the use of it, is liable for the injuries which the animal has caused, whether the animal was under his care or whether it was lost or got loose.

1386. The owner of a building is responsible for the injuries caused by its destruction when such destruction has taken place owing to his not keeping it in good order or owing to bad construction.
TITLE FIFTH.

OF MARRIAGE CONTRACTS AND OF THE RESPECTIVE RIGHTS OF HUSBAND AND WIFE.

(Passed 10th February, 1804; promulgated 20th of same month.)

CHAP. I.

GENERAL PROVISIONS.

1387. The law only regulates conjugal relations with respect to property when there is no special agreement, but the husband and wife may enter into any agreement they deem proper, provided it is not contrary to good morals, and besides, is subject to the following restrictions. Civ. C. 6, 900, 1133, 1172, 1392, 1393, 1428, 1494, 1514, 1540, 1554.

1388. A husband and wife cannot derogate from the rights resulting from the husband's marital powers over the person of the wife and of the children or which belong to the husband as head of the family, nor from the rights conferred upon the survivor of the husband or wife under the Title Of Paternal Authority and the Title Of Minority, of Guardianship and of Emancipation, nor from the prohibitory provisions of the present Code. Civ. C. 213, 371 et s., 389, 476, 1497, 1527.

1389. They cannot make any agreement or renunciation of which the object would be to change the legal order of succession, either with respect to themselves in the succes-
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sion of their children or descendants or with respect to their children among themselves; without prejudice to the donations *inter vivos* or *mortis causa* which may be made according to the manner and in the cases provided for in the present Code. Civ. C. 791, 1130.

1390. A husband and wife can no longer stipulate in a general manner that their association shall be governed by the customs, laws or local statutes which were heretofore in force in the various parts of French territory and which are repealed by the present Code.

1391. They may, nevertheless, declare in a general manner that they intend to marry under the system of community or under the dotal system.

In the first case and under the system of community the rights of the husband and wife and of their heirs are regulated by the provisions of chapter II. of the present Title.

In the second case and under the dotal system their rights shall be regulated by the provisions of chapter III.

Nevertheless, if the certificate of celebration of marriage bears that the husband and wife have been married without a contract, the wife shall be considered, with respect to third parties, as having the capacity of contracting in accordance with the provisions of common law, unless she has declared in the instrument which contains the engagement on her part that she has made a marriage contract.

1392. A simple stipulation to the effect that the wife has settled upon herself, or that another person has settled upon her, some property as dowry, is not sufficient to make the property come within the dotal system, unless there is an express declaration to that effect in the marriage contract.

The selection of the dotal system does not result from the
simple declaration made by the husband and wife that they marry without community or that they shall be separated as to property. Civ. C. 1540 et s.

1393. In default of special stipulations derogating from the system of community or modifying it, the rules established in the first part of chapter II. shall constitute the common law of France.

1394. All matrimonial agreements shall be drawn up prior to the marriage in an instrument made before a notary. The notary shall read to the parties the last paragraph of art. 1391 and also the last paragraph of the present article. It shall be mentioned in the contract that this reading has taken place, under penalty of a fine of ten francs against the notary who is the offender.

The notary shall deliver to the parties at the time of signing the contract a certificate on unstamped paper and without cost stating his full names and his place of residence, the names, first names, occupation and residence of the future husband and wife, and also the date of the contract. This certificate shall show that it is to be delivered to the officer of civil status before the celebration of the marriage. Civ. C. 1120, 1320, 1338, 1341, 1387.

1395. They cannot in any way be altered after the celebration of the marriage. Civ. C. 780, 1076, 1079, 1083, 1093, 1130, 1353, 1388, 1396, 1421, 1422, 1451, 1543, 1835, 1855 et s.

1396. The changes which might have been made therein before such celebration shall be mentioned in an instrument drawn up in the same manner as the marriage contract.

Moreover, no change or defeasance is valid without the presence and simultaneous consent of all the persons who have been parties to the marriage contract. Civ. C. 1321, 1394, 1397, 1451.
1397. All changes or defeasances, even when made in accordance with the requirements of the foregoing article, shall be null with respect to third parties if they have not been drawn up at the end of the original marriage contract; and the notary shall not be able to deliver an exemplified copy for execution, nor certified copies, of the marriage contract, without writing out at the end the changes or the defeasances, under penalty of damages to the parties and under a heavier penalty if proper. Civ. C. 1321, 1396, 1556.

1398. A minor who is able to contract marriage is able to enter into all agreements which such a contract is susceptible of; and the conditions and donations made therein by him are valid, provided he has had in making the contract the assistance of the persons whose consent is necessary for the validity of the marriage. Civ. C. 144 et s., 818, 1095, 1309, 1557.

Chap. II.
Of the System of Community.

1399. Community, whether legal or conventional, commences from the day of the marriage contracted before the officer of civil status: it cannot be stipulated that it shall commence at any other time. Civ. C. 1451, 1497 et s.

First Part.
Of Legal Community.

1400. Community which is established by the simple declaration that the persons marry under the system of community, or by the non-existence of a contract, is
governed by the rules contained in the six following sections.

§ 1. *Of what forms part of the Community as to Assets and Liabilities.*

Sub-sect. 1. *Of Community Assets.*

1401. Community is composed as to assets:

1. Of all the personal property which the husband and wife own at the time of the celebration of the marriage, together with all the personal property which comes to them during the marriage, either by way of succession or even donation, unless the donor has provided differently;

2. Of all profits, revenues, interest and arrears, of whatever nature they may be, which may have become due or have been collected during the marriage and coming from the property belonging to the husband and wife at the time of the celebration of the marriage, or from the property which has come to them during the marriage, in whatever way it may be;

3. Of all the real estate which is acquired during the marriage. Civ. C. 529, 1393, 1400, 1404, 1433, 1437, 1470, 1497, 1498, 1500.

1402. Every piece of real estate is considered an acquest of the community unless it is proved that the husband or the wife had the ownership or legal possession thereof previously to the marriage or unless it has come to one of them since the marriage, by way of succession or donation. Civ. C. 1352, 1401, 1404, 1435.

1403. The cut of wood and the products of quarries and mines form part of the community as regards every portion thereof which is considered as usufruct in accordance with the rules explained under the Title *Of Usufruct, of Use and of Habitation.*
If the cut of wood which, according to such rules, should have been made during the community has not been so made, compensation therefor shall be due to the husband or wife who is not the owner of the property or to his or her heirs.

If the quarries and mines have been opened during the marriage the products thereof only form part of the community subject to compensation or an indemnity in favour of the husband or wife to whom the same may be due. Civ. C. 521, 585, 1437.

1404. Real estate which the husband and wife owned at the time of the celebration of the marriage or which comes to them during its continuance, by way of inheritance, does not form part of the community.

Nevertheless, if the husband or wife has acquired some real estate since the marriage contract, but before the celebration of the marriage, with the stipulation that it should be community property, the real estate acquired during that time shall form part of the community unless the acquisition has been made in consequence of some clause of the marriage contract, in which case it shall be dealt with in accordance with the agreement. Civ. C. 1470, 1493.

1405. Donations of real estate which are made during the marriage to one only of the two married persons do not form part of the community and belong to the donee alone, unless the donation expressly states that the thing given shall belong to the community. Civ. C. 1470, 1493.

1406. Real estate left or assigned by the father, mother, or other ascendants to the husband or wife, either to make up what is due to him or her, or upon condition of paying the donor's debts to third parties, does not form part of the community, subject to compensation or indemnity. Civ. C. 1075, 1437, 1552, 1553.
1407. Real estate acquired during the marriage by way of exchange for real estate belonging to the husband or wife does not form part of the community, and is subrogated to the place and stead of the real estate which has been conveyed, subject to compensation if there is a balance due. Civ. C. 1437.

1408. A purchase made during the marriage, at public sale or otherwise, of a part of some real estate of which the husband or wife was the joint owner does not constitute an acquest; but the community shall receive an indemnity for the sum which it has expended upon such purchase.

In case the husband becomes the purchaser or highest bidder, alone and in his own name, of a portion or of the whole real estate belonging jointly to the wife, the latter at the dissolution of the community may at her choice either abandon the property of the community, which community then becomes the debtor of the wife for the portion of the price due to her, or take the real estate and reimburse the purchase price to the community. Civ. C. 883, 1437, 1470, 1493.

Sub-sect. 2. Of the Liabilities of the Community and of the Actions resulting therefrom against the Community.

1409. The liabilities of the community consist in:
1. All the personal debts which the husband and wife owed at the time of the celebration of their marriage or with which the successions coming to them during the marriage are burdened, subject to compensation for all debts relating to real estate belonging individually to either the husband or the wife;
2. The debts contracted by the husband during the community or by the wife with the consent of the husband, as well with respect to the principal as to interest and income,
subject to compensation in the cases in which it takes place;

3. The revenues and arrears of the annuities only, or of the liabilities which are personal to both the husband and wife;

4. The repairs to real estate which does not form part of the community and due on account of a usufruct;

5. The expenses of support of the husband or wife, of the education and maintenance of the children, and of all other charges resulting from the marriage. Civ. C. 203, 207, 214, 529, 612, 1410, 1422 et s., 1426, 1437 et s., 1510.

1410. The community is only liable for the personal debts contracted by the wife previously to the marriage, if they result from an official instrument which has been made before the marriage or which has received a positive date before that time, either by registration or by the death of one or more of the subscribers to the said instrument.

A creditor of the wife by virtue of an instrument which has no positive date previously to the marriage can only proceed against her for payment upon her individual real estate in fee.

A husband who claims to have paid a debt of this kind for his wife cannot ask her or her heirs to repay him therefor. Civ. C. 1328, 1424, 1485.

1411. The debts of successions purely personal which come to the husband and wife during the marriage shall all be paid out of the community. Civ. C. 1418, 1496.

1412. The debts of a succession purely of real estate which comes to the husband or wife during the marriage shall not be paid out of the community, subject nevertheless to the right which belongs to the creditors to pro-
ceed against the real estate of the succession to obtain payment.

Nevertheless, if the succession comes to the husband, the creditors may proceed to obtain payment either against all the individual property of the husband or even against the property of the community; but in the latter case compensation is due to the wife or to her heirs. Civ. C. 1437.

1413. If a succession purely of real estate comes to the wife and she has accepted it with the consent of her husband, the creditors of the succession may proceed to recover payment against all the individual property of the wife; but if the succession has only been accepted by the wife with the authority of the Court upon the refusal of the husband, the creditors, in case the real estate of the succession is insufficient, can only proceed against the individual property of the wife owned absolutely. Civ. C. 217, 1417, 1426.

1414. When the succession coming to the husband or wife is partly of personal and partly of real estate, the debts with which it is encumbered shall only be paid out of the community to the extent of the portion which the personal property should contribute towards the payment of debts according to the value of such personal property when compared with the value of the real estate.

This proportionate part is fixed according to the inventory which the husband must cause to be drawn up, either for his own account, if the succession concerns him personally, or as directing and authorizing his wife’s acts in case the succession comes to her.

1415. If there is no inventory, and in all cases in which the absence of an inventory is prejudicial to the wife, she or her heirs may, upon the dissolution of the community, proceed to recover the repayments lawfully due, and may even prove the nature and the value of the personal property not
inventoried, as well by private documents and papers as by witnesses, and if necessary by common repute.

A husband is never allowed to make such proof. Civ. C. 1442, 1499, 1504, 1510.

1416. The provisions of article 1414 do not prevent the creditors of a succession which is partly of personal property and partly of real estate from proceeding to recover payments out of the property of the community, whether the estate has come to the husband or whether it has come to the wife, when the latter has accepted it with the consent of the husband; all of which is subject to the repayments respectively due.

The same rule applies if the succession has only been accepted by the wife with the authority of the Court, and if nevertheless the personal property has been mixed up with the property of the community without any previous inventory. Civ. C. 1437, 1470, 1493, 1524.

1417. If the succession has been accepted by the wife, only with the authority of the Court upon the refusal of the husband, and if an inventory has been made, the creditors can only proceed to recover payment against the property, personal or real, of the said succession, and in case of insufficiency against the other individual property which the wife owns absolutely. Civ. C. 219, 1413, 1424 et s.

1418. The rules established in article 1411 et s. apply to the debts in connection with a donation as well as to those resulting from a succession.

1419. Creditors can proceed to recover payment of the debts which the wife has contracted with the husband’s consent, as well against all the community property as against the property of the husband or wife; subject to the compensation due to the community or the indemnity due to the husband. Civ. C. 1401, 1426, 1437, 1470, 1493.
1420. All debts which have been contracted by the wife, only by virtue of a general or special power of attorney from the husband, shall be paid by the community; and the creditor cannot proceed to recover payment either against the wife or against her personal property. Civ. C. 1409, 1998.

§ 2. Of Administration of the Community and of Effects of Acts of the Husband or Wife with respect to Conjugal Partnership.

1421. The husband has the sole management of community property.

He can sell, convey, and mortgage it without the cooperation of the wife. Civ. C. 818, 1401, 1428, 1507, 2208.

1422. He cannot dispose inter vivos of the real estate belonging to the community, nor of the whole or part of the personal property, without consideration, unless it is for the establishment of children of the marriage.

Nevertheless, he may dispose, without consideration and specifically, of the personal property in favour of all persons, provided he does not retain the usufruct for himself. Civ. C. 1401, 1437, 1439, 1469.

1423. A donation mortis causa made by the husband cannot exceed his share of the community.

If he has given in this manner a thing belonging to the community, the donee can only claim the thing in kind if, owing to the result of a division, it falls to the share of the husband’s heirs: if the thing does not fall to the share of such heirs, the legatee is entitled to the repayment of the whole value of the thing given out of the share of the husband’s heirs in the community and out of the individual property of such husband. Civ. C. 1021, 1474.
1424. The fines imposed upon the husband for a crime which does not occasion civil death (n), can be enforced against community property, subject to the indemnity due to the wife: those imposed upon the wife can only be collected from the individual property of which she has the full ownership, so long as the community lasts. Civ. C. 1409, 1425, 1426, 1437.

1425. Sentences passed upon the husband or wife for a crime occasioning civil death (n), can only be enforced against his or her share of the community, and his or her individual property.

1426. The acts performed by the wife without the husband's consent, and even with the authority of the Court, do not affect community property unless she has acted as a public trader, and for the purposes of her trade. Civ. C. 217, 1549.

1427. A wife cannot bind herself, nor bind the community property, even to get her husband out of prison, or for the establishment of her children in case of her husband's absence, without being authorized by the Court. Civ. C. 217, 1535, 1555.

1428. A husband has the management of all the individual property of the wife.

He can institute alone all personal and possessory actions which belong to the wife.

He cannot convey his wife's individual real estate without her consent.

He is responsible for all damages to the individual property of the wife caused by his omission to take proper measures of preservation. Civ. C. 818, 1421, 1429, 1492, 1498, 1507, 1549, 2121, 2135, 2185, 2254.

(a) Civil death was abolished by the law of 31st May, 1854.
1429. Leases made by the husband alone for property belonging to the wife for a time exceeding nine years are, in case of dissolution of the community, only binding upon the wife or her heirs for the time which remains to run, either of the first period of nine years, if the parties are still within the same, or of the second, and so on, so that the lessee only has the right to complete the time of tenancy of the period of nine years in which he is. Civ. C. 595, 1718.

1430. Leases for nine years or less which the husband alone has executed or renewed for property of his wife more than three years before the expiration of the running lease in case of country property, and more than two years before the same time in case of house property, shall be void unless they have commenced to run previously to the dissolution of the community. Civ. C. 1441, 1718.

1431. A wife who binds herself jointly with her husband for matters of the community, or relating to the husband, is, with respect to him, only presumed to have bound herself as surety; she must be indemnified for the obligation which she has assumed. Civ. C. 1200, 1214, 1216, 1482, 2011 et s., 2032, 2135.

1432. A husband who guarantees, jointly and severally or otherwise, a sale made by the wife of some of her individual real estate, has likewise a remedy against her if he is attacked, either upon her share of the community or upon her individual property. Civ. C. 1200, 1478.

1433. If real estate belonging to the husband or wife has been sold, or if land burdens relating to a tenement belonging individually to one of them have been redeemed in cash, and the price thereof has been paid to the community without any part of it being re-invested, such price shall be taken out of the community for the benefit of the husband or wife who
was owner, either of the real estate sold or of the burdens redeemed. Civ. C. 1315, 1470, 1493, 1497, 1525.

1434. The re-investment is supposed to have been made with respect to the husband, whenever upon a purchase he has declared that it has been paid for with the monies coming from the sale of real estate which belonged to him individually, and that such purchase is to stand as a re-investment for his benefit. Civ. C. 1470, 1493.

1435. A declaration of the husband that the purchase is made with the monies coming from a sale of real estate made by the wife, and is to be a re-investment for her benefit, is not sufficient if such re-investment has not been formally accepted by the wife; if she has not accepted it she simply has the right upon the dissolution of the community to the repayment of the price of her real estate so sold. Civ. C. 1434, 1437.

1436. The repayment of the price of real estate belonging to the husband is only taken out of the assets of the community; the repayment of the price of real estate belonging to the wife is taken out of the individual property of the husband in case the community property is insufficient. In all cases the repayment is only made on the basis of the sale, whatever allegations may be made concerning the value of the real estate sold. Civ. C. 1470.

1437. Whenever a sum is taken out of the community to pay the individual debts or charges of the husband or wife, such as the price or part of the price of individual real estate, or the redemption of land burdens or the recovery, preservation, or improvement of his or her individual property, and generally whenever the husband or wife has derived a personal benefit from property belonging to the community, he or she owes the repayment thereof.
1438. If the father and mother have jointly endowed a child of the marriage without mentioning what portion they meant to contribute, they are supposed each of them to have endowed such child for one-half, whether the dowry has been furnished or promised in property of the community, or in individual property of the husband or wife.

In the second case the husband or wife whose real estate or personal property has been given as dowry has against the property of the other an action for an indemnity of one-half of such dowry based upon the value of such property at the time of the donation. Civ. C. 843, 1422, 1544.

1439. A dowry given by the husband alone to a child of the marriage out of property of the community is a charge upon the community; and in case the wife accepts the community she is obliged to contribute one-half of the dowry unless the husband has expressly declared that he assumed the whole of it, or a part greater than the half. Civ. C. 1422.

1440. Every person who gives a dowry is obliged to guarantee it, and the interest runs from the day of the marriage, even if time is allowed for payment, unless there is some stipulation to the contrary. Civ. C. 1547.

§ 3. Of the Dissolution of the Community, and of some of its consequences.

1441. The community is dissolved:
1. By natural death;
2. By civil death (o);
3. By divorce;

(o) Civil death was abolished by the law of 31st May, 1854.
4. By separation from bed and board;

1442. The failure to make an inventory after the natural or civil death (p) of the husband or wife does not cause the community to continue, subject to the proceedings which interested parties may institute with relation to the composition of the property and effects of the community, and the proof thereof may be made as well by documents as by common repute.

If there are minor children the non-existence of an inventory also makes the surviving husband or wife lose the enjoyment of their income; and the assistant guardian who has not compelled such husband or wife to make an inventory is jointly and severally liable with him or her for all judgments which may be rendered in favour of the minors. Civ. C. 384, 795, 1415, 1456, 1470, 1471, 1472, 1482, 1566, 1567.

1443. A separation of property can only be sued for in court by the wife whose dowry is in danger, and when the husband’s affairs are in such disorder that there is reason to fear that his property will not be sufficient to answer for the wife’s rights and claims.

All voluntary separations are void. Civ. C. 1447, 1563.

1444. A separation of property, although ordered by the Court, is void unless it has been carried out by the actual settlement of the rights and claims of the wife made by a public instrument to the extent of the husband’s property, or at least unless proceedings have been commenced within a fortnight of the judgment, and have not been suspended since then. Civ. C. 1463.

(p) Civil death was abolished by the law of 31st May, 1854.
1445. Every separation of property must be made public before it takes effect, by a notice posted on a notice-board intended for that purpose in the principal room of the Tribunal of First Instance, and also, if the husband is a merchant, banker, or trader, in such room at the Tribunal of Commerce of the place of his domicil; and if all this has not been done, the judgment shall be void.

A judgment ordering a separation of property extends back as to its effects to the day of the beginning of the suit. Civ. C. 1153.

1446. The wife's personal creditors cannot apply for a separation of property without her consent.

Nevertheless, in case of bankruptcy or insolvency of the husband, they may enforce the rights of their debtor to the extent of the amount of their claims. Civ. C. 1166, 1464, 2121.

1447. The husband's creditors can attack the separation of property ordered, and which tends to defraud them of their rights: they can even join in the suit for separation to oppose it. Civ. C. 1167, 1464.

1448. A wife who has obtained a separation of property must contribute as well to the household expenses as to those of the education of the children of the marriage, in proportion to her means and those of her husband.

She shall bear these expenses entirely if the husband has nothing left. Civ. C. 203, 212 et s., 214, 1537, 1575.

1449. A wife separated, either from bed and board or only as to property, regains the independent management of her property.

She can dispose of her personal property and convey it.

She cannot dispose of her real estate without the consent of her husband, or without being authorized by the Court.

1450. A husband is not answerable for the omission to invest or re-invest the proceeds of real estate which the wife, who is separated as to property, has conveyed with the consent of the Court, unless he has taken part in the contract, or it is proved that the monies have been received by him, or have been of benefit to him.

He is answerable for the omission to invest or re-invest if the sale has been made in his presence and with his consent. He is not answerable for the soundness of such investment.

1451. A community which is dissolved by a separation, either from bed and board or as to property only, can be re-established by the consent of both parties.

This can only be done by an instrument executed in the presence of notaries, the original being filed and a certified copy thereof being published in the manner set forth in article 1445.

In such case the community which is re-established produces its effect from the time of the marriage; things are put back in the same state as if there had been no separation, without prejudice, nevertheless, to the carrying out of the agreements which have been entered into during such interval by the wife in accordance with article 1449.

Any agreement by which the husband and wife re-establish their community under different conditions from those which governed it previously shall be void. Civ. C. 311, 1394, 1445.

1452. A dissolution of community brought about by a divorce, or a separation from bed and board or as to property only, does not entitle the wife to her rights as survivor; but
she retains the right to enforce them upon the natural or civil death (q) of her husband. Civ. C. 311, 1443 et s., 1518.

§ 4. Of Acceptance of the Community and of the Renunciation which can be made, with the Conditions relating thereto.

1453. After the dissolution of the community the wife or her heirs and legal representatives have the right to accept or renounce it: any agreement to the contrary is void. Civ. C. 1463, 1466, 1492.

1454. A wife who has interfered with the property of the community cannot renounce the community.

Acts of pure administration or preservation do not amount to an interference. Civ. C. 778, 779, 1463.

1455. A wife of full age who, in a public instrument, has assumed the capacity of partner in the community, cannot renounce the community nor cause such capacity to be taken away from her, even if she has assumed it before she has had an inventory drawn up, unless there has been fraud on the part of the husband’s heirs. Civ. C. 1116 et s.

1456. A wife who survives and wishes to retain the right to renounce the community must, within three months of the day of her husband’s death, cause a true and correct inventory to be made of all the community property, the husband’s heirs being represented or having been duly summoned.

Upon the closing of the inventory she shall affirm, in the presence of the public officer who has drawn it up, that it is true and correct. Civ. C. 793, 1457, 1459, 1466.

(q) Civil death was abolished by the law of 31st May, 1854.
1457. She must make her renunciation, at the clerk's office of the Tribunal of First Instance in the District where her husband had his domicile, within three months and forty days from his death: this instrument must be recorded in the register kept to receive the renunciations of successions. Civ. C. 1461, 1465.

1458. A widow may, according to circumstances, apply to the Tribunal of First Instance for an extension of the time fixed by the foregoing article for her renunciation: this extension shall, if necessary, be ordered, the husband's heirs being represented or having been duly summoned. Civ. C. 798, 1461.

1459. A widow who has not made her renunciation within the time above mentioned does not forfeit her right to renounce if she has not interfered and made an inventory. Proceedings, however, may be taken against her as partner of the community until she has renounced, and she owes the expenses made against her up to the time of her renunciation.

Proceedings can likewise be brought against her after the expiration of the forty days from the closing of the inventory if it has been closed before the three months. Civ. C. 800, 1461 et s.

1460. A widow who has made away with or concealed effects of the community shall be declared to be a partner of the community, notwithstanding her renunciation: the same rule shall apply to her heirs. Civ. C. 792, 801, 1477, 1483.

1461. If a widow dies before the expiration of the three months without having made or completed the inventory, the heirs shall have a new period of three months from the
death of the widow to make or complete the inventory and of forty days for deliberation after the inventory is closed.

If the widow dies after completing the inventory, her heirs shall have a new period of forty days from the time of her death for deliberation.

They may, moreover, renounce the community in the manner hereabove set forth; and articles 1458 and 1459 shall apply to them. Civ. C. 1466, 1475, 1491.

1462. The provisions of article 1456 et s. shall apply to the wives of individuals civilly dead (r) from the time the civil death has commenced.

1463. A woman who is divorced or separated from bed and board and who has not accepted the community within the three months and forty days since the divorce or the separation has been finally decreed is supposed to have renounced it, unless she has obtained an extension from the Court within that time, the husband having appeared or having been duly summoned. Civ. C. 311, 1458.

1464. The creditors of the wife may attack the renunciation which has been made by her or her heirs and by which they would be defrauded of their claims, and may accept the community for their own account. Civ. C. 788, 1167.

1465. A widow, whether she accepts or renounces the community, has the right, during the three months and forty days which are allowed her for making the inventory and for deliberation, to take her food and the food of the servants out of the existing provisions, and if there be none, to borrow for that purpose for account of the assets of the community, provided she makes use of such right with moderation.

(r) Civil death was abolished by the law of 31st May, 1854.
She owes no rent for the premises she may have occupied during such time in a house forming part of the community or belonging to the husband's heirs; and if the house which the husband and wife lived in at the time of the dissolution of the community was occupied by them by virtue of a lease, the wife shall not, during such time, contribute to the payment of the rent, which shall be taken out of the assets. Civ. C. 1495, 1570.

1466. In case of dissolution of the community by death of the wife, her heirs may renounce the community within the time and in the manner provided by law for the surviving wife. Civ. C. 1453, 1475, 1491.

§ 5. Of Division of the Community after Acceptance.

1467. After acceptance of the community by the wife or her heirs, the assets are divided and the liabilities are assumed in the manner hereinafter set forth. Civ. C. 815, 1401, 1453 et s., 1468 et s., 1522.

Sub-sect. 1. Of Division of Assets.

1468. The husband or wife or their heirs must return to the general assets composing the existing property, all they owe the community by way of compensation or indemnity, according to the rules hereabove mentioned in section 2 of the first part of the present chapter. Civ. C. 1422 et s., 1435 et s.

1469. The husband or wife, or his or her heirs, must likewise return the sums which have been taken out of the community or the value of the property which he or she has used to endow a child of another marriage or to endow personally a child of the marriage. Civ. C. 843, 1438, 1439, 1544, 2093.
1470. Out of the general assets of the estate the husband or wife or his or her heirs take:

1. His or her individual property which has not become community property, if it exists in kind, or the property which has been acquired by way of reinvestment;

2. The price of the real estate belonging to him or her which has been conveyed during the community and of which no reinvestment has been made;

3. The indemnities which are due to him or her by the community. Civ. C. 1404 et s., 1419, 1431 et s., 1502 et s., 1515 et s.

1471. The repayments to be made to the wife come before those to be made to the husband.

They are made as to the property which does not exist in kind, first out of the cash, then out of the personal property, and subsequently out of the real estate of the community: in the last case the choice of the real estate is left to the wife and to her heirs. Civ. C. 832 et s., 1415, 1470, 1472, 1483, 1492, 1493, 1494.

1472. A husband can only enforce his right to take back against the property of the community.

In case the community property should be insufficient, the wife and her heirs can enforce their right to take back against the individual property of the husband. Civ. C. 883, 1436, 1470, 1471, 1476, 2121, 2135.

1473. The reinvestments and compensations due to the husband or wife by the community, and the compensations and indemnities due by them to the community, bear interest by right from the day of the dissolution of the community. Civ. C. 1441, 1479.

1474. After all the rights to take back have been satisfied out of the assets, the surplus is divided by halves be-
ween the husband and wife or those who represent them. Civ. C. 1482, 1571.

1475. If the wife's heirs are divided, so that one has accepted the community which the other has renounced, the one who has accepted it can only take his individual and hereditary share in the property which falls to the wife's portion.

The husband retains the surplus and remains liable to the heir who renounces for the rights which the wife might have exercised in case of renunciation, but only to the extent of the individual hereditary share of the heir who has renounced. Civ. C. 873, 1466, 1491, 1495.

1476. Otherwise, the division of the community, as to everything which relates to its proceedings, the judicial sale of real estate when necessary, the effects of the division, the guarantee resulting therefrom, and the balance due, is subject to all the rules which are contained in the Title Of Successions in case of divisions among co-heirs. Civ. C. 815, 883, 2103, 2109.

1477. If the husband or wife has made away with or concealed any effects of the community, he or she shall be deprived of his or her share of said effects. Civ. C. 792, 801, 1460.

1478. If either the husband or wife remains the personal creditor of the other after the division is ended, for instance when the proceeds of his or her property have been used to pay a personal debt of the other, or for any other cause, he or she can enforce the claim against the share of the community coming to the other or against the other's individual property. Civ. C. 1432.

1479. The personal claims which the husband or wife
have to bring against each other only bear interest from the day the action is commenced in court. Civ. C. 115, 1440, 1473, 1570.

1480. The donations which the husband or wife may have made the one to the other shall only be taken out of the share of the donor in the community and out of such donor’s individual property. Civ. C. 1091 et s.

1481. The wife’s mourning shall be paid for by the heirs of the predeceased husband.

The amount to be paid for such mourning is fixed according to the husband’s fortune.

The same is due to the wife even when she renounces the community. Civ. C. 1492, 1570.

Sub-sect. 2. Of Liabilities of the Community and of Contribution to Debts.

1482. Debts of the community are due by halves by the husband and wife or by their heirs: the expenses for the seals, inventory, sale of personal property, liquidation, judicial sale of real estate and division form part of such debts. Civ. C. 1409, 1456, 1483, 1490, 1510.

1483. A wife is only liable for the debts of the community, either with respect to the husband or with respect to the creditors, to the extent of her share, provided a true and exact inventory has been made, and taking into account as well the contents of such inventory as what has come to her under the division. Civ. C. 1328, 1409, 1432, 1456, 1510.

1484. The husband is liable for all the debts of the community contracted by him, subject to his remedy against the wife or her heirs for one-half of such debts. Civ. C. 1478, 1482.
1485. He is only liable for one-half of those which were personal to the wife and have fallen into the community. Civ. C. 1410 et s., 1413 et s.

1486. The wife can be sued for all the debts incurred by her and which have fallen into the community, subject to her remedy against the husband or his heir for one-half of such debts. Civ. C. 1410, 1478.

1487. The wife, even when personally liable for a debt of the community, can only be sued for one-half of such debt, unless she is jointly and severally liable. Civ. C. 1200, 1489.

1488. The wife who has paid a debt of the community beyond her half cannot claim back from the creditor the amount in excess, unless the receipt states that what she paid was for her half. Civ. C. 1235, 1377.

1489. The husband or wife who, owing to the effect of a mortgage encumbering the real estate which has come to him or her upon a division, is being sued for the whole of a community debt, has by right a remedy for one-half of such debt against the other or his or her heirs. Civ. C. 873, 2114.

1490. The foregoing provisions do not prevent one or more of the coparceners from being made to pay upon the division a portion of the debts other than the half and even to pay them in full.

Whenever one of the coparceners has paid debts of the community beyond the portion for which he was liable, the one who has paid too much has a remedy against the other. Civ. C. 1482, 1487.

1491. Everything hereabove stated with respect to the
husband or wife applies to the heir of either of them; and such heirs have the same rights and are subject to the same actions as the married person whom they represent. Civ. C. 1461, 1466, 1475, 1495.


1492. The wife who renounces loses all her rights to the property of the community and even to the personal property which has become part of it through her. She only takes back the clothes and linen for her own use. Civ. C. 1453, 1463, 1495, 1566, 2145.

1493. The wife who renounces has the right to take back:

1. The real estate belonging to her, when it exists in kind, or the real estate which has been purchased as a reinvestment;

2. The proceeds of the real estate belonging to her which has been conveyed and for which a reinvestment has not been made and accepted as above stated;

3. All the indemnities which may be due to her by the community. Civ. C. 1404, 1433, 1470.

1494. The wife who renounces is released from all contribution to the debts of the community, as well with respect to the husband as with respect to the creditors. However, she remains liable towards the creditors when she has bound herself jointly with her husband or when the debt which has become a community debt originally arose through her; all of which shall be subject to her remedy against the husband or his heirs. Civ. C. 1431, 1486.

1495. She can maintain all actions and assert her rights to take back, as has been above set forth, as well against
the community property as against the individual property of the husband.

Her heirs can do the same, with the exception of what relates to the taking of linen and clothes and to the board and lodging during the time allowed to make the inventory and for deliberation, which rights are purely personal to the surviving wife. Civ. C. 1054, 1465, 1491, 1492, 1514.

Provision:—Relating to Legal Community when either the Husband or Wife, or both, have children of previous marriages.

1496. Everything that has been hereabove stated shall be followed, even when either the husband or wife, or both of them, have children of previous marriages.

If, however, the merger of the personal property and of the debts has occasioned an advantage for the benefit of the husband or wife greater than what is allowed by art. 1098 of the Title Of Donations Inter Vivos and of Wills, the children of the first marriage shall be entitled against such husband or wife to an action for reduction. Civ. C. 1098, 1527.

Second Part.

Of Conventional Community and of Agreements which may modify or even make away with Legal Community.

1497. The husband and wife may modify legal community by all sorts of agreements not forbidden by articles 1387, 1388, 1389 and 1390.

The principal changes are those which take place by making stipulations in one of the following manners, viz.:

1. That the community shall only apply to acquests;
2. That the present or future personal property shall not fall into the community or shall only fall into it in part;
3. That all or part of the present or future real estate shall be included by way of equitable conversion;
4. That the husband and wife shall pay individually the debts which they had previously to the marriage;
5. That in case of renunciation, the wife shall be able to take back the property she has contributed, free of all charges;
6. That the survivor shall have a preciput;
7. That the husband or wife shall have unequal shares;
8. That there shall exist between them a universal community. Civ. C. 1498, 1500, 1505, 1510, 1514, 1515, 1520, 1526, 1527 et s.

§ 1. Of Community reduced to Acquests.

1498. When the husband and wife stipulate that there shall be only a community of acquests between them they are supposed to exclude from the community the present and future debts of each of them and their respective present and future personal property.

In such case, and after the husband and wife have each taken back the property contributed by them, of which due proof shall be made, the division is reduced to the acquests made together or separately during the marriage by the husband and wife and resulting as well from the common work as from the savings realized upon the revenue and income of the property of the husband and wife. Civ. C. 1401, 1434, 1435, 1470, 1497.

1499. If the personal property existing at the time of the marriage or which has come to them since then has not been described in an inventory or statement in due form it is supposed to be an acquest. Civ. C. 1402, 1504.
§ 2. Of the provision excluding Personal Property, wholly or in part, from the Community.

1500. The husband and wife may exclude all their present or future personal property from the community.

When they stipulate that they shall reciprocally include it in the community to the extent of a fixed sum or value, they are supposed by that fact alone to have reserved the balance. Civ. C. 1428, 1503 et s.

1501. Such a provision makes the husband or wife liable to the community for the sum which he or she has promised to contribute and compels him or her to prove that such contribution has been made. Civ. C. 1845.

1502. The contribution is sufficiently proved as to the husband by the declaration inserted in the marriage contract that his personal property is of a stated value.

It is sufficiently proved as to the wife by the receipt given by the husband to her or to those who have endowed her.

1503. The husband and wife each have the right to take back and deduct, at the time of the dissolution of the community, the amount of the personal property which he or she brought at the time of the marriage or of the property which has come to him or her since then over his or her contribution to the community. Civ. C. 1470, 1531, 1551.

1504. The personal property which comes to either the husband or wife during the marriage must be evidenced by an inventory.

In the absence of an inventory of the personal property which has come to the husband or of a title sufficient to show its nature and value after the liabilities have been
taken into account, the husband cannot enforce his right to take back such personal property.

If the absence of an inventory bears upon personal property belonging to the wife, she or her heirs are entitled to prove the value of such personal property, either by writings or by witnesses or by common repute. Civ. C. 1415.

§ 3. Of the Clause of Equitable Conversion.

1505. When the husband and wife or one of them has included in the community all or part of their present or future real estate, this clause is called *equitable conversion*. Civ. C. 1402, 1498, 1499, 1506, 1507.

1506. Equitable conversion can be limited or unlimited. It is limited when the husband or wife has declared an intention to equitably convert and include in the community some real estate, wholly or to the extent of a certain sum.

It is unlimited when the husband or wife has simply declared that he or she wanted to include his or her real estate in the community to the extent of a certain sum.

1507. The effect of a limited equitable conversion is to make the real estate to which it applies community property in the same manner as personal property.

When some real estate or the whole real estate of the wife is equitably converted, the husband can dispose of it in the same way as the other effects of the community and can convey the whole of it.

If the real estate is only equitably converted for a certain sum, the husband cannot convey it without the wife's consent; but he can mortgage it without her consent to the extent only of the portion equitably converted. Civ. C. 1509, 1511, 2124.

1508. An unlimited equitable conversion does not make
the community the owner of the real estate to which it applies: its effect is limited to compelling the husband or wife who has consented to it to include in the assets at the time of the dissolution of the community some of the real estate to the extent of the sum promised by him or her.

The husband cannot, as in the foregoing article, convey the whole or part of the real estate to which the unlimited equitable conversion applies without the consent of his wife; but he can mortgage it to the extent of such equitable conversion. Civ. C. 1421, 2124.

1509. The husband or wife who has equitably converted an inheritance has at the time of the division the right to retain it by deducting from his or her share the value which it then has; his or her heirs have the same right. Civ. C. 1474.

§ 4. Of the Clause of Separation of Debts.

1510. The clause by which the husband and wife agree that they will pay separately their personal debts binds them upon the dissolution of the community to respectively make good to each other the debts which are proved to have been paid by the community for account of the one who owed them.

This obligation exists in the same manner whether an inventory has been made or not; but if the personal property brought by the husband and wife is not shown by an inventory or an official statement made previously to the marriage, the creditors of one or the other may proceed to obtain payment against all the personal property not inventoried, as well as against all other property of the community, without regard to distinctions which might be set up.

The creditors have the same right against the personal property which has come to the husband and wife during
the community if it has not been likewise described in an inventory or official statement. Civ. C. 1437, 1478, 1482.

1511. When the husband and wife bring to the community a certain sum or a specific thing, such contribution carries with it a tacit agreement that it is not encumbered by any debts made previously to the marriage; and the husband or wife who is indebted shall make good to the other all the debts which lessen the value of the contribution promised. Civ. C. 1478.

1512. The provision of separation of debts does not prevent the community from being charged with the interest and arrears which have accrued since the marriage. Civ. C. 1439–2 and 3.

1513. When the community is sued for the debts of the husband or wife and it has been declared in the marriage contract that he or she was free and exempt from all debts previously to the marriage, the other is entitled to an indemnity, which is taken either from the share in the community of the one who is so indebted or from his or her individual property; and in case of insufficiency, such indemnity can be claimed by way of guarantee from the father, the mother, the ascendant or the guardian who has declared that such husband or wife was free from debt. This guarantee may even be enforced by the husband during the community if the debt is due by the wife; subject in such case to the repayment due by the wife or her heirs to the guarantors after the dissolution of the community. Civ. C. 1410, 1440, 1478.

§ 5. Of the Right granted to the Wife to take back her Contribution Free and Net.

1514. The wife may stipulate that in case of renunciation of the community she can take back all or part of what she
has contributed, either at the time of the marriage or since; but this stipulation cannot extend beyond the things which she has positively specified, nor apply to persons other than those mentioned.

For instance, the right to take back the personal property which the wife brought upon the marriage does not extend to the property which has come to her during the marriage.

Likewise, the right granted to the wife does not extend to the children, and the right granted to the wife and the children does not extend to the ascendants or collateral heirs.

In all cases contributions can only be taken back after the personal debts of the wife which the community might have paid have been deducted. Civ. C. 1525.

§ 6. Of Conventional Preciput.

1515. The clause by which the surviving husband or wife is authorized to take, before any division, a certain sum or a certain quantity of movable effects in kind only gives the surviving wife the right to take the property when she accepts the community, unless the marriage contract has reserved her this right, even upon renouncing it.

Outside of the case of this exception, the preciput only takes effect against the assets to be divided and not against the individual property of the predeceased husband or wife. Civ. C. 1091, 1453, 1519.

1516. Preciput is not looked upon as an advantage subject to the formalities of donations, but as a marriage agreement. Civ. C. 1091, 1098, 1527.

1517. Preciput takes effect upon natural or civil death (s).

(s) Civil death was abolished by the law of 31st May, 1854.
1518. When the dissolution of the community takes place by divorce or separation from bed and board there is no occasion for delivery of the preciput at that time; but the husband or wife who has obtained either the divorce or the separation from bed and board retains his or her right to the preciput in case of survivorship. If it is the wife, the sum or the thing which forms the preciput always remains with the husband provisionally, but he is obliged to give security. Civ. C. 311, 1452.

1519. The creditors of the community always have the right to cause the things forming part of the preciput to be sold, subject to the remedies of the husband or wife in accordance with article 1515. Civ. C. 1416.

§ 7. Of the Clauses by which unequal shares of the Community are attributed to the Husband and Wife.

1520. The husband and wife may derogate from the equal division established by law, either by giving to the survivor or his or her heirs a share less than one-half of the community, or by giving to such survivor a fixed sum for all community rights, or by stipulating that in certain cases the whole community shall belong to the surviving husband or wife or to one of them only. Civ. C. 1522, 1525.

1521. When it has been agreed that the husband or wife or his or her heirs shall only have a certain part of the community, such as a third or a fourth, the husband or wife so reduced or his or her heirs shall only be responsible for the debts of the community in proportion to the share of the assets which they take.

The agreement is void if it compels the husband or wife so reduced or his or her heirs to bear a larger portion or if
it exempts them from bearing a portion of the debts equal to what they take of the assets. Civ. C. 1172, 1855.

1522. When it is agreed that the husband or wife or their heirs shall only be entitled to claim a certain sum for all his or her rights in the community, the clause is a bargain which compels the other or his or her heirs to pay the sum agreed upon, whether the community is good or bad, or sufficient or not, to pay the amount. Civ. C. 1467.

1523. If the clause only establishes the bargain with respect to the heirs of the husband or wife, he or she, in case of survivorship, is entitled to one-half upon the legal division. Civ. C. 1467 et s.

1524. The husband or his heirs, when they keep all the community property by virtue of the provision contained in article 1520, are obliged to pay all the community debts.

In no case shall the creditors have any claim against the wife or her heirs.

If the surviving wife is the one who, in consideration of a stipulated sum, has the right to keep all the community property from the heirs of the husband, she may, at her choice, either pay them this sum and remain liable for all the debts, or renounce the community and abandon to the husband’s heirs all the property and liabilities. Civ. C. 1492 et s.

1525. The husband and wife have the right to agree that all the community property shall belong to the survivor or to one of them only, but the heirs of the other shall then take back the contributions or the capital which have fallen into the community through the person from whom they take.

Such an agreement is not considered a liberality subject
to the rules relating to donations, either as to the subject matter or as to forms, but simply as an agreement in connection with the marriage and between partners. Civ. C. 931, 1094, 1098, 1498, 1499, 1507, 1520, 1527.

§ 8. Of Community under Universal Title.

1526. The husband and wife may, by their marriage contract, institute a universal community of their present and future personal property and real estate, or of all their present property only, or of all their future property only.

Provisions applying to the Eight Foregoing Sections.

1527. What is contained in the eight foregoing sections does not limit to the exact provisions thereof the conditions which may govern a conventional community.

The husband and wife may make any other conditions, as is said in article 1387, subject, however, to the restrictions contained in articles 1388, 1389 and 1390.

Nevertheless, in case there should be children of a previous marriage, any agreement intended by its effects to give to the husband or wife more than the share allowed by article 1098 of the Title Of Donations Inter Vivos and of Wills shall be void with respect to everything exceeding such portion; but the mere profits resulting from common work and the savings made from the respective incomes, although unequal, of the husband and wife, are not considered as a liberality made to the detriment of the children of the first marriage. Civ. C. 1098.

1528. Conventional community is governed by the rules of legal community in all cases excepting when modifications have been implicitly or explicitly made by contract. Civ. C. 1497.
§ 9. Of Conditions excluding Community.

1529. When, without submitting to the dotal system, the husband and wife declare that they marry without community, or when they are separated as to property, the effects of such an agreement shall be regulated as follows. Civ. C. 1387, 1391 et s.

Sub-sect. 1. Of the Clause providing that the Husband or Wife marry without Community.

1530. The clause providing that the husband and wife marry without community does not give the wife the right to manage her property nor to collect the income thereof: such income is supposed to go to the husband to settle the household expenses. Civ. C. 203, 214, 1401, 1421, 1540, 1549, 1575.

1531. The husband retains the management of the personal property and real estate of the wife, and in consequence, the right to collect all the personal property which she brings as dowry or which comes to her during the marriage, subject to the restitution which he must make thereof after the dissolution of the marriage or after the separation of property which may be ordered by the Courts. Civ. C. 1421.

1532. If, in the personal property brought as dowry by the wife or which comes to her during the marriage, there are things which cannot be used without being consumed, a statement and appraisement shall be added to the marriage contract or an inventory shall be made at the time they become due, and the husband must return their value according to the appraisement. Civ. C. 587.

1533. The husband is liable for all charges resulting from usufruct. Civ. C. 600 et s., 1562, 1580.
1534. The provision which is the subject of this sub-section does not prevent a stipulation being made to the effect that the wife may collect every year, upon her own receipt, certain portions of the income for her maintenance and personal wants. Civ. C. 1549.

1535. The real estate set aside as dowry in the case mentioned in this sub-section shall not be inalienable. Nevertheless, it cannot be conveyed without the husband’s consent, and in case of his refusal, without permission of the Court. Civ. C. 217 et s., 818, 1554 et s.

Sub-sect. 2. Of the Clause of Separation of Property.

1536. When the husband and wife have stipulated in their marriage contract that there would be a separation of property between them, the wife retains the entire management of her personal property and real estate and the free enjoyment of her income. Civ. C. 1449, 1576.

1537. The husband and wife each contribute to the household expenses according to the conditions contained in their contract; and if there are none in relation thereto, the wife contributes to those expenses to the extent of one-third of her income. Civ. C. 203 et s., 1448, 1575.

1538. The wife cannot in any case, nor in consequence of any agreement, convey her real estate without the express consent of her husband, or in case of his refusal, without being authorized by the Court.

Any general consent given to the wife to convey her real estate, either by marriage contract or since then, is void. Civ. C. 217, 1576.

1539. When a wife separated as to property has left the enjoyment of her property to her husband, the latter is only
bound, either in case of a demand made upon him on the part of his wife, or at the dissolution of the marriage, to produce the income which exists, and he is not accountable for the income which has already been spent. Civ. C. 1578.

Chap. III.

Of Dotal System.

1540. Dowry under this system, as well as under the one provided by Chapter II., is the property which the wife brings to the husband to bear the household expenses.

1541. Everything the wife sets apart, or which is given to her by marriage contract, is dotal unless there is an agreement to the contrary. Civ. C. 1392, 1549, 1554.

§ 1. Of Settlement of Dowry.

1542. A settlement of dowry may include all the present and future property of the wife, or all her present property only, or a part of her present and future property, or even an individual thing.

A settlement in general terms of all the wife's property does not include future property. Civ. C. 1165, 1391, 1392, 1395, 1549, 1553, 1554, 1574 et s., 1581.

1543. A settlement of dowry cannot be made, nor can the dowry be increased, during the marriage. Civ. C. 1395, 1574.

1544. If the father and mother make jointly a settlement of dowry without specifying each one's share, such
settlement shall be considered as having been made by equal portions.

If the settlement of the dowry has been made by the father alone, out of the rights of the father and mother, the mother is not liable, even if she was present at the execution of the contract, and the father shall be responsible for the entire dowry. Civ. C. 1134, 1438.

1545. If the surviving father or mother has made a settlement of dowry out of the property of such father and mother without specifying the portions, the dowry shall first be taken out of the rights of the future wife to the property of the deceased father or mother, and the balance out of the property of the one of them who has made the settlement. Civ. C. 1438.

1546. Although the daughter endowed by her father and mother has property of her own of which they have the enjoyment, the dowry shall be taken out of their property, unless there is an agreement to the contrary. Civ. C. 384.

1547. Those who make a settlement of dowry are bound to warrant the property given. Civ. C. 1440, 1625.

1548. The interest on the dowry begins to run by right against those who have promised it, from the day of the marriage, even if time has been allowed for payment, unless there is an agreement to the contrary. Civ. C. 1440, 1570.

§ 2. Of the Rights of the Husband to the Dotal Property and of Inalienability of Dowry.

1549. The husband has the sole management of the dotal property during the marriage.

He alone has the right to proceed against debtors and
holders of such property, to collect the revenue and interest, and to obtain the repayment of the capital.

However, it may be agreed in the marriage contract that the wife shall collect annually, upon her own receipt, for her maintenance and her personal wants, a part of her income. Civ. C. 818, 1421, 1428, 1531, 1534, 1541, 1554, 1574, 2121, 2135 et s.

1550. The husband is not bound to give security upon payment of the dowry, unless he has been compelled so to do in the marriage contract. Civ. C. 600, 1562.

1551. If the dowry or a part of it consists in personal articles estimated in the marriage contract, without a declaration that the appraisal does not constitute a sale, the husband becomes the owner thereof and only owes the value given to the personal property. Civ. C. 1564.

1552. The appraisal made of real estate forming part of the dowry does not transfer the ownership to the husband unless there is an express declaration to that effect. Civ. C. 1551.

1553. The real estate purchased with dotal funds does not become dotal property unless the condition of investment has been inserted in the marriage contract.

The same rule applies to real estate given in payment of a dowry consisting in cash. Civ. C. 1435, 1559, 1595-3.

1554. Real estate given as dowry cannot be conveyed or mortgaged during the marriage, either by the husband or wife, or by both of them jointly, with the following exceptions. Civ. C. 873, 1075, 1090, 1251, 1338, 1382, 1392, 1426, 1449, 1549, 1556, 1558, 1560, 1563, 1571, 2045, 2157, 2195.

1555. The wife may, with the consent of her husband,
or in case of his refusal with the authority of the Court, give her dotal property for the establishment of children whom she might have of a previous marriage; but if she is only authorized by the Court, she must reserve the enjoyment of such property to her husband. Civ. C. 217, 218, 1427.

1556. She may also, with the consent of her husband, give her dotal property for the establishment of the children of the marriage. Civ. C. 1075, 1123, 1124, 1554, 1555, 1563.


1558. Dotal real estate may also be conveyed by order of the Court and at auction after three notices:—

To release the husband or wife from prison;

To furnish support to the family in the cases provided by articles 203, 205 and 206 of the Title Of Marriage;

To pay the wife's debts or those of the persons who have given the dowry, when such debts have a positive date which is previous to the marriage contract;

To make heavy repairs which are indispensable for the preservation of the dotal real estate;

Finally, when such real estate is undivided, owned together with third persons, and it is apparent that it cannot be divided.

In all these cases any surplus over the selling price above the acknowledged wants shall remain dotal property and shall be invested as such for the benefit of the wife. Civ. C. 606, 827, 1317, 1427, 1557, 1559, 1686, 1912.

1559. Dotal real estate can be exchanged, but with the wife's consent, against other real estate of the same value,
to the extent of four-fifths at least, by establishing the advantage of the exchange and obtaining the authority of the Court and according to an estimate made by experts appointed of its own accord by the Tribunal.

In such case the real estate received in exchange shall be dotal: the surplus above the price, if there is any, shall also be dotal and shall be invested as such for the benefit of the wife. Civ. C. 1395, 1554, 1558, 1702.

1560. If, outside of the exceptional cases which have just been explained, the wife or husband, or both of them jointly, should convey the dotal property, the wife or her heirs may have the conveyance set aside after the dissolution of the marriage, and prescription cannot be set up against them during its continuance: the wife shall have the same right after a separation of property.

The husband may himself have the conveyance set aside during the marriage by remaining, nevertheless, liable for damages to the purchaser if he has not declared in the contract that the property sold was dotal. Civ. C. 1125, 1149, 1304, 1382, 1554, 1557, 1558, 1630, 1634, 2012, 2121, 2135, 2195, 2256.

1561. Prescription does not run during the marriage against dotal real estate which has not been declared to be alienable in the marriage contract, unless the prescription has commenced to run previously thereto. Nevertheless, prescription can run after a separation of property, whatever may be the time when the prescription has commenced. Civ. C. 227, 306 et s., 682, 683, 1560, 2255, 2256.

1562. A husband, with respect to dotal property, is subject to all the obligations of a usufructuary.

He is liable for all prescriptions which have taken effect and for any waste resulting from his negligence. Civ. C. 600, 1533, 1580, 2121, 2135.
1563. If the dowry is in danger, the wife can apply for a separation of property, as is stated in articles 1443 et s.

§ 3. Of Restitution of Dowry.

1564. If the dowry consists in real estate, or in personal property not appraised in the marriage contract or appraised with a declaration that the appraisement does not take away the ownership from the wife, the husband or his heirs may be compelled to return it immediately after the dissolution of the marriage. Civ. C. 1551, 1552.

1565. If it consists in a sum of money, or in personal property appraised in the marriage contract without a declaration that the appraisement does not confer ownership upon the husband, the restitution can only be claimed one year after the dissolution. Civ. C. 1551, 1552.

1566. If the personal property of which the wife retains the ownership has been damaged by use and not owing to the fault of the husband, he shall only be bound to return such of the property as remains and in the condition in which it is.

Nevertheless, the wife may, in all cases, take back her linen and clothes for her present use, but the value thereof shall be deducted if such linen and clothes had been appraised when originally given. Civ. C. 589, 1492.

1567. If the dowry comprises bonds or settlements of annuities which have been lost or suffered reductions which cannot be attributed to the husband's negligence, he shall not be liable therefor and he shall be released upon turning over the contracts. Civ. C. 588, 1911 et s.
1568. If the dowry comprises the settlement of a usufruct, the husband or his heirs, upon the dissolution of the marriage, are only obliged to return the right to the usufruct and not the income accrued during the marriage. Civ. C. 588.

1569. If the marriage has lasted ten years since the time fixed for the payment of the dowry has expired, the wife or her heirs may claim such dowry from the husband after the dissolution of the marriage without being bound to prove that he has received it, unless he shows that he has taken steps without success to obtain the payment thereof. Civ. C. 1502.

1570. If the marriage is dissolved by the death of the wife, the interest and revenue of the dowry which is to be returned begin to run by right for the benefit of her heirs from the day of the dissolution.

If it is by the death of the husband, the wife has the choice between claiming the interest of the dowry during the year of her mourning or claiming alimony during such time, at the expense of the husband's succession; but in both cases lodgings and the wearing apparel of her mourning shall be supplied to her by the succession during that year without any deduction from the interest which she is entitled to. Civ. C. 1465, 1481, 2135.

1571. At the dissolution of the marriage the revenue of the dotal real estate is divided between the husband and the wife or their heirs, in proportion to the part of the last year which has run.

The year commences from the day upon which the marriage has been celebrated. Civ. C. 585, 586.

1572. The wife and her heirs have no privilege over previous mortgage creditors for the restitution of the dowry. Civ. C. 2121, 2135.
1573. If the husband was already insolvent and had no trade or profession when the father settled the dowry upon his daughter, the latter shall only be bound to return to her father's succession the action which she has against the succession of her husband for repayment.

But if the husband has only become insolvent since the marriage,

Or if he had a trade or profession which took the place of capital,

The loss of the dowry falls solely upon the wife. Civ. C. 843 et s.

§ 4. Of Paraphernal Property.

1574. All the property of the wife which has not been included in the settlement of dowry is paraphernal. Civ. C. 1536, 1540.

1575. If all the wife's property is paraphernal, and if there are no provisions in the contract to make her contribute to a part of the household expenses, the wife contributes thereto to the extent of one-third of her income. Civ. C. 203 et s., 1537.

1576. The wife has the management and enjoyment of her paraphernal property.

But she cannot convey it or appear in court in connection with the same without the consent of her husband, or upon his refusal, without the authorization of the Court. Civ. C. 215 et s., 1581.

1577. If the wife gives her power of attorney to the husband to manage her paraphernal property with the obligation to account to her for its revenue, he shall be liable to her in the same manner as any attorney-in-fact.

1578. If the husband has had the enjoyment of the
paraphernal property of his wife without a power of attorney, and nevertheless without opposition on her part, he is only bound, upon the dissolution of the marriage, or upon the first request made by the wife, to produce the existing revenues, and he is not accountable for the revenues which have been consumed up to that time. Civ. C. 1539.

1579. If the husband has had the enjoyment of the paraphernal property, notwithstanding the manifest opposition of the wife, he is answerable to her for all the revenues, existing as well as consumed. Civ. C. 527.

1580. The husband who has the enjoyment of the paraphernal property is subject to all the obligations of a usufructuary. Civ. C. 600, 1533, 1562.

Special Provision.

1581. When submitting to the dotal system the husband and wife may, nevertheless, agree that there shall be a partnership of acquests, and the effects of such partnership shall be regulated as is stated in articles 1498 and 1499.
TITLE SIXTH.

OF SALES.

(Passed 6th March, 1804; promulgated 16th of same month.)

CHAP. I.

OF THE NATURE AND FORM OF SALES.

1582. A sale is a contract by which one person binds himself to deliver a thing and another to pay for it.

A sale can be made by a public instrument or by an instrument under private signature. Civ. C. 1102 et s., 1317, 1322.

1583. A sale becomes complete between the parties, and the ownership belongs by right to the purchaser, against the vendor, so soon as the thing and the price have been agreed upon, although the thing has not yet been delivered or the price paid. Civ. C. 711, 1138, 1141, 1217, 1218, 1591, 1606, 1614, 2182.

1584. A sale can be made absolutely or under condition precedent or under condition subsequent.

It can also apply to two or more optional things.

In all cases its effect is regulated by the general principles relating to contracts. Civ. C. 1168, 1181, 1185, 1189.

1585. When goods are not sold in a lump but by weight, number, or measure, the sale is not complete in this respect, that the goods sold remain at the risk of the vendor until they have been weighed, counted, or measured; but the
purchaser may claim the delivery thereof, or damages, if necessary, in case the contract is not carried out. Civ. C. 520, 521, 1142, 1182, 1302, 1583, 1604, 1606.

1586. If, on the contrary, the goods have been sold in a lump, the sale is complete although the goods have not yet been weighed, counted, or measured.

1587. As regards wines, oil and other goods which it is customary to taste before buying, there is no sale so long as the purchaser has not tasted or accepted them.

1588. A sale made upon trial is always supposed to be made under condition precedent. Civ. C. 1181 et s., 1584.

1589. A promise of sale is equivalent to a sale in case of mutual consent of both parties as to the thing and the price. Civ. C. 1179, 1583, 1592.

1590. If, upon a promise of sale, earnest money has been given, each of the contracting parties is at liberty to withdraw,

The one who has given the earnest money, by forfeiting it,
And the one who has received it, by returning twice the amount. Civ. C. 1715.

1591. The consideration of the sale shall be fixed and designated by the parties.

1592. It can, nevertheless, be left to the arbitration of a third party. If said party is not willing to or cannot make an estimate, there is no sale. Civ. C. 1854.

1593. The expenses of the contract and other charges relating to the sale shall be paid by the purchaser. Civ. C. 1248, 1382, 1999, 2062.
CHAP. II.

OF THOSE WHO CAN BUY OR SELL.

1594. All those who are not prohibited by law from so doing can buy or sell. Civ. C. 128, 450, 537, 1123, 1507, 1554, 1576, 1596 et s., 1860.

1595. A contract of sale can only take place between husband and wife in the three following cases:—

1. In case either the husband or the wife, when judicially separated as to property, assigns to the other some property in payment of his or her rights;

2. When the assignment made by the husband to the wife, even when not separated as to property, has a legitimate cause, such as the reinvestment of proceeds of her real estate which has been conveyed, or of funds belonging to her if such real estate or funds do not form part of the community;

3. When the wife assigns property to her husband in payment of an amount which she has promised him as dowry, and when there is no community.

Subject in these three cases to the rights of the heirs of the contracting parties if there should be any indirect advantage. Civ. C. 1401, 1421, 1443 et s., 1540.

1596. The following persons cannot, either themselves or through intermediaries, become purchasers at public sale, under penalty of avoidance of the sale:

Guardians, with respect to the property of those under their guardianship;

Attorneys-in-fact, with respect to property which they have charge of selling;

Administrators, with respect to property belonging to districts or public establishments intrusted to their care;

Public officers, with respect to national property of which
the sale is conducted through their instrumentality. Civ. C. 450, 911, 1099, 1100, 1991.

1597. Judges, their assistants, magistrates holding the office of public prosecutor, clerks of the court, sheriffs, solicitors, counsellors and notaries, cannot purchase the actions, contested rights and causes of action which come under the jurisdiction of the Tribunal in the District of which they carry on their profession, under penalty of avoidance of the sale and of damages. Civ. C. 1699.

Chap. III.

Of Things which can be Sold.

1598. Everything which is in trade (i) can be sold when special laws do not prohibit the sale thereof. Civ. C. 538, 1128, 1600, 2226.

1599. The sale of a thing belonging to another person is void: it can give rise to damages when the purchaser is not aware that the thing belonged to another person. Civ. C. 136, 137, 843, 1021, 1141, 1165, 1409, 1626, 1659, 1696, 1707, 2265, 2280.

1600. The succession of a person who is alive cannot be sold, even with his consent. Civ. C. 791, 1130, 1304.

1601. If, at the time of the sale, the thing sold has been totally destroyed, the sale shall be void.

If only a part of the thing has been destroyed, the

(i) These words must be taken in a broad sense, and apply to property belonging to private individuals in contra-distinction to public property.
purchaser has the choice between either giving up the purchase or claiming the part saved by having the price thereof fixed by appraisement. Civ. C. 1193, 1195, 1301.

Chap. IV.

Of the Vendor's Obligations.


1602. The vendor is obliged to explain distinctly what he binds himself to.

Any obscure or ambiguous contract shall be interpreted against the vendor. Civ. C. 1156, 1162.

1603. There are two principal obligations, one to make delivery, and the other to warrant the thing sold. Civ. C. 1604, 1625.

§ 2. Of Delivery.

1604. Delivery is the transfer of the thing sold into the power and possession of the purchaser. Civ. C. 1136.

1605. The obligation to deliver real estate is fulfilled on the part of the vendor when he has handed over the keys, in case of a building, or when he has handed over the title deeds.

1606. The delivery of personal property takes place,

Either by actual transfer,

Or by handing over the keys of the buildings which contain it,

Or even by the mere consent of the parties, if the transfer
cannot take place at the time of the sale, or if the purchaser already had the property in his possession in another manner. Civ. C. 1138, 1141, 1605.

1607. The transfer of incorporeal rights is made either by handing over the title deeds or by the use which the purchaser has made of such rights with the consent of the vendor. Civ. C. 1689 et s., 2075.

1608. The expenses of delivery are paid by the vendor, and those of removal by the purchaser, unless there is a stipulation to the contrary. Civ. C. 1248.

1609. Delivery must be made at the place where the thing sold was at the time of the sale, unless a different agreement has been made. Civ. C. 1247, 1264.

1610. If the vendor fails to make delivery at the time agreed upon between the parties the purchaser may at his choice apply for the cancellation of the sale or ask to be given possession if the delay has only been occasioned by an act of the vendor. Civ. C. 1139, 1184, 1611, 1614, 1615, 1654.

1611. In all cases the vendor shall be ordered to pay damages if any detriment has resulted to the purchaser from the failure to make delivery at the time agreed upon. Civ. C. 1146.

1612. A vendor is not obliged to deliver the thing if the purchaser does not pay the price thereof, unless the vendor has given him time for payment. Civ. C. 1650 et s.

1613. Neither shall he be obliged to make delivery, even if he has allowed him time to pay, if, since the sale, the purchaser has become a bankrupt or is in a state of C.N.
insolvency so that the vendor finds himself in imminent danger of losing the purchase money; unless the purchaser furnishes security for payment at the time agreed upon. Civ. C. 1188, 1612, 1657.

1614. The thing must be delivered in the condition it was in at the time of the sale.
From that day, all the revenues belong to the purchaser. Civ. C. 551, 1615, 1682.

1615. The obligation to deliver the thing includes its accessories and everything that was intended for its perpetual use. Civ. C. 1625, 1692, 2204.

1616. A vendor is obliged to deliver the quantity such as it is specified in the contract, subject to the modifications hereinafter mentioned. Civ. C. 1765.

1617. If the sale of real estate has been made and the dimensions have been specified at the rate of so much, according to the measures, the vendor is obliged to deliver to the purchaser the quantity stated in the contract, if the latter requires it.
If this cannot be done or if the buyer does not require it, the vendor is obliged to accept a proportionate reduction in the price. Civ. C. 1627, 1636, 1765.

1618. If, on the contrary, in the case mentioned in the foregoing article, the dimensions are larger than those expressed in the contract, the purchaser at his choice may either pay the surplus of the price or withdraw from the contract if the surplus exceeds by one-twentieth the dimensions specified. Civ. C. 1681 et s.

1619. In all other cases,
Whether the sale made is of a specified and limited corpus,
Whether it applies to distinct and separate pieces of property,
whether it commences by the measure or designation of the property sold followed by the measure,
the designation of this measure does not entitle the vendor to any increase in the price for what exceeds the measure, nor the purchaser to any reduction in the price for what is below it, unless the difference between the actual measure and the one expressed in the contract should be of one-twentieth, more or less, with respect to the value of all the property sold, provided there is no stipulation to the contrary.

1620. In case it should be necessary in accordance with the foregoing article to increase the price on account of what exceeds the measure, the purchaser may at his choice either withdraw from the contract or pay the surplus of the price, with interest, if he has kept the real estate. Civ. C. 1681.

1621. In all cases in which the purchaser has the right to withdraw from the contract, the vendor is obliged to return to him the expenses occasioned by the contract, besides the price, if he has received the same. Civ. C. 1630.

1622. The action for an increase in the price, on the part of the vendor, and the action for a reduction in the price or for cancellation of the contract, on the part of the purchaser, must be brought within one year from the date of the contract, otherwise it is barred. Civ. C. 1617.

1623. If two pieces of property have been sold by the same contract and for one single and same price, the measure of each of them being specified, and one of such pieces of property should be of smaller and the other of...
larger dimensions, proper compensation shall be established to the extent of the difference, and an action for an increase or reduction in the price only lies in accordance with the rules hereabove set forth.

1624. The question of ascertaining whether the loss or depreciation of the property sold before its delivery shall fall upon the vendor or the purchaser is to be decided according to the rules contained in the Title Of Contracts or Conventional Obligations in General. Civ. C. 1137, 1138 et s., 1182, 1234, 1302.

§ 3. Of Warranty.

1625. The warranty which the vendor owes to the purchaser has a double object: First, the peaceful possession of the property sold; second, the hidden defects of this property or the defects rendering the sale void. Civ. C. 1599, 1603, 1610, 1641 et s.

Sub-sect. 1. Of Warranty in case of Ejectment.

1626. Although no stipulation as to warranty has been made upon the sale of property, the vendor is in duty bound to warrant the purchaser against the ejectment which he is subjected to from the whole or part of the property sold or against the alleged charges upon such property which have not been declared at the time of the sale. Civ. C. 884, 1148, 1619, 1627, 1628, 1629, 1630, 1636, 1640, 1681, 1705, 2178, 2191.

1627. The parties may, by special agreement, add to this obligation, which exists by right, or reduce its effect: they may even agree that the vendor shall not be subject to any warranty. Civ. C. 1134, 1626, 1628, 1643.
1628. Even if it is stated that the vendor is not bound to any warranty, he nevertheless remains responsible for the warranty resulting from his personal act: any agreement to the contrary is void. Civ. C. 1626, 1629, 1693.

1629. Even in case of a stipulation of no warranty, the vendor is bound in case of ejectment to return the price, unless the purchaser knew of the danger of his being ejected or unless he had made the purchase at his risk and peril. Civ. C. 1626, 1628, 1638, 1642.

1630. When a warranty has been promised or when no stipulation has been made with respect thereto, the purchaser, if he is ejected, has the right to claim from the vendor,

1. The return of the price,
2. The return of the revenues, when he is obliged to give them back to the owner who ejects him,
3. The expenses incurred in the action for warranty brought by the purchaser or those incurred by the original plaintiff,
4. Finally, the damages and interest and the expenses and proper costs of the contract. Civ. C. 1149, 1599, 1621, 1625, 1626, 1629, 1633, 1646, 1681, 2178.

1631. When, at the time of the ejectment, the property sold has decreased in value or has been considerably damaged, either owing to the negligence of the purchaser or by accidents resulting from superior force, the vendor nevertheless is bound to return the whole price. Civ. C. 1382, 2175.

1632. But if the purchaser has reaped some benefit from the damage occasioned by him, the vendor has the right to retain out of the price a sum equal to such benefit.

1633. If the property sold has increased in value at the
time of the ejectment, even independently of what the purchaser may have done to it, the vendor is bound to pay him what it is worth above the price of the sale. Civ. C. 1637.

1634. A vendor is bound to reimburse the purchaser, or to cause him to be reimbursed by the person who ejects him, for all the useful repairs and improvements which he has made to the property.

1635. If a vendor has sold the property of another person in bad faith, he is bound to repay to the purchaser all the expenses, even for embellishment or pleasure, which the latter may have made in connection with the property. Civ. C. 549 et sq., 1599, 2268.

1636. If the purchaser is only ejected from part of the property and such part is of so much importance in proportion to the whole that the purchaser would not have bought it without the part from which he has been ejected, he may have the sale cancelled.

1637. If, in case of ejectment from part of the property sold, the sale is not cancelled, the value of the part from which the purchaser is ejected shall be reimbursed to him according to an appraisement made at the time of the ejectment and not proportionately to the total price of the sale, whether the property sold has increased or decreased in value. Civ. C. 1617, 1633.

1638. If the estate sold is encumbered with servitudes which are not apparent, without any declaration to that effect having been made, and such servitudes are of so much importance that it is to be presumed that the purchaser would not have bought the property if he had been informed thereof, he may sue for the cancellation of the
contract, unless he prefers to be satisfied with an indemnity. Civ. C. 1626, 1642.

1639. The other questions which may be brought up, owing to the damages resulting to the purchaser from the failure to carry out the sale, must be decided according to the general rules contained in the Title Of Contracts or Conventional Obligations in General. Civ. C. 1136 et s., 1142 et s., 1146 et s., 1182, 1184, 1226 et s.

1640. A warranty on account of ejectment ceases when the purchaser has allowed a final judgment to be rendered against him or a judgment from which an appeal can no longer be taken without summoning the vendor, if the latter proves that sufficient defences existed to have the action dismissed. Civ. C. 1851.

Sub-sect. 2. Of Warranty against the Defects of the Thing sold.

1641. A vendor is bound to warrant against the hidden defects of the thing sold which render it unfit for the use for which it was intended or which impair its use to such an extent that the purchaser would not have acquired it or would only have given a smaller price if he had known of them. Civ. C. 1602, 1625, 1636, 1638, 1642, 1643, 1644, 1674.

1642. A vendor is not responsible for the apparent defects as to which the purchaser has been able to satisfy himself. Civ. C. 1116, 1313, 1629, 1674.

1643. He is responsible for the hidden defects, even if he did not know of them, unless it has been stipulated in such case that he should not be bound to any warranty. Civ. C. 1627, 1629.
1644. In the cases provided for in articles 1641 and 1643 the purchaser may at his choice, either give back the thing and have the price returned to him or keep the thing and have such part of the price returned as shall be decided by experts. Civ. C. 1617, 1634.

1645. If the vendor knew of the defects of the thing, he is bound not only to return the price which he has received, but he is also liable to the purchaser for all damages. Civ. C. 1149, 1630 et s.

1646. If the vendor did not know of the defects of the thing he shall only be bound to return the price and to reimburse to the purchaser the expenses occasioned by the sale. Civ. C. 1630, 1650.

1647. If the thing which had defects has ceased to exist owing to its bad condition, the loss falls upon the vendor, and he is bound towards the purchaser to return the price together with the other compensations mentioned in the two foregoing articles.

But if the loss happens by accident, it falls upon the purchaser. Civ. C. 1641.

1648. The action resulting from defects which render the sale void must be brought by the purchaser within a short time, according to the nature of such defects and the customs of the place where the sale has been made. Civ. C. 1304.

1649. It cannot be brought in case of sales made by order of the Court. Civ. C. 1684.
CHAP. V.

OF THE PURCHASER'S OBLIGATIONS.

1650. The principal obligation of the purchaser is to pay the price upon the day and at the place fixed by the sale. Civ. C. 1239, 1653, 2102—4, 2103—1 et s., 2108.

1651. If nothing has been arranged in that respect at the time of the sale, the purchaser must make payment at the place and time the delivery is to be made. Civ. C. 1427.

1652. The purchaser owes interest on the purchase price up to the time of the payment of the capital in the three following cases:
   If it has been so agreed at the time of sale;
   If the thing sold and delivered bears fruit or produces any other revenue;
   If the purchaser has been summoned to pay.
   In the last case the interest only runs from the time of the summons (w). Civ. C. 1139, 1153, 1905, 2176.

1653. If the purchaser is disturbed or has a just cause for fearing that he will be disturbed by an action upon a mortgage or for recovery, he may suspend payment of the price until the vendor has caused the disturbance to cease, unless the latter prefers to give security or unless it has been stipulated that the purchaser will pay notwithstanding the disturbance. Civ. C. 1599, 2011.

1654. If the purchaser does not pay the price, the vendor may ask for the cancellation of the sale. Civ. C.

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(w) A summons here means a legal demand made through a sheriff.
1655. The cancellation of a sale of real estate shall be forthwith ordered if the vendor is in danger of losing the property and the price.

If this danger does not exist, the Judge may grant the purchaser more or less time, according to circumstances.

When the time has passed and the purchaser has not paid, the cancellation of the sale shall be ordered. Civ. C. 1184, 1244.

1656. If it has been stipulated upon a sale of real estate that in default of payment of the price at the time agreed upon the sale shall be cancelled by right, the purchaser can nevertheless pay after the time has expired, so long as a demand has not been made upon him by way of a summons (x); but after this summons the Judge cannot grant him any more time. Civ. C. 1139, 1184, 1983.

1657. In case of sale of goods and personal effects the cancellation of the sale shall take place by right for the benefit of the vendor and without a summons (x) after the expiration of the time agreed upon for taking back the thing. Civ. C. 1585, 2102—4.

(x) A summons here means a legal demand made through a sheriff.
OF SALES.

CHAP. VI.

OF AVOIDANCE AND RESCISSION OF SALES.

1658. Independently of the causes of avoidance or rescission above explained in this Title and of those which apply to all contracts, a contract of sale can be rescinded by making use of a power of redemption or on account of insufficiency of the price. Civ. C. 1108 et s., 1183 et s., 1304 et s., 1595 et s., 1616 et s., 1636, 1644 et s., 1654 et s., 1659 et s., 1674 et s.

§ 1. Of Right of Redemption.

1659. The right of redemption or repurchase is a covenant by which the vendor retains the power of taking back the thing sold by returning the purchase price and reimbursing what is specified in article 1673. Civ. C. 1038, 1168, 1174, 1599, 1692, 1751.

1660. The right of redemption cannot be stipulated for a period exceeding five years.

   If it has been stipulated for a longer time it is reduced to that period.

1661. The time fixed is obligatory and cannot be extended by the Court. Civ. C. 1662.

1662. If the vendor has not brought his action for redemption within the time fixed the purchaser remains the irrevocable owner. Civ. C. 1673, 1751.

1663. The time runs against all persons, even against a minor, subject to the remedy against the proper person if there is occasion therefor. Civ. C. 2278.
1664. The vendor who has an agreement containing the right of redemption may bring his action against a second purchaser, even if the power of redemption is not mentioned in the second contract. Civ. C. 1165.

1665. The purchaser of property subject to a power of redemption, may exercise all the rights of his vendor. He has the benefit of prescription as well against the real owner as against those who might claim to have rights to the thing sold or mortgages thereupon. Civ. C. 2225.

1666. He can set up the plea of seizure against the creditors of the vendor. Civ. C. 2021 et s.

1667. If the purchaser of the undivided part of an estate subject to a power of redemption has bought the whole estate at a public sale which has been applied for against him, he may compel the vendor to take back the whole property if the latter wishes to make use of his power of redemption. Civ. C. 1686 et s.

1668. If several persons have sold jointly and by a single contract a joint estate, each one can only bring his action for redemption for the part which belonged to him. Civ. C. 1217.

1669. The same rule shall apply if the person who alone has sold an estate has left several heirs.

Each of the co-heirs can only make use of the power of redemption for the part which he takes in the succession. Civ. C. 1220.

1670. But in the cases provided for in the foregoing articles a purchaser can exact that all the vendors or all the co-heirs be joined in the action so that they may agree among themselves upon the redemption of the whole estate;
and if they do not agree his action shall be dismissed. Civ. C. 1225, 1685.

1671. If the sale of an estate belonging to several persons has not been made jointly and the whole estate has not been sold at the same time, and if each one has only sold his share thereof, they can bring their action for redemption separately for the part which belonged to them;

And the purchaser cannot compel the person who brings the action in this way to redeem the whole.

1672. If the purchaser has left several heirs the action for redemption can only be brought against each one of them for his share, provided it is still undivided or the property sold has already been divided between them.

But if there has been a division of the estate and the property sold has fallen to the share of one of the heirs, the action for redemption may be brought against him for the whole. Civ. C. 873, 883 et s., 1220 et s.

1673. The vendor who makes use of a power of redemption must reimburse not only the purchase price but also the expenses and proper charges of the sale, the necessary repairs and those which have increased the value of the property to the extent of such value. He can only enter into possession after having complied with all these requirements.

When the vendor regains his estate owing to the power of redemption he takes it free from all charges and mortgages with which the purchaser may have encumbered it. He is bound to carry out the leases made without fraud by the purchaser. Civ. C. 1183, 1659, 2103, 2125, 2180, 2195.

§ 2. Of Rescission of Sales on Account of Lesion.

1674. If the vendor has suffered a loss of more than seven-twelfths of the price of a piece of real estate, he has
the right to apply for the rescission of the sale, even if he has expressly renounced in the contract the right to ask for such rescission and has declared that he abandoned any increase in the value. Civ. C. 888, 1668, 1677, 1706, 1904, 1968, 1976.

1675. To ascertain if there is lesion of more than seven-twelfths, the real estate must be appraised according to its condition and value at the time of the sale. Civ. C. 890, 1589, 1674.

1676. An action can no longer be brought after the expiration of two years from the day of the sale.

The time runs against married women, absentees, interdicted persons and minors taking the place of a person of full age who has been the vendor.

The time also runs and is not suspended during the period stipulated for the power of redemption.

1677. Proof of lesion can only be allowed by judgment and only in case the facts alleged are sufficiently probable and serious to create a presumption of lesion.

1678. This proof can only be made by a report of three experts, who are obliged to draw up a single joint official report and to express a single opinion by a plurality of votes.

1679. If there are different opinions, the official report shall state the reasons given, but it shall not be allowed to make known what the opinion of each expert was.

1680. The three experts shall be appointed by the Court, unless the parties have agreed to name them all three jointly.

1681. In case the action for rescission succeeds, the purchaser has the choice either between returning the thing
and taking back the price which he has paid, or keeping the property by paying the balance of the just price after deducting one-tenth of the total price.

A third party in possession has the same right, subject to his claim for warranty against the vendor. Civ. C. 891, 1618, 1630.

1682. If the purchaser prefers to keep the property by paying the balance, as provided in the foregoing article, he owes interest on such balance from the day the action for rescission was commenced.

If he prefers to return it and to take back the price, he must return the income from the beginning of the action.

Interest on the price which he has paid is also allowed him from the beginning of the action or from the time of payment, if he has not collected any revenue. Civ. C. 1614, 1652.

1683. Rescission for lesion does not take place in favour of the purchaser.

1684. It does not take place in any sales which according to law can only be made by order of the Court. Civ. C. 1649.

1685. The rules contained in the foregoing section for cases in which several persons have sold property jointly or separately, and in case the vendor or the purchaser has left several heirs, shall likewise be followed in bringing the action for rescission. Civ. C. 1668 et s.
1686. If the joint property of several persons cannot be divided conveniently and without loss;
Or if, in a division of joint property made amicably, there is any property which none of the co-parceners can or is willing to take;
The sale takes place at auction and the proceeds are divided among the co-owners. Civ. C. 815 et s., 883, 2109

1687. Each of the co-owners is at liberty to ask that the public be called to the sale. The public must necessarily be called when one of the co-owners is a minor. Civ. C. 460, 839.

1688. The practice and the formalities to be complied with for a judicial sale are explained in the Title Of Successions and in the Code of Procedure. Civ. C. 827, 838 et s.

1689. In an assignment of a claim, of a right, or of an action against a third party the delivery takes place between the assignor and the assignee by handing over the instrument. Civ. C. 1109, 1116, 1179, 1582, 1583, 1607, 1690, 2073.
1690. An assignee is only seized as against third parties by the notice of the assignment given to the debtor.

Nevertheless, the assignee may likewise be seized by the acceptance of the assignment given by the debtor in an official instrument. Civ. C. 841, 1130, 1131, 1143, 1242, 1271, 1295, 1322, 1328, 1583, 1607, 1689, 1691, 2075.

1691. If the debtor has paid the assignor before the latter or the assignee has given notice of the assignment to such debtor, he shall be lawfully released. Civ. C. 1242, 1277, 1295.

1692. The sale or assignment of a claim includes the accessories of the claim, such as the security, the privileges and mortgages. Civ. C. 1018, 1249, 1615, 2112.

1693. A person who sells a claim or any other incorporeal right must warrant its existence at the time of the assignment, though no warranty has been stipulated. Civ. C. 1236, 1626 et s., 1640, 1692, 1694.

1694. Such person does not answer for the solvency of the debtor unless he has bound himself thereto, and then only to the extent of the price which he has obtained for the claim.

1695. When he has agreed to warrant the solvency of the debtor such undertaking only applies to his present solvency and does not extend to the future, unless the assignor has made an express stipulation to that effect. Civ. C. 1693, 1694.

1696. A person who sells his hereditary rights without specifying the property in detail is only bound to warrant his capacity as heir. Civ. C. 780, 1156, 1163, 1697, 1698.

1697. If he has already had the benefit of the income c.n.  c  c
of some property or received the amount of any claim belonging to the inheritance, or sold certain things of the succession, he is bound to reimburse the purchaser therefor, unless he has expressly reserved them upon the sale. Civ. C. 1615.

1698. The purchaser, on the other hand, must reimburse the vendor for what he has paid on account of the debts and charges of the succession, and make good to him everything that was owed to him, unless there is a stipulation to the contrary. Civ. C. 1697.

1699. A person against whom a contested claim has been assigned can cause himself to be released therefrom by the assignee by reimbursing to him the actual price of the assignment, with the expenses and just charges and interest, from the day the assignee paid the price of the assignment made to him. Civ. C. 841, 1597, 1700 et s.

1700. A claim is supposed to be contested when there is a suit or a dispute as to the existence of a right. Civ. C. 1699.

1701. The provisions mentioned in article 1699 do not apply:—
1. In case the assignment has been made to a co-heir or joint owner of the claim assigned;
2. When it has been made to a creditor in payment of what is due to him;
3. When it has been made to the possessor of the estate, subject to the contested right.
Title Seventh.

Of Exchanges.

(Passed 7th March, 1804; promulgated 17th of same month.)

1702. An exchange is a contract by which the parties give respectively to each other one thing for another.

1703. An exchange takes place by simple consent in the same manner as a sale. Civ. C. 711, 1138, 1341, 1347, 1583.

1704. If one of the parties to an exchange has already received the thing given to him in exchange, and proves subsequently that the other contracting party is not the owner of such thing, he cannot be compelled to deliver the thing which he has promised in exchange, but only to return the thing which he has received. Civ. C. 1612, 1653.

1705. The party to an exchange who is dispossessed of the thing which he has received in exchange, has the choice between asking for damages or claiming back his thing. Civ. C. 1142, 1149, 1184, 1630, 1636, 1654, 1704, 1707.

1706. Rescission on account of lesion does not take place in contracts of exchange.

1707. All the other rules set down for contracts of sale shall moreover apply to exchanges. Civ. C. 1582 et s., 1599.
TITLE EIGHTH.

OF CONTRACTS OF LETTING.

(Passed 7th March, 1804; promulgated 17th of same month.)

CHAP. I.

GENERAL PROVISIONS.

1708. There are two sorts of contracts of letting:
One for things,
The other for work. Civ. C. 1709, 1711 et s., 1779 et s.

1709. The letting of things is a contract by which one of the parties binds himself to procure for the other, during a certain time and in consideration of a certain price, which the latter promises to pay him, the enjoyment of a thing. Civ. C. 1127, 1719, 1743, 2118.

1710. The letting of work is a contract by which one of the parties binds himself to do a certain thing for the other in consideration of a price agreed between them. Civ. C. 1779 et s.

1711. These two modes of letting are also sub-divided into several special kinds:—
The letting of houses or of personal property is called a lease for rent;
The letting of country property, a lease on shares;
The letting of work or labour, a lease;
The letting of animals, of which the profits are divided
between the owner and the one to whom he entrusts them, a lease of cattle;

Estimates, contracts or fixed bargains for undertaking a piece of work in consideration of a stated price also constitute a lease when the material is furnished by the person for whom the work is done.

These three last kinds are governed by special rules. Civ. C. 1714, 1752, 1763, 1779, 1787, 1800.

1712. Leases of national property, of property of districts, and of public institutions, are subject to special rules.

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CHAP. II.

OF THE LETTING OF THINGS.

1713. One may let all kinds of personal property or real estate.

§ 1. Of Rules applying both to Leases of Houses and of Country Property.

1714. Letting can be done in writing or verbally. Civ. C. 1736, 1758, 2102.

1715. If a lease, made without any writing, has not yet been carried out and one of the parties denies its existence, the proof cannot be made by witnesses, however small the price may be, and even if it is alleged that earnest money has been given.

The oath can only be proffered to the person who denies that there is a lease. Civ. C. 1341, 1353, 1357.
1716. When there is a controversy about the price of a verbal lease which has already been acted upon, and no receipt has been given, the landlord shall be believed upon his oath, unless the tenant prefers to apply for an appraisal by experts; in which case the expenses of the appraisal shall be borne by the tenant if such appraisal exceeds the price which he has declared. Civ. C. 1357, 1366.

1717. The lessee has the right to sub-let or even to assign his lease to another person if this right has not been taken away from him.

It can be taken away wholly or in part.

This clause is always necessary. Civ. C. 1142, 1184, 1341, 1353, 1741, 1763, 1766.


1719. A lessor is bound by the nature of the contract and without any special stipulation being required:—

1. To deliver to the lessee the property leased;

2. To keep the property in good order so that it can be applied to the use for which it has been let;

3. To secure to the tenant the peaceful enjoyment thereof during the continuance of the lease. Civ. C. 1720, 1741, 1778.

1720. A lessor is bound to deliver the property in good repair in all respects.

He must, during the continuance of the lease, make all the repairs which may become necessary, with the exception of those incumbent upon the tenant. Civ. C. 1719, 1731, 1741, 1754.
1721. A warranty is due to the lessee for all the concealed vices or defects of the property leased which interfere with the use thereof, even if the lessor did not know of them at the time of making the lease.

If any loss should result to the lessee from such vices or defects, the lessor is bound to hold him harmless. Civ. C. 1641 et s., 1719, 1724 et s., 1891 et s.

1722. If the property leased is wholly destroyed by accident during the continuance of the lease, the lease is cancelled by right: if it is only destroyed in part, the lessee may, according to circumstances, either ask for a reduction in the price, or even for the cancellation of the lease. In either case, no indemnity shall be due. Civ. C. 1134, 1728, 1741, 1769.

1723. The lessor cannot change the condition of the thing leased during the continuance of the lease. Civ. C. 1728.

1724. If, during the continuance of the lease, the thing leased requires urgent repairs, which cannot be postponed until its expiration, the lessee must allow them to be made, whatever may be the inconvenience he is put to and although he may be deprived of a part of the thing leased during the time they are being made.

But if these repairs last more than forty days, the price of the lease shall be reduced in proportion to the time and the part of the thing leased which he has been deprived of.

If the repairs are of such a nature that they render uninhabitable what is necessary to lodge the tenant and his family, he can have the lease cancelled. Civ. C. 1720.

1725. The lessor is not bound to warrant the lessee against the disturbances caused to his enjoyment by acts of violence of third parties, even when they do not claim to have any right to the property leased; but the lessee can proceed against them in his own name. Civ. C. 1727.
1726. If, on the contrary, the tenant or the farmer have been disturbed in their enjoyment in consequence of an action relating to the ownership of the estate, they are entitled to a proportionate reduction in the price of the lease for rent or lease on shares, provided a notice of the disturbance and of the obstacle has been given to the landlord. Civ. C. 1768.

1727. If those who have committed the acts of violence claim to have some right to the property leased, or if the lessee has himself been summoned before a Court to be ordered to abandon such property in whole or in part or to allow some servitude to be made use of, he must have the lessor joined on account of his warranty, and a dismissal shall be ordered against such lessee if he demands it by naming the lessor from whom he holds possession. Civ. C. 1768.

1728. A lessee is bound to two principal obligations:—
1. To make use of the property leased as a prudent owner, and according to the purposes intended by the lease, or according to those presumed under the circumstances if there is no agreement to that effect;
2. To pay the price of the lease at the times agreed upon. Civ. C. 1134, 1184, 1722, 2202-1.

1729. If the lessee uses the property leased for a different purpose from the one intended, or in such way that a loss might result for the lessor, the latter may, according to circumstances, have the lease cancelled. Civ. C. 1760, 1766.

1730. If a description of the premises has been drawn up between the lessor and the lessee, the latter must return the property in the same condition in which he has received it according to such description, with the exception of what has been destroyed or damaged by old age or by superior force. Civ. C. 555, 1731, 1735, 1755.
1731. If no description of the premises has been made, the lessee is supposed to have received them in good condition of repair for occupancy and must return them in the same condition, unless there is proof to the contrary. Civ. C. 1735, 1755.

1732. He is answerable for the dilapidations and losses sustained during his occupancy, unless he establishes that they have not occurred through any fault of his. Civ. C. 555, 1730, 1731, 1754.

1733. He is responsible in case of fire unless he proves:—
That the fire has taken place by accident or superior force or owing to bad construction;
Or that the fire has spread from a neighbouring house. Civ. C. 1148, 1251-3, 1302, 1383, 1592, 1709, 1722, 1728, 1734, 2093.

1734. (Amended by Law of 5th January, 1883.)—If there are several tenants, each one is responsible for the fire in proportion to the letting value of the part of the premises which they occupy:
Unless they prove that the fire commenced in the premises of one of them, in which case that one alone is responsible; or unless some of them prove that the fire could not have commenced on their premises, in which case such ones are not responsible.

1735. A lessee is responsible for the damages and losses occasioned by the persons belonging to his household or by his sub-tenants. Civ. C. 1384.

1736. If the lease has been made without any writing, one of the parties can only give the other notice to quit by complying with the customs of the place as to the time required. Civ. C. 1715, 1775.
1737. A lease ceases by right at the expiration of the time specified, when it has been made in writing, and it is not necessary to give notice to quit. Civ. C. 1181, 1775.

1738. If, at the expiration of written leases, the lessee remains and is allowed to continue in possession, a new lease is created, of which the effect is regulated by the article relating to unwritten leases. Civ. C. 1728, 1759, 1776.

1739. When notice to quit has been given, the lessee cannot claim a tacit renewal, although he has continued his occupancy.

1740. In the cases mentioned in the two foregoing articles the security given for the lease does not apply to the obligations resulting from its extension. Civ. C. 2011 et s.

1741. A contract for letting expires by the destruction of the thing leased or by the failure on the part of the lessor and lessee respectively to carry out what they have agreed to. Civ. C. 1184, 1188, 1719, 1728, 1760.

1742. A contract for letting does not expire by the death of the lessor nor of the lessee. Civ. C. 1122, 1795.

1743. If the lessor sells the property leased, the purchaser cannot eject the farmer or tenant who has a lease in authentic form or a lease with a positive date, unless such right has been reserved in the contract of letting. Civ. C. 546, 547, 1251, 1750, 1761, 2166, 2182, 2185.

1744. If it has been agreed at the time of the lease that in case of sale the purchaser might expel the farmer or tenant, and no stipulation has been made as to damages,
the lessor is bound to indemnify the farmer or tenant in the following manner. Civ. C. 1746.

1745. In case of a house, an apartment or a store, the lessor shall pay as damages to the tenant who has been ejected a sum equal to the price of the rent during the time which is granted from the notice to quit up to the moving, according to the customs of the place.

1746. In case of country property the indemnity which the lessor must pay to the farmer shall be one-third of the price of the lease for all the time which still remains to run.

1747. The indemnity shall be fixed by experts in case of factories, works and other establishments which require important outlays.

1748. A purchaser who wishes to make use of the privilege reserved by the lease to eject a tenant or farmer in case of sale is also bound to give notice in advance to the tenant, according to the time required by the customs of the place for notices to quit.

He must also give notice to the farmer of country property at least one year in advance. Civ. C. 1736, 1774.

1749. Farmers or tenants cannot be ejected unless the damages hereabove mentioned have been paid to them by the lessor, or if not by him by the new purchaser.

1750. If the lease has not been made by a public instrument or has no positive date, the purchaser is not responsible for any damages. Civ. C. 1317, 1328, 1743.

1751. A purchaser with power of redemption cannot make use of the privilege of ejecting the tenant until he has
become the absolute owner by the expiration of the time fixed for the redemption. Civ. C. 1665.

§ 2. Of Special Rules of Leases for Rent.

1752. A tenant who does not furnish the house with enough furniture, may be ejected unless he gives sufficient security to answer for the rent. Civ. C. 1350, 2102, 2279.

1753. A sub-tenant is only liable to the owner to the extent of the rent of the sub-lease which he may owe at the time of the attachment, but he cannot set up payments made in anticipation.

Payments made by a sub-tenant, either by virtue of a stipulation contained in his lease or in consequence of a custom of the place, are not supposed to be made in anticipation. Civ. C. 1341, 1353, 1717.

1754. Repairs incumbent upon the tenant, or those of small importance for which the tenant is responsible unless there is a stipulation to the contrary, are those which are considered as such by the customs of the place, and among others the repairs to be made:—

To fireplaces, backs of chimneys, chimney-pieces and shelves of mantels; 
To the plastering of the lower parts of walls of apartments and other places of abode to the height of one meter; 
To pavements and tiles of rooms when only a few are broken; 
To panes of glass, unless they have been broken by a hailstorm or some other extraordinary accident and resulting from superior force, for which the tenant cannot be made liable; 
To doors, windows, partitions or shutters of a shop, hinges, bolts and locks. Civ. C. 1720.
1755. None of the repairs considered as repairs incumbent upon the tenant shall be charged to tenants when they are occasioned by old age or superior force. Civ. C. 1730.

1756. The cleaning of wells and cesspools shall be paid for by the lessor, unless there is a clause to the contrary.

1757. A lease of furniture supplied to furnish a whole house or a whole main building or a store or any other lodgings is supposed to be made for the ordinary time of leases of houses, main buildings, stores or other lodgings, according to the customs of the place. Civ. C. 1159, 1350, 1352.

1758. A lease of a furnished apartment is considered to be made by the year when it has been made for so much a year;
By the month when it has been made for so much a month;
By the day when it has been made for so much a day.
If there is nothing to show that the lease has been made for so much a year, a month, or a day, the letting is supposed to be made according to the customs of the place. Civ. C. 1159, 1736.

1759. If the tenant of a house or an apartment continues his occupancy after the expiration of the written lease without objection on the part of the lessor he shall be considered to hold them under the same conditions for the term established by the customs of the place and he cannot move or be ejected until after a notice to quit has been given according to the time required by the customs of the place. Civ. C. 1737, 1738.

1760. In case of cancellation owing to the fault of the lessee, he is obliged to pay the price of the rent during the
time required to re-let, without prejudice to the damages which may result from his wrongful act. Civ. C. 1729, 1741, 1752, 2102-1.

1761. A lessor cannot cancel a lease, even if he declares that he wants himself to live in the house leased, unless there is a stipulation to the contrary. Civ. C. 1743.

1762. If it has been agreed in the lease that the lessor might come and occupy the house, he is bound to give notice to quit in advance at the times required by the customs of the place. Civ. C. 1736, 1743.

§ 3. Of Special Rules of Leases on Shares.

1763. A person who cultivates land under condition of a division of the revenue with the lessor cannot sub-let or assign his lease unless such power has been expressly granted to him therein. Civ. C. 1717.

1764. In case of violation of such a condition, the owner has the right to re-enter into possession and the lessee shall be ordered to pay the damages resulting from the non-performance of the lease. Civ. C. 1741.

1765. If, in a lease on shares, a smaller or larger area has been given to the property than it really has, the price which the farmer has to pay shall only be increased or reduced in the cases and according to the rules contained in the Title Of Sales. Civ. C. 1617 et s.

1766. If a lessee of country property does not place upon it the necessary cattle and implements for its cultivation; if he stops cultivating it or does not cultivate it as a prudent owner; if he applies the property leased to a use for which it was not intended, or in general if he does not fulfil the
conditions of the lease and the lessor suffers some damage thereby, he may, according to circumstances, have the lease cancelled.

In case of cancellation owing to an act of the lessee, he is liable for damages, as is stated in article 1764. Civ. C. 1729, 1746, 2102-1.

1767. Every lessee of country property is bound to house the crops in the places designated for that purpose according to the lease. Civ. C. 1777, 1778.

1768. A lessee of country property is bound to give notice to the owner of all encroachments upon the property, under penalty of all costs and damages. This notice must be given within the same time that is required in case of a summons, according to the distance of the place. Civ. C. 1726.

1769. If the lease is made for several years and during the lease the whole or at least the half of a crop has been destroyed accidentally, the farmer can ask for a reduction of the price of the lease unless his loss is made up by previous crops.

If the loss has not been made up, an appraisal of the reduction can only be made at the end of the lease, at which time an average shall be taken of all the years of his occupancy.

Nevertheless, the Judge may temporarily exempt the lessee from paying a part of the price in consequence of the loss he has sustained. Civ. C. 1722, 1771.

1770. If the lease is only for one year and the loss is of the whole crop or at least of one-half, the lessee shall be released from the payment of a proportionate part of the price of the lease.

He cannot claim any reduction if the loss is less than one-half. Civ. C. 1769, 1771 et s.
1771. A farmer cannot obtain any reduction when the loss of the crops occurs after they have been separated from the earth, unless the lease gives the owner a part of the crop in kind; and in such case the owner must bear his share of the loss, provided a demand had not been made upon the lessee to deliver his portion of the crops.

Neither can the farmer ask for a reduction when the cause of the loss already existed and was known at the time of the making of the lease. Civ. C. 1302.

1772. A lessee may be made responsible for accidents, by an express stipulation. Civ. C. 1134, 1302, 1773.

1773. This stipulation shall only apply to ordinary accidental cases, such as hailstorms, lightning, frost, or falling-off.

It does not extend to extraordinary accidental cases, such as destruction resulting from war or floods, which the country is not ordinarily subject to, unless the lessee has assumed all accidental cases, whether foreseen or unforeseen.

1774. An unwritten lease of country property is supposed to be made for the time that is necessary for the lessee to take in all the crops of the property leased.

For instance, a lease on shares of a field, a vineyard, or any other property of which the crops are all taken in during the course of the year, is supposed to be made for one year.

A lease of arable lands, when they are divided into breaks or seasons, is supposed to be made for as many years as there are breaks. Civ. C. 1715, 1736.

1775. A lease of country property, although unwritten, ceases by right at the expiration of the time for which it is supposed to have been made in accordance with the foregoing article. Civ. C. 1737.
1776. If, at the expiration of written leases for country property, the lessee remains or is left in possession, a new lease is created, of which the effects are regulated in accordance with art. 1774. Civ. C. 1738, 1759, 1774.

1777. The outgoing farmer must leave to the one who takes his place to cultivate the lands, suitable lodgings and other facilities for the work of the following year; and reciprocally the farmer entering into possession must furnish to the one who is leaving, suitable lodgings and other facilities for the consumption of fodder and for the crops which are still to be taken in.

In both cases the customs of the place must be complied with. Civ. C. 1767.

1778. The outgoing farmer must also leave the straw and the manure of the year if he has received them when he commenced his enjoyment: and even if he has not received them, the owner may retain them after appraisal.

CHAP. III.

OF THE LETTING OF WORK AND INDUSTRY.

1779. There are three principal kinds of letting of work and industry:

1. The hiring of workmen who enter the service of a person;

2. The hiring of carriers, as well by land as by water, who undertake to carry persons or goods;

3. The hiring of contractors for a work on an estimate or by the job. Civ. C. 1780 et s., 1782 et s., 1787 et s.
§ 1. Of the Hiring of Servants and Workmen.

1780. (Amended by Law of 27th December, 1890). A person can only bind himself to give his services for a certain time or a special enterprise.

The hiring of services made without a fixed duration can always cease at the wish of one of the contracting parties.

Nevertheless, the cancellation of the contract at the wish of one only of the contracting parties may give rise to damages.

To fix the indemnity to be granted, if there should be reason therefor, the customs, the nature of the services hired, the time elapsed, the amounts withheld and the payments made in view of a retiring pension, and generally all the circumstances which may justify the existence and determine the extent of the damage caused, shall be taken into account.

The parties cannot beforehand renounce the contingent right to claim damages in consequence of the foregoing provisions.

The controversies to which the application of the foregoing paragraphs may give rise when they are brought before the Civil Tribunals and before the Courts of Appeals shall be prepared for trial as urgent cases and tried forthwith.

1781. A master shall be believed upon his affirmation:
As to the amount of the wages;
As to the payment of the salary for the year elapsed;
And as to the instalments paid for the current year (y).

(y) This art. was repealed by the law of 2nd August, 1868.
§ 2. Of Carriers by Land and Water.

1782. Carriers by land and water are subject, with respect to the safe-keeping and preservation of the things which are entrusted to them, to the same obligations as the innkeepers who are mentioned in the Title Of Deposits and Sequestration. Civ. C. 1952, 2102—6.

1783. They are answerable, not only for what they have already received on their ships or in their wagons, but also for what has been delivered to them on the port or in their storehouses to be placed on their ships or wagons. Civ. C. 1384, 1782, 1784, 1785.

1784. They are responsible for the loss of or the injuries to the things which are entrusted to them, unless they prove that the same have been lost or injured accidentally or by superior force.

1785. Common carriers by land and water and those who cart for the public must keep books for the money, the articles and the packages they take charge of. Civ. C. 1784.

1786. Common carriers and agents of public wagons and carts, masters of boats and ships, are also subject to special regulations, which form the law between them and other citizens.

§ 3. Of Estimates and Jobs.

1787. When a person has charge of carrying out a work, it can be agreed that he will only furnish his work or industry, or that he will also furnish the materials. Civ. C. 1341, 1348.

1788. If, in case the workman furnishes the materials,
the thing is destroyed before being delivered, in whatever manner it may be, the loss falls upon the workman, unless the employer has been given notice to receive the thing. Civ. C. 1302, 1789, 1790.

1789. In case the workman only furnishes his work or his industry and the thing happens to be destroyed, the workman is only liable for his negligence. Civ. C. 1382, 1383.

1790. If, in the case mentioned in the foregoing article, the thing happens to be destroyed, but not through any fault of the workman, before the work has been received and without the employer having been given notice to examine it, the workman cannot claim any wages unless the destruction of the thing is due to the bad quality of the materials.

1791. If the work is for several pieces or by measure, it may be examined by the parties: it is supposed to be finished for all the parts paid for if the employer pays the workman in proportion to the work done.

1792. If the building constructed for a given price is destroyed, wholly or in part, owing to bad construction or even to some defect of the soil, the architect and the contractor are responsible for ten years. Civ. C. 1788, 1793, 2270.

1793. When an architect or a contractor has undertaken to put up a building for a contract price according to plans settled and agreed upon with the owner of the land, he cannot ask for any increase in the price, either on the ground that labour and materials have gone up in value or on the ground of changes or additions made in the plans, unless these changes and additions have been authorized in writing and the price agreed upon with the owner. Civ. C. 2103–4, 2110.
1794. An employer may of his own accord cancel a job which has been undertaken, even if the work has been already commenced, by compensating the contractor for all his expenses, his work and all he might have earned in such enterprise.

1795. A contract for the letting of work expires by the death of the workman, the architect or the contractor. Civ. C. 1237.

1796. But the owner is bound to pay to their successor the amount of the work done and of the materials prepared, in proportion to the price set down in the contract, but only if the work and the materials can be of use to him.

1797. A contractor is answerable for the acts of the persons whom he employs. Civ. C. 1384.

1798. Masons, carpenters and other workmen who have been employed in the construction of a building or other works undertaken upon a contract only have an action against the person for whom the work has been done to the extent of what such person owes the contractor at the time the action is commenced.

1799. Masons, carpenters, locksmiths and other workmen who make contracts by the job for their own account are subject to the rules contained in the present section: they become contractors for the kind of work they undertake.
§ 1. *General Provisions.*

1800. A lease of cattle is a contract by which one of the parties gives to the other a stock of cattle, to be kept, fed and cared for under conditions agreed upon between them.

1801. There are several kinds of leases of cattle:
Simple or ordinary leases of cattle;
Leases of cattle by halves;
Leases of cattle granted to a farmer or settler who pays in kind;
There is also a fourth kind of contract improperly called lease of cattle. Civ. C. 1804 et s., 1818 et s., 1821 et s., 1827 et s., 1831.

1802. A lease of cattle can be made for all kinds of animals which can be raised or can be made use of for agricultural or commercial purposes.

1803. If there is no special agreement these contracts are governed by the following principles. Civ. C. 1134, 1811.

§ 2. *Of Simple Leases of Cattle.*

1804. A simple lease of cattle is a contract by which one person gives to another cattle to be kept, fed and cared for on condition that the lessee shall have the benefit of one-half of the growth and shall also bear one-half of the loss. Civ. C. 1811.

1805. The estimate placed upon the cattle in the lease
does not confer ownership upon the lessee: its only effect is to fix the loss or the gain which may exist at the expiration of the lease. Civ. C. 1810, 1817, 1822.

1806. A lessee is bound to look to the preservation of the cattle as a prudent owner. Civ. C. 1810, 1817.

1807. He is only liable for accidents when they result from negligence on his part, without which the loss would not have occurred. Civ. C. 1148, 1382.

1808. In case of controversy the lessee is bound to prove the accident, and the lessor is bound to prove the negligence which he charges the lessee with. Civ. C. 1302, 1315.

1809. A lessee who is released owing to an accident is always bound to account for the skins of the animals.

1810. If all the cattle die, not through any negligence of the lessee, the loss falls upon the lessor. If only a part of them die, the loss is divided jointly according to the amount of the original appraisal and the amount of the appraisal at the expiration of the lease. Civ. C. 1302, 1827.

1811. It cannot be agreed:
That the lessee shall bear the total loss of the cattle, although it occurred by accident and not through his negligence;
Or that he shall bear a larger part of the losses than of the profits;
Or that the lessor, at the end of the lease, shall be entitled to something more than the cattle have produced.
Any agreement of this kind is void.
The lessee has the sole benefit of the milk, the manure and the labour of the cattle leased.
The wool and the growth of the cattle are divided. Civ. C. 547, 583, 1825.

1812. A lessee cannot dispose of any head of cattle, either of the stock or of the growth, without the consent of the owner, nor can the latter dispose of any without the lessee's consent.

1813. When a lease of cattle is made to a farmer of another person, a notice thereof must be given to the landlord from whom such farmer holds possession: otherwise the landlord can have the cattle attached and sold for what his farmer owes him. Civ. C. 2102.


1815. If no time has been fixed by agreement for the duration of the lease, it is supposed to have been made for three years. Civ. C. 1774.

1816. A lessor may sue to have it cancelled sooner if the lessee does not fulfil its conditions. Civ. C. 1184, 1769.

1817. At the end of the lease, or at the time it is cancelled, a new appraisal of the cattle is made.

The lessee can take heads of cattle of each kind to the extent of the first appraisal: the balance is divided.

If there are not enough heads of cattle to make up the amount of the first appraisal, the lessor takes what remains and the parties account to each other for the loss. Civ. C. 1805, 1810, 1826.

§ 3. Of Leases of Cattle by Halves.

1818. A lease of cattle by halves is a partnership by which each one of the contracting parties furnishes one-half
of the cattle, which remain in common for profits and losses. Civ. C. 1803, 1841, 1853.

1819. The lessee has the sole benefit of the milk, the manure and the labour of the cattle, as in a simple lease of cattle.

The lessor is only entitled to one-half of the wool and of the growth.

Any agreement to the contrary is void, unless the lessor is the owner of the farm of which the lessee is the farmer or settler paying in kind. Civ. C. 1823.

1820. All the other rules of a simple lease of cattle apply to leases of cattle by halves.

§ 4. Of Leases of Cattle granted by Landlords to their Farmers or Settlers paying in Kind.

Sub-sect. 1. Of Leases of Cattle given to the Farmer.

1821. This lease of cattle (also called iron lease of cattle) is one by which the landlord of a farm lets it on condition that, at the expiration of the lease, the farmer shall leave cattle of a value equal to the estimated price of the cattle which he has received.

1822. The appraisal of the cattle given to the farmer does not confer upon him the ownership thereof, but, nevertheless, places them at his risk. Civ. C. 1805, 1825.

1823. All the profits belong to the farmer during the continuance of the lease, unless there is a stipulation to the contrary. Civ. C. 1819.

1824. In leases of cattle made to a farmer the manure does not form part of the personal profits of the lessees but
belongs to the farm and must be exclusively applied to the cultivation thereof. Civ. C. 1778.

1825. The loss, even total and accidental, falls wholly upon the farmer, unless there is an agreement to the contrary. Civ. C. 1822.

1826. At the end of the lease the farmer cannot keep the cattle by paying the original estimated value; he must leave cattle of a value equal to what he has received.
In case of deficiency he must make it good; and the surplus only belongs to him. Civ. C. 1817, 1822.

Sub-sect. 2. Of Leases of Cattle given to Settlers paying in Kind.

1827. If all the cattle die, not through the negligence of the lessee, the loss falls upon the lessor. Civ. C. 1810, 1825.

1828. It can be stipulated that the lessee shall abandon to the lessor his share of the wool at a price below the ordinary value; that the lessor shall have a larger share of the profits; that he shall have one-half of the milk;
But it cannot be stipulated that the settler shall bear the whole loss. Civ. C. 1811.

1829. This lease of cattle expires with the lease of the farm. Civ. C. 1737, 1774.

1830. It is moreover subject to all the rules of a simple lease of cattle. Civ. C. 1804 et s.

§ 5. Of the Contract incorrectly called Lease of Cattle.

1831. When one or more cows are given to be kept and fed, the lessor retains the ownership thereof: he is only entitled to the benefit of the calves which are born of them.
TITLE NINTH.

OF CONTRACTS OF PARTNERSHIP.

(Passed 8th March, 1804; promulgated 18th of same month.)

CHAP. I.

GENERAL PROVISIONS.

1832. A partnership is a contract by which two or several persons agree to place a thing in common with a view of dividing the profits which may result therefrom. Civ. C. 1102 et s.

1833. Every partnership must have a licit cause and be made in the common interest of the parties.

Each partner must contribute thereto either money or other property, or his work. Civ. C. 1133, 1832, 1855.

1834. Every partnership must be made in writing if it is for an object of which the value exceeds one hundred and fifty francs.

No oral testimony shall be admitted against or beyond the contents of the articles of co-partnership, nor as to what might be alleged to have been said previously to the same or at the time thereof or since then, even in case of a sum or value less than one hundred and fifty francs. Civ. C. 1341, 1347, 1353, 1866.
OF CONTRACTS OF PARTNERSHIP.

CHAP. II.

OF DIFFERENT KINDS OF PARTNERSHIP.

1835. Partnerships are general or particular. Civ. C. 1836 et s., 1841 et s.

§ 1. Of General Partnerships.

1836. General partnerships are divided into two kinds, partnerships of all present property and general partnerships of profits.

1837. A partnership of all present property is one by which the parties place in common all the personal property and real estate which they own at the present time and the profits which they may obtain therefrom. They may also include therein all other kinds of profits, but the property which might come to them by inheritance, donation or legacy only forms part of the partnership as to the enjoyment thereof: and it is not allowed to make any stipulation for the purpose of including the ownership of such property, excepting between husband and wife and in accordance with what is provided in relation to them. Civ. C. 1130, 1497, 1526.

1838. A general partnership of profits includes everything the parties may earn by their work, for whatever cause it may be, during the continuance of the partnership: the personal property which each of the parties owns at the time of the contract is also included, but their individual real estate is only included as to the enjoyment. Civ. C. 527, 578, 1847, 1853.

1839. A simple agreement for a general partnership
made without any other explanation only carries with it a general partnership of profits.

1840. A general partnership can only exist between persons who are respectively capable of giving to or receiving from each other, and it is not prohibited to give an advantage to oneself to the detriment of other persons. Civ. C. 854, 906, 913 et s., 1098.

§ 2. Of Particular Partnerships.

1841. A particular partnership is one which only applies to certain specified things or to their use or to the revenue to be gathered therefrom. Civ. C. 1126.

1842. A contract by which several persons become partners, either for a specified enterprise or for carrying on a trade or profession, is also a particular partnership. Civ. C. 1873.

CHAP. III.

OF AGREEMENTS OF PARTNERS AMONG THEMSELVES AND WITH RESPECT TO THIRD PARTIES.

§ 1. Of Agreements of Partners among themselves.

1843. A partnership commences from the time of the contract if the same does not fix any other time.

1844. If no agreement has been made as to the duration of the partnership it is supposed to have been contracted for the whole life of the partners, subject to the restriction contained in Art. 1869; or if the business is such that its
duration is limited, for all the time this business is to last. Civ. C. 1865.

1845. Each partner owes the partnership everything he has promised to contribute to it.
When this contribution consists in a special thing and the partnership is dispossessed thereof, the partner is responsible to the partnership in the same way as a vendor is to his purchaser. Civ. C. 1619, 1625, 1833, 1846.

1846. A partner who was to contribute a sum of money to the partnership and who has not done so owes, by right and without demand, interest on this amount from the day it should have been paid.
The same rule applies to the sums which he has taken out of the funds of the partnership, from the day he has withdrawn them for his special benefit.
All of which is without prejudice to greater damages if there is occasion therefor. Civ. C. 1146, 1149, 1153.

1847. Partners who have agreed to contribute their work to the partnership are accountable to it for all the profits which they have made by the kind of work which forms the object of such partnership. Civ. C. 1853.

1848. When one of the partners is a creditor for his own special account for an amount due by a person who also owes the partnership an amount likewise due, the attribution of what he receives from such debtor must be made with respect to the claim of the partnership and his own in proportion to both claims, even if by his receipt he has directed that the whole payment should be attributed to his private claim: but if in his receipt he has expressed that the whole payment should be attributed to the partnership claim, this stipulation shall be carried out. Civ. C. 1253, 1849.
1849. When one of the partners has received his entire share of a joint claim and the debtor has since become insolvent, such partner is bound to return to the common fund what he has received, even if he has given a special receipt for his share.

1850. Each partner is liable to the partnership for the damages occasioned by his negligence, and he cannot offset such damages against the profits which his work has brought him in connection with other business. Civ. C. 1146, 1291, 1382.

1851. If the property of which the enjoyment only has been granted to the partnership consists in special and specified things which are not consumed by use, they remain at the risk of the partner who owns them.

If these things are of a nature to be consumed; if they would be damaged by being kept; if they were intended to be sold or if they have been put into the partnership upon a valuation given to them in an inventory, they are at the risk of the partnership.

If the thing has been appraised, the partner can only claim the amount of the valuation. Civ. C. 1302, 1845, 1867.

1852. A partner has an action against the partnership not only on account of the sums which he has disbursed for it, but also on account of the obligations which he has contracted in good faith for the business of the partnership and the risks inseparable from his management. Civ. C. 1202, 1214, 1845 et s., 1862, 1998.

1853. When the articles of partnership do not fix the share of each partner in the profits or losses, each one's share is in proportion to his contribution to the capital of the partnership.
As regards the one who only contributes his work, his share of the profits or losses is fixed as if his contribution had been the same as the one of the partner who has contributed the least. Civ. C. 1832, 1863.

1854. If the partners have agreed to leave it to one of them or to a third party to fix the shares, the settlement thereof cannot be attacked unless it has manifestly been made against equity.

No claim shall be admitted in this respect if more than three months have elapsed since the party who claims to have been wronged has had knowledge of the settlement or if he has commenced to act upon such settlement. Civ. C. 1592.

1855. An agreement by which one of the parties would receive all the profits is void.

A stipulation which exempts from all contribution to the losses the sums or articles contributed to the capital of the partnership by one or several partners shall likewise be void. Civ. C. 6, 1172.

1856. A partner who has charge of the management by virtue of a special clause of the articles of partnership can, notwithstanding the objections of the other partners, perform all acts relating to his management, provided there is no fraud on his part.

This power cannot be revoked without legitimate cause so long as the partnership lasts; but if it has only been given by an agreement subsequent to the articles of partnership, it can be revoked as a simple power of attorney. Civ. C. 1859, 1991, 2001, 2004 et s.

1857. When several partners have charge of the management, without their duties being specified or without it being expressed that one of them could act without the
other, each of them can perform separately all the acts connected with such management. Civ. C. 1995.

1858. If it has been stipulated that one of the managers cannot do anything without the other, one of them cannot act in the absence of the other without a new agreement, even in case of a positive impossibility for one of them to take part in the acts of management. Civ. C. 1852, 1862, 1989.

1859. In default of special stipulations as to the mode of management, the following rules are applied:—

1. The partners are supposed to have given reciprocally to each other the power to manage. What each one does is valid, even as regards the shares of his partners, without their consent having been obtained; subject to the right which belongs to the latter, or one of them, to object to the operation before it is closed;

2. Each partner may make use of the things belonging to the partnership, provided he uses them for the purpose for which they are intended by custom and does not use them against the interests of the partnership or in a way to prevent his partners from using them according to their rights;

3. Each partner has the right to bind his partners to incur with him the expenses which are necessary for the preservation of the property of the partnership;

4. One of the partners cannot make any changes in the real estate forming part of the partnership, even if he claims that they are to the advantage of such partnership, unless the other partners consent thereto. Civ. C. 1165, 1375, 1381, 1862, 1988, 2102.

1860. A partner who is not a manager cannot convey or hypothecate the property, even personal, forming part of the partnership.

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1861. Each partner may, without the consent of his partners, take into partnership with himself a third party in connection with his share of the partnership; he cannot take him into the partnership without such consent, even if he has the management thereof.

§ 2. *Of Agreements of Partners with respect to third parties.*

1862. In partnerships which are not commercial, the partners are not jointly liable for the partnership debts and one partner cannot bind the others if the latter have not conferred upon him the power so to do. Civ. C. 1859, 1873.

1863. Partners are liable to creditors with whom they have dealt, each one for an equal sum and share, even if the share of one of them in the partnership is smaller, unless the contract has specially restricted the responsibility of one of the partners to the extent of his share.

1864. A stipulation to the effect that an obligation is assumed for account of the partnership only binds the contracting partner and not the others, unless the latter have given him power so to do or unless the thing has turned out to the benefit of the partnership. Civ. C. 1859, 1863.
OF the Different Ways in which a Partnership Expires.

1865. A partnership expires:
1. By the expiration of the time for which it has been formed;
2. By the destruction of the thing or the fulfilment of the operation;
3. By the natural death of one of the partners;
4. By the civil death (z), the interdiction or the insolvency of one of them;
5. By the wish expressed by one or several not to remain partners. Civ. C. 1183, 1184, 1226, 1231, 1844, 1867, 1868, 1871.

1866. An extension of a partnership made for a fixed period can only be proved by a writing made in the same form as the contract of co-partnership. Civ. C. 1341, 1347, 1353, 1834.

1867. When one of the partners has promised to place in common the ownership of a thing the loss of which has occurred before it has been so placed, this produces the dissolution of the partnership with respect to all the partners.

The loss of a thing also dissolves the partnership in all cases when the use thereof alone has been placed in common and the ownership has remained in the hands of the partner.

But the partnership is not dissolved by the loss of a thing of which the ownership has already been brought into the partnership. Civ. C. 1138, 1845, 1851.

(z) Civil death was abolished by the law of 31st May, 1854.
1868. If it has been stipulated that in case of the death of one of the partners the partnership should continue with his heir, or only among the surviving partners, these provisions shall be followed: in the second case the heir of the decedent is only entitled to a distribution according to the condition of the partnership at the time of the death and only shares in subsequent rights in so far as they may necessarily result from what has taken place before the death of the partner from whom he inherits. Civ. C. 1865.

1869. The dissolution of a partnership by the wish of one of the parties only applies to partnerships of which the duration is unlimited and takes place by a renunciation, notice of which is given to all the partners, provided such renunciation is made in good faith and not for cross purposes. Civ. C. 1844.

1870. A renunciation is not in good faith when the partner renounces for the purpose of appropriating to himself alone the profits which the partners hope to earn jointly.

It is made for cross purposes when the things are no longer entire and it is important for the partnership that its dissolution should be deferred.

1871. A dissolution of partnership for a limited time cannot be asked for by one of the partners before the time agreed upon, unless there are good causes therefor, such as when another partner violates his agreement or a permanent infirmity unfits him for the business of the partnership, or other such similar causes of which the soundness and importance are left to the discretion of the Judges. Civ. C. 1184, 1865.

1872. The rules relating to divisions of successions, the manner of making the same, and the obligations resulting
therefrom among co-heirs, apply to divisions among partners. Civ. C. 792, 815 et s., 826.

Provision relating to Commercial Partnerships.

1873. The provisions of the present Title only apply to commercial partnerships as regards the points which are not in any way in opposition to the laws and customs of trade.
Tenth.

OF LOANS.

(Passed March 9th, 1804; promulgated 19th of same month.)

1874. There are two kinds of loans:
Loans of things which can be used without being destroyed;
And loans of things which are consumed by the use which is made of them.
The first kind is called loans for use or commodatum; the second is called loans for consumption or simply loans. Civ. C. 1875, 1892.

Chap. I.

OF LOANS FOR USE, OR COMMODATUM.

§ 1. Of the Nature of Loans for Use.

1875. A loan for use, or commodatum is a contract by which one of the parties delivers to the other a thing to be used on condition on the part of the borrower to return it after having made use of it.

1876. This loan is essentially gratuitous.

1877. The lender remains the owner of the thing loaned. Civ. C. 1880, 1885, 1893.
1878. Everything which is in trade \((a)\) and which is not consumed by use may form the object of such an agreement. Civ. C. 1128, 1894, 1938.

1879. Agreements which are entered into by way of commodatum extend to the heirs of the person who makes the loan and to the heirs of the one who borrows.

But if the loan has only been made on account of the borrower and to him personally, then his heirs cannot continue to have the enjoyment of the thing loaned. Civ. C. 1122.

§ 2. Of the Obligations of the Borrower.

1880. The borrower is bound to take care of and preserve the thing loaned in the same way as a prudent owner. He can only use it for the use for which it is fitted by its nature or to which it shall apply by contract, all of which shall be under penalty of damages if there is occasion therefor. Civ. C. 578, 1137, 1728.

1881. If the borrower uses the thing for another purpose or for a longer time than he should have done, he shall be liable for the loss which may have occurred, even accidentally. Civ. C. 1245, 1302.

1882. If the thing loaned is destroyed by an accident from which the borrower might have saved it by making use of his own thing, or if, being only able to save one of the two, he has given the preference to his own thing, he is liable for the loss of the other. Civ. Civ. 1148.

1883. If the thing has been appraised when it was

\((a)\) The word "trade" must be taken in a broad sense, and applies to property belonging to private individuals in contradistinction to public property.
loaned, the loss which happens, even by accident, shall be sustained by the borrower if there is no agreement to the contrary. Civ. C. 1148, 1851.

1884. If the thing is damaged solely by the effect of the use for which it has been borrowed and without any laches on the part of the borrower, he is not responsible for the damage. Civ. C. 1245.

1885. The borrower cannot retain the thing as compensation for what the lender owes him. Civ. C. 1293.

1886. If, for the purpose of making use of the thing, the borrower has incurred certain expenses, he cannot claim repayment thereof. Civ. C. 1890.

1887. If several persons have borrowed the same thing jointly they are jointly and severally liable to the lender. Civ. C. 1200, 1202, 1222, 1225.

§ 3. Of the Obligations of a Lender for Use.

1888. A lender cannot take back the thing loaned before the time agreed upon, or in the absence of an agreement, until it has been applied to the use for which it was borrowed. Civ. C. 1185 et s.

1889. Nevertheless, if, during that time, or before the borrower has ceased to need the thing, the lender happens to be in pressing and unforeseen want of his thing the Judge may, according to circumstances, compel the borrower to return it to him.

1890. If, during the continuance of the loan, the borrower has been compelled to incur for the preservation of the thing some extraordinary and necessary expenses, so
urgent that he was not able to notify the lender, the latter shall be bound to repay the same to him. Civ. C. 1886.

1891. When the thing loaned has such defects that it may cause injury to the person who makes use of it, the lender is responsible if he knew of such defects and did not warn the borrower. Civ. C. 1382, 1641 et s.

Chap. II.

Of Loans for Consumption or Simple Loans.

§ 1. Of the Nature of Loans for Consumption.

1892. A loan for consumption is a contract by which one of the parties delivers to the other a certain quantity of things which are consumed by use, on condition that the latter shall return to him as many of the same kind and quality.

1893. In consequence of such a loan the borrower becomes the owner of the thing loaned; and the loss falls upon him in whatever manner it may have occurred.

1894. Things which, although of the same kind, differ from each other individually, such as animals, cannot be given by way of loan for consumption: the loan is then for use.

1895. The claim resulting from a loan of money is always for the numerical sum mentioned in the contract.

If there has been an increase or decrease in the value of the monies before the time of the payment, the debtor must
return the numerical sum loaned and shall only return this sum in the currency current at the time of the payment. Civ. C. 1896.

1896. The rule set down in the foregoing article does not take effect if the loan has been made in bullion. Civ. C. 1243.

1897. If bullion or provisions have been loaned the debtor must always return the same quantity and quality, whatever may be the increase or decrease in their value, and he has nothing else to return. Civ. C. 1243, 1246.

§ 2. Of the Obligations of the Lender.

1898. In a loan for consumption the lender is held liable in the manner set forth in article 1891 in case of a loan for use.

1899. The lender cannot claim the return of the things loaned before the time agreed upon. Civ. C. 1888.

1900. If no time has been specified for the restitution, the Judge may grant the borrower a certain time according to circumstances. Civ. C. 1244, 1888.

1901. If it has only been agreed that the borrower should pay when he could, or when he had means therefor, the Judge shall fix a time for payment, according to circumstances. Civ. C. 1900.

§ 3. Of the Obligations of the Borrower.

1902. The borrower is bound to return the things loaned in same quantity and quality and at the time agreed upon. Civ. C. 1185, 1244, 1892.
1903. If it is not possible for him to do so, he is bound to pay the value thereof, taking into account the time when and the place where the thing was to be returned, according to the agreement.

If the time and place have not been fixed, the payment shall be made according to the value at the time and at the place where the loan has been made. Civ. C. 1247.

1904. If the borrower does not return the things borrowed, or their value, at the time agreed upon, he owes interest thereon from the day of the beginning of the action. Civ. C. 1153, 1907.

Chap. III.

Of Loans with Interest.

1905. It is allowed to agree that interest shall be paid on simple loans, either of money or of provisions or of other personal things. Civ. C. 2277.

1906. The borrower who has paid interest which was not agreed upon can neither claim it back nor deduct it from the capital. Civ. C. 1235.

1907. Interest is legal or conventional. Legal interest is fixed by law (b). Conventional interest can exceed legal interest whenever the law does not prohibit it.


1908. A receipt for a capital, given without reserve

(b) The legal rate of interest in France in civil matters is 5 per cent. (Law of 3rd of Sept. 1807.)
as to the interest, supposes the payment thereof and operates as a release therefor. Civ. C. 1319, 1320, 1350.

1909. Interest can be stipulated upon a capital which the lender undertakes not to claim back.

In such case the loan takes the name of settlement of annuity. Civ. C. 530, 1912, 1919, 1968 et s.

1910. Such an annuity may be taken out in two ways: perpetually, or for a lifetime. Civ. C. 1968.

1911. A perpetual annuity is essentially redeemable.

The parties can only agree that the redemption shall not take place before a time which cannot exceed ten years, or without having notified the creditor at a time in advance which shall be fixed between them. Civ. C. 530, 1187.

1912. The debtor of a perpetual annuity may be compelled to redeem it:

1. If he ceases to fulfil his obligations during two years;
2. If he fails to furnish to the lender the security promised by the contract. Civ. C. 1178, 1184, 1188.

1913. The capital of a perpetual annuity likewise becomes due in case of bankruptcy or insolvency of the debtor. Civ. C. 1188.

1914. The rules relating to life annuities are set forth under the Title Of Contingent Contracts. Civ. C. 1964.
TITLE ELEVENTH.

OF DEPOSITS AND OF SEQUESTRATION.

(Passed 14th March, 1804; promulgated 24th of same month.)

CHAP. I.

OF DEPOSITS IN GENERAL AND OF THEIR VARIOUS KINDS.

1915. A deposit is in general an act by which a person receives the thing of another person, with the obligation to keep it and to return it in kind.

1916. There were two kinds of deposits: deposits properly so-called, and sequestrations. Civ. C. 1917, 1955.

CHAP. II.

OF DEPOSITS PROPERLY SO CALLED.

§ 1. Of the Nature and Essence of Contracts of Deposit.

1917. A deposit, properly so called, is a contract which is essentially gratuitous. Civ. C. 1105, 1936, 1957.

1918. It can only apply to personal property. Civ. C. 1959.

1919. It is only complete by the actual or fictitious delivery of the thing deposited.
OF DEPOSITS AND SEQUESTRATION.

Fictitious delivery is sufficient when the depositary is already in possession in some other capacity of the thing agreed to be left with him as a deposit. Civ. C. 1606.


§ 2. Of Voluntary Deposits.

1921. Voluntary deposits take place by the reciprocal consent of the person making them and of the person who receives them. Civ. C. 1108, 1109.

1922. Voluntary deposits can only be lawfully made by the owner of the thing deposited or with his express or tacit consent. Civ. C. 1938.

1923. Voluntary deposits must be proved by a writing. Oral testimony is not received for an amount exceeding one hundred and fifty francs. Civ. C. 1341, 1347, 1924, 1950.

1924. When a deposit, being for more than one hundred and fifty francs, is not established by a writing, the person who is attacked as depositary is believed on his declaration, either as to the fact itself of the deposit, or the thing which formed the object thereof, or as to the fact of its restitution. Civ. C. 1357, 1366.

1925. A voluntary deposit can only take place between persons who are capable of contracting.

Nevertheless, if a person capable of contracting accepts a deposit made by a person who was incapable, the former is liable for all the obligations of a real depositary, and can be sued by the guardian or administrator of the person who has made the deposit. Civ. C. 1124.
1926. If the deposit has been made by a person having the necessary capacity to another who has not such capacity, the person who has made the deposit is only entitled to maintain an action for the restitution of the thing deposited so long as it exists in the hands of the depositary, or to maintain an action for restitution to the extent of the benefit derived by the latter. Civ. C. 1312.

§ 3. Of the Obligations of a Depositary.

1927. A depositary must bestow the same care in watching over the thing which is deposited as he bestows upon the things which belong to him. Civ. C. 1137.

1928. The provisions of the foregoing article shall be applied more strictly: 1. If the depositary has offered himself to receive the deposit; 2. If he has stipulated a salary for looking after the deposit; 3. If the deposit has been made solely in the interest of the depositary; 4. If it has been expressly agreed that the depositary should be answerable for all kinds of wrongs.

1929. A depositary is not in any case answerable for the accidents resulting from superior force, unless notice has been given to him to return the thing deposited. Civ. C. 1139.

1930. He cannot make use of the thing deposited without the express or presumed permission of the depositor. Civ. C. 895, 1881.

1931. He shall not attempt to discover what are the things which have been deposited with him, if they have been entrusted to him in a closed box or under a sealed cover.
1932. The depositary must return the identical thing which he has received.
For instance, deposits of sums of money must be returned in the same coins as they have been made, whether in case of increase or of decrease in the value of the same. Civ. C. 1293, 1915, 1933.

1933. A depositary is only bound to return the thing deposited in the condition in which it is at the time of restitution. Damages which do not result from any act of his shall be borne by the depositor. Civ. C. 1245, 1302.

1934. A depositary from whom a thing has been taken away by superior force and who has received the value thereof or something in its place, must return what he has received in exchange for it. Civ. C. 1303.

1935. The heir of the depositary who has sold in good faith the thing which he did not know to be a deposit is only bound to return the price which he has received or to assign his action against the purchaser if he has not received payment thereof. Civ. C. 1380, 1599.

1936. If the thing deposited has produced an income which has been collected by the depositary, he is obliged to return such income. He owes no interest upon the money deposited excepting from the day upon which he has been given notice to return it. Civ. C. 548, 1139.

1937. A depositary must only return the thing deposited to the person who has entrusted it to him or to the person in whose name the deposit has been made or to the one who has been appointed to receive it. Civ. C. 1924, 1939, 1940.

1938. He cannot compel the person who has made the
deposit to prove that he was the owner of the thing deposited.

Nevertheless, if he discovers that the thing has been stolen and who is the real owner, he must denounce to the latter the deposit which has been made with him, and demand of him to claim it within a sufficient and fixed time. If the person to whom this notice is given fails to claim the deposit, the depositary is lawfully released by the delivery which he makes thereof to the person from whom he has received it. Civ. C. 1922, 2279.

1939. In case of natural or civil death (b) of the person who has made the deposit, the thing deposited can only be returned to his heir.

If he has several heirs it must be returned to each of them according to their share and portion.

If the thing deposited is indivisible the heirs must agree among themselves to receive it. Civ. C. 1220.

1940. If the person who has made the deposit has changed status, for instance, if a wife, independent at the time the deposit was made, has since married, and is under the power of her husband; if a person of full age who has made a deposit is interdicted; in all such cases and others of the same kind the deposit can only be returned to the person who has the administration of the rights and property of the depositor. Civ. C. 217, 450, 509, 513, 1421, 1428, 1531, 1549, 1925.

1941. If the deposit has been made by a guardian, a husband, or an administrator, in one of such capacities, it can only be returned to the person whom such guardian, husband or administrator represented, if their management or administration is ended. Civ. C. 1937.

(b) Civil death was abolished by the law of 31st May, 1854.

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1942. If the contract of deposit specifies the place where the restitution shall be made, the depositary is obliged to take the thing deposited to such place. If the transportation has caused expense the same shall be paid by the depositor. Civ. C. 1247.

1943. If the contract does not specify the place of restitution such restitution shall be made at the place of deposit itself. Civ. C. 1247.

1944. The deposit must be returned to the depositor as soon as he claims it, even if the contract has fixed a special time for the restitution, unless there is an attachment or an injunction in the hands of the depositary stopping the restitution or the removal of the thing deposited.

1945. A depositary who has acted in bad faith is precluded from the right of assignment. Civ. C. 1270.

1946. All the obligations of the depositary cease if he happens to discover and can prove that he is himself the owner of the thing deposited. Civ. C. 1300 et s.

§ 4. Of the Obligations of persons through whom the deposit has been made.

1947. A person who has made a deposit is obliged to repay to the depositary the expenses which the latter has incurred for the preservation of the thing deposited and to make good to him all the losses which he may have sustained owing to the deposit. Civ. C. 1375, 1381, 1890.

1948. A depositary may retain the deposit until full payment of what is due to him on account of such deposit.
§ 5. Of Obligatory Deposits.

1949. An obligatory deposit is one which was compulsory owing to some accident, such as a fire, complete destruction, pillage, shipwreck, or other unforeseen events.

1950. Proof by witnesses is allowed in case of an obligatory deposit, even if the amount involved exceeds one hundred and fifty francs. Civ. C. 1348, 1924, 1949.

1951. Obligatory deposits are moreover governed by all the rules previously mentioned.

1952. Innkeepers or hotel-keepers are responsible as depositaries for the effects brought by the traveller who is stopping with them; a deposit of such kinds of effects shall be considered as an obligatory deposit. Civ. C. 1782 et s., 1953 et s.

1953. They are responsible for the theft of or injury to the effects of the traveller, whether the theft has been committed or the injury caused by the servants or employees of the hotel, or by travellers passing through.

(Added by law of 18th April, 1889.) This responsibility is limited to one thousand francs for monies and securities or shares to bearer, of whatever nature, which have not been actually deposited in the hands of the innkeepers or hotel-keepers. Civ. C. 1384.

1954. They are not responsible for thefts committed with force and arms or by any other superior force. Civ. C. 1148.
Chap. III.

Of Sequestration.

§ 1. Of Various Kinds of Sequestration.

1955. Sequestration is either conventional or judicial. Civ. C. 1956 et s.

§ 2. Of Conventional Sequestration.

1956. Conventional sequestration is a deposit made by one or several persons of a thing in dispute in the hands of a third party who binds himself to return it after the controversy is over to the person who shall obtain it by judgment.


1958. When it is gratuitous it is governed by the rules of a deposit properly so called, subject to the differences hereafter mentioned.

1959. Sequestration may apply not only to personal effects but even to real estate. Civ. C. 1918.

1960. A depositary of a thing sequestrated cannot be released before the controversy is ended, excepting with the consent of all the interested parties or for a cause which a judgment has declared to be legitimate.

§ 3. Of Sequestration or Judicial Deposit.

1961. Sequestration may be ordered by a Court:

1. In case of personal property of a debtor which has been attached;
2. In case the ownership or possession of real estate or personal property is in dispute between two or more persons;


1962. The appointment of a judicial custodian produces reciprocal obligations between the attaching creditor and the custodian. The custodian must bestow upon the thing attached, for its preservation, the same care as a prudent owner.

He must produce it to be sold upon a release from the attaching creditor, or must produce it to the party against whom the executions have been issued, in case the attachment has been vacated.

The obligation of the attaching creditor consists in the payment to the custodian of the salary fixed by law. Civ. C. 596 et s.

1963. A judicial sequestrator shall be either the person as to whom the interested parties have agreed between themselves, or a person appointed by the Court of its own accord.

In both cases the person to whom the thing is entrusted is subject to all the obligations resulting from a conventional sequestration. Civ. C. 1956.
TITLE TWELFTH.

OF CONTINGENT CONTRACTS.

(Passed 10th March, 1804; promulgated 20th of same month.)

1964. A contingent contract is a reciprocal agreement of which the effects as to the advantages and losses thereof depend upon an uncertain event, either with respect to all the parties or one or several of them.

Such are:
- Insurance contracts;
- Loans on bottomry;
- Gaming and betting;
- Annuities.

The two first are governed by maritime law. Civ. C. 1104, 1133, 1965 et s., 1968 et s.

CHAP. I.

GAMING AND BETTING.


1966. Games which tend to promote skill in the use of arms, races on foot or on horseback, tennis and other games of the same kind which develop skill and promote physical exercise, are excepted from the foregoing provision.
Nevertheless, the Tribunal can dismiss the case when the sum appears excessive.

1967. In no case can the loser claim back what he has voluntarily paid, unless there has been fraud, deceit or swindling on the part of the winner. Civ. C. 6, 1116, 1133, 1965.

CHAP. II.

OF CONTRACTS OF ANNUITIES.

§ 1. Of the Conditions required for the Validity of the Contract.

1968. An annuity may be granted for a consideration in money, or for an article of personal property of some value, or for real estate. Civ. C. 1909, 1910, 1976, 1977 et s., 2277.

1969. It can also be granted, without consideration, by donation inter vivos, or by will. It must then be made in the form provided by law. Civ. C. 931 et s., 967 et s.

1970. In the case of the foregoing article a life annuity can be reduced if it exceeds the portion which the person has the right to dispose of. It is void if it has been made in favour of a person who is incapable of receiving it. Civ. C. 908, 913 et s., 917, 920, 1098.

1971. An annuity may be made either in favour of the person who furnishes the value thereof, or in favour of a third party who only has a right of enjoyment of the same.

1973. It can be in favour of a third party, although the price thereof has been furnished by another person.
In the last case, it is not subject to the rules provided for donations, although it has the character of a gift, except in the cases of reduction and nullity mentioned in article 1970. Civ. C. 1121.

1974. All contracts for a life annuity made in favour of a person who was dead at the time of the making of such contracts are ineffectual. Civ. C. 1104, 1964.

1975. The same rule applies in the case of a contract by which an annuity has been created in favour of a person suffering from an illness from which he has died within twenty days from the date of the contract.

1976. A life annuity can be made at the rate the contracting parties choose to fix. Civ. C. 1568, 1582, 1583, 1674, 1907.

§ 2. Of the Effects of the Contract between the Contracting Parties.

1977. The person in whose favour a life annuity has been created for a consideration can apply for the cancellation of the contract if the grantor does not furnish the security stipulated for its fulfilment. Civ. C. 1184.

1978. The non-payment alone of the annuity does not give the right to the person in whose favour it has been created to apply for the repayment of the capital or to re-enter upon the property conveyed by him; he only has the right to attach the property of his debtor and to have it.
sold, and to obtain by judgment or consent that a sufficient sum should be invested out of the proceeds of the same for the payment of the interest. Civ. C. 1654, 1656, 1912, 1977, 1983, 2093 et s., 2123, 2204 et s.

1979. The grantor cannot exempt himself from the payment of the annuity by offering to return the principal, and by renouncing to claim back the interest paid; he is bound to pay the interest during the whole life of the person or of the persons in whose favour the annuity has been created, whatever may be the duration of the life of such persons and however burdensome the payment of the annuity may have become. Civ. C. 1912, 2263.

1980. The annuity is only due to the owner in proportion to the number of days he has lived.

Nevertheless, if it has been stipulated that it is to be paid in advance, the payment which has been made belongs to the owner from the day it should have been made. Civ. C. 584, 586, 1571.

1981. It may not be stipulated that an annuity cannot be attached, unless it has been created without consideration. Civ. C. 1969 et s.

1982. An annuity does not cease upon the civil death of the owner; the payment shall be continued during his natural life (c).

1983. The owner of an annuity can only claim payment thereof by proving his existence or the existence of the person in whose favour it has been created. Civ. C. 1315.

(c) Civil death having been abolished by the law of 31st May, 1854, this article has ceased to apply.
**Title Thirteenth.**

**Of Powers of Attorney.**

(Passed 10th March, 1804; promulgated 20th of same month.)

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**Chap. I.**

**Of the Nature and Forms of Powers of Attorney.**

1984. A commission or warrant of attorney is an instrument by which one person gives to another the power to do something for the principal and in his name.


1985. A power of attorney can be given either by a public instrument or by a writing under private signature, even by letter. It can also be given verbally; but the proof thereof by witnesses is only admitted in accordance with the Title Of Contracts or Conventional Obligations in General.


1986. A power of attorney is without compensation, unless there is a stipulation to the contrary. Civ. C. 1992.

1987. It is either special and for one matter or for certain matters only, or general and for all the business of the principal.
1988. A power of attorney made out in general terms only applies to acts of administration.

In case of a conveyance or mortgage or other transaction relating to property, the power must be expressly given. Civ. C. 1319, 1912, 1985, 1987, 1989, 1998.


1990. Women and emancipated minors can be selected as attorneys-in-fact; but the principal has no cause of action against the attorney-in-fact who is a minor, except in accordance with the general rules relating to the obligations of minors, nor against a married woman who has accepted a power without the consent of her husband, except in accordance with the rules established under the Title Of Marriage Contracts and of the respective Rights of Husband and Wife. Civ. C. 481 et s., 1124 et s., 1305 et s., 1312, 1420, 1426.

Chap. II.

Of the Obligations of Attorneys-in-fact.

1991. An attorney-in-fact is bound to carry out the power, so long as he has charge of acting under it, and he is responsible for the damages which might result from his failure to act.

He is also bound to finish a matter commenced at the death of the principal if delay would be prejudicial. Civ. C. 1372 et s., 1984, 1985, 1992.
1992. An attorney-in-fact is answerable not only in case of fraud, but also for negligence in his management. Nevertheless, the responsibility in case of negligence is enforced less rigorously against a person who has acted without compensation under a power than against one receiving a salary. Civ. C. 1374, 1382, 1991.

1993. Every attorney-in-fact is bound to render an account of his management, and to answer to his principal for everything he has received by virtue of his power, even if what he has received was not due to the principal. Civ. C. 1992.

1994. An attorney-in-fact is answerable for the person he has substituted in his management; 1. When he has not received the power to substitute; 2. When this power has been conferred without naming the person, and when the person selected by him was notoriously unfit or insolvent.

In all cases a principal can proceed directly against the person whom the attorney-in-fact has substituted. Civ. C. 1384.

1995. When there are several attorneys-in-fact or mandatories appointed by the same instrument, there is no solidarity between them unless it is expressed. Civ. C. 1200, 1202, 1222, 1382.

1996. An attorney-in-fact owes interest on the sums which he has applied to his own use from the time he has made use of them; and on those remaining in his hands from the time of the demand made upon him. Civ. C. 1139, 2277.

1997. An attorney-in-fact who has given to the person with whom he is dealing in such capacity sufficient know-
Of the Obligations of Principals.

1998. A principal is bound to carry out the engagements contracted by the attorney-in-fact in accordance with the power which he has given him.

He is only bound for what may have been done beyond it in case of his express or tacit ratification. Civ. C. 1338, 1984, 1989, 1994, 1999.

1999. A principal must repay to the attorney-in-fact the advances and disbursements made by him in acting under the power, and he must pay him his salary when it has been promised.

If the attorney-in-fact cannot be charged with any negligence, the principal cannot refuse to make these reimbursements and payments, even if the matter has not been successful, and he cannot have the amount of his expenses or advances reduced on the ground that they might have been smaller. Civ. C. 1131, 1133, 1372, 1375, 1589, 1984, 1997, 1998, 2002, 2003.

2000. A principal must also make good the losses which the attorney-in-fact has sustained in consequence of his management if he cannot be charged with imprudence. Civ. C. 1375, 1992.
2001. Interest on advances made by the attorney-in-fact is due to him by the principal from the time these advances are proved to have been made. Civ. C. 1570, 1996, 2277.

2002. When an attorney-in-fact has been appointed by several persons for a common business, each one of them is jointly and severally liable towards him for all the consequences resulting from the power. Civ. C. 1200 et s., 1999.

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Chap. IV.

Of the Different Ways in which a Power of Attorney expires.

2003. A power of attorney expires by the revocation of the attorney-in-fact;
By his renunciation of the power;
By the natural or civil death (d), the interdiction or the insolvency, either of the principal or of the attorney-in-fact. Civ. C. 501, 1991.

2004. A principal can revoke his power of attorney whenever he chooses, and compel the attorney-in-fact, if necessary, to return to him, either the writing under private signature which contains it, or the original of the power in public form, if such original has been delivered, or the certified copy if the original has been kept. Civ. C. 2006.

2005. A revocation of which notice has been given to

(d) Civil death was abolished by the law of 31st May, 1854.
the attorney-in-fact alone cannot be set up against third parties who have had dealings with him without knowing of this revocation, but the principal has his remedy against the attorney-in-fact. Civ. C. 1165.

2006. The appointment of a new attorney-in-fact for the same business is equivalent to a revocation of the previous one from the day upon which the latter has been given notice. Civ. C. 2003 et s.

2007. An attorney-in-fact may renounce the power by giving notice of his renunciation to the principal. Nevertheless, if this renunciation is prejudicial to the principal he must be compensated by the attorney-in-fact unless it is impossible for the latter to continue to act under the power without sustaining himself a considerable loss. Civ. C. 1372 et s., 1382, 1991.

2008. If an attorney-in-fact has no knowledge of the death of the principal or of one of the other causes which has made the power expire, what he may have done without such knowledge is valid. Civ. C. 1991, 2009, 2244, 2247.

2009. In the above cases the engagements contracted by the attorney-in-fact shall be carried out with respect to third parties who are in good faith. Civ. C. 2268.

2010. In case of the death of the attorney-in-fact, his heirs must give notice to the principal and attend in the meantime to what is required in the interest of the latter, as circumstances may demand. Civ. C. 1373.
TITLE FOURTEENTH.

OF SECURITY.

(Passed 14th February, 1804; promulgated 24th of same month.)

CHAP. I.

OF THE NATURE AND EXTENT OF SECURITY.

2011. A person who answers as surety for an obligation undertakes with respect to the creditor to satisfy this obligation if the debtor does not satisfy it himself. Civ. C. 1102, 1105, 1325, 2015, 2025 et s., 2037, 2040 et s.

2012. Security can only be given for an obligation which is valid.

One may, nevertheless, answer as surety for an obligation, even if it can be annulled owing to an objection which is purely personal to the debtor, for instance, in case of his minority. Civ. C. 1129, 1130, 1133, 1134, 2036.

2013. The security cannot exceed what is due by the debtor, nor be given under more rigorous conditions.

It can be given for a part only of the debt, and under less rigorous conditions.

The security which exceeds the debt or which is given under more rigorous conditions is not void; it shall only be cut down to the amount of the principal obligation. Civ. C. 2015 et s.

2014. A person may become surety without an order
from the individual for whom he binds himself and even without his knowledge.

One may also become surety not only for the principal debtor, but also for the person who has given security for him. Civ. C. 1120 et s.

2015. Security cannot be presumed; it must be expressly given, and it cannot be extended beyond the limits within which it has been given. Civ. C. 1202, 1353, 1834.

2016. The security given in an indefinite manner for a principal obligation extends to all the accessories of the debt, even to the expenses connected with the first demand and to those subsequent to the notice given to the surety. Civ. C. 1740, 2025.

2017. The engagement taken by sureties extends to their heirs, with the exception of execution against the person (e), if the engagement was such that the surety was bound by it. Civ. C. 724, 2040.

2018. A debtor who is obliged to give security must furnish a surety who has the capacity to bind himself, who has sufficient property to answer for the effects of the obligation, and of whom the domicil is within the District of the Royal Court (Court of Appeals) where the security is to be given. Civ. C. 2040.

2019. The solvency of a surety is determined solely by the real estate which he owns, except in commercial matters or when the debt is small.

Real estate which is in dispute, or as to which a seizure would be too difficult on account of its remoteness, is not taken into account. Civ. C. 2040, 2185.

(e) Execution against the person was abolished in civil and commercial matters by the law of 22nd July, 1867.

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2020. When a surety voluntarily accepted by a creditor or by the Court afterwards becomes insolvent, a new surety shall be furnished.

An exception is made to this rule only when the security has been given by virtue of an agreement by which the creditor has insisted upon having a certain person as surety.

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**Chap. II.**

**Of the Effects of Security.**

§ 1. *Of the Effects of Security between Creditor and Surety.*

2021. A surety is only bound towards the creditor to pay him if the debtor fails to do so, and the latter's property must previously be seized, unless the surety has renounced the benefit of seizure, or unless he has bound himself jointly and severally with the debtor; in which case the effects of his undertaking are regulated by the principles which have been established for debts jointly and severally due. Civ. C. 2042.

2022. A creditor is only obliged to seize the property of his principal debtor when the surety demands it upon the first proceedings instituted against him.

2023. A surety who demands the seizure must indicate to the creditor the property of the principal debtor, and advance enough money to have the seizure take place.

He is not obliged to indicate the property of the principal debtor situated outside of the District of the Royal Court (*Court of Appeals*) of the place where the payment is to
be effected, nor the property in dispute, nor the property mortgaged for the debt and which is no longer in the possession of the debtor. Civ. C. 2019, 2024, 2170.

2024. Whenever a surety has pointed out the property, as authorized by the foregoing article, and has furnished sufficient funds for the seizure, the creditor is liable towards the surety, to the extent of the property pointed out, for the insolvency of the principal debtor which has occurred owing to his failure to institute proceedings.

2025. When several persons have become sureties for the same debtor and the same debt, each one of them is liable for the whole debt. Civ. C. 1200 et s., 2011, 2016, 2033.

2026. Nevertheless, each one of them may demand that the creditor should previously divide his action and reduce it to the part and portion due by each surety, unless they have renounced the right of division.

If, at the time one of the sureties has had the division ordered, some of them were insolvent, such surety is bound in proportion to these insolvencies; but no claim can be made against him for the insolvencies which have occurred since the division. Civ. C. 2027.

2027. If a creditor has divided his action of his own accord and voluntarily, he must stand by the division, even if there were insolvent sureties previously to the time when he consented thereto. Civ. C. 1210.

§ 2. Of the Effects of Security between Debtor and Surety.

2028. A surety who has paid has a claim against the principal debtor, whether the security has been given with or without the knowledge of the debtor.
This claim exists as well for the principal as for the interest and costs: nevertheless, the surety only has a claim for the expenses he has incurred since he has given notice to the principal debtor of the proceedings brought against himself. He also has a claim for damages and interest according to circumstances. Civ. C. 1236, 1251.

2029. A surety who has paid the debt is subrogated to all the rights which the creditor had against the debtor. Civ. C. 1251 et s.

2030. When there were several principal debtors jointly and severally liable for the same debt, the surety who has answered for all of them has against each one of them a claim for the repayment of everything he has paid. Civ. C. 1251, 2023, 2029, 2037.

2031. A surety who pays the first time has no claim against the principal debtor who has paid the second time, when the latter had received no notice of the payment made by the former; but the surety has a claim against the creditor for repayment.

When a surety has paid without having been sued and without giving notice to the principal debtor, he has no claim against such debtor in case the latter should have had the means to defeat the claim at the time of payment; but the surety has a claim against the creditor for repayment. Civ. C. 1166, 1377 et s., 2028 et s.

2032. A surety, even before he is paid, can proceed against the debtor to be indemnified:

1. When such surety has been sued in court for payment;
2. When the debtor has become a bankrupt, or is insolvent;
3. When the debtor has undertaken to give him a release at the end of a certain time;
4. When the debt has become due by the expiration of the time for which it had been contracted;

5. At the end of ten years, when no time has been specified for the expiration of the principal obligation, unless the same is of such a nature as not to expire before a fixed time, such as a guardianship. Civ. C. 1154, 1185, 1188.

§ 3. Of the Effects of Security between Sureties.

2033. When several persons have become sureties for the same debtor upon the same debt, the surety who has paid the debt has a claim against all the other sureties for the share and portion of each of them.

But this claim only exists when the surety has paid in one of the cases mentioned in the foregoing article. Civ. C. 1251, 1375.

CHAP. III.

OF THE EXPIRATION OF SECURITY.

2034. The obligation resulting from the giving of security expires by the same causes as other obligations. Civ. C. 1234 et s.

2035. The merger which takes place in the person of the principal debtor and of the surety when the one becomes the heir of the other, does not put an end to the claim of the creditor against the person who has given security for the surety. Civ. C. 1300 et s.

2036. A surety may set up against the creditor all the
exceptions which appertain to the principal debtor and are inherent to the debt.

But he cannot set up the exceptions which are purely personal to the debtor. Civ. C. 1236, 1261 et s., 1281, 1287, 1294, 1301, 1351, 1365, 2012, 2219, 2262, 2277.

2037. A surety is released when subrogation to the rights, mortgages and privileges of the creditor can no longer take place in favour of the surety owing to an act of such creditor. Civ. C. 1250, 1252, 1382.

2038. The voluntary acceptance, by a creditor, of real estate or of a thing whatsoever it may be in payment of the principal debt, releases the surety, even if the creditor should afterwards be ejected therefrom. Civ. C. 1271.

2039. A simple extension granted by a creditor to the principal debtor does not release the surety, who may in such case proceed against the debtor to compel him to pay. Civ. C. 2032.

CHAP. IV.

OF LEGAL AND JUDICIAL SECURITY.

2040. Whenever a person is bound by law or by judgment to furnish security, the security offered must fulfil the conditions specified in articles 2018 and 2019.

In case of judicial security the surety must also be amenable to execution against the person. Civ. C. 16, 120, 123, 124, 601, 626, 711, 807, 1518, 1653, 2185.
2041. A person who cannot find a surety can give instead a pledge as sufficient security. Civ. C. 2071.


2043. A person who has merely given security for a judicial surety cannot ask that the principal debtor and the surety be seized.
**Title Fifteenth.**

**Of Compromises.**

(Passed 20th March, 1804; promulgated 30th of same month.)

2044. A compromise is a contract by which the parties put an end to a controversy which has arisen or prevent a controversy about to arise.

This contract must be drawn up in writing. Civ. C. 888, 1134, 1341, 1357, 2048, 2049, 2052.

2045. In order to compromise, one must have the right to dispose of the things included in the compromise. A guardian can only compromise for a minor or an interdicted person in accordance with article 467 of the Title Of Minority, of Guardianship, and of Emancipation, and he can only compromise with a minor who has become of age with respect to the guardianship accounts in accordance with article 472 of the same Title.

Districts and public establishments can only compromise with the express consent of the King. Civ. C. 6, 335, 1123 et s., 1128, 1131, 1133, 2046, 2052.

2046. A person can compromise as to the civil interests resulting from a misdemeanour.

A compromise does not stop the action brought by the Public Prosecutor.

2047. A person may add to a compromise a stipulation
for a penal clause against the party who fails to carry it out. Civ. C. 1226 et s.

2048. Compromises are confined to their object: the renunciation therein contained of all rights, actions and claims only extends to what relates to the controversy which has given rise thereto. Civ. C. 1163.

2049. Compromises only settle the controversies therein included, whether the parties have expressed their intention in special or general terms, or whether such intention appears as a necessary consequence of what is expressed. Civ. C. 1156, 1163.

2050. If a person who has made a compromise as to a right which belonged to him individually acquires thereafter a similar right through another person he is not bound by the compromise previously made with respect to the right which he has since acquired.

2051. A compromise made by one of the interested parties does not bind the others and cannot be set up against them. Civ. C. 1165, 2037.

2052. Compromises have, between the parties, the effect of a final judgment.
They cannot be attacked on account of an error of law, nor on account of injury. Civ. C. 888, 1110, 1118, 1131, 1350, 1351, 1356, 2044, 2048.

2053. Nevertheless, a compromise can be set aside when there is an error as to the person or as to the matter in dispute.
It can also be set aside in all cases in which there is fraud or duress. Civ. C. 1099, 1131, 1341.

2054. An action to set aside a compromise also lies
when it has taken place in consequence of an instrument which was void, unless the parties have expressly taken into account the cause of avoidance. Civ. C. 1110, 1338.

2055. A compromise based on papers which have since been declared to be forgeries is wholly void. Civ. C. 1131.

2056. A compromise as to a suit which has come to an end owing to a final judgment having been rendered, of which the parties or one of them had no knowledge, is void.

If the judgment which was unknown to the parties was subject to appeal, the compromise shall be valid. Civ. C. 1351.

2057. When parties have made a general compromise applying to all matters standing between them, the instruments which were then unknown to them or which have been subsequently discovered do not constitute a cause for rescission, unless they have been withheld through the act of one of the parties.

But the compromise shall be void if it only referred to a thing to which the newly-discovered documents show that one of the parties had no right.

TITLE SIXTEENTH.

OF EXECUTION AGAINST THE PERSON IN CIVIL MATTERS (f).

(Passed 13th February, 1804; promulgated 23rd of same month.)

2059. Execution against the person takes place in civil matters in case of stellionate.

Stellionate occurs:

When a person sells or mortgages real estate which he knows does not belong to him;

When a person represents, as being unencumbered, property which is mortgaged or declares that the mortgages are of less amount than those encumbering the property.

2060. Execution against the person takes place also:

1. In case of a necessary deposit;

2. In case of restitution for abandonment, ordered by the Court, of an estate of which the owner has been deprived by violence; for the return of revenues collected during illegal possession, and for the payment of damages awarded to the owner;

3. For restitution of funds placed in the hands of public officers appointed therefor;

4. For the production of things deposited with receivers, commissioners, or other custodians;

5. Against judicial sureties and against sureties of persons

(f) Execution against the person in civil and commercial matters and against foreigners was abolished by the law of the 22nd July, 1867.
subject to execution against the person, when they have submitted to such execution;

6. Against all public officers, for the production of the originals kept by them, when it is ordered;

7. Against notaries, solicitors, and sheriffs, for the restitution of documents confided to them and of funds collected by them for clients in their professional capacity.

2061. Those who have been ordered by a final judgment in an action for trover to vacate an estate and who refuse to obey, may be compelled so to do by execution against the person, ordered by a second judgment fifteen days after service of the first judgment upon the person or at his domicil.

If the property or estate is at a distance of more than five myriameters from the domicil of the person against whom the judgment has been rendered, one day shall be added to the period of fifteen days for each five myriameters.

2062. Execution against the person cannot be ordered against farmers for the payment of rents of rural property, unless it has been expressly stipulated in the lease.

Nevertheless, execution against the person can be issued against farmers and settlers paying in kind if they fail at the end of the lease to produce the cattle leased, the seeds, and the agricultural implements which have been entrusted to them, unless they prove that they are not accountable for the loss of these things.

2063. Outside of the cases mentioned in the foregoing articles or which might come under a new special law, Judges are not allowed to order execution against the person; and notaries and clerks of Courts shall not be allowed to receive instruments in which the same has been stipulated, and French people shall not be allowed to execute such instruments, even if they are executed in a foreign country, and otherwise everything so done shall be void, together with costs, damages, and interest.
2064. Even in the cases above set forth no execution against the person shall be ordered against minors.

2065. Such execution cannot be ordered for a sum below three hundred francs.

2066. It shall not be ordered against persons over seventy years of age, nor against married or unmarried women, except in case of stellionate.

It is sufficient that the seventieth year should have commenced to be entitled to the favour granted to septuagenarians.

Execution against the person for stellionate shall only be issued against married women during marriage when there is a separation of property or when they have property of which they have reserved to themselves the free administration and on account of engagements relating to such property.

Women married with community of property who have bound themselves jointly and severally with their husbands cannot be considered guilty of stellionate on account of such agreements.

2067. Execution against the person, even in cases in which it is authorized by law, can only be issued by virtue of a judgment.

2068. An appeal does not stay an execution against the person ordered by a judgment, upon which execution can be issued in the meantime by giving security.

2069. Issuing execution against the person does not prevent or stop the proceedings or execution against the property.

2070. No changes are made in the special laws allowing execution against the person in commercial matters, nor in the laws relating to misdemeanours, nor in those relating to the administration of public funds.
Title Seventeenth.

Of Pledges.

(Passed 16th March, 1804; promulgated 26th of same month.)

2071. A pledge is an agreement by which a debtor hands over to his creditor a thing to secure a debt. Civ. C. 1101, 1286, 1582, 1584, 1915 et s., 2041, 2078.

2072. A pledge of personal property is called a pawn; a pledge of real estate is called antichresis. Civ. C. 2073, 2085.

Chap. I.

Of Pawns.

2073. A pawn confers upon the creditor the right to cause himself to be paid out of the thing pawned by way of privilege and in preference to other creditors. Civ. C. 2079, 2095, 2102—2.

2074. This privilege only exists if there is an instrument, in public form or under private signature, duly registered, containing a statement of the sum due, and also the kind and nature of the things pawned or a list annexed of their quality, weight, and measure.
However, the instrument need only be reduced to writing and registered in case of a matter exceeding the value of one hundred and fifty francs. Civ. C. 1317, 1325, 1341.

2075. The privilege mentioned in the foregoing article only applies to incorporeal personal property, such as claims to personal property, if a public instrument or one under private signature has been made, likewise registered, and which has been served upon the debtor of the claim pledged. Civ. C. 1317, 1325, 1690, 2074.

2076. In all cases the privilege with respect to the pawn only continues if the pawn has been placed and remains in the possession of the creditor or of a third party accepted by the parties. Civ. C. 1286, 1606 et s., 1690, 2075.

2077. A pawn may be given by a third party for the debtor. Civ. C. 1119 et s., 2014, 2090.

2078. A creditor cannot, in case of non-payment, dispose of the pawn; but he must have the Courts order that he shall retain the pawn as payment and to the extent of its value, according to an appraisal made by experts, or that it shall be sold at auction.

All covenants allowing a creditor to appropriate the pawn, or to dispose of it without complying with the formalities above set forth, shall be void. Civ. C. 6, 1133, 2087.

2079. Until the debtor has been deprived of the property, if this takes place, he remains the owner of the pawn, which is only a deposit in the hands of the creditor to secure the latter's privilege. Civ. C. 2073, 2088.

2080. A creditor is answerable for the loss of or injury
to the pawn resulting from his negligence, according to the rules set forth in the Title Of Contracts or Conventional Obligations in General.

On the other hand, the debtor must take into account the necessary and useful expenses which the creditor has incurred for the preservation of the pawn. Civ. C. 1137, 1302 et s., 2079.

2081. In case of a claim given as a pledge and bearing interest, the creditor shall deduct such interest from the interest which may be due.

If the debt which the claim has been pledged to secure does not bear interest itself, the interest shall be deducted from the capital of the claim. Civ. C. 1254.

2082. A debtor cannot demand that the person holding the pawn should return it, unless the latter makes an improper use of it, until the principal, interest and costs which the pawn has been given to secure have been entirely paid off.

If another debt should exist on the part of the same debtor towards the same creditor, which had originated subsequently to the giving of the pledge and which matures before the payment of the first debt, the creditor is not bound to dispossess himself of the pawn before he has been paid in full for both debts, even if no stipulation has been made to apply the pawn to the payment of the second debt. Civ. C. 1948.

2083. A pawn cannot be divided, notwithstanding the divisibility of the debt, between the heirs of the debtor or those of the creditor.

The heir of the debtor who has paid his portion of the debt cannot ask for the return of his share of the pawn, so long as the debt has not been fully paid off.

On the other hand, the heir of the creditor who has
received his portion of the debt cannot return the pawn to
the detriment of those of his co-heirs who have not been

2084. The foregoing provisions do not apply to com-mer-
cial matters, nor to pawn establishments duly authorized,
and as to which the laws and regulations relating to them
shall be followed.

Chap. II.

Of Antichresis.

2085. Antichresis can only be created by virtue of a
writing.

By such an agreement a creditor only acquires the right
to collect the revenues of the real estate on condition of
applying them annually to the payment of the interest, if
any is due to him, and thereafter to the payment of the
capital of his claim. Civ. C. 2089.

2086. A creditor is bound to pay the taxes and annual
charges upon the real estate which he holds owing to an
antichresis, unless something different has been stipulated.

He must also keep the property in order and undertake
the useful and necessary repairs, for which he can deduct
from the revenues all the expenses relating to all these
various things, and otherwise he shall be liable to damages.
Civ. C. 2080.

2087. A debtor cannot claim the enjoyment of real
estate which he has hypothecated by way of antichresis,
until the debt has been fully paid off.

C.N.
But a creditor who wishes to exempt himself from the obligations mentioned in the foregoing article can always compel the debtor to take back the enjoyment of his property, unless he has renounced this right. Civ. C. 2082.

2088. A creditor does not become the owner of the real estate by the mere failure to pay at the time agreed upon; any clause to the contrary is void: in such case he can resort to legal measures to have his debtor dispossessed. Civ. C. 2078.

2089. When the parties have stipulated that the revenues shall make up for the interest, either wholly or to a certain extent, this covenant shall be carried out in the same way as any other which is not prohibited by law. Civ. C. 1289 et s., 1907, 1976.

2090. The provisions of articles 2077 and 2083 apply to antichresis as well as to pawns.

2091. Nothing enacted in the present chapter shall affect the rights which third parties might have to the real estate hypothecated by way of antichresis.

If a creditor holding by virtue of such a title has a privilege or mortgage upon the estate, lawfully existing and preserved, he can set them up as any other creditor, in their order. Civ. C. 2085, 2087, 2166.
TITLE EIGHTEENTH.

OF PRIVILEGES AND MORTGAGES.

(Passed 19th March, 1804; promulgated 29th of same month.)

CHAP. I.

GENERAL PROVISIONS.

2092. Whoever has personally bound himself is obliged to carry out his engagements out of all his personal property and real estate, present or future. Civ. C. 2204.

2093. The property of the debtor is the common pledge of his creditors, and the proceeds thereof are distributed among them pro rata, unless legitimate causes of preference exist among the creditors. Civ. C. 2092, 2218.

2094. The legitimate causes of preference are privileges and mortgages. Civ. C. 2095 et s., 2114 et s.

CHAP. II.

OF PRIVILEGES.

2095. A privilege is the right which the nature of the claim gives to a creditor to be preferred to other creditors, even to mortgagees. Civ. C. 2103, 2106, 2109, 2166.
OF PRIVILEGES AND MORTGAGES.

2096. Preferences are established among privileged creditors by the various kinds of privileges. Civ. C. 2101 et s., 2105.

2097. Privileged creditors of the same rank are paid pro rata.

2098. Privileges in favour of the rights of the Royal (Public) Treasury, and the order in which they come, are regulated by the laws applying thereto.

The Royal (Public) Treasury cannot, however, obtain privileges to the detriment of rights previously acquired by third parties.

2099. Privileges can apply to personal property or to real estate.

§ 1. Of Privileges relating to Personal Property.

2100. Privileges are either general or special to certain articles of personal property.

Sub-sect. 1. Of General Privileges relating to Personal Property.

2101. Privileged claims on all personal property generally are those hereinafter set forth, and can be asserted in the following order.

1. Court expenses;
2. Funeral expenses;
3. (Amended by law of 30th November, 1892.) All expenses relating to the last illness, pro rata among those to whom they are due, whatever may have been its termination;
4. The wages of servants for the year elapsed and what is due for the current year;
5. Supplies of provisions furnished to the debtor or his family, viz.:—during the last six months by retail dealers, such as bakers, butchers and others; and during the last year by boarding-house keepers and wholesale dealers. Civ. C. 810, 1250, 2098, 2104, 2271, 2272.

Sub-sect. 2. Of Privileges relating to certain articles of Personal Property.

2102. The privileged claims on certain articles of personal property are:

1. The rents and hire of real estate on the proceeds of the crop of the year, and of everything contained in the house or the farm let, and of everything which is used for the cultivation of the farm; viz.: For everything that has fallen due and for everything that may become due if the leases are made in the public form, or, if made under private signature, they have a positive date, and in both those cases the other creditors have the right to sublet the house or farm during the remainder of the lease and to apply such rents to pay themselves, provided, however, they pay the landlord everything that may still be due to him.

And in the absence of leases in the public form or under private signature without having a positive date, then during one year from the expiration of the current year;

The same privilege exists for tenants' repairs, and for everything relating to the carrying out of the lease;

Nevertheless, the sums due for seeds, or for the expenses of the year's crop, are paid to the owner out of the proceeds of the crop, and those due for implements out of the proceeds of such implements, in both cases by way of preference.

The owner can attach the furniture contained in his house or farm when it has been removed without his consent, and he retains his privilege on it, provided he has made his claim, viz.: within forty days in the case of movables
470 OF PRIVILEGES AND MORTGAGES.

contained in the farm, and within fifteen days for furniture contained in a house;

2. Claims against the pledge which the creditor holds;

3. Expenses incurred to keep a thing in repair;

4. The price of personal property not paid for, if it is still in the possession of the debtor, whether he has bought on credit or for cash;

If the sale has been made for cash, the vendor can even claim such things, so long as they are in the possession of the purchaser, and prevent a re-sale if the claim has been made within eight days from the delivery and the things are in the same condition in which they were delivered;

The vendor’s privilege, however, can only be enforced after the one belonging to the owner of the house or farm, unless it is proved that the owner knew that the furniture and other articles contained in the house or farm did not belong to the tenant;

No change is made in the laws and customs of trade relating to claims;

5. Board furnished by an innkeeper, on the effects of the traveller which have been brought into his inn;

6. Expenses and incidental expenses for carriage on the thing carried;

7. Claims resulting from misappropriation or breach of trust committed by public officers in fulfilling their duties, on the amount given by them as security, and on the interest which may be due thereon. Civ. C. 529, 535, 570, 1184, 1188, 1317, 1322, 1690, 1741, 1754, 2073, 2118.

§ 2. Of Privileges relating to real Estate.

2103. Preferred creditors as to real estate are:

1. Vendors, as to real estate sold, for the payment of the price thereof;

If there are several successive sales, for which the price
is wholly or partly due, the first vendor is preferred to the second, the second to the third, and so on;

2. Those who have supplied the money for the purchase of real estate, provided it is expressly stated in the instrument by which the loan is made that the sum was intended for that purpose, and in the vendor's receipt that the payment was made out of the money borrowed;

3. Co-heirs, as to the real estate of the succession, to secure the divisions made among them, the balance due on the shares and the reversion;

4. Architects, contractors, masons, and other workmen employed to put up, reconstruct, or repair buildings, canals, or other works whatsoever, provided, nevertheless, an official report has been previously drawn up by an expert appointed of its own accord by the Tribunal of First Instance of the District in which the buildings are situated, showing the condition of the premises with respect to the work which the owner declares he has the intention of undertaking, and provided the works have been accepted within six months at the most from their completion by an expert also appointed by the Court, of its own accord;

But the amount of the privilege cannot exceed the amount allowed by the second official report, and it is confined to the increase in value at the time of the conveyance of the real estate, and resulting from the work which has been undertaken;

5. Those who have loaned the money to pay or reimburse the workmen have the same privilege, provided the use made of the money is officially shown by the instrument establishing the loan and by the receipt of the workmen, as has been above stated for those who have loaned money for the purchase of real estate. Civ. C. 578, 617, 883, 1250, 1659, 1673, 1689, 1707, 1792, 1798, 2011, 2095, 2108, 2110, 2134, 2175, 2270.
§ 3. Of Privileges relating to Personal Property and Real Estate.

2104. The privileges which extend over personal property and real estate are those set forth in article 2101.

2105. When, in the absence of personal property, the privileges referred to in the foregoing article are brought forward to be satisfied out of the proceeds of real estate at the same time as preferred creditors of such real estate, the payments are made in the following order:
1. Court expenses and others mentioned in article 2101;
2. The claims mentioned in article 2103.

§ 4. How Privileges are maintained.

2106. Privileges relating to real estate do not produce any effect among creditors unless they have been made public by being inscribed on the registers of the Registrar of Mortgages in the manner provided by law, and from the time they have been so inscribed, with the following exceptions only. Civ. C. 2146.

2107. Are exempt from the necessity of being inscribed the claims mentioned in article 2101.

2108. A vendor who has a privilege retains it by the transcription of the deed conveying the property to the purchaser, and which shows that the whole or part of the price is due to him; for that purpose the transcription of the deed made by the purchaser is equivalent to an inscription by the vendor or the lender who has furnished the money paid, and who is subrogated to the rights of the vendor in the same deed: nevertheless, the Registrar of Mortgages is bound, under penalty of damages towards
third parties, to enter, of his own accord on the register, the claims resulting from the deed transferring the property, as well in favour of the vendor as in favour of the lenders, who may also have the deed of sale transcribed, if it has not already been transcribed, for the purpose of securing the inscription of what is due on the price. Civ. C. 1654 et s., 2196 et s.

2109. A co-heir or co-parcener retains his privilege over the property forming each share, or over the property publicly sold, for the balance of his share or his reversions, or for the proceeds of the auction sale, by the inscription made by him within sixty days from the date of the deed of division, or of the public sale: during that time no mortgage can be granted on the property, subject to the claim for a balance, or sold at auction to the detriment of the creditor entitled to such balance or to the proceeds. Civ. C. 466, 888, 889, 1338, 2103, 2108, 2113, 2205.

2110. Architects, contractors, masons, and other workmen employed to put up, reconstruct, or repair buildings, canals, or other works, and those who, for the purpose of paying and reimbursing them, have loaned money of which the use is established, retain their privilege from the date of the inscription of the first official report by the double inscription made, first, of the official report showing the condition of the premises; second, of the official report of acceptance. Civ. C. 2103—4, 2106, 2113, 2146.

2111. Creditors and legatees who ask for the separation of the estate of the decedent in accordance with article 878 of the Title Of Successions retain against the creditors of the heirs or the representatives of the decedent their privilege on the real estate of the succession by the inscription made respecting each estate, within six months from the opening of the succession.
Before the expiration of that period no valid mortgage can be granted on such estates by the heirs or representatives to the detriment of these creditors or legatees. Civ. C. 878, 880 et s., 2146.

2112. The assignees of these various privileged claims enjoy the same rights as the assignors in their place and stead. Civ. C. 1250, 1690, 2096.

2113. All privileged claims which are subject to the formality of inscription, and as to which the requirements above set forth to maintain the privilege have not been complied with, do not cease, nevertheless, to be mortgages; but the mortgage, with respect to third parties, only dates from the time of such inscriptions which shall be made, as is hereafter explained. Civ. C. 2134, 2154.

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**Chap. III.**

*Of Mortgages.*

2114. A mortgage is a real right to real estate subject thereto, for the satisfaction of an obligation.

By its nature it is indivisible, and remains as a whole on all the real estate subject thereto, and on each piece of such property and every portion thereof.

It follows the property into whatever hands it passes. Civ. C. 1149, 1188, 1244, 1912, 2093, 2094, 2119, 2122, 2161, 2166, 2180.

2115. A mortgage only exists in the cases and in the manner authorized by law.
2116. A mortgage is either legal or judicial or conventional.

2117. Legal mortgages are those resulting from the law. Judicial mortgages are those resulting from judgments or judicial acts. Conventional mortgages are those resulting from agreements and from the special provisions of deeds and contracts. Civ. C. 2121, 2123, 2124.

2118. The following property only can be mortgaged: 1. Real estate in trade (g) and its accessories considered as real estate; 2. The usufruct of the same property and its accessories during the time of its duration. Civ. C. 525 et s., 578, 2125.

2119. Personal property cannot be subject to a mortgage. Civ. C. 522, 528, 529.

2120. No changes are made by the present Code in the provisions of maritime laws relating to ships and sea vessels.

§ 1. Of Legal Mortgages.

2121. The rights and claims to which a legal mortgage is attached are:
Those of married women, on the property of their husbands;
Those of minors and interdicted persons, on the property of their guardians;
Those of the State, of Districts, and of public establish-

(g) This means all real estate of private individuals generally which is susceptible of being disposed of, in contra-distinction to property of the State.
ments, on the property of collectors and administrators who are accountable. Civ. C. 11, 171, 194, 389, 469, 475, 509, 894, 1017, 1083, 1092, 1093, 1251, 1428, 1476, 1549, 1551, 1565, 1570, 2098, 2127, 2135, 2180.

2122. A creditor who has a legal mortgage can enforce his right upon all the real estate belonging to his debtor, and upon the real estate which may come to him in the future, subject to the restrictions hereinafter contained. Civ. C. 883, 1422, 1423, 1446, 1471, 1845 et s., 1852, 2121, 2135, 2161.

§ 2. Of Judicial Mortgages.

2123. A judicial mortgage results from judgments either contested or by default, final or provisional, in favour of those who have obtained them.

It also results from acknowledgments or verifications made in the judgment of signatures affixed to an instrument under private signature containing an obligation.

It can be enforced upon the real estate of the debtor and such as he may afterwards acquire, with the restrictions hereafter mentioned.

Decisions of arbitrators only carry with them a mortgage when the judicial order for execution is affixed to them.

Neither can a mortgage result from judgments rendered in foreign countries, unless they have been declared to be executory by a French Tribunal, without prejudice to the provisions to the contrary which may exist in political laws or in treaties. Civ. C. 307, 1350, 1351, 2114, 2124, 2128, 2148, 2160, 2168.

§ 3. Of Conventional Mortgages.

2124. Conventional mortgages can only be granted by those who have the capacity of conveying the real estate which they subject to them. Civ. C. 217, 457, 513, 1124.
2125. Those who only have over the real estate a right depending upon a condition, or revocable in certain cases, or which may be cancelled, can merely grant a mortgage subject to the same condition or to the same cancellation. Civ. C. 1181, 1183, 1304, 1674.

2126. The property of minors, of interdicted persons, and of absentees, so long as the possession thereof has been temporarily conferred, can only be mortgaged for the causes and in the manner established by law or by virtue of judgments. Civ. C. 217, 457.

2127. A conventional mortgage can only be granted by deed executed in the public form in the presence of two notaries or of one notary and two witnesses. Civ. C. 873, 1317 et s., 1985, 1988, 2129.

2128. Contracts entered into in a foreign country do not establish a mortgage on property in France, unless there are provisions contrary to this principle in the political laws or in the treaties.

2129. Conventional mortgages are only valid if the public instrument giving existence to the claim or a public instrument executed subsequently states in specific terms the nature and the location of each piece of real estate actually belonging to the debtor and on which he grants the mortgage for the claim. All the property which he presently owns can be made specifically subject to the mortgage.

Future property cannot be mortgaged. Civ. C. 2130, 2418.

2130. Nevertheless, if the present and unencumbered property of the debtor is insufficient to secure the claim, he may, by mentioning this insufficiency, consent that all the
property which he may afterwards acquire shall become subject thereto as the acquisitions take place. Civ. C. 2129, 2148, 2161.

2131. Likewise, if the present piece or pieces of property subject to the mortgage has or have been destroyed or been damaged, so that it or they have become insufficient to secure the creditor, he may either proceed at once to obtain payment or ask for an additional mortgage. Civ. C. 1118, 1912.

2132. A conventional mortgage is only valid if the amount for which it is granted is settled and fixed by deed; if the claim resulting from the obligation is conditional as to its existence or unsettled as to its amount, the creditor can only ask for the inscription which is hereafter referred to, to the extent of the estimated value expressly declared by him, and which the debtor shall have the right to have reduced if there is occasion therefor. Civ. C. 1108, 1130, 1173, 1179, 1875, 2114, 2115, 2125, 2148, 2163.

2133. A mortgage granted extends to all the improvements made in the property mortgaged. Civ. C. 517 et s., 555, 2175.

§ 4. Of the Rank of Mortgages with respect to each other.

2134. A mortgage, whether legal, judicial, or conventional, only ranks among creditors from the day of the inscription which the creditor has caused to be made on the registers of the Registrar in the form and manner directed by law, with the exceptions mentioned in the following article. Civ. C. 1251, 2113, 2114, 2122, 2146, 2166.

2135. A mortgage exists independently of any inscription:
1. In favour of minors or interdicted persons, on the real estate belonging to their guardian, on account of his administration, from the day of the acceptance of the guardianship;

2. In favour of married women, for their dowries and marriage settlements, on the real estate of their husband, from the day of the marriage.

The wife only has a mortgage for the amounts forming part of her dowry and those coming from successions falling to her, or from donations made to her during marriage, from the time of the opening of the successions or from the day when the donations have taken effect.

She only has a mortgage for the payment of debts which she has contracted with her husband or for the reinvestment of her individual property which has been conveyed, from the day she has bound herself or from the day of the sale.

In no case shall the provisions of the present article affect the rights of third parties acquired previously to the publication of the present Title. Civ. C. 469, 470, 475, 942, 1250, 1328, 1431, 1570, 2121, 2123, 2134, 2139, 2144, 2148, 2153, 2154, 2157, 2195.

2136. Nevertheless, husbands and guardians are bound to make public the mortgages which encumber their property, and for that purpose to cause, of their own accord, the inscriptions on the real estate belonging to them or which may thereafter belong to them to be made without delay, at the offices established for that purpose.

Husbands and guardians who, having failed to cause the inscriptions ordered in the present article to be made, should consent or allow privileges or mortgages to take effect on their real estate without expressly declaring that the said property was subject to the legal mortgage of a married woman or of minors, shall be considered guilty of stellionate,
and as such amenable to execution against the person (h). Civ. C. 2159.

2137. Assistant guardians are bound, under their personal responsibility and under penalty of damages, to see that the inscriptions on the property of the guardian on account of his administration are taken without delay, and even to cause the said inscriptions to be made. Civ. C. 2142, 2194 et s.

2138. If the husbands, guardians, and assistant-guardians have failed to cause the inscriptions ordered by the foregoing articles to be made, the King's Attorney (Republic's Attorney) of the Tribunal of First Instance of the domicil of the husbands and guardians, or of the place where the property is located, shall have them made. Civ. C. 2193, 2194.

2139. Relatives, either of the husband or of the wife, and those of minors, or in default of relatives, their friends, may cause the said inscriptions to be made: the wife and the minors can also have them made. Civ. C. 2194 et s.

2140. When parties of full age have covenanted in a marriage contract that an inscription shall only be taken on one or more pieces of real estate of the husband, the real estate which is not mentioned as being subject to the inscription shall remain free and unencumbered by mortgage for the wife's dowry and for her claims and marriage settlement. It is not allowed to covenant that no inscription shall be taken. Civ. C. 2144.

2141. The same rule shall apply to the real estate of the

(h) Execution against the person was abolished in commercial and civil matters and against foreigners by the law of 22nd of July, 1867.
PRIVILEGES AND MORTGAGES.

guardian when the relatives have decided, in a family council, that an inscription should only be taken on certain pieces of real estate. Civ. C. 407.

2142. In the cases mentioned in the two foregoing articles, the husband, the guardian and the assistant-guardian are only bound to cause the inscription to be made on the real estate mentioned.

2143. When a mortgage has not been limited by the instrument appointing the guardian, he may, in case a general mortgage on his real estate should manifestly exceed what would be sufficient security for his administration, apply to have this mortgage reduced to the real estate offering sufficient security to fully protect the minor.

The application shall be made against the assistant-guardian, and the family must have previously expressed its opinion. Civ. C. 420, 2162.

2144. The husband may, likewise, with the consent of his wife, and after having taken the advice of her four nearest relatives, called together in a family meeting, apply to have the general mortgage covering all his real estate by reason of the dowry of the wife, of her claims and marriage settlements, reduced to the real estate sufficient to secure the entire rights of the wife. Civ. C. 1549, 1554, 2145, 2157, 2162.

2145. Judgments at the suits of husbands and guardians shall only be rendered after hearing the King's Attorney (Republic's Attorney) and he defending.

If the Tribunal orders that the mortgage be reduced to certain pieces of real estate, the inscriptions made on all the others shall be cancelled. Civ. C. 2144, 2156.
Chap. IV.

Of the Mode of Inscription of Privileges and Mortgages.

2146. Inscriptions are made at the office of the Registrar of Mortgages in whose district the property subject to the privileges or mortgages is situated. They do not produce any effect if they are not taken within the period during which the acts performed previously to the beginning of the bankruptcy are declared to be void.

The same rule applies among creditors of a succession, if the inscription has only been taken out by one of them since the opening of the succession and if the succession has only been accepted under benefit of inventory. Civ. C. 797, 2106.

2147. All creditors whose inscriptions have been made on the same day come in pro rata for a mortgage of the same date, without distinction between an inscription made in the forenoon and one made in the afternoon, even when this difference has been noted by the Registrar. Civ. C. 2200.

2148. To effect an inscription, a creditor presents, either himself or through a third party, to the Registrar of Mortgages, the original instrument in public form or an official certified copy of the judgment or instrument conferring the privilege or mortgage.

He annexes thereto two statements on stamped paper, of which one can be written out on the certified copy of the instrument; they contain:

1. The name, first name, domicile of the creditor; his occupation, if he has one, and an election of domicile made by him in some place within the district of the office;
2. The name, first name, domicile of the debtor, his
occupation, if he is known to have one, or some individual and special designation, so that the Registrar of Mortgages may always recognize and distinguish the person subject to the mortgage;

3. The date and nature of the instrument;

4. The amount of the capital of the claims set forth in the instrument or estimated by the person effecting the inscription, in case of annuities or prestations, or of contingent, conditional or uncertain rights, when an estimate thereof is ordered, as also the amount of the accessories to be added to the capital, and the time of payment;

5. A statement of the nature and location of the property over which he intends to retain his privilege or mortgage.

This last provision is not necessary in case of legal or judicial mortgages: in the absence of an agreement, a single inscription for such mortgages extends over all the real estate situated in the district of the office. Civ. C. 111, 214, 1120, 1275, 1690, 1692, 2114, 2129, 2149, 2152, 2153, 2157.

2149. Inscriptions to be made on the property of a deceased person can be made with the simple designation of the decedent, as is stated in No. 2 of the foregoing Article. Civ. C. 2148.

2150. The Registrar enters on his register the contents of the statement and hands to the appearer the instrument or certified copy of the same, and also one of the statements, at the foot of which he certifies that he has made the inscription. Civ. C. 2197 et s., 2202.

2151. (Amended by law of 17th June, 1893.) A privileged creditor whose instrument has been inscribed or transcribed, or the mortgagee inscribed for a capital bearing interest or arrears, has the right to be placed, for three years
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only, on the same rank as for the capital, without prejudice to the special inscriptions bearing mortgage from their date, to be effected for the interest and arrears not covered by the first transcription or inscription.

2152. A person who has caused an inscription to be made, and his representatives or assigns, may, by a public instrument, change on the register of mortgages the domicil elected by him, provided he selects and appoints a new one in the same district. Civ. C. 2148 et s.

2153. The rights of the State, of Districts and of public establishments to purely legal mortgages on the property of persons accountable to them; those of minors or interdicted persons, on guardians; those of married women, on their husbands, shall be inscribed on the production of two statements, containing only:

1. The name, first name, occupation and real domicil of the creditor, and the domicil elected for or by him in the district;

2. The name, first name, occupation, domicil, or the exact designation of the debtor;

3. The nature of the rights to be preserved and the amount of the value of special things, without being bound to fix the amount of those which are conditional, contingent or uncertain. Civ. C. 2121, 2135, 2148.

2154. Inscriptions keep the mortgage and the privilege alive for ten years from the day of their date; their effect ceases if these inscriptions have not been renewed before the expiration of this period. Civ. C. 1134, 2108, 2134, 2146, 2148, 2166, 2167, 2168, 2169, 2180, 2181, 2183, 2194.

2155. The expenses of inscriptions shall be paid by the debtor, unless there is a covenant to the contrary; they
shall be advanced by the person making the inscription, except in case of a legal mortgage, for the inscription of which the registrar has his remedy against the debtor. The expenses of transcription which the vendor may cause to be made shall be paid by the purchaser. Civ. C. 1593, 2108, 2121.

2156. Actions to which inscriptions may give rise against creditors shall be brought before the tribunal having jurisdiction by a summons served upon the person or at the last domicile elected upon the register, even in case of death, either of the creditors or of those at whose residence they have elected domicile. Civ. C. 2145, 2149.

CHAP. V.

OF CANCELLATION AND REDUCTION OF INSCRIPTIONS.

2157. Inscriptions shall be cancelled by the consent of the parties interested and having capacity therefor, or by virtue of a judgment of the highest Court, or one which has become final. Civ. C. 472, 1123, 1124, 1350, 1351, 1554, 2108, 2134, 2135, 2143, 2153, 2158, 2160, 2180, 2197.

2158. In both cases, those who want to have them cancelled shall deposit at the office of the Registrar a certified copy of the public instrument containing the consent, or of the judgment.

2159. A cancellation which is not consented to shall be applied for before the Tribunal of the District in which the inscription has been made, unless the same has been made
to secure a contingent or uncertain judgment, as to the execution and satisfaction of which the debtor and the alleged creditor are engaged in litigation or are awaiting judgment in another Tribunal, in which case the action for cancellation shall be brought there or be remitted.

Nevertheless, the agreement made by the creditor and the debtor to bring the action before a Tribunal which they have selected in case of litigation shall receive its sanction between them. Civ. C. 2156.

2160. Cancellation must be ordered by the Tribunals when the inscription has been made without being based upon the law or upon an agreement, or when it has been made upon an instrument which was either irregular or has come to an end, or has been satisfied, or when the rights of privilege or mortgage have been wiped out by operation of the law. Civ. C. 2157, 2180.

2161. Whenever inscriptions effected by a creditor who, according to law, has the right to take them on the present or future property of the debtor without any limit having been agreed to, extend over more different pieces of property than is necessary to secure the claims, an action to have the inscriptions reduced or partly cancelled as to what exceeds the proper portion can be maintained by the debtor. The rules established in Art. 2159 as to jurisdiction shall be followed.

The provisions of the present article do not apply to conventional mortgages. Civ. C. 2124 et s.

2162. Inscriptions covering several pieces of property are considered excessive when the value of a single piece of property or of several of them, exceeds by more than one-third as to the property unencumbered the amount of the capital and legal accessories of the claims. Civ. C. 2164.
2163. In like manner, inscriptions taken according to the appraisal of the claims made by the creditor which have not been settled by agreement as to the mortgage to be granted for their protection and which by their nature are conditional, contingent or uncertain, can be reduced as excessive. Civ. C. 2132.

2164. In such case, the excess shall be appraised by the Judges according to circumstances, the probabilities of events and the presumptions of fact, in such a manner as to satisfy the probable rights of the creditor and the interest of the debtor in retaining sufficient credit, without prejudice to the new inscriptions for a mortgage which may be taken, from the day of their date, if events have brought up the uncertain claims to a larger amount. Civ. C. 1353.

2165. The value of real estate which is to be compared with the value of the claims with a third added thereto, is reached by calculating fifteen times the amount of the revenue shown by the original register of real estate taxes or by the rate of taxation on the books according to the proportion existing in the districts where the property is situated between such register or such rate and the revenue for real estate not liable to waste away, and ten times this amount if the real estate is of a kind to waste away. Nevertheless, the Judges may also be guided by the information derived from leases which do not appear suspicious, from the official reports of appraisals which may have been drawn previously at times not far off, and from all other similar instruments, and appraise the revenue at the average rate resulting from these various sources of information.
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CHAP. VI.

Of the Effect of Privileges and Mortgages against Third Parties in Possession.

2166. Creditors who have a privilege or mortgage on real estate which has been inscribed follow the real estate through whatever hands it may pass and rank and are paid according to the rank of their claims or inscriptions. Civ. C. 1134, 2093, 2095, 2114, 2121, 2134, 2154, 2180.

2167. If a third party in possession does not comply with the formalities hereafter mentioned to clear his property he remains liable as possessor for all the mortgages by the sole effect of the inscriptions and has the benefit of the time and delay granted to the original debtor. Civ. C. 1251, 2114, 2168, 2183 et al., 2193.

2168. A third party in possession is bound in the same case either to pay all the interest and the capital due, to whatever sum they may amount, or to abandon the real estate mortgaged without any restriction. Civ. C. 2172.

2169. If a third party in possession fails to fully comply with one of these obligations, each mortgagee has the right to cause the real estate to be sold thirty days after the service upon the original debtor of a demand and after service upon the third party in possession of a notice to pay the debt which has become due or to abandon the estate. Civ. C. 2114, 2176, 2217.

2170. Nevertheless, a third party in possession who is not personally liable for the debt can object to the sale of the estate mortgaged which has been transferred to him if there is other real estate mortgaged for the same debt in the possession of the principal person or persons bound and can apply for the previous seizure thereof in the manner
provided under the Title Of Security: pending the seizure the sale of the mortgaged estate is postponed. Civ. C. 2021 et s.

2171. The plea of seizure cannot be set up against a privileged creditor or a creditor who has a special mortgage on the estate. Civ. C. 2103, 2129.

2172. As to abandonment on account of a mortgage, it can be made by all third parties in possession who are not personally liable for the debt and who are capable of making a conveyance. Civ. C. 1121, 1124, 2178.

2173. It can even take place after the third party in possession has acknowledged the debt or judgment has been rendered against him in such capacity only: the abandonment does not prevent the third party in possession from taking back the property up to the time of the judicial sale by paying the whole debt and the costs. Civ. C. 2174.

2174. An abandonment on account of a mortgage takes place at the clerk’s office of the Tribunal where the property is situated; and a certificate thereof is delivered by this Tribunal.

Upon the petition of the most active of the interested parties, a curator of the real estate abandoned is appointed, against whom proceedings are taken for the sale thereof in the manner provided for ejectments. Civ. C. 2204 et s.

2175. The damages occasioned by the acts or negligence of a third party in possession to the detriment of mortgagees or privileged creditors give rise to an action for indemnity against him; but he is only entitled to be repaid for his expenses and improvements to the extent of the additional value resulting from the improvement. Civ. C. 1631 et s., 2103
2176. The revenue of the real estate mortgaged is only due by the third party in possession from the day of the demand for payment or to quit and if the proceedings instituted have been stopped for three years, from the time of the new demand which shall be served. Civ. C. 2169, 2183, 2184.

2177. Servitudes and real rights which a third party in possession had upon the estate before entering into possession take effect again after the abandonment or the judicial sale made against him.

His personal creditors can enforce their mortgages according to their rank against the property abandoned or sold at auction after all the creditors who have taken out inscriptions against the previous owners. Civ. C. 2134.

2178. A third party in possession who has paid the mortgage or who has abandoned the real estate mortgaged or has been ejected from such real estate has a remedy for warranty against the principal debtor, as allowed by law. Civ. C. 1626 et s., 2191.

2179. A third party in possession who wishes to free his property by paying the price thereof shall comply with the regulations contained in chapter VIII. of the present Title. Civ. C. 2181, 2193 et s.
OF PRIVILEGES AND MORTGAGES.

CHAP. VII.

OF THE SATISFACTION OF PRIVILEGES AND MORTGAGES.

2180. Privileges and mortgages expire:
1. By the extinction of the principal obligation,
2. By the renunciation of the mortgage by the creditor,
3. By the fulfilment of the formalities and conditions required of third parties in possession to free the property which they have acquired,
4. By prescription.

Prescription is acquired by the debtor as to the property in his possession by the time specified for prescription of the actions which have given rise to the mortgage or privilege.

As to the property which is in the possession of a third party, prescription is acquired in his favour by the time specified for prescription of property for his benefit: if prescription is based upon a deed it only commences to run from the time such deed has been transcribed on the registers of the Registrar.

Inscriptions taken by the creditor do not prevent the prescription established by law in favour of a debtor or a third party in possession from running. Civ. C. 1234, 1251, 1431, 2114, 2121, 2123, 2134, 2135, 2157, 2166, 2183, 2195, 2219 et s., 2244, 2262, 2265.
Chap. VIII.

Of the Mode of Freeing Property from Privileges and Mortgages.

2181. Contracts conveying real estate or real rights relating to real estate which third parties wish to free from privileges and mortgages shall be transcribed in full by the Registrar of mortgages in whose district the property is situated.

This transcription shall take place on a register kept for that purpose and the Registrar shall be bound to give an acknowledgment thereof to the applicant. Civ. C. 2182, 2196.

2182. A simple transcription of deeds conveying property on the register of the Registrar does not free the real estate from existing mortgages and privileges.

A vendor only transmits to the purchaser the ownership of and the rights to the property sold which he had himself. He transmits them subject to the same privileges and mortgages by which it was encumbered. Civ. C. 2114, 2125.

2183. If the new owner wishes to protect himself against the effects of the proceedings authorized by chapter VI. of the present Title he is bound to serve a notice upon the creditors at the domicils elected by them in their inscriptions, either before the proceedings or within one month at the latest from the date of the first demand which has been served upon him, which notice shall contain:

1. An extract of his deed, mentioning only the date and the nature of the deed, the name and an exact designation of the vendor or of the donor, the nature and the location of the property sold or given, and in case of a mass of real estate a general description only of the estate and of the
districts in which it is situated, the price and the expenses forming part of the price of sale, and an appraisal of the property, if it has been given;

2. An extract of the transcription of the deed of sale;

3. A statement in three columns, of which the first shall contain the dates of the mortgages and those of the inscriptions; the second the names of the creditors; the third the amount of the claims inscribed. Civ. C. 1258, 2185.

2184. The purchaser or the donee shall declare in the same instrument that he is ready to pay forthwith the debts and the expenses secured by mortgage to the amount of the price only, whether the debts are due or not. Civ. C. 1188, 1652, 2167, 2183.

2185. When the new owner has given this notice within the time specified, every creditor whose deed has been inscribed can apply to have the real estate sold at auction and disposed of at public sale, provided:

1. This application is served upon the new owner within forty days at the latest from the notice served on behalf of the latter, adding two days for each distance of five myriameters between the domicil elected and the real domicil of each creditor making the application;

2. The application contains the consent of the applicant to raise the price or cause it to be raised one-tenth beyond what has been stipulated in the contract or declared by the new owner;

3. The same notice is served within the same time upon the previous owner and principal debtor;

4. The original and the copies of these notices are signed by the creditor making the application or by his attorney-in-fact expressly appointed, who in such case is bound to give a copy of his power of attorney;

5. Such creditor offers to give security to the extent of the price and charges:
Unless all this is done the whole shall be void. Civ. C. 419, 450, 724, 883, 1183, 1358, 1428, 1536, 1583, 2018, 2019, 2021, 2041, 2118, 2175, 2183, 2185, 2187, 2188.

2186. In case the creditors should not have applied for a sale at auction within the time and in the manner specified, the value of the real estate remains finally settled at the price set down in the deed or declared by the new owner, who, in consequence, shall be free from all privileges and mortgages by paying said price to the creditors who hold the proper rank to receive it, or by depositing it. Civ. C. 1258, 1259, 1650, 2180—3, 2183.

2187. In case of resale at auction it shall take place according to the rules established for compulsory ejectments, either upon the application of the creditor who has asked for it, or of the new owner.

The applicant shall mention in the advertisements, the price stipulated in the deed or declared, and the additional amount to which the creditor has bound himself to raise it or cause it to be raised. Civ. C. 2202.

2188. The highest bidder is bound beyond the price of his bid to return to the owner or donee who has been dispossessed the expenses and costs of the deed, those of the transcription on the registers of the Registrar, those of the notices and those incurred by him to obtain the resale. Civ. C. 550, 1183, 1652, 2175, 2176.

2189. A purchaser or donee who retains the real estate put up at auction by becoming the highest bidder is not obliged to have the judgment ordering the public sale transcribed.

2190. The withdrawal of the creditor applying for a sale at auction does not prevent the public sale, even if the
creditor pays the amount of his proposal, unless all the other mortgagees expressly consent thereto.

2191. A purchaser who has become the highest bidder shall have his remedy, such as the law gives it, against the vendor for the repayment of the amount exceeding the price stipulated in the deed and for the interest of such amount from the day of each payment. Civ. C. 1625 et s., 2177, 2178, 2192.

2192. In case the deed of the new owner includes real estate and personal property, or several pieces of real estate some of which are mortgaged and others not mortgaged, situated in the same or in several districts of offices of Registrars, conveyed for a single or same price or for distinct or separate prices, and which are or are not worked for the same enterprise, the price of each piece of real estate, subject to special and distinct inscriptions shall, if necessary, be declared in the notice served upon the new owner by valuation on the total price mentioned in the deed.

The creditor who outbids can in no case be compelled to extend his proposal, either to other personal property or to any other pieces of real estate than those mortgaged for his claim and situated in the same district; but the new owner shall have his remedy against the former ones to be compensated for any damage which he may have suffered on account of the division of the things which he has purchased or of the enterprises worked. Civ. C. 2167, 2168, 2169, 2183, 2185.
Of the manner of Satisfying Mortgages when no inscription exists on the property of Husbands and Guardians.

2193. Purchasers of real estate belonging to husbands or guardians may, when there are no inscriptions on such real estate on account of the management of the guardian or on account of dowry or of the wife's right to take back and her marriage settlements, satisfy the mortgages existing on the property acquired by them. Civ. C. 2121, 2135 et s., 2153, 2181.

2194. For that purpose they shall file, in the clerk's office of the Civil Tribunal of the place where the property is situated, a copy duly compared, of the deed transferring the property, and they shall certify the filing thus made by a notice served as well upon the wife or the assistant guardian as upon the King's Attorney (Republic's Attorney) of the Tribunal. An extract of this deed containing its date, the names, first names, occupation and domicile of the contracting parties, a description of the nature and location of the property, the price and other expenses of the sale, shall be and shall remain posted for two months in the hall of the Court; during which time the wives, husbands, guardians, assistant guardians, minors, interdicted persons, relatives or friends, and the King's Attorney (Republic's Attorney) are allowed to apply for, if necessary, and to cause inscriptions to be made on the property conveyed, at the office of the Registrar of Mortgages, which shall produce the same effect as if they had been taken upon the day of the marriage contract or the day the guardian entered upon his management; without prejudice to the proceedings which might be brought against the husbands and guardians, as has been stated hereabove, on account of the mortgages granted by
them in favour of third parties without having declared to the latter that the real estate was already mortgaged on account of marriage or guardianship. Civ. C. 1348, 1353, 2136, 2154, 2181, 2183.

2195. If, during the course of the two months of the advertising of the contract, no inscription has been taken on behalf of a wife, a minor, or an interdicted person, on the real estate sold, it comes to the purchaser without any lien on account of dowry, of the wife's right to take back and her marriage settlements or of management of the guardian; but subject to the remedy against the husband or the guardian, if there is occasion therefor.

If inscriptions have been taken out in behalf of such wife, minor or interdicted person, and if there are previous creditors who absorb the whole price or a part of it, the purchaser shall be released for the price or the part of the price paid by him to creditors holding effectual rank, and the inscriptions taken in behalf of a wife, minor or interdicted person shall be cancelled of record, either wholly or up to the amount due.

If the inscriptions in behalf of a wife, minor or interdicted person had been made previously, the purchaser cannot make any payment of the price to the detriment of such inscriptions, which shall always take the date of the marriage contract or of the beginning of the guardian's management, as has been hereabove stated: and in such case the inscriptions of other creditors who do not come in effectual rank shall be cancelled of record. Civ. C. 2135, 2136, 2154, 2166, 2180, 2186, 2193, 2194.
OF PRIVILEGES AND MORTGAGES.

CHAP. X.

OF THE PUBLICITY OF REGISTERS AND OF THE RESPONSIBILITY OF REGISTRARS.

2196. Registrars of mortgages are bound to deliver copies of the deeds transcribed on their registers and of the inscriptions existing, or a certificate to the effect that none exists, to all those who ask for the same. Civ. C. 2135, 2148, 2153, 2154, 2197, 2202.

2197. They are responsible for the damage resulting from:

1. Omissions on their part to record on their registers the transcriptions of deeds of conveyance and the inscriptions applied for in their offices;

2. Omissions to mention in their certificates one or several existing inscriptions, unless in the latter case the error should come from an insufficient description which could not be charged to them. Civ. C. 1382, 1383, 2148, § 2, 2157, 2202.

2198. The real estate as to which the Registrar has omitted in his certificates one or more of the liens inscribed remains free therefrom in the hands of the new purchaser, subject to the liability of the registrar, provided such purchaser has asked for the certificate since the transcription of his deed: without prejudice, nevertheless, to the rights of the creditors to be placed according to the rank belonging to them, so long as the price has not been paid by the purchaser or so long as the rank which the creditors are entitled to among each other has not been confirmed.

2199. Registrars can never refuse or delay the transcription of deeds of conveyance, the inscription of mortgages, or
the delivery of certificates asked for, under penalty of damages to the parties; for such purpose an official report of the refusal or delay shall forthwith be drawn up at the solicitation of the applicants, either by a Justice of the Peace or by a sheriff and crier of the Court, or by any other sheriff or notary with the assistance of two witnesses. Civ. C. 2197.

2200. (Amended by Law of 5th January, 1875.)—Nevertheless, Registrars are bound to keep a register on which they shall inscribe day by day and in numerical order the deliveries made to them of deeds of conveyance or attachments of real estate to be transcribed, of statements to be inscribed and of instruments, certified copies or extracts of instruments granting subrogation or a right of priority, and of judgments ordering the annulling, cancelling or rescission of instruments transcribed to be entered.

They shall give the applicant a receipt on stamped paper bearing the number of the register on which the delivery has been recorded, for each instrument or each statement to be transcribed, inscribed or entered, and they shall not transcribe deeds of conveyance or attachments of real estate nor inscribe statements or enter instruments granting subrogation or a right of priority, or judgments ordering the annulling, cancelling or rescission of deeds transcribed on the registers kept for that purpose, except upon the date and in the order of the deliveries made to them.

The register provided for by this article shall be kept in duplicate and one of the duplicates shall be deposited without expense and within thirty days from the time it is closed, at the clerk's office of the Civil Tribunal of a different district from the one in which the Registrar resides.

The Tribunal in the clerk's office of which the duplicate of the register of deposit is deposited shall be appointed by an order of the Presiding Justice of the Court of Appeals in the district of which the Registrar's office is situated.
This order shall be made upon the application of the Attorney-General.

2201. All the registers of Registrars shall be of stamped paper, numbered and initialed upon each page from the first to the last by one of the Judges of the Tribunal in the district of which the office is situated. The registers shall be closed every day in the same manner as those kept for recording instruments.

2202. In performing their duties Registrars are bound to comply with all the provisions of the present chapter, under penalty of a fine of from two hundred to one thousand francs for the first violation and of dismissal in case of a second violation; without prejudice to damages to the parties, which shall be paid before the fine. Civ. C. 1149, 1382, 2102—7, 2197.

2203. Entries relating to deposits, inscriptions and transcriptions shall be made on the registers following each other without blanks or interlineations, under penalty for the registrar of a fine of from one thousand to two thousand francs, besides damages to the parties, also payable previously to the fine.
TITLE NINETEENTH.

OF COMPULSORY EJECTMENT AND OF RANK AMONG CREDITORS.

(Passed 19th March, 1804; promulgated 29th of same month.)

CHAP. I.

OF COMPULSORY EJECTMENTS.

2204. A creditor may sue for ejectment:

1. From real estate or its accessories deemed to be real property owned in fee by his debtor; 2. From the usufruct belonging to the debtor upon property of the same nature. Civ. C. 517, 578, 2092 et s., 2118.

2205. Nevertheless, the undivided share of a co-heir in the real estate of a succession cannot be sold out by his personal creditors before the division or judicial sale which they may demand, if they deem proper, or in which they may take part, in accordance with article 882 of the Title Of Successions. Civ. C. 882, 1166, 2114, 2169.

2206. Real estate of a minor, even emancipated, or of an interdicted person, cannot be sold before seizure of the personal property. Civ. C. 457.

2207. Seizure of the personal property is not necessary before ejectment from real estate owned jointly by a person of full age and a minor or an interdicted person, if the debt is common to both of them, or if proceedings have
been commenced against a person of full age or before interdiction.

2208. Ejectment from real estate forming part of a community shall be sued for against the husband alone who is the debtor, even if the wife has made herself liable for the debt.

Ejectment from real estate of the wife which has not become part of the community shall be sued for against the husband and wife, and the latter may be authorized by the Court to carry on the proceedings in case of the refusal of the husband to go on with the suit with her, or, if the husband is a minor.

In case of minority of the husband and wife, or of minority of the wife alone, if her husband, being of full age, refuses to carry on the proceedings with her, a guardian is appointed to the wife by the Tribunal and the proceedings are carried on against him. Civ. C. 217 et s., 1421, 1424 et s., 1428, 1449, 1554 et s., 1576.

2209. A creditor cannot sue to have real estate which has not been mortgaged to him sold, unless the property mortgaged to him is of insufficient value.

2210. A forced sale of property which is situated in several different districts can only be applied for successively, unless it forms part of one and the same estate.

It shall be carried on before the Tribunal in the district of which is the principal establishment of the estate, or if there is no such principal establishment, where the portion of property lies which brings in the greatest revenue according to the original tax-roll.

2211. If the property mortgaged to the creditor, or the property not mortgaged, or the property situated in several districts, forms part of a single and same estate, the sale of
the whole shall be applied for together if the debtor wishes it; and a valuation of the price which the public sale might bring shall be made, if necessary. Civ. C. 2166, 2192.

2212. If a debtor establishes by leases in the public form that the net and available revenue of his real estate during one year is sufficient for the payment of the principal, interest and costs of the debt, and if he offers the assignment thereof to the creditor, the proceedings may be stayed by the Judges, but may be renewed in case of an attachment or if some other obstacle to the payment arises. Civ. C. 1275, 1317.

2213. A forced sale of real estate can only be applied for by virtue of an instrument in public form, and upon which execution can be issued, and for a duly established and liquidated debt. If the debt is for money, but is not liquidated, the proceedings are regular, but a public sale can only take place after the same has been liquidated. Civ. C. 1317.

2214. An assignee of an instrument upon which execution can be issued can only sue for an ejectment after a notice of the assignment has been served upon the debtor. Civ. C. 1690, 2213.

2215. Proceedings can result from a provisional or final judgment giving the right to immediate execution, notwithstanding an appeal; but a public sale can only take place after a final judgment of the highest Court or when a judgment has become final.

Proceedings cannot be instituted in consequence of a judgment by default during the time the default can be opened. Civ. C. 1351.

2216. Proceedings cannot be dismissed on the ground
that the creditor has brought them for a larger amount than what is due to him.

2217. Previously to all proceedings for ejectment from real estate, a demand to pay shall be served through a sheriff at the instance and solicitation of the creditor upon the person of the debtor or at his domicil.

The form of the demand and of the proceedings relating to the ejectment are regulated by the laws of procedure.

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**Chap. II.**

**Of the Rank and Distribution of the Price between Creditors.**

2218. The rank and the distribution of the price of real estate, and the manner of proceeding, are regulated by the laws of procedure.
TITLE TWENTIETH.

OF PRESCRIPTION.

(Passed 15th March, 1804; promulgated 25th of same month.)

CHAP. I.

GENERAL PROVISIONS.

2219. Prescription is a way of acquiring property or of releasing oneself at the end of a certain period of time and under conditions specified by law. Civ. C. 617, 625, 712, 1234, 2180.

2220. A person cannot renounce prescription beforehand: he can renounce prescription which has taken effect. Civ. C. 1130, 1133, 1134.

2221. A renunciation of prescription is either express or tacit: tacit renunciation results from a fact which supposes the abandonment of an acquired right. Civ. C. 2220.

2222. A person who cannot convey cannot renounce prescription which has taken effect. Civ. C. 128, 217, 1124 et s., 1305 et s., 1421, 1428, 1449, 1507 et s., 1535, 1538, 1554 et s., 1561, 1594, 1598, 1988 et s.

2223. Judges cannot, of their own accord, set forth the plea resulting from prescription. Civ. C. 2224.

2224. Prescription can be set up at all stages of a case,
even before a Royal Court (Court of Appeals), unless the party who has not set up the plea of prescription should be considered from the circumstances as having renounced it. Civ. C. 2272, 2275.

2225. Creditors or any other persons whose interest it is that prescription should have taken place can set it up, even if the debtor or owner renounces it. Civ. C. 1166, 1183, 1705, 2125.

2226. There is no prescription against things which are not in trade (f). Civ. C. 538, 643, 1128, 2227, 2229, 2230, 2232, 2262.

2227. The State, public institutions and districts are subject to the same prescriptions as private individuals, and can set them up in the same manner. Civ. C. 2265.

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Chap. II.

Of Possession.

2228. Possession is the retention or enjoyment of a thing or of a right which we have and which we make use of, either ourselves or by another person who holds it or makes use of it in our name. Civ. C. 1614, 2134, 2180, 2229, 2230, 2236, 2239, 2262.

2229. In order that prescription should take place it is

(f) This expression must be taken in its broad sense, and means that property which cannot belong to private individuals is not subject to prescription.
necessary to have a continuous, uninterrupted, peaceful, public and unambiguous possession in the capacity of owner. Civ. C. 688, 691, 2232, 2236, 2242, 2243.

2230. A person is always presumed to hold possession for himself and as owner if it is not established that he commenced to possess for another person. Civ. C. 2234, 2236, 2242 et s.

2231. When a person has commenced to hold possession for another he is always presumed to possess by virtue of the same title, unless there is proof to the contrary. Civ. C. 1350, 1352, 2236, 2240.

2232. Acts which are purely discretionary or which are simply tolerated cannot give rise to possession or prescription.

2233. Neither can acts of duress establish possession capable of giving rise to prescription.
   Effectual possession only begins from the time the duress has ceased. Civ. C. 1112.

2234. An actual possessor who establishes that he has formerly held possession is presumed to have continued it during the intervening period unless there is proof to the contrary. Civ. C. 1350, 1352, 2230 et s.

2235. To make prescription complete, a person may add to the possession he holds the possession of his predecessor, in whatever manner the former has come into it, whether it is by virtue of a general or special title, or with or without consideration. Civ. C. 724, 2229, 2264, 2265.
Chap. III.

Of the Causes which Prevent Prescription.

2236. Those who hold possession for third parties never acquire by prescription, whatever time may have elapsed.

Thus, a lessee, a depositary, a usufructuary, and all others who hold the property of an owner, not as their own, cannot acquire it by prescription. Civ. C. 578, 1709, 1905, 2219, 2229, 2240, 2262.

2237. Neither can the heirs of those who held property in one of the manners set forth in the foregoing article acquire it by prescription. Civ. C. 724.

2238. Nevertheless, the persons mentioned in articles 2236 and 2237 can acquire by prescription if the title giving them possession is modified, either owing to the act of a third party or by the objections which they set up against the rights of the owner. Civ. C. 2231, 2236, 2240.

2239. Those to whom lessees or depositaries or other persons holding property not as their own have transferred such property by an instrument of conveyance can acquire it by prescription. Civ. C. 2262, 2265 et s.

2240. A person cannot acquire by prescription against his own title, in this way, that a person cannot himself change the cause and nature of his possession. Civ. C. 691, 2220, 2231, 2236, 2238.

2241. A person can acquire by prescription against his own title, in this way, that the cancellation of the obligation which he has contracted can be obtained by prescription. Civ. C. 2236, 2240.
OF PRESCRIPTION.

CHAP. IV.

OF THE CAUSES INTERRUPTING OR SUSPENDING THE COURSE OF PRESCRIPTION.

§ 1. Of the Causes Interrupting Prescription.

Prescription can be interrupted either naturally or civilly. Civ. C. 2229, 2233, 2243.

Natural interruption takes place when the person in possession is deprived for upwards of one year of the enjoyment of the property, either by the former owner or by a third party.

A citation to appear in court, a demand, or an attachment served upon the person whom one wishes to prevent from acquiring by prescription, constitute a civil interruption. Civ. C. 1304, 1576, 2008, 2114, 2169, 2180, 2229, 2247, 2251, 2274, 2277.

A citation to appear for conciliation in the office of a Justice of the Peace interrupts prescription from the day of its date, when it is followed by a summons to appear in court issued within the time allowed by law.


If a summons is void because its form is irregular,
If the plaintiff withdraws his action,
If he allows the action to drop,
Or if his action is dismissed,
The interruption is considered as not having taken place.
Civ. C. 2237, 2246, 2262.
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OF PRESCRIPTION.

2248. Prescription is interrupted by an admission on
the part of the debtor or of the person in possession of the
right of the individual against whom prescription was

2249. The service of papers made in accordance with
the foregoing articles upon one of several joint debtors,
or his admission, interrupts prescription against all the
others and even against their heirs.

Such service made upon one of the heirs of a joint
debtor, or an admission on the part of that heir, does not
interrupt prescription against the other heirs, even if the
claim was upon a mortgage, if the obligation is indi-
visible.

Such service or admission only interrupts prescription
against the other co-debtors for the share for which the
heir is liable.

For the purpose of interrupting prescription entirely
against all the other co-debtors it is necessary to make such
service upon all the heirs of the deceased debtor or to have
an admission from all these heirs. Civ. C. 1199, 1206,
1213, 1217, 1222.

2250. Such service made upon the principal debtor, or
an admission on his part, interrupts prescription against the

§ 2. Of the Causes which Suspend the Course of Prescription.

2251. Prescription runs against all persons, unless they
come under an exception established by law. Civ. C. 2227,
2261.

2252. Prescription does not run against minors and
interdicted persons, with the exception of what is stated in
art. 2278 and except in the other cases provided by law.
Civ. C. 710, 883.
OF PRESCRIPTION. 511

2253. It never runs between husband and wife.

2254. Prescription runs against a married woman as to the property of which the husband has the management, subject to her remedy against her husband, even if there is no separation of property resulting from a marriage contract or from a judgment. Civ. C. 1428, 1443.

2255. Nevertheless, it does not run during the marriage against the conveyance of property subject to the dotal system, in accordance with art. 1561 of the Title Of Marriage Contracts and of the Respective Rights of Husband and Wife. Civ. C. 1304, 1560 et s.

2256. Prescription is likewise suspended during marriage:

1. In case an action on the part of the wife could only be brought after she had made use of an option to accept or renounce the community;

2. In case the husband, having sold property belonging to the wife individually, without her consent, is responsible for the sale, and in all other cases in which the action of the wife might make the husband responsible. Civ. C. 1428, 1453.

2257. Prescription does not run—against a claim depending upon a condition, until the condition takes place;—against an action upon warranty, until the ejectment has taken place;—against a claim maturing upon a given day, until the day arrives. Civ. C. 706, 707, 1181, 1185 et s., 1382, 1705, 2180, 2262, 2265.

2258. Prescription does not run against an heir under benefit of inventory for claims which he has against the succession.

It runs against a vacant succession, although no curator has been appointed. Civ. C. 802, 811.
2259. It runs also during the three months allowed to make the inventory and the forty days for deliberating. Civ. C. 795.

CHAP. V.

OF THE TIME REQUIRED FOR PRESCRIPTION.


2260. Prescription is counted by days and not by hours.

2261. It takes effect when the last day of the period has passed.

§ 2. Of Prescription of Thirty Years.

2262. All actions relating to real estate as well as to personal property are outlawed at the end of thirty years and the person alleging prescription is not obliged to produce any proof and no exception resulting from bad faith can be set up against him. Civ. C. 706, 2229, 2249, 2263, 2268, 2274.

2263. After twenty-eight years from the date of the last instrument, the person who owes an annuity can be compelled to furnish at his own expense a new instrument to his creditor or to the latter's legal representatives. Civ. C. 1337, 2262.

2264. The rules of prescription applying to other things than those mentioned in the present Title are explained under the Titles which apply to them. Civ. C. 137, 330, 475, 541, 553, 560, 617, 619, 641, 642, 685, 690, 695,
§ 3. Of Prescription of Ten or Twenty Years.

2265. A person who acquires a piece of real estate in good faith and by virtue of a good title is covered by prescription as to its ownership at the end of ten years if the real owner lives within the bounds of the district of the Royal Court (Court of Appeals) where the real estate is situated, and at the end of twenty years if such owner is domiciled outside of said district. Civ. C. 550, 939, 2267, 2268, 2269.

2266. If the real owner has had a domicile within and without the district at different times, it is necessary in order to make the prescription complete to add to what is missing of the ten years of presence twice the number of years of absence which are missing to complete the ten years of presence.

2267. A title which is void on account of an irregularity as to its form cannot be used as a foundation to the prescription of ten and twenty years.

2268. Good faith is always presumed and the person who alleges bad faith is obliged to prove it. Civ. C. 1116.

2269. It is sufficient that good faith should have existed at the time of the acquisition. Civ. C. 2231.

2270. At the end of ten years architects and contractors are released from their guarantee in connection with the heavy works which they have put up or directed. Civ. C. 1792.
§ 4. Of certain Special Prescriptions.

2271. The action belonging to masters and teachers of sciences and arts, for lessons given by them by the month;
   The action belonging to keepers of hotels and eating-houses, for lodging and board furnished by them;
   The action belonging to workmen and labourers, for the payment of their days of work, their supplies and wages;
   Are outlawed at the end of six months. Civ. C. 1710, 1758, 1779, 2101—4, 2102—5, 2260, 2274 et s., 2278.

2272. (Amended by Law of 30th November, 1892.)—The action belonging to sheriffs for the fees of the writs which they serve and the matters they attend to;
   The action belonging to tradespeople for the goods they sell to private individuals not in trade;
   The action belonging to schoolmasters for the amount of their pupils' schooling; and to other masters for the charges of the apprenticeship;
   The action belonging to servants who are taken by the year, for the payment of their wages;
   Are outlawed at the end of one year.
   The action belonging to physicians, surgeons, surgeon-dentists, midwives and druggists, for their visits, operations and medicines, is outlawed at the end of two years. Civ. C. 2274, 2278.

2273. The action belonging to solicitors, for the payment of their charges and fees, is outlawed at the end of two years from the time of the judgment rendered in the suits or of the settlement made by the parties or since the revocation of said solicitors.
   As regards the matters not ended, they cannot bring suit for their charges and fees dating back more than five years. Civ. C. 2274, 2278.

2274. Prescription takes place in the above cases, even
if the supplies, deliveries, services and work have been continued.

It only ceases to run in case of an account stated, a schedule or an obligation given, or a summons before a Court which has not lapsed. Civ. C. 1353, 2272, 2273, 2275.

2275. Nevertheless, those against whom these prescriptions are set up can have the oath proffered to those who set them up, for the purpose of ascertaining whether the thing has really been paid for.

The oath can be proffered to widows and heirs, or to the guardians of the latter, if they are minors, in order to make them declare if they know whether the thing is due. Civ. C. 1358, 2272, 2278.

2276. Judges and solicitors are released from claims for documents at the end of five years after judgment in the suits.

Sheriffs are likewise released two years after they have attended to the matters or after the service of the writs which they have had charge of.

2277. Arrears of perpetual annuities or annuities for life;

Those of allowances for support;

The rents of houses and those of country property;

The interest on sums loaned, and generally everything which is payable annually or periodically at shorter times;


2278. The prescriptions referred to in the articles of the present section run against minors and interdicted persons, subject to their remedy against their guardians. Civ. C. 2252.
2279. Possession is equivalent to a title with respect to personal property.

Nevertheless, a person who has lost a thing, or from whom it has been stolen, can claim it from the person in whose hands he finds it within three years from the day of the loss or of the theft; but the latter has his remedy against the individual from whom he has received it. Civ. C. 527, 550, 1141, 1302, 1350, 1752, 1926, 2084, 2280.

2280. (Amended by law of 11th July, 1892.)—If the present possessor of the thing stolen or lost has bought it at a fair or at a market or at a public sale, or from a tradesman selling similar goods, the original owner can only have it returned by reimbursing to the possessor the price which it has cost him.

The lessor who claims by virtue of article 2102 the furniture removed without his consent and which has been purchased under the same conditions, must likewise repay to the purchaser the price which it has cost him.

2281. Prescriptions which have commenced to run at the time of the publication of the present Title shall be regulated in accordance with the former laws.

Nevertheless, the prescriptions then commenced and for which, under the former laws, more than thirteen years are still necessary from the same time, shall become complete at the end of that period of thirteen years. Civ. C. 2, 691, 2262.
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