**French Civil Code**

# BOOK III. Of The Different Modes Of Acquiring Property.

## TITLE I.

***Of Successions.***

**Decreed the 19th of April, 1803. Promulgated 29th of the same Month.**

## CHAPTER I.

***Of the opening of Successions, and of the Seisin of Heirs.***

718. Successions are opened by natural death and by civil death.

719. A succession is opened by civil death from the moment at which that death is incurred, conformably to the regulations of chap. 2, section 2, of the title, "Of the Enjoyment and Privation of Civil Rights."

720. If several persons, respectively called to the succession of each other, perish by one and the same accident, so that it is not possible to ascertain which of them died first, the presumption of survivorship is determined by the circumstances of the event, and in defect of such, by force of age and sex.

721. If those who perished together were under fifteen years, the eldest shall be presumed to have survived. If they were all above sixty, the youngest shall be presumed to have survived.
If some were under fifteen years, and others more than sixty, the former shall be presumed to have survived.

722. If those who perished together were of the age of fifteen years complete, but less than sixty, the male is always presumed to have survived, where there is equality of age, or if the difference which exists does not exceed one year.
If they were of the same sex, the presumption of survivorship which gives rise to succession according to the order of nature must be admitted; thus the younger is presumed to have survived the elder.

723. The law regulates the order of succeeding between legitimate heirs; in defect of such, the property passes to natural children, afterwards to the father or mother surviving; and if there be neither of those, to the state.

724. The lawful heirs are seised in full right of the property, claims, and funds of the deceased, under the obligation to discharge all the expenses of the succession: natural children, the spouse surviving, and the state, must cause themselves to be put in possession by act of law, in the forms which shall be determined.

## CHAPTER II.

***Of the Qualities requisite to succeed.***

725. In order to succeed, the party must of necessity be in existence at the moment at which the succession is opened.
Those incapable of succeeding are,
1st. He who is not yet conceived;
2d. The child who is not born likely to live;

3d. He who is civilly dead.

726. A foreigner is not permitted to succeed to property which his relation, foreigner or Frenchman, possesses in the territory of the republic, except in those cases and in the manner in which a Frenchman succeeds to his relation possessing property within the country of such foreigner, conformably to the regulations of article 11, under the title "Of the Privation and Forfeiture of Civil Rights."

727. Unworthy to succeed, and as such excluded from successions, are,
1st. He who shall be condemned for having caused or attempted to cause the death of the defunct;
2d. He who has brought against the defunct a capital charge adjudged calumnious;
3d. The heir being of age, who, being informed of the murder of the defunct, shall not have denounced it to the officers of justice.

728. This failure of denunciation cannot be objected to the ancestors and descendants of the murderer, nor to his connexions in the same degree, nor to the husband or wife, nor to his brothers or sisters, nor to his uncles and aunts, nor to his nephews and nieces.

729. The heir excluded from the succession for cause of unworthiness, is bound to restore all the fruits and revenues of which he has had the enjoyment since the opening of the succession.

730. The children of such unworthy person, coming to the succession in their own right, and without the aid of representation, are not excluded by the fault of their father; but the latter cannot in any case claim, over the property of such succession, the usufruct which the law allows to fathers and mothers over the property of their children.

## CHAPTER III.

***Of the different Orders of Succession.***

### SECTION I.

***General Dispositions.***

731. Successions are decreed to the children and descendants of the deceased, to his ancestors and collateral relations, in the order and according to the rules hereafter determined.

732. The law considers neither the nature nor the origin of property in order to regulate the succession thereto.

733. Every succession which falls to ancestors or collaterals, is divided into two equal parts; one for the relations of the paternal line, the other for relations of the maternal line. Uterine relations, or children of the same father, are not excluded by germanes; but they only take share in their own line, saving what shall be declared in article 752. Germanes take part in the two lines. There is no devolution from one line to another, except when no ancestor or collateral can be found in one of the two lines.

734. This first division being effected between the paternal and maternal lines, no further division is made between the different branches; but the moiety devolved upon each line belongs to the heir or heirs nearest in degree, saving the case of representation, as shall be spoken of hereafter.

735. The proximity of relationship is established by the number of generations; every generation is called a degree.

736. The series of degrees forms the line; the series of degrees between persons descending from each other is called the line direct; the line collateral is the series of

degrees between persons who do not descend from each other, but who are descended from a common author. The line direct is distinguished into the line direct descending and the line direct ascending. The first is that which connects the head with those who descend from him; the second is that which connects a person with those from whom he descends.

737. In the direct line are computed as many degrees as there are generations between the persons: thus the son is, with respect to his father, in the first degree; the grandson in the second; and in like manner the father and grandfather with respect to ions and grandsons.

738. In the collateral line the degrees are computed by generations, from one of the relations to, but not including their common author, and from the latter to the other relations. Thus two brothers are in the second degree; the uncle and the nephew are in the third degree; cousins-german in the fourth; and so of the rest.

**SECTION II.**

***Of Representation.***

739. Representation is a fiction of law, of which the effect is to cause representatives to enter into the place, the degree, and the rights of the party represented.

740. Representation takes place to infinity in the direct descending line. It is admitted in all cases, whether the children of the deceased come in competition with the descendants of a child previously dead; or whether all the children of the deceased having died before him, the descendants of such children are found to be in equal or unequal degrees toward them.

741. Representation does not take place in favor of ancestors; the nearest in each of the two lines always excludes the more distant.

742. In the collateral line, representation is admitted in favor of children and descendants of brothers and sisters of the deceased, whether they come to the succession concurrently with uncles or aunts, or whether all the brothers and sisters of the deceased being previously dead, the succession is found to be devolved upon their descendants in equal or unequal degrees.

743. In all cases where representation is admitted, the petition is effected by stocks: if one original stock have produced several branches, the subdivision is made also by stocks in each branch, and the members of the same branch make distribution between themselves by heads.

744. There is no representation of persons living, but only of those who are civilly or naturally dead. There can be no representation of a person the succession to whom is renounced.

**SECTION III.**

***Of Successions devolving upon Descendants.***

745. Children or their descendants succeed to their father and mother, grandfathers, grandmothers, or other ancestors, without distinction of sex or primogeniture, and although they be the issue of different marriages. They succeed by equal portions and by heads when they are all in the first degree and called in their own right: they succeed by stocks, when they come all or in part by representation.

## SECTION IV.

### *Of Successions devolving upon Ancestors.*

746. If the deceased has left neither posterity, nor brother, nor sister, nor descendants from them, the succession is divided into moieties between the ancestors of the paternal line and the ancestors of the maternal line. The ancestor who is found in the nearest degree receives the moiety allotted to his line, to the exclusion of all others. Ancestors in the same degree succeed by heads.

747. Ancestors succeed, to the exclusion of all others, to things by them given to their children or decendants dead without issue, when the objects given are found again in kind in the succession. If the objects have been alienated, the ancestors receive the price which may be therefore due. They succeed also to the action for recovery which the donee may have.

748. When the father and mother of a party dead without issue have survived him, if he has left brothers, sisters, or descendants from them, the succession is divided into two equal portions, of which a moiety only devolves upon the father and mother, who share it equally between them. The other moiety belongs to the brothers, sisters, or decendants from them, as shall be explained in section 5 of the present chapter.

749. In the case where a person dead without issue leaves brothers, sisters, or descendants from them, if the father or the mother be previously dead, the portion which in such case would have devolved conformably to the preceding article, is reunited to the moiety accruing to the brothers, sisters, or their representatives, as shall be explained in section 5 of the present chapter.

## SECTION V.

### *Of collateral Successions.*

750. In case of the previous decease of the father and mother of a person dead without issue, his brothers, sisters, or their descendants are called to the succession, to the exclusion of the ancestors and other collaterals. They succeed, either in their own right, or by representation, as has been regulated in section 2 of the present chapter.

751. If the father and mother of the party dead without issue have survived him, his brothers, sisters, or their representatives are only called to a moiety of the succession. If the father or the mother only has survived, they are called to the enjoyment of three-fourths.

752. The distribution of the moiety or of the three-fourths devolved upon the brothers or sisters, according to the terms of the preceding article, is effected between them by equal portions, if they are all by the same bed; if they are by different beds, a division is made of a moiety between the two lines paternal and maternal of the deceased; the germanes take part in both lines, and the uterine relations and those on the father[1]s side each in their own line only; if there are brothers and sisters on one side only, they succeed to the whole, to the exclusion of all the other relations of the other line.

753. In default of brothers or sisters or descendants from them, and in default of ancestors in one or other of the lines, the succession devolves as regards one moiety on the surviving ancestors; and as regards the other moiety, on the nearest relations of the other line. If there be a competition of collateral relations in the same degree, they share by heads.

754. In the case of the preceding article, the father or mother surviving has the usufruct of a third of the goods to which he does not succeed in property.

755. Relations beyond the twelfth degree do not succeed. In default of relations capable

of succeeding in one line, the relations of the other line succeed as regards the whole.

## CHAPTER IV.

***Of irregular Successions.***

### SECTION I.

***Of the Rights of Natural Children over the Proprty of their Father or Mother, and of the Succession to Natural Children dead without issue.***

756. Natural children are not heirs; the law does not grant to such any rights over the property of their father or mother deceased, except when they have been legally recognizcd. It does not grant to them any right over the property of relations of their father or mother.

757. The right of the natural child over the property of the father or mother deceased, is regulated in the following manner: If the father or mother has left lawful descendants, such right extends to one-third of the hereditary portion which the child would have had if he had been legitimate: it extends to a moiety when the father or mother does not leave descendants, but many ancestors, or brothers, or sisters; to three-fourths when the father or mother docs not leave either descendants or ancestors, either brothers or sisters.

758. The natural child has a right to the whole of the property, when his father or mother does not leave relations of a degree capable of succeeding.

759. In case of the previous decease of the natural child, his children or descendants may claim the rights fixed by the preceding articles.

760. The natural child or his descendants are bound to deduct from what they have the right to claim, all which they have received from the father or the mother whose succession is opened, and which shall be subject to account, according to the rules established in section 2 of chapter 6 of the present title.

761. All claim is forbidden them, when they have received in the lifetime of their father or mother, the half of what is allowed them by the preceding articles, with an express declaration on the part of their father or mother, that their intention is to reduce the natural child to the portion which they have assigned him. In the case in which this portion shall be inferior to the half of what ought to come to the natural child, he shall not be at liberty to claim more than the additional sum necessary to complete such moiety.

762. The regulations of articles 757 and 758 are not applicable to children who are the fruit of adulterous or incestuous intercourse. The law awards to them a subsistence merely.

763. This subsistence is regulated by consideration of the ability of the father or mother, the number and quality of legitimate heirs.

764. When the father or mother of an adulterous or incestuous child shall have caused him to learn a mechanical art, or when one of them shall have secured to him a subsistence while living, the child cannot set up any claim against their succession.

765. The succession to a natural child deceased without issue, devolves upon his father or mother who may have acknowledged him; or by moieties to both, if he has been acknowledged by both.

766. In case of the previous decease of the father and mother of the natural child, the property which he has received from them passes to the legitimate brothers or sisters,

if found in kind in the succession: actions for recovery, if any exist, on the price of such property alienated, if still due, revert equally to the legitimate brothers and sisters.

All other property passes to the natural brothers or sisters, or their descendants.

**SECTION II.**

***Of the Rights of the surviving Conjunct and of the Republic.***

767. When the deceased leaves neither relations of a degree capable of succeeding, nor natural children, the property of his succession belongs to his conjunct not being divorced surviving him.

768. In default of conjunct surviving, the succession is acquired by the republic.

769. The conjunct surviving and the commissioners of public property, who claim right to the succession, are bound to cause seals to be affixed, and to preserve an inventory to be made in the forms prescribed for the acceptance of successions under privilege of inventory.

770. They must demand provisional possession in the court of first instance within the jurisdiction of which the succession is opened. The court cannot decree on such petition until after three publications and notices in the usual forms, and after having heard the commissioner of government.

771. The spouse surviving is also bound to make use of the personal property, or to give sufficient security to assure its restoration, in case heirs of the deceased should present themselves within the space of three years: after such delay, the security is discharged.

772. The spouse surviving or the commissioners of public property who shall not have complied with the formalities respectively prescribed to them, may be condemned to damages and interest towards the heirs, if any such appear.

773. The regulations of articles 769, 770, 771, and 772, are common to natural children summoned for want of relations.

## CHAPTER V.

***Of the Acceptance and Repudiation of Successions.***

**SECTION I.**

***Of Acceptance.***

774. A succession may be accepted simply and absolutely or under privilege of inventory.

775. No one is bound to accept a succession which has fallen to him.

776. Married women are incapable of a valid acceptance of a succession without the authority of their husbands or of act of law, conformably to the regulations of cap. 6, under the title "Of Marriage." Successions falling to minors and interdicted persons, cannot be validly accepted but in conformity to the regulations of the title "Of Minority, Guardianship, and Emancipation."

777. The effects of acceptance have relation back to the day of the opening of the succession.

778. Acceptance may be express or tacit; it is express, when the title or quality of heir is assumed in an authentic or private act; it is tacit when the heir makes an act which necessarily supposes his intention of accepting, and which he would have no right to do but in his quality of heir.

779. Acts purely conservatory, of attention and provisional administration, are not acts of entry upon heirship, if the title or quality of heir have not been assumed.

780. Donation, sale, or conveyance of his successional rights made by one coheir, either to a stranger, or to all the other coheirs, or to some one of them, imports on his part acceptance of the succession. It is the same 1st, with a renunciation, though gratuitous, made by one of the heirs, in favor of one or more of his coheirs: 2nd, With a renunciation made even to the advantage of all the coheirs without distinction, when he receives the price of his renunciation.

781. When he to whom a succession has fallen is dead without having repudiated it or without having accepted it expressly or tacitly, his heirs may accept or repudiate it in his right.

782. If the heirs cannot agree in accepting or rejecting the succession, it must be accepted under privilege of inventory.

783. One of full age cannot impeach an express or tacit acceptance made by him of a succession, except in the case where such acceptance shall have been the consequence of a fraud practised against him: he can never disclaim it under pretext of hardship, excepting only in the case where the succession is found to be absorbed or diminished more than half, by the discovery of a will unknown at the moment of acceptance.

## SECTION II.

### *Of the Renunciation of Successions.*

784. Renunciation of a succession is not to be presumed: moreover it cannot be made, except at the office of the court of first instance within the circle where the succession is opened, or a particular register kept for this purpose.

785. The heir who renounces, is considered as never having been heir.

786. The share of the party renouncing is added to his coheirs; if he be the only one, it devolves upon the next degree.

787. Parties can never come in as representatives of an heir who renounces: if the party renouncing is the sole heir in his own degree, or if all his coheirs renounce, the children come in in their own right, and succeed by heads.

788. The creditors of a party renouncing to the prejudice of their rights, may cause themselves to be authorized by law to accept the succession in right of their debtor, in his place and stead. In such case, the renunciation is annulled merely in favor of the creditors, and up to the amount only of their claims; it is not so as respects the advantage of the heir who has renounced.

789. The power of accepting or repudiating a succession, is prescribed by the lapse of time required for the longest prescription respecting claims to real property.

790. So long as prescription of the right to accept has not been acquired against heirs who have renounced, they have the ability still of accepting the succession, if it has not been already accepted by other heirs: without prejudice nevertheless to the rights which may be acquired by third persons over the property of the succession, whether by prescription, or by acts validly made with the Curator to the vacant succession.

791. A party cannot, even by contract of marriage, renounce the succession to a living person, nor alienate the eventual claims which he may have to such succession.

792. The heirs who shall have conveyed away or concealed the goods of a succession are deprived of the power of renouncing therein: they become heirs simply and absolutely, notwithstanding their renunciation, without power to claim any share in the objects

conveyed away or concealed.

## SECTION III.

### *Of the Privilege of Inventory, of its Effects, and of the Obligations of the Beneficiary Heir.*

793. The declaration of an heir that he does not mean to assume this quality but under the privilege of an inventory, ought to be made at the office of the civil court of first instance of the circle in which the succession is opened: it mast be inscribed on the register destined to receive acts of renunciation.

794. This declaration has no effect except as it is preceded or followed by a faithful and exact inventory of the goods of the succession, in the forms regulated by the laws upon that proceeding, and within the intervals which shall be hereafter determined.

795. The heir has three months to form an inventory, computing from the day on which the succession is opened. He has moreover, for the purpose of deliberating on his acceptance or renunciation, a delay of forty days, which began to run from the day on which the three months allowed for the inventory expire, or from the day of closing the inventory, if it has been finished before the three months.

796. If, however, there are in the succession objects liable to perish, or expensive in their preservation, the heir may, in his quality of capable to succeed, and without being liable to inference of an acceptance on his part, cause himself to be authorized by act of law to proceed to a sale of such effects. Such sale ought to be made by the public officer, after notices and publications regulated by Jaws relating to that procedure.

797. During the continuance of the intervals for making the inventory and for the deliberation, the heir cannot be compelled to assume this quality, and sentence cannot be obtained against him; if he renounce when those intervals are expired, or before, the expenses legally incurred by him up to that period are to be charged upon the succession.

798. After the expiration of the intervals above mentioned, the heir, in case of prosecution directed against him, may demand a new delay, which the court which has possession of the suit may grant or refuse according to circumstances.

799. The expenses of prosecution, in the case of the preceding article, are at the charge of the succession, if the heir can prove, either that he had not any know-ledge of the death, or that the delays were insufficient, whether by reason of the situation of the property, or by reason of disputes having arisen; if he can bring no proof thereon, the expenses remain at his personal charge.

800. The heir preserves nevertheless, after the expiration of the delays granted by article 795, and also of those allowed by the judge conformably to article 798, the faculty of still making an inventory and of constituting himself heir beneficiary, if he has not otherwise done an act of heirship, or if there does not exist against him a judgment passed by force of a matter decided which condemns him in the quality of simple and absolute heir.

801. The heir who is found guilty of concealing or who has omitted knowingly and of bad faith, to comprehend in the inventory some effects of the succession, is deprived of the privilege of the inventory.

802. The effect of the privilege of the inventory is to give to the heir the advantage, 1st. Of not being bound to payment of the debts of the succession, except to the amount of the value of the goods collected by him, besides the power of discharging himself from the payment of the debts by abandoning all the goods of the succession to the creditors and legatees. 2d. Of not confounding his personal property with that of

the succession, and of preserving towards it the right of claiming the payment of his own demand.

803. The beneficiary heir is charged to administer the goods of the succession, and must render an account of his administration to the creditors and legatees. He cannot be compelled by his own property until after he has been in arrear in rendering his account, and in default of having satisfied this obligation. After the settling of the account, he can only be answerable in his own personal property to the amount of the sums remaining in his hands.

804. He is only responsible for serious faults in the administration with which he is invested.

805. He cannot sell the moveables of the succession but by the agency of a public officer, by auction, and after public notices and the accustomed publications. If he present them in kind, he is only responsible for the depreciation or deterioration caused by his own negligence.

806. He can only sell the immoveable property in the forms prescribed by the laws on this procedure; he is bound to pay over the price thereof to the mortgage creditors who make themselves known.

807. He is bound, if the creditors or other persons interested require it, to give good and sufficient security for the value of the moveables comprised in the inventory, and for the portion of the price of the immoveable property not paid over to mortgage creditors.

In failure of this security to be furnished by him, the moveable property is sold, and the price is deposited, as well as the unappropriated portion of the price of the immoveable property, to be employed in the acquittance of the charges on the succession.

808. If there are opposing creditors, the beneficiary heir can only pay in the order and in the manner directed by the judge. If there are not opposing creditors, he pays the creditors and the legatees as soon as they present themselves.

809. Creditors not opposing, who do not appear until after the settling of the account and the payment of the balance, have no redress to exercise except against the legatees. In both cases such redress is prescribed by the lapse of three years, to be computed from the day of the settling of the account and from the payment of the residue.

810. The expenses of the seals, if any have been affixed, of the inventory and of the account, are at the charge of the succession.

## SECTION IV.

### *Of vacant Successions.*

811. When after the expiration of the delays for making the inventory and for deliberating, no person appears who claims a succession, there is no heir known, or the known heirs have renounced therein, such succession is taken to be vacant.

812. The court of first instance within the circle in which it is opened names a curator on the petition of the persons interested, or on the requisition of the commissioner of government.

813. The curator in a vacant succession is bound, before every thing, to certify the state thereof by an inventory: he exercises and prosecutes the rights belonging to it: he answers demands formed against it: he administers on condition of causing the money arising from the succession, as well as that produced by the sale of the moveables or immoveables, to be paid into the hands of the receiver of national revenues, for the

preservation of their rights, and on condition of rendering account to whomsoever it shall belong.

814. The regulations of section 3 of the present chapter, on the forms of the inventory, on the mode of administration, and on the account to be rendered on the part of the heir beneficiary, are furthermore common to the curators of vacant successions.

## CHAPTER VI.

***Of Division and Restitution.***

### SECTION I.

***Of the Action for Division and of its Form.***

815. No one can be compelled to remain without division, and distribution may be always sued for, notwithstanding prohibitions and conventions to the contrary. The distribution may nevertheless be suspended by agreement during a limited time; such agreement cannot be made obligatory beyond five years; but it may be renewed.

816. The distribution may be demanded even though one of the coheirs shall have enjoyed separately a part of the goods of the succession, if there have not been an act of distribution, or sufficient possession to acquire a prescriptive right.

817. The action for distribution, with respect to coheirs, minors, or interdicted persons, may be exercised by their guardians, specially authorized by a family-council.

With respect to absent coheirs, the action belongs to the relations put in possession.

818. The husband may, without the concurrence of his wife, claim a distribution of objects moveable or immoveable fallen to her and which come into community: with respect to objects which do not come into community, the husband cannot claim the distribution thereof without the concurrence of his wife; he can only demand a provisional distribution in case he has a right to the enjoyment of her property.

The coheirs of the wife cannot claim final distribution without suing the husband and his wife.

819. If all the heirs are present and of age, the affixing of the seals on the effects of the succession is not necessary, and the distribution may be made in the form and by such act as the parties interested judge convenient. If all the heirs are not present, if there are among them minors or interdicted persons, the seal must be affixed with the least possible delay, whether at the request of the heirs, or on the prosecution of the commissary of government in the court of first instance, or officially by the justice of the peace within the circle in which the succession is opened.

820. Creditors may also require the affixing of seals, by virtue of an executory title or of a permission from the judge.

821. When the seal has been affixed, all creditors may make opposition thereto, although they have neither executory title nor permission from the judge. The formalities for the removal of the seals and the formation of the inventory are regulated by the laws on the procedure.

822. The action for distribution and the disputes which arise in the course of the proceedings, are submitted to the court of the place where the succession is opened. It is before this court that auctions are held, and that petitions ought to be brought relative to the warranty of lots between copartners, as well as those for rescinding of the distribution.

823. If one of the coheirs refuse to consent to the distribution, or if disputes arise either respecting the mode of proceeding therein, or on the manner of completing it, the court pronounces as in a summary matter, or commissions, if there be ground, one of the judges for the proceedings in the distribution, on whose report it decides the dispute.

824. The estimate of the immoveable property is made by competent persons chosen by the parties interested, or on their refusal nominated officially. The statement of these persons must present the basis of the estimate: it must show whether the thing estimated can be conveniently divided; in what manner; in short to fix, in case of division, each of the parts which may be formed of it and their value.

825. The valuation of the moveables, if there have not been an appraisement made in a regular inventory, ought to be made by people conversant with these affairs, at a fair price and without increase.

826. Each of the coheirs may demand his own share in kind of the moveables and immoveables of the succession; nevertheless, if there are seising or opposing creditors, or if[1] the majority of[1] the coheirs deem a sale necessary for the discharge of[1] the debts and incumbrances on the succession, the moveables must be sold publicly in the ordinary form.

827. If the immoveables cannot be commodiously divided, a sale by auction must be proceeded in before the court. Nevertheless the parties, if all of age, may consent that the auction should be made before a notary, on the choice of whom they can agree.

828. After the moveables and immoveables have been valued and sold, the judge appointed sends the parties (if there be ground for doing so) before a notary respecting whom they can agree, or one officially nominated if the parties cannot agree upon the choice.

They proceed before this officer to the accounts which the copartners may owe, to the formation of the general mass, to the composition of the lots, and to the supplies to be made to each of the copartners.

829. Every coheir makes restitution of the estate according to rules which shall be hereafter established, of gifts he may have received, and of sums for which he is debtor.

830. If the restitution is not made in kind, the coheirs to whom it is due may deduct a correspondent portion from the mass of the succession. The deductions are made as far as possible, in objects of the same nature, quality, and goodness, as the objects not restored in kind.

831. After these deductions, recourse is had on what remains in the mass, to the formation of so many equal lots as there are coheirs or stocks in coparcenary.

832. In the formation and arrangements of the lots, parties must avoid as much as possible disjointing estates and dividing works; and it is expedient, if it can be, to dispose in each lot the same quantity of moveables and immoveables, of rights or credits of the same nature and value.

833. The inequality of the lots in kind is balanced by a return either in rent or in money.

834. The lots are formed by one of the coheirs, if they can agree between themselves on a choice, and if the party elected accepts the commission; in the opposite case, the lots are made by a competent person appointed by the judge-commissary. They are afterwards drawn at hazard.

835. Before proceeding to draw the lots, each coparcener is admitted to offer his objections against their formation.

836. The rules established for the division of the masses to be distributed are equally observed in the subdivision to be made between the coparcenary stocks.

837. If in the operations sent before a notary disputes should arise, the notary shall draw up a statement of the difficulties and of the respective allegations of the parties, shall send them before the commissary nominated for the distribution; and, further, the forms shall be pursued which are prescribed by the laws on that procedure.

838. If all the coheirs are not present, or if there are amongst them interdicted persons, or minors although emancipated, the distribution must be made by act of law, conformably to the rules prescribed by article 819, and those following up to and including the preceding one. If there are many minors who have opposing interests in the distribution, a special and particular guardian must be appointed for each.

839. If there be ground for an auction, in the case of the preceding article, it cannot be made except by act of law with the formalities prescribed for the alienation of the property of minors. Strangers are always admitted thereto.

840. Distributions made conformably to the rules above prescribed, whether by guardians with the authority of a family-council, or by minors emancipated, assisted by their curators, or in the name of absentees or persons not present, are final: they are only provisional, if the rules prescribed have not been observed.

841. Every person, even a relation of the deceased, not being capable of succeeding him, and to whom a coheir shall have ceded his claim upon the succession, may be excluded from the division, either by all the coheirs, or by one only, on reimbursing him the price of such cession.

842. After the distribution, delivery must be made to each of the coparceners, of the particular titles to the objects which may have devolved to him. The titles to a property divided remain with him who has the greatest share, on condition of aiding there with such of the coparceners as shall be interested therein, when it shall be required of him. Titles common to a whole inheritance are delivered to him whom all the heirs have chosen to be the depositary thereof, on condition of aiding therewith the coparceners, on every requisition. If there be a difficulty in the choice, it is regulated by the judge.

## SECTION II.

### *Of Restitutions.*

843. Every heir, even beneficiary, coming to a succession, must restore to his coheirs, all he has received from the deceased by donation during life directly or indirectly: he cannot retain such gift nor claim a legacy left him by the deceased, unless such gifts and legacies have been given him expressly in addition and not subject to partition, or with a dispensation of restitution.

844. In the case even where gifts and legacies shall have been made in addition and with dispensation of restitution, the heir coming to distribution cannot retain them except to the amount of the disposable proportion: the excess is subject to restitution.

845. The heir who renounces a succession, may nevertheless retain a donation made during life, or claim a legacy given him, to the amount of his disposable proportion.

846. A donee who was not heir presumptive at the time of the donation, but who has become capable of succeeding on the day of opening the succession, must equally make restitution, unless the donor have dispensed therewith.

847. Donations and legacies given to the son of him who is found to be successor at the period of opening the succession, are always taken to have been made with

dispensation of restitution.

The father coming to the succession of the donor is not bound to make restitution.

848. In like manner, the son coming in his own right to the succession of the donor, is not bound to restore a donation made to his father, even though he shall have accepted the succession to the latter: but if the son only comes by representation, he must re-store a donation made to his father, even in the case where he shall have repudiated the succession.

849. Donations and legacies made to the husband or wife of a party succeeding, are deemed to have been made with dispensation of restitution. If the donations and legacies are made conjointly to the two married parties of whom one only is capable of succeeding, the other restores a moiety thereof; if donations are made to the married party capable of succeeding, restitution must be made of the whole.

850. Restitution is only made to the succession of the donor.

851. Restitution is due from him who has been employed for the establishment of one of the co-heirs, or for the payment of his debts.

852. The expenses of nourishment, of maintenance, of education, of apprenticeship, the ordinary expenses of equipment, those of marriage and customary presents, must not be restored.

853. It is the same with respect to profits which the heir may have derived from contracts made with the deceased, if such contracts did not present any indirect advantage when they were made.

854. In like manner restitution is not due in respect of partnerships formed without fraud between the deceased and one of his heirs, when the conditions thereof bave been regulated by an authentic act.

855. Immoveable property which has perished by accident and without the fault of the donee is not subject to restitution.

856. The fruits and interests of things subject to restitution are only due computing from the day on which the succession is opened.

857. The restitution is due only from one coheir to another: it is not due to legatees nor to the creditors of their succession.

858. The restitution is made in kind or by taking less.

859. It may be demanded in kind, in the case of immoveables, as often as the immoveable given has not been alienated by the donor, and there are not in the succession immoveables of the same nature, value, and goodness, of which may be formed lots nearly equal for the other co-heirs.

860. The restitution only takes place by taking less when the donee has alienated the immoveable before the opening of the succession; it is due to the value of the immoveable at the date of the opening.

861. In all cases reimbursements ought to be made to the donee of the expenses at which the object has been improved, regard being had to the augmented value as found at the time of distribution.

862. Reimbursement should be made also to the donee of expenses necessarily incurred in the preservation of the object, although they have not improved the bulk.

863. The donee on his part must give account of the injuries and deteriorations which have diminished the value of the immoveable, by his own act or through his fault and

negligence.

864. In the case where the immoveable has been alienated by the donee, the improvements or injuries caused by the purchaser must be charged conformably to the three preceding articles.

865. When the restitution is made in kind, the property is reunited to the stock of the succession, free and quit of all charges, created by the donee; but the mortgage-creditors may intervene in the distribution for the purpose of preventing a restitution being made in fraud of their claims.

866. When the donation of an immoveable made with dispensation of restitution to one capable of succeeding exceeds his disposable portion, restitution of the excess is made in kind, if the retrenchment of such excess can operate advantageously.
In the contrary case, if the excess is above one moiety of the value of the immoveable, the donee must restore it in entirety, saving a deduction from the stock to the amount of his disposable portion; if such portion exceed half the value of the immoveable, the donee may retain the immoveable in entirety, on condition of taking less and of recompensing the co-heirs in money or otherwise.

867. The coheir who makes restitution in kind of an immoveable, may retain the possession thereof until be has been reimbursed the sums due to him for expenses or improvements.

868. The restitution of moveables is only made by taking less. It is regulated on the basis of the value of the moveables at the time of the donation, according to the estimatory statement annexed to the act; and in defect of such statement, according to a valuation by competent persons, at a fair price and without increase.

869. The restitution of money given is made by taking less in the money of the succession.
In case of deficiency, the donee may free himself from restitution of the money by abandoning to the due amount, the moveables, or in default of moveables, the immoveables of the succession.

## SECTION III.

### *Of Payment of Debts.*

870. The coheirs contribute among them to the payment of the debts and charges on the succession each in the proportion to what he takes therein.

871. The legatee by general title contributes with the heirs proportionably to his emolument; but the particular heir is not bound by debts and charges, saving however a mortgage on the immoveable bequeathed.

872. When some of the immoveables of a succession are encumbered with rents by a special mortgage, each of the coheirs may require that the rents should be redeemed, and the immoveables rendered free, before they proceed to the formation of lots. If the coheirs make distribution of the succession in the state in which they find it, the immoveable encumbered ought to be estimated at the same rate as the other immoveables; a deduction of the capital of the rent is made from the total valuation; the heir within whose lot such immoveable falls alone remains charged with the encumbrance of the rent, and he must indemnify his coheirs against it.

873. The heirs are bound by the debts and charges on the succession, personally for their part and individual portions, and conditionally for the whole; saving the remedy either against their coheirs, or against the general legatees, in proportion to the part in which they are bound to contribute thereto.

874. The particular legatee who has discharged the debt with which the imnmoveable bequeathed was encumbered, enters by substitution into the right, of the creditor against the heir. and successors by general title.

875. The co-heir or successor by general title, who has paid, in consequence of the mortgage, more than his share of the common debt, has no resource against the other co-heirs or successors by general title, except for such part as each of them ought personally to sustain, even in the case where the co-heir having paid the debt shall have caused himself to be substituted into the rights of the creditors; without prejudice nevertheless to the rights of a co-heir, who, by the effect of the privilege of inventory, shall have preserved the power of claiming payment of his personal demand, like every other creditor.

876. In case of the insolvency of one of the co-heirs or successors by general title, his share in the mortgage debt is assessed upon all the others, in their respective proportions.

877. Executory demands against the deceased are in like manner executory against the heir personally; but the creditors nevertheless shall not be at liberty to pursue the execution thereof until eight days after the notification of such demands in person or at the domicil of the heir.

878. They may demand, in all cases, and against every creditor, the separation of the patrimony of the deceased from that of the heir.

879. This right however can be no longer exercised, when there is a transfer in the claim against the deceased, by the acceptance of the heir as debtor.

880. Prescription takes place, with reference to moveables, by the lapse of three years. With regard to immoveables, an action may be maintained as long as they are in the hands of the heir.

881. The creditors of the heir are not permitted to demand a separation of the patrimonies against the creditors of the succession.

882. The creditors of one coparcener, in order to prevent the making of distribution in fraud of their rights, may oppose its being done out of their presence; they have a right of interposing therein at their own charge; but they cannot impugn a distribution completed, provided however it has not been proceeded in without them and in prejudice of an opposition formed by them.

## SECTION IV.

### *Of the Effects of Distribution and of the Warranty of the Lots.*

883. Every coheir is deemed to have succeeded alone and immediately to all the effects comprised in his lot, or fallen to him by auction, and never to have had any property in the other effects of the succession.

884. The coheirs are respectively sureties for each other, against those molestations and evictions only which proceed from a cause anterior to the distribution. The guarantee does not take effect if the species of eviction suffered be excepted by a particular and express clause in the act of distribution; it ceases if it is by his own fault that the coheir suffers eviction.

885. Each of the coheirs is personally bound, in proportion to his hereditary share, to indemnify his coheir against the loss which his eviction has caused him. If one of the coheirs is found to be insolvent, the portion in which he is bound must be equally assessed upon the party indemnified and all the solvent coheirs.

886. The guarantee of the solvency of one who owes a rent cannot be made use of beyond the five years succeeding the distribution. There is no ground for the warranty on account of the insolvency of a debtor where it has occurred subsequently to the distribution completed.

## SECTION V.

### *Of Annulment of Distributions.*

887. Distributions may be rescinded for cause of violence or fraud. There may also be ground for annulment where one of the coheirs establishes, to his own prejudice, a loss of more than one fourth. The simple omission of an object in the succession does not give room for an action for annulment, but merely for a supplement to the act of distribution.

888. The action for annulment is admitted against every act which has for its object the cessation of the coparcenary of the coheirs, although it be ratified by sale, by exchange, by composition, or in any other manner. But after the distribution, or the act which supplies its place, the action for rescision is no longer admissible against the agreement founded upon the real difficulties presented by the first act, even though there should not have been process commenced upon this subject.

889. The action is not admitted against a sale of a successional right made without fraud to one of the coheirs, at his own risk and peril, by his other co-heirs or by one of them.

890. In order to judge if damage have been done, a valuation is made of the objects according to their value at the period of the distribution.

891. The defendant on a petition for annulment may arrest the progress thereof and prevent a new distribution, by tendering and furnishing to the plaintiff the supplement of his hereditary portion, either in money, or in kind.

892. The co-heir who has alienated his lot in whole or in part, is no longer admissible to sustain an action for annulment on the ground of fraud or violence, if the alienation which he has made is subsequent to the discovery of the fraud, or to the cessation of the violence.