

French Civil Code

BOOK I. Of Persons.

Decreed 21st March, 1803. Promulgated 31st of the same Month.

TITLE VI.

Of Divorce.

CHAPTER I.

Of the Causes of Divorce.

229. The husband may demand a divorce on the ground of his wife's adultery.
230. The wife may demand divorce on the ground of adultery in her husband, when he shall have brought his concubine into their common residence.
231. The married parties may reciprocally demand divorce for outrageous conduct, ill-usage, or grievous injuries, exercised by one of them towards the other.
232. The condemnation of one of the married parties to an infamous punishment, shall be to the other a ground of divorce.
233. The mutual and unwavering consent of the married parties, expressed in the manner prescribed by law, under the conditions, and after the proofs which it points out, shall prove sufficiently that their common life is insupportable to them; and that there exists, in reference to them, a peremptory cause of divorce.

CHAPTER II.

Of the Divorce for Cause Determinate.

SECTION I.

Of the Forms of the Divorce for Cause Determinate.

234. Whatever may be the nature of the facts or offences which afford ground for a demand of divorce for cause determinate, such demand shall only be made to the court of the circle within which the married persons shall have their domicil.
235. If any of the facts alleged by the married party demandant give ground for a criminal prosecution on the part of the public officers, the action for divorce shall remain suspended until after the judgment of the criminal tribunal; it may then be resumed, without permitting any objection or exception at law to be drawn from the criminal judgment prejudicial to the married party demandant.
236. Every petition for divorce shall detail the facts; it shall be sent back, with the corroborating documents, if there are any, to the president of the court, or to the judge who shall perform his functions, by the married party demandant in person, unless prevented by illness; in which case, on his request, and the certificate of two doctors of physic or surgery, or of two officers of health, the magistrate shall repair to the residence of the demandant there, to receive his petition.
237. The judge after having heard the petitioner, and having made to him such observations as he shall deem suitable, shall mark the petition and the documents, and draw up a statement that the whole has been placed in his hands. This statement shall

be signed by the judge and by the petitioner, unless the latter is ignorant or unable to write, in which case mention shall be made thereof.

238. The judge shall make order, at the foot of his statement, that the parties shall appear in person before him, at the day and hour that he shall point out; and to this end, a copy of his order shall be addressed by him to the party against whom the divorce is demanded.
239. On the day appointed, the judge shall make to the two married parties, if both present themselves, or to the petitioner, if appearing alone, such representations as lie shall deem likely to effect a reconciliation: if he is unable to accomplish this, he shall draw up a statement thereof, and shall set forth the communication of the petition and of the documents to the commissioner of government, and the report of the whole to the tribunal.
240. Within the three following days, the court, on the report of the president or of the judge who shall have exercised his functions, and on the motion of the commissioner of the government, shall award or suspend the permission of citation. The suspension shall not exceed the term of twenty days.
241. The petitioner may, by virtue of the permission of the court, cause the defendant to be summoned, in the ordinary form, to appear in person at a private hearing, within the interval prescribed by law; he shall cause a copy to be delivered at the head of his summons, of the petition of divorce, and of the documents produced in its support.
242. At the expiration of the interval, whether the defendant appear or not, the petitioner in person, assisted by a counsel, if he shall deem it expedient, shall unfold, or cause to be unfolded, the grounds of his petition; he shall produce the documents which support it, and shall name the witnesses whom he proposes to have heard.
243. If the defendant appear in person or by an authorized agent, he may make his observations, or cause them to be made, as well upon the grounds of the petition as upon the documents produced by the petitioner and on the witnesses named by him. The defendant shall name, on his part, the witnesses whom he proposes to have heard, and on them the petitioner in turn shall make his observations.
244. A statement shall be drawn up of the appearance, depositions and observations of the parties, as well as of the confessions which either may make. The statement shall be read over to the aforesaid parties, who shall be required to sign it; and express mention shall be made of their signature, or of their declaration of inability or unwillingness to sign.
245. The court shall send the parties to a public hearing of which it shall appoint the day and hour; it shall direct a communication of the proceeding to the commissioner of government, and shall appoint a judge to report. In case the defendant shall not appear, the petitioner shall be bound to signify to him the order of the court, within the interval which it shall appoint.
246. At the day and hour appointed, on the report of the judge nominated, the commissioner of government being heard, the court shall decree first upon the exceptions of law, if any have been propounded. In case they shall be found conclusive, the petition for divorce shall be rejected: in the opposite case, or if exceptions of law have not been offered, the petition for divorce shall be admitted.
247. Immediately after the admission of the petition for divorce, on the report of the judge appointed, the commissioner of government being heard, the court shall adjudge fully. It shall give judgment on the petition, if it appear in a state to be decided on; if not, it shall admit the petitioner to proof of pertinent facts alleged by him and the

defendant to contrary proof.

248. At every stage of the cause, the parties shall be at liberty, after the reports of the judge, and before the commissioner of the government shall have begun to speak, to propose, or cause to be proposed, their respective arguments, first upon exceptions at law and afterwards upon the merits; but in no case shall the counsel of the petitioner be heard, unless the petitioner be present in person.
249. Immediately after pronouncing the judgment which shall direct the inquiries, the registrar of the court shall read that part of the statement which contains the nomination already made of the witnesses whom the parties propose to have heard. They shall be warned by the president that as yet they are at liberty to mention others, but that after this moment no more can be received.
250. The parties shall propose at once their respective exceptions against the witnesses of whom they desire to get rid. The court shall decide on these exceptions after having heard the commissioner of the government.
251. The relations of the parties, with the exception of their children and descendants, cannot be excepted to on the ground of their affinity, nor can the domestics of the parties by reason of such quality; but the court shall have such regard as reason requires to the depositions of relations and servants.
252. Every judgment which shall admit a proof by witnesses shall mention by name the witnesses who shall be heard, and shall fix the day and hour at which the parties are to present themselves.
253. The depositions of the witnesses shall be received by the court sitting with closed doors, in the presence of the commissioner of government, of the parties, and of their counsel or friends to the number of three on each side.
254. The parties by themselves or by their counsel may make to the witnesses such observations and examinations as they shall judge suitable, without being allowed nevertheless to interrupt them in the course of their depositions.
255. Every deposition shall be reduced to writing; as well as the remarks and observations to which it shall have given rise. The statement of inquiry shall be read as well to the witnesses as to the parties: both shall be required to sign it; and mention shall be made of their signature, or of their declaration of inability or refusal to sign.
256. After the close of the two inquiries or of that of the petitioner, if the defendant has not produced witnesses, the court shall send the parties to a public hearing, for which it shall point out the day and hour; it shall order the communication of the proceeding to the commissioner of government, and shall appoint a reporter. This order shall be signified to the defendant at the request of the petitioner, within the interval appointed therein.
257. On the day fixed for final judgment, a report shall be made by the judge commissioned: the parties shall be at liberty afterwards to make by themselves or by the instrumentality of their counsel, such observations as they shall judge useful to their cause; after which the commissioner of government shall give his arguments.
258. Final judgment shall be pronounced publicly; when it shall establish the divorce, the petitioner shall be authorized to go before the civil officer, and cause him to pronounce it.
259. When the petition for divorce shall have been founded on causes of excess, cruelty, or grievous injury, although they shall be well established, the judges shall be at liberty not to allow the divorce immediately. In such case, before judgment is given,

they shall authorize the woman to quit the society of her husband, without being bound to receive him, unless she judges it expedient; and they shall sentence the husband to pay her an alimentary pension proportioned to his means, if the wife has not herself sufficient funds to supply her wants.

260. After a year of trial, if the parties are not re-united, the married person petitioning shall cause the other to be cited to appear before the court, within the intervals prescribed by law, there to hear final judgment pronounced, which shall then allow the divorce.
261. When the divorce shall be demanded by reason that one of the married persons is condemned to an infamous punishment, the only formalities to be observed shall consist of producing before the civil court a copy in correct form of the judgment of condemnation, with a certificate from the criminal court, importing that the said judgment is no longer liable to be reviewed in any legal way.
262. In case of appeal from the judgment of admission, or from the final judgment, given by the court of first instance in a cause of divorce, the cause shall be prepared for hearing and decided by the court of appeal, as an urgent affair.
263. The appeal shall not be receivable except where it shall have been lodged within three months, to be reckoned from the day of intimation given of the judgment rendered on the hearing or by default. The interval for making application to the court of cassation against a judgment in the last resort shall also be one of three months, computing from the intimation. The application shall be suspensory.
264. By virtue of every judgment given in the last resort, or passed with the force of a matter decided, which shall authorize a divorce, the married person who shall have obtained it, shall be obliged to present himself, within an interval of two months, before the civil officer, the other party being duly summoned, in order to cause him to pronounce the divorce.
265. These two months shall not begin to run, with regard to the judgments of first instance, until after the expiration of the interval for the appeal; with regard to judgments given for default in matters of appeal not until after the expiration of the interval for opposition; and with regard to peremptory judgments in the last resort, not until after the expiration of the interval for application for cassation.
266. The married party petitioner who shall have suffered the interval of two months hereinbefore determined to pass by, without summoning the other party before the civil officer, shall forfeit the benefit of the judgment which has been obtained, and shall not be permitted to resume his suit for divorce, except for new cause; in which case the ancient causes may be insisted on.

SECTION II.

Of the Provisional Measures to which the Petition for Divorce for Cause determinate may give rise.

267. The provisional management of the children shall rest with the husband, petitioner, or defendant, in the suit for divorce, unless it be otherwise ordered by the court for the greater advantage of the children, on petition either of the mother, or the family, or the government commissioner.
268. The wife, petitioner, or defendant in divorce, shall be at liberty to quit the residence of her husband during the prosecution, and demand an alimentary pension proportioned to the means of the husband. The court shall point out the house in which the wife shall be bound to reside, and shall fix, if there be ground, the alimentary provision which the husband shall be obliged to pay her.

269. The wife shall be bound to prove her residence in the house appointed, as often as she shall be thereto required; in default of such proof, the husband may refuse the alimentary pension, and if the wife is the petitioner for divorce, may cause her to be declared incapable of continuing her prosecution.

270. The wife having community of goods, plaintiff or defendant in divorce shall be at liberty, in every stage of the cause, commencing with the date of the order mentioned in article 238, to require, for the preservation of her rights, that seals should be affixed to the moveable goods in community. These seals shall not be taken off until an inventory and appraisal is made, and on the undertaking of the husband to produce the articles contained in the inventory, or to answer for their value, as their legal keeper.

271. Every obligation contracted by the husband at the expense of the community, every alienation made by him of immoveable property dependent upon it, subsequently to the date of the order mentioned in article 238, shall be declared void, if proof be given moreover, that it has been made or contracted in fraud of the rights of the wife.

SECTION III.

Of Exceptions at Law against the Suit for Divorce for Cause determinate.

272. The suit for divorce shall be extinguished by the reconciliation of the parties, whether occurring subsequently to the facts which might have authorized such suit, or subsequently to the petition for divorce.

273. In either case the petitioner shall be declared incapable of pursuing the action; a new one may, nevertheless, be instituted for cause accruing subsequently to the reconciliation, and the ancient causes may then be employed in support of such new petition.

274. If the petitioner for divorce deny that a reconciliation has taken place, the defendant shall make proof thereof, either in writing or by witnesses, in the form prescribed in the first section of the present chapter.

CHAPTER III.

Of Divorce by Mutual Consent.

275. The mutual consent of married persons shall not be admitted, if the husband have not reached twenty-five years, or if the wife be under twenty-one.

276. The mutual consent shall not be received until two years from the marriage.

277. It shall no longer be admissible after twenty years of marriage, nor where the wife shall have attained the age of forty-five years.

278. In no case shall the mutual consent of married persons be sufficient, unless authorized by their fathers and mothers, or by their other living ancestors, according to the rules prescribed in article 150, under the title "*of Marriage.*"

279. Married persons determined to effect a divorce by mutual consent, shall be bound to make previously an inventory and estimate of all their property moveable and immoveable, and to adjust their respective rights, on which notwithstanding it shall be free to them to enter into arrangements.

280. They shall be bound in like manner to establish in writing their agreement on the three points following:

1st. To whom the children, the fruit of their union, shall be intrusted, as well during the period of the unit, as after divorce pronounced;

2d. To what house the wife is to retire and reside in during the period of the suit;
3d. What sum the husband is to pay to his wife during she same period, if she has not an income sufficient to supply her wants.

281. The married parties shall present themselves together and in person, before the president of the civil court of their circle, or before the judge who shall discharge his functions, and make to him a declaration of their desire, in presence of two notaries brought by themselves.

282. The judge shall make to both the married parties together, and to each of them apart, in the presence of the two notaries, such representations and exhortations as he shall deem suitable: he shall read to them the fourth chapter of the present title, which regulates "*The Effects of Divorce*," and shall disclose to them all the consequences of the step they are taking.

283. If the married parties persist in their resolution, an act shall, be given them, by the judge setting forth that they demand a divorce and mutually consent to it; and they shall be required to produce and deposit on the instant, in the hands of the notaries, besides the acts mentioned in articles 279 and 280— 1st. The acts of their birth and that of their marriage;

2d. The acts of birth and of death, of all the children the fruit of their union;

3d. An authenticated declaration of their father and mother or other living ancestors, to the effect, that for causes to them known, they authorize him or her, their son or daughter, grandson or granddaughter married to such or such a person, to demand divorce and to consent thereto. The fathers, mothers, grandfathers and grandmothers of the married parties shall be presumed living until the production of the acts verify their decease.

284. The notaries shall draw up at length a detailed statement of all that shall have been said or done in execution of the preceding articles; the minute thereof shall remain with the elder of the two notaries, as well as the documents produced, which shall be annexed to the statement, in which mention shall be made of intimation which shall be given to the wife to retire within twenty-four hours to the house agreed on between her and her husband, and to reside there until divorce pronounced.

285. The declaration thus made shall be renewed within the first fortnight of the 4th, 7th, and 10th month following, observing the same formalities. The parties shall be bound each time to bring proof, by public act, that their fathers, mothers, or other living ancestors, persist in their first determination; but they shall not be bound to repeat the production of any other act.

286. Within a fortnight from the day on which a year shall have expired, computing from the first declaration, the married parties, attended each by two friends, persons of credit within the circle, of the age of fifty years at the least, shall present themselves together, and in person, before the president of the court, or the judge who shall discharge his functions; they shall hand to him copies in correct form, of the four statements, containing their mutual consent, and of all the acts which shall have been annexed to it, and shall require of the magistrate, each separately, in the presence nevertheless of each other, and of the four persons of credit, sentence of divorce.

287. After the judge and the attending parties shall have made their observations to the married persons, if they persevere, an act shall be delivered to them of their request and of the presentation made by them of the documents in its support: the registrar of the court shall draw up a statement which shall be signed as well by the parties (unless they shall declare they know not how or are incapable of writing, in which case mention shall thereof be made) as by the four attending persons, the judge and the

registrar.

288. The judge shall then annex to this statement, his decree that within three days, a report shall by him be made to the court in the council-chamber, upon the conclusions in writing by the commissioner of government, to whom the documents shall be, for this purpose, communicated by the registrar.
289. If the commissioner of government finds in the documents proof that the married parties were of the age the husband of 25 years, the wife of 21 years, when they made their first declaration; that at this period they had been married during two years, and that their marriage had not subsisted more than 20 years, that the wife was under the age of 45 years, that the mutual consent had been expressed four times in the course of the year, after the preliminaries hereinbefore prescribed, and with all the formalities required in the present chapter, more especially with the authority of the fathers and mothers of the married persons, or with that of their other living ancestors in case of the previous decease of their fathers and mothers:— *"he shall give his conclusions in these terms,"* the law permits in a contrary case, his conclusion shall be in these terms, *"the law forbids."*
290. The court shall not upon the report enter into any other examinations than those pointed out in the preceding article. If the result shall be that, in the opinion of the court, the parties have satisfied the conditions and complied with the formalities appointed by the law, it shall admit the divorce, and send the parties before the civil officer, to have it pronounced: in the opposite case, the court shall declare that the divorce cannot be admitted, and shall set forth the grounds of their decision.
291. The appeal against the judgment, declaring that there is no ground for directing a divorce, shall only be admissible where it is lodged by the two parties, but by separate acts, within ten days at the soonest, and at the latest within twenty days, from the date of the judgment of first instance.
292. The acts of appeal shall be mutually signified as well to the other married party as to the commissioner of the government of the court of first instance.
293. Within ten days, to be computed from the intimation given to him of the second act of appeal, the commissioner of government in the court of first instance shall cause to be passed to the general commissioner of government in the court of appeal a copy of the judgment, and the documents on which it has been founded. The commissioner-general in the court of appeal shall give his conclusions in writing, within ten days following the receipt of the documents: the president, or the judge officiating for him, shall make his report to the court of appeal, in the chamber of council, and judgment shall be finally given within ten days following the remission of the conclusions of the commissioner.
294. In pursuance of the sentence establishing the divorce, and within twenty days from its date, the parties shall present themselves together and in person before the officer of the civil power, in order to cause him to pronounce the divorce. This interval exceeded, the judgment shall be as though it had never occurred.

CHAPTER IV.

Of the Effects of Divorce.

295. Married parties who shall be divorced, for any cause whatsoever, shall never be permitted to be united again.
296. In a case of divorce pronounced for cause determinate, the wife divorced shall not be

permitted to marry for ten months after divorce pronounced.

297. In case of divorce by mutual consent, neither of the parties shall be allowed to contract a new marriage until the expiration of three years from the pronouncement of the divorce.
298. In the case of divorce admitted by law for cause of adultery, the guilty party shall never be permitted to marry with his accomplice. The wife adulteress shall be condemned in the same judgment; and, on the request of the public minister, to confinement in a house of correction, for a determinate period, which shall not be less than three months, nor exceed two years.
299. For whatever cause a divorce shall take place, except in the case of mutual consent, the married party against whom the divorce shall have been established shall lose all the advantage conferred by the other party, whether by their contract of marriage, or since the marriage contracted.
300. The married party who shall have obtained the divorce shall preserve the advantages conferred by the other spouse, although they may have made mutual stipulations and such reciprocity have not taken place.
301. If the married parties shall have conferred no advantage, or if those stipulated do not appear sufficient to secure the subsistence of the married party who has obtained the divorce, the court may award to such party, from the property of the other, an alimentary pension, which shall not exceed the third part of the revenues of such other. This pension shall be revocable in a case where it shall cease to be necessary.
302. The children shall be entrusted to the married party who has obtained the divorce, unless the court, on petition by the family, or by the commissioner of government, gives order, for the greater benefit of the children, that all or some of them shall be committed to the care either of the other married party, or of a third person.
303. Whoever may be the person to whom the children shall be committed, their father and mother shall preserve respectively the right to watch over the maintenance and education of their children, and shall be bound to contribute thereto in proportion to their means.
304. The dissolution of a marriage by divorce admitted by law shall not deprive children, the fruit of such marriage, of any of the benefits secured to them by the laws, or by the matrimonial covenants of their father and mother; but there shall be no admission of claims by the children except in the same manner and in the same circumstances in which they would have been admitted if the divorce had not taken place.
305. In the case of divorce by mutual consent, a property in half the possessions of each of the two married parties shall be acquired in full right, from the day of their first declaration, by the children born of their marriage: the father and mother shall nevertheless retain the enjoyment of such moiety until their children's majority, on condition of providing for their nourishment, maintenance, and education, in a manner suitable to their fortune and condition; the whole without prejudice to the other advantages which may have been secured to the said children by the matrimonial covenants of their father and mother.

CHAPTER V.

Of the Separation of Persons.

306. In cases where there is ground for a petition in divorce for cause determinate, it shall be free to the married parties to make petition for separation of persons.

307. It shall be entered, carried on, and determined in the same manner as every other civil action: it shall not take place in consequence merely of the mutual consent of married parties.
308. The wife against whom separation of persons shall be pronounced for cause of adultery, shall be condemned by the same judgment, and, on the requisition of the public minister, to confinement in a house of correction during a fixed period, which shall not be less than three months nor exceed two years.
309. The husband shall continue empowered to arrest the effect of this sentence, by consenting to receive his wife again.
310. When the separation of persons pronounced for any other cause than that of adultery in the wife shall have continued three years, the married party, who was originally defendant, may demand divorce of the court, which shall allow it, unless the original plaintiff, present or duly summoned, consents immediately that such separation shall cease.
311. The separation of person shall import in every case a separation of property.