French Civil Code

BOOK III. Of The Different Modes Of Acquiring Property.

TITLE III.

OF CONTRACTS OR CONVENTIONAL OBLIGATIONS IN GENERAL.

Decreed the 7th of February, 1804. Promulgated the 17th of the same Month.

CHAPTER I.

Preliminary Regulations.

1101. A contract is an agreement which binds one or more persons, towards another or several others, to give, to do, or not to do something.

1102. A contract is synallagmatical or bilateral when the contractors bind themselves mutually some of them towards the remainder.

1103. It is unilateral when it binds one person or several towards one other or several others, without any engagement being made on the part of such latter.

1104. It is commutative when each of the parties binds himself to give or to do a thing which is regarded as the equivalent for that which is given him, or for that which is done for him. When the equivalent consists in the chance of gain or loss for each of the parties, in consequence of an uncertain event, the contract is aleatory.

1105. The contract of beneficence is that in which one of the parties procures for the other an advantage purely gratuitous.

1106. The contract by onerous title is that which subjects each of the parties to give or to do something.

1107. Contracts, whether they have a particular denomination, or whether they have not, are subject to general rules, which are the objects of the present title. Rules applicable to certain contracts are established under the titles relating to each of them; and the rules applicable to commercial transactions are established by the laws relating to commerce.

CHAPTER II.

Of Conditions essential to the Validity of Agreements.

1108. Four conditions are essential to the validity of an agreement:
The consent of the party who binds himself;
His capacity to contract;
A certain object forming the matter of the contract;
A lawful cause in the bond.

SECTION I.

Of consent.

1109. There can be no valid consent if such consent have been given through mistake, or have been extorted through violence or surreptitiously obtained by fraud.

1110. Mistake is not a cause for annulling the agreement except when it occurs in the very substance of the thing which is the object thereof. It is not a cause for nullity

when it occurs only in the person with whom it is intended to contract, unless the consideration of such person were the principal cause of the agreement.

1111. Violence exercised toward him who has contracted the obligation, is a cause of nullity, although it have been exercised by a third person different from him for whose benefit the agreement has been made.

1112. That is violence which is of a nature to make an impression on a reasonable person, and which may inspire him with fear of exposing his person or his fortune to a considerable and present injury. Regard must be had, on this subject, to the age, to the sex, and condition of persons.

1113. Violence is a cause of nullity of contract, not only when it has been exercised cver the contracting party, but further when it has been so over his or her husband or wife, over their descendants or ancestors.

1114. Reverential fear only towards a father, mother, or other ancestor, without any violence having been exercised, does not suffice to annul a contract.

1115. A contract can no longer be impeached for cause of violence, if; subsequently to the cessation of the violence, such contract have been approved, either expressly, or tacitly, or by suffering the time fixed by the law for remedy thereof to pass by.

1116. Fraud is a cause of nullity of the agreement when the stratagems practised by one of the parties are such, that it is evident that without such stratagems the other party would not have contracted. It is not to be presumed, but must be proved.

1117. The agreement contracted by mistake, violence, or fraud, is not void absolutely; it only affords ground for an action for nullity or rescision, in the cases and in the manner explained in section 7 of chap. 5 of the present title.

1118. Inquiry does not vitiate agreements except in certain cases or with regard to certain persons, as shall be explained in the same section.

1119. A man cannot, in general, bind himself or stipulate in his own name except for himself.

1120. Nevertheless a man may vouch for a third person, by guaranteeing the deed of the latter; saving the indemnity against him who has vouched or who has promised to get it ratified, if the third party refuse to keep his engagement.

1121. A man may in like manner stipulate for the benefit of a third person, when such is the condition of a stipulation that a man makes for himself or of a donation which he makes to another. He who has made such stipulation can no longer revoke it, if the third party has declared his readiness to profit by it.

1122. A man is deemed to have stipulated for himself and for his heirs arid assigns, unless the contrary be expressed, or result from the nature of the agreement.

SECTION II.

Of the Capacity of the Contracting Parties.

1123. Every person may contract who has not been declared by the law incapable of doing so.

1124. Incapable of contracting are, Minors, Interdicted persons, Married women in the cases expressed by the law, And all those generally to whom the law has forbidden certain contracts.

1125. The minor, the interdicted person, and the married woman, cannot, under pretext of incapacity, impeach their own engagements, except in the cases provided for by the

law. Persons capable of binding themselves cannot object the incapacity of the minor, of the interdicted person, or of the married woman, with whom they have contracted.

SECTION III.

Of the Object and Matter of Contracts.

1126. Every contract has for its object a thing which one party binds himself to give, or which one party binds himself to do or not to do.

1127. The simple use or the simple possession of a thing may be, like the thing itself, the object of contract.

1128. It is only things which are objects of commerce that can be the object of agreements.

1129. It is necessary that the obligation have for its object a thing at least determinate as regards its kind. The quantity of the thing is allowed to be uncertain, provided it is capable of being determined.

1130. Things future may be the objects of an obligation. A man cannot however renounce a succession not opened, or make any stipulation regarding such a succession, even with his consent whose succession was in agitation.

SECTION IV.

Of the Cause.

1131. An obligation without a cause, or upon a false cause, or upon an unlawful cause, can have no effect.

1132. The agreement is not less valid, although the cause be not expressed therein.

1133. The cause is unlawful when it is prohibited by the law, when it is contrary to good morals or to public order.

CHAPTER III.

Of the Effect of Obligations.

SECTION I.

General Regulations.

1134. Agreements legally formed have the force of law over those who are the makers of them. They cannot be revoked except with their mutual consent, or for causes which the law authorizes. They must be executed with good faith.

1135. Agreements bind not only as to what is expressed therein, but further as regards all the consequences which equity, usage, or law attribute to an obligation by its nature.

SECTION II.

Of the Obligation of Giving.

1136. The obligation of giving imports that of delivering the thing and of preserving it up to delivery, under pain of damages and interest towards the creditor.

1137. The obligation of vigilance in the preservation of the thing, whether the agreement have for its object the advantage of one of the parties, or whether its object be their mutual profit, subjects him who is charged therewith to apply all his care like a good father of a family. This obligation is more or less extended in relation to certain contracts, the effects of which, in this respect, are explained under the titles which apply to them.

1138. The obligation to deliver the thing is perfect by the consent merely of the contracting parties. It renders the creditor proprietor, and puts the thing upon his risk from the instant at which it ought to have been delivered, although the delivery have not been actually made unless the debtor should have delayed delivering it; in which case the thing remains at the risk of the latter.

1139. The debtor is deemed guilty of delay, either by a summons or other equivalent act, or by the effect of the agreement, when it imports that, without need of an act and by the sole lapse of the term, the debtor shall be in delay.

1140. The effects of the obligation to give or to deliver an immoveable are regulated under the title "Of Sales," and under the title "Of Privileges and Mortgages."

1141. If the thing which a party is bound to give or to deliver to two persons successively is purely moveable, that one of the two who has been put in actual possession tbere-of is preferred and remains proprietor thereof, although his title should be posterior in date, provided however that the possession be in good faith.

SECTION III.

Of the Obligation to do or not to do.

1142. Every obligation to do or not to do resolves itself into damages, in case of non-performance on the part of the debtor.

1143. Nevertheless the creditor has a right to demand that whatever shall have been done in contravention of the engagement, shall be destroyed; and he may procure himself to be authorized to destroy it at the expense of the debtor, without prejudice to his damages, if there be ground.

1144. The creditor may also, in case of non-performance, be authorized to procure the bond to be executed himself at the expense of the debtor.

1145. If the obligation is not to do, he who contravenes it therein is indebted in damages and interest by the single act of contravention.

SECTION IV.

Of Damages and Interest resulting from the non-performance of the Obligation.

1146. Damages and interest are only due when the debtor is in arrear in fulfilling his obligation; except nevertheless when the thing which the debtor has bound himself to give or to do cannot be given or done but within a certain time which he has suffered to pass by.

1147. The debtor is condemned, if there be ground, to the payment of damages and interest, either by reason of the non-performance of the obligation or by reason of delay in its execution, as often as he cannot prove that such non-performance proceeds from a foreign cause which cannot be imputed to him, although there be no bad faith on his part.

1148. There is no ground for damages and interest, when by consequence of a superior force or of a fortuitous occurrence, the debtor has been prevented from giving or doing that to which he has bound himself, or has done that from which he was interdicted.

1149. The damages and interest due to the creditor are, in general, to the amount of the loss which he has sustained or of the gain of which he has been deprived ; saving the exceptions and modifications following.

1150. The debtor is only bound for the damages and interest which were foreseen, or which might have been foreseen at the time of the contract, when it is not in

consequence of his fraud that the obligation has not been executed.

1151. Even in the case where the non-performance of the contract results from the fraud of the debtor, the damages and interest must not comprehend, as regards the loss sustained by the creditor and the gain of which he has been deprived, any thing which is not the immediate and direct consequence of the non-performance of the contract.

1152. When the agreement imports that he who shall fail in executing it shall pay a certain sum under the title of damages, there can be allowed to the other party neither a greater nor a less sum.

1153. In the obligations which are limited to the payment of a certain sum, the damages and interest resulting from the delay in the performance consist only of a condemnation to the interest fixed by the law ; saving the rules peculiar to commerce and security. Such damages and interest are demandable without binding the creditor to prove any loss. They are only due from the day of the demand, except in cases wherein the law makes them run absolutely.

1154. Interest accruing from capital sums may produce interest either by a judicial demand or by a special agreement, provided that whether in the demand or in the agreement, the interest in question has been due for one entire year at least.

1155. Nevertheless revenues falling due, such as rents of farms, houses, arrears of perpetual annuities, or those for life, produce interest from the day of demand or by the agreement. The same rule applies to restrictions of fruits, and to interest paid by a third person to the creditor in discharge of the debtor.

SECTION V.

Of the Interpretation of Agreements.

1156. In agreements it is necessary to search into the mutual intention of the contracting parties, rather than to stop at the literal sense of terms.

1157. When a clause is susceptible of two meanings, it must rather be understood in that according to which it may have some effect, than in that whereby it cannot produce any.

1158. Expressions susceptible of two meanings must be taken in that which agrees best with the matter of the contract.

1159. Whatever is ambiguous must be interpreted according to the usage of the country where the contract is made.

1160. Clauses usual in the contract must be supplied therein, although they are not expressed.

1161. All the clauses of agreements are interpreted by each other, giving to each the sense derived from the entire act.

1162. In case of doubt, the agreement is interpreted against him who has stipulated, and in favour of him who has contracted the obligation.

1163. However general the terms may be in which an agreement is couched, it only comprehends things respecting which it appears that the parties intended to contract.

1164. When a case has been put in a contract for the purpose of explaining the obligation, it is not to be inferred to have been designed to restrict the extent to which the engagement goes of right as regards cases not expressed.

SECTION VI.

Of the Effect of Agreements as respects third Persons.

1165. Agreements have no effect but between the contracting parties ; they do not work injury to a third person, nor can they profit him except in the case provided for by article 1121.

1166. Nevertheless creditors may put in force all claims and suits belonging to their debtor, with the exception of those which are exclusively attached to the person.

1167. They may also, in their own name, impeach acts made by their debtor in fraud of their rights. They must nevertheless, as regards their rights, set forth under the title "Of Succession," and under the title "Of the Marriage Contract, and of the respective Rights of Married Persons," conform themselves to the rules which are therein prescribed.

CHAPTER IV.

Of the different Species of Obligations.

SECTION I.

Of conditional Obligations.

§ I. Of Conditions generally, and of their different Kinds.

1168. The obligation is condlitional when it is made to depend on an event future and uncertain, either by suspending it until the event happens, or by receding therefrom accordingly as the event shall happen or not.

1169. A casual condition is that which depends on chance, and which is in no respect in the power of the creditor or of the debtor.

1170. A potestative condition is that which causes the performance of the agreement to depend on an event which it is in the power of one or other of the contracting parties to cause to happen or to prevent from doing so.

1171. A mixed condition is that which depends at once on the will of one of the contracting parties, and on the will of a third person.

1172. Every condition of a thing impossible, or contrary to good morals, or prohibited by the law, is null, and renders null the agreement which depends thereon.

1173. The condition of not doing an impossible thing does not render null the obligation contracted subject to such condition.

1174. Every obligation is null when it has been contracted under a potestative condition on the part of him who binds himself.

1175. Every condition must be accomplished in the manner in which the parties have probably wished and intended that it should be.

1176. When an obligation is contracted under the condition that an event shall happen within a fixed time, such condition is deemed to have failed when the time is expired without the event having taken place. If there be no time fixed, the condition may always be accomplished; and it is not taken to have failed until it has become certain that the event will not happen.

1177. When an obligation is contracted under the condition that an event shall not happen within a fixed time, such condition is accomplished when the time is expired without the event having occurred; it is equally so, if before the limit, it is certain that the event

will not occur; and if there have been no determinate period, it is not accomplished until it is certain that the event will not happen.

1178. The condition is taken to be accomplished, when the debtor, bound under such condition, has prevented the accomplishment thereof.

1179. A condition accomplished has an effect retroactive to the day on which the engagement was contracted. If the creditor be dead before the accomplishment of the condition, his rights pass to his heirs.

1180. A creditor may, before the condition is accomplished, put in force all acts preservative of his rights.

§ II. Of the suspensive Condition.

1181. The obligation contracted under a condition suspensive, is that which depends either on an event future and uncertain, or on an event actually happened, but still unknown to the parties. In the first case, the obligation cannot be performed until after the event. In the second case, the obligation takes effect from the day on which it was contracted.

1182. When the obligation has been contracted under a condition suspensive, the thing which forms the matter of the agreement remains at the risk of the debtor, who is not bound to deliver it except in case of the event of the condition. If the thing have perished entirely without the fault of the debtor, the obligation is extinguished. If the thing be deteriorated without the fault of the debtor, the creditor has the choice either to dissolve the obligation, or to demand the thing in the state in which it shall be found, without diminution of price. If the thing be deteriorated by the fault of the debtor, the creditor has a right either to dissolve the obligation, or to demand the thing in the state in which it shall be found, with damages.

§ III. Of the Condition dissolutory.

1183. A condition dissolutory is that which, when it is accomplished, operates the revocation of the obligation, and which again puts affairs in the same state as though the obligation had never existed. It does not suspend the performance of the obligation; it merely obliges the creditor to restore what he may have received, in the case in which the event provided for by the condition happens.

1184. A condition dissolutory is always intended in synallagmatical contracts, for the case in which one of the two parties shall not satisfy his engagement. In this case the contract is not dissolved absolutely. The party towards whom the engagement has not been performed, has his election either to compel the other to performance of the agreement where it is possible, or to demand the dissolution thereof with damages and interest. The dissolution may be demanded at law, and a delay may be granted to the defendant according to circumstances.

SECTION II.

Of Obligations for a Term.

1185. A term differs from a condition, in that it does not suspend the engagement, of which it retards the execution only.

1186. That which is not due until after a term, cannot be demanded until the expiration of the term; but that which has been paid in advance, cannot be recovered.

1187. A term is always presumed to be stipulated in favor of the debtor, unless it result from the stipulation, or from circumstances, that it has been also agreed in favor of the creditor.

1188. A debtor can no longer claim the benefit of the term when he has become bankrupt, or when by his own act he has diminished the security which he had given by the contract to his creditor.

SECTION III.

Of alternative Obligations.

1189. A debtor in respect of an alternative obligation is discharged by the delivery of one of two things which were comprehended in the obligation.

1190. The election belongs to the debtor, if it have not been expressly accorded to the creditor.

1191. A debtor may discharge himself by delivering one of two things promised; but he cannot compel the creditor to receive one part of one, and one part of the other.

1192. An obligation is pure and simple, although contracted in an alternative manner, if the one of two things promised could not be the subject of obligation.

1193. The obligation alternative becomes pure and simple, if one of the things promised perishes and is no longer capable of being delivered, even with the fault of the debtor. The price of such thing cannot be offered in its place. If both have perished and the debtor is in fault with respect to one of them, he must pay the price of that which perished last.

1194. When in the cases contemplated in the preceding article, the election has been deferred by agreement with the creditor: Either one of the things only has perished; and then if it is without the fault of the debtor, the creditor must have that which remains; if the debtor is in fault the creditor may demand the thing which remains or the price of that which has perished; Or both the things have perished; and then if the debtor is in fault with regard to both, or even with regard to one of them only, the creditor may demand the price of either at his election.

1195. If both the things have perished without the fault of the debtor, and before lie is in delay, the obligation is extinguished, conformably to article 1302.

1196. The same principles apply to cases in which there are more than two things comprehended in the alternative obligation.

SECTION IV.

Of Obligations, joint and several.

§ I. Of Creditors jointly and severally interested.

1197. The obligation is joint and several among several creditors when the title gives expressly to each of them the right to demand payment of the whole of the debt, and when payment made to one of them discharges the debtor, although the benefit of the obligation be distributable and divisible between the different creditors.

1198. It is within the election of the debtor to pay to one or other of the joint and several creditors, so long as he is not anticipated by the prosecution of one of them. Nevertheless postponement, which is only made by one of the joint and several creditors, does not discharge the debtor, except on the part of such creditor.

1199. Every act which interrupts prescription with regard to one of the joint and several creditors, benefits the other creditors.

§ II. Of Debtors jointly and severally interested.

1200. Debtors are jointly and severally interested when they are bound to one and the

same thing, in such manner that each one may be arrested for the entirety, and when payment made by one discharges the other towards the creditor.

1201. The obligation may be joint and several, though one of the debtors be bound differently from the other to the payment of the same thing: for example, if one be bound only conditionally, while the engagement of the other is absolute, or if one has taken a term which is not granted to the other.

1202. Joint and several obligation is not to be presumed; it is necessary that it should be expressly stipulated. This rule is only suspended where the joint and several obligation takes place absolutely, by virtue of a regulation of the law.

1203. The creditor of an obligation contracted jointly and severally may address himself to such one of the debtors as he may choose, without the latter being able to object the benefit of division.

1204. Prosecutions directed against one of the debtors do not prevent the creditor from instituting the like against the others.

1205. If the thing due have perished by the fault or during the delay of one or of several of the joint and several debtors, the other joint-debtors are not discharged from the obligation of paying the price of such thing; but the latter are not subject to damages. A creditor can only recover damages against the debtors by whose fault the thing has perished and against those who are in delay.

1206. Prosecutions made against one of joint and several debtors interrupt prescription with respect to all.

1207. A demand for interest made against one of the joint and several debtors causes interest to run with respect to all.

1208. A joint and several debtor prosecuted by the creditor must oppose all the objections which flow from the nature of the obligation, and all those which are personal to himself, as well as those which are common to all the joint debtors. He cannot oppose objections which are purely personal to some of the joint-debtors.

1209. When one of the debtors becomes sole heir of the creditor, or when the creditor becomes sole heir of one of the debtors, the intermixture does not extinguish the joint and several credit, except for the part and portion of such debtor or creditor.

1210. A creditor who consents to a division of the debt with regard to one of the joint-debtors, preserves his joint and several action against the others, but subject to a deduction of the share of the debtor who was discharged from joint and several obligation.

1211. A creditor who receives by division the share of one of the debtors, without reserving in the quittance his joint and several claims or his rights in general, only renounces joint and several obligation with regard to such debtor. A creditor is not deemed to relinquish joint and several obligation to a debtor by receiving from him a sum equal to the portion in which he is bound. if the acquittance do not import that it is for his share. It is the same with regard to a simple demand made against one of the co-debtors for his share, if the latter have not acquiesced in the demand, or if a judgment of condemnation have not intervened.

1212. The creditor who receives dividedly and without reserve the portion of one of the joint-debtors without arrears or interest of the debt, does not lose his joint and several obligation except as regards the arrears or interest fallen due, and not for those to fall due, nor as regards the capital, unless the divided payment have continued during ten consecutive years.

1213. The obligation contracted jointly and severally towards the creditor divides itself absolutely among the debtors who are only bound therefore among themselves each for his own share and portion.

1214. The joint debtor of a joint and several debt, who has paid it in entirety, cannot recover against the others beyond the part and portion of each of them. If one of them is found to be insolvent, the loss which his insolvency occasions, is subdivided by contribution among all the other joint-debtors being solvent and him who has made the payment.

1215. In the case in which a creditor has renounced his joint and several action against one of the debtors, if one or more of the remaining joint-debtors become insolvent, the portion of the insolvent. shall be proportionably subdivided among all the debtors, even among those previously discharged from joint and several claims by the creditor.

1216. If the matter for which the debt has been contracted jointly and severally relates only to one of the joint and several co-obligors, the latter shall be bound in the whole debt as respects the other joint-debtors, who shall only be considered with reference to him as his sureties.

SECTION V.

Of Obligations divisible and indivisible.

1217. The obligation is divisible or indivisible accordingly as it has for its object either a thing which in its delivery, or an act which in its execution, is or is not susceptible of division, either material or intellectual.

1218. The obligation is indivisible, although the thing or the act which is the object thereof is divisible in its nature, if the aspect under which it is considered in the obligation does not render it susceptible of partial execution.

1219. Joint and several obligation stipulated does not confer the character of indivisibility.

§ I. Of the Effects of the divisible Obligation.

1220. The obligation which is susceptible of division, must be executed between the creditor and the debtor as if it were indivisible. The divisibility has no application but with regard to their heirs, who cannot demand the debt or who are not bound to pay it, except in the portions of which they are seised, or in which they are bound as representing the creditor or the debtor.

1221. The principle laid down in the preceding article admits of exceptions with regard to the heirs of the debtor, 1st. In the case where the debt is on mortgage; 2d. When it is of a certain property; 3d. When a debt alternative is in question regarding things in the election of the creditor, one whereof is indivisible; 4th. When one of the heirs is charged alone, by the document, with the execution of the obligation; 5th. When it may be collected, either from the nature of the engagement, or from the thing which forms the object thereof, or from the end which is proposed by the contract, that the intention of the contracting parties was that the debt should not be partially discharged. In the first three cases, the heir who possesses the thing due or the estate pledged for the debt, may be sued for the whole out of the thing due or out of the estate pledged, saving the remedy against his coheirs. In the fourth case the heir alone charged with the debt, and in the fifth case every heir, may also be sued for the whole; saving his remedy against his coheirs.

§ II. Of the Effects of an indivisible Obligation.

1222. Each one of those who have contracted conjointly an indivisible debt, is bound for

the total thereof; although the obligation have not been contracted jointly and severally.

1223. The same rule applies to the heirs of him who has contracted a similar obligation.

1224. Every heir of the creditor may demand in totality the execution of the indivisible obligation.

He cannot alone remit the entirety of the debt; he cannot alone receive the value in place of the thing. If one of the heirs have alone remitted the debt or received the price of the thing, his coheir cannot demand the indivisible thing without accounting for the portion of the coheir who has made remittance or received the price.

1225. The heir of the debtor, charged with the entirety of the obligation, may demand a delay in order to sue his coheirs, unless the debt should be of a nature not capable of being acquitted except by the heir charged, who may then be condemned alone; saving his remedy for indemnification against his coheirs.

SECTION VI.

Of Obligations with Penal Clauses.

1226. The penal clause is that by which a person, in order to assure the performance of an agreement, binds himself to something in case of non-performance.

1227. The nullity of the principal obligation carries with it that of the penal clause. The nullity of the latter does not draw after it that of the principal obligation.

1228. The creditor is allowed to sue for performance of the principal obligation, in lieu of demanding the penalty stipulated against the debtor who is in delay.

1229. The penal clause is the compensation for the damages which the creditor is subjected to from the non-performance of the principal obligation. He cannot demand at the same time the principal and the penalty, unless the latter have been stipulated for delay only.

1230. Whether the original obligation contain, or whether it do not contain a term within which it must be accomplished, the penalty is not incurred until he who is bound either to deliver, or to take, or to do, is in delay.

1231. A penalty may be modified by the judge when the principal obligation has been executed in part.

1232. When the original obligation contracted with a penal clause relates to a thing indivisible, the penalty is incurred by the contravention of one only of the heirs of the debtor, and it may be demanded, either in entirety against him who has so acted in contravention, or against each of the coheirs for their part and portion, and conditionally for the whole, saving their remedy against him who has actually incurred the penalty.

1233. When the original obligation contracted under a penalty is divisible, the penalty is only incurred by that one of the heirs who contravenes such obligation, and in the proportion only in which he was bound in the principal obligation, without any action against those who have performed it. This rule admits exception when the penal clause having been added with the intention that the payment should not be made partially, one coheir has prevented the performance of the obligation in totality. In such case the entire penalty may be demanded against him and against the other coheirs for their portion only, saving their remedy.

CHAPTER V.

Of the Extinction of Obligations.

1234. Obligations are extinguished,
By payment,
By novation,
By voluntary remission,
By compensation,
By intermixture,
By the loss of the thing,
By nullity or rescission,
By the effect of the condition dissolutory, which has been explained in the preceding chapter,
And by prescription, which shall form the subject of a particular title.

SECTION I.

Of Payment.

§ I. Of Payment in general.

1235. Every payment supposes a debt; that which has been paid without being due is subject to recovery. The recovery is not permitted with respect to natural obligations which have been voluntarily discharged.

1236. An obligation may be discharged by every person who is interested therein, such as a co-obligor or a surety. The obligation may even be discharged by a third person who is not interested therein, provided such third person act in the name and in discharge of the debtor, or that if he act in his own proper name, he is not substituted into the rights of the creditor.

1237. The obligation to do an act cannot be discharged by a third person against the consent of the creditor, when the latter has an interest in its being performed by the debtor himself.

1238. In order to pay validly, it is necessary to be proprietor of the thing given in payment, and capable of alienating it. Nevertheless the payment of a sum in money or other thing which is consumed by using, cannot be recovered against the creditor who has consumed it bona fide, although payment thereof have been made by him who is not the proprietor thereof or who was not capable of alienating it.

1239. The payment must be made to the creditor or to some one having authority from him, or who shall be authorized by the court or by the law to receive for him. Payment made to one who shall not have authority to receive for the creditor, is valid, if the latter ratify it or if he have profited thereby.

1240. Payment made bona fide to him who is in possession of the credit, is valid, although he be so by eviction.

1241. Payment made to the creditor is not valid if he were incapable of receiving it, unless the debtor can prove that the thing paid has turned to the benefit of the creditor.

1242. Payment made by the debtor to his creditor, to the prejudice of a seizure or opposition, is not valid with regard to the creditors seizing or opposing; the latter may, according to their claim, compel him to pay afresh, saving in such case only, his remedy against the creditor.

1243. The creditor cannot be compelled to accept a thing different from that which is due to him, although the value of the thing tendered should be equal or even superior.

1244. The debtor cannot oblige the creditor to receive partial payment of a debt, although divisible.

The judge may nevertheless, in consideration of the debtors situation, and using this power with great caution, award moderate delays for the payment, and suspend the course of the suit, putting all things in the same state.

1245. A debtor in a certain and determinate property is discharged by the remittance of such object in the state in which it may be at the time of delivery, provided that the deteriorations which have occurred therein do not proceed from his act or fault, nor from that of persons for whom he is responsible; provided also that previously to such deteriorations he were not in delay.

1246. If the debt consists of a thing which cannot be determined except by its species, the debtor shall not be bound, in order to his discharge, to give it of the best kind; but he must not offer the worst.

1247. The payment must be performed in the place appointed by the agreement. If the place be not designated therein, when a certain and determinate property is in question, it must be made in the place where the thing which is the object of the obligation was at the date thereof. With the exception of these two cases, the payment must be made at the domicil of the debtor.

1248. The expenses of the payment are at the charge of the debtor.

§ II. Of Payment with Substitution.

1249. Substitution into the rights of the creditor for the benefit of a third person who pays him, is either conventional or legal.

1250. Such substitution is conventional, 1st. When the creditor receiving his payment from a third person substitutes him into his rights, actions, privileges, or mortgages against the debtor, such substitution must be express, and made at the same time as the payment; 2d. When the debtor borrows a sum for the purpose of paying his debt, and of substituting the lender into the rights of the creditor, it is necessary to the validity of such substitution, that the act of borrowing and the acquittance should be made before notaries; that in the act of borrowing it should be declared that the sum has been borrowed in order to make payment, and that in the quittance it should be declared that the payment has been made with money furnished for that purpose by the new creditor. Such substitution is operative without the concurrence of the creditor's assent.

1251. Substitution takes place absolutely, lst. For his benefit who being himself a creditor pays another creditor who has a preferable claim on account of his privileges or mortgages; 2d. For the benefit of the purchaser of an immoveable, who employs the value of his purchase in payment of creditors oto whom such estate was mortgaged; 3d. For his benefit who being bound with others or for others for the payment of the debt, had interest in discharging it; 4th. For the benefit of the beneficiary heir who has paid out of his own funds the debts of the succession.

1252. The substitution established by the preceding articles takes place as well against sureties as against debtors: it is not allowed to work injury to the creditor where he has only been paid in part; in such case he may exercise his rights, as respects what remains due to him, by preference against him from whom he has only received a partial payment.

§ III. Of the Application of Payments.

1253. He who owes several debts has the right to declare, when he pays, which debt it is his purpose to discharge.

1254. He who owes one debt bearing interest or producing arrears cannot, without the consent of the creditor, apply the payment which he makes to the capital in preference to the arrears or interest: the payment made on the capital and interest, but which is not entire, is applied at first to the interest.

1255. When he who owes divers debts has received an acquittance by which the creditor has deducted what he has received from one of the debts specifically, the debtor can no longer demand deduction from a different debt, unless there have been fraud or surprise on the part of the creditor.

1256. When the quittance does not contain any application, the payment must be deducted from the debt which the debtor had at that time the most interest in acquitting among those which are equally due; otherwise, from the debt due, though less burdensome than those which are not so. If the debts are of equal nature, the deduction is made from that of longest standing: all things being equal, it is made proportionably.

§ IV. Of Tenders of Payment, and of Deposit.

1257. When the creditor refuses to receive his payment, the debtor may make him real offers, and on the refusal of the creditor to accept them, may deposit the sum or the thing offered. Real offers followed by a deposit discharge the debtor; they have with respect to him the effect of payment, when validly made, and the thing thus deposited remains at the risk of the creditor.

1258. In order that real offers should be valid, it is necessary, lst. That they should be made to the creditor capable of receiving, or to a person who has authority to receive for him; 2d. That they should be made by a person capable of paying; 3d. That they should consist of the entire sum demandable, of arrears or interest due, of liquidated damages, and of a sum for unliquidated damages, saving to perfect it; 4th. That the term be expired, if it have been stipulated in favor of the creditor; 5th. That the condition under which the debt has been contracted has occurred; 6th that the offers were made at the place agreed on for the payment, and that, if there be no special agreement on the place of payment, they should be made personally to the creditor, or at his domicil, or at the domicil chosen for the performance of the agreement; 7th. That the offers be made by a ministerial officer having authority for these descriptions of acts.

1259. It is not necessary to the validity of the deposit that it should have been authorized by the judge; it suffices, lst. That it have been preceded by a summons signified to the creditor, and containing an indication of the day, the hour, and the place, where and when the thing offered will be deposited; 2d. That the debtor divest himself of the thing offered, by sending it to the depot marked out by the law for the reception of deposits, with the interest up to the day of the deposit; 3d. That a statement have been drawn up by the ministerial officer, of the nature of the commodities offered, of the refusal which the creditor has made to receive them, or of his non-appearance, and finally of the deposit; 4th. That in case of non-appearance on the part of the creditor, the statement respecting the deposit have been signified to him with a summons to take away the thing deposited.

1260. The expenses of real offers and of deposit are, if valid, charged upon the creditor.

1261. So long as the deposit is not accepted by the creditor, the debtor may withdraw it; and if he do withdraw it, the parties jointly indebted with him and his sureties are not discharged.

1262. When the debtor has himself obtained a judgment passed with force of a matter decided, which has declared his offers and his deposit good and valid, he is no longer

at liberty, even with the consent of the creditor, to withdraw his deposit, to the prejudice of those jointly indebted with him, or of his sureties.

1263. A creditor who has consented that the debtor should withdraw his deposit after it has been declared valid, by a judgment which has acquired the force of a matter decided, can no longer, with a view to the payment of his demand, exercise the privileges or mortgages attached thereto; the mortgage ceases to exist except from the day on which the act by which he consented that the deposit should be withdrawn shall be reinvested with the forms requisite to reestablish the mortgage.

1264. If the thing due is a certain property which must be delivered in the place where it is found, the debtor must give the creditor notice to remove it, by act notified personally to him or at his domicil, or at the domicil elected for the execution of the agreement. Such notice having been given, if the creditor do not remove the thing, and the debtor wants the place in which it stood, the latter may obtain from the court permission to put it in deposit in some other place.

§ V. Of the Cession of Property.

1265. The cession of property is the abandonment made by a debtor to his creditors of all his property, when be finds himself no longer in condition to pay his debts.

1266. The cession of property is voluntary or judicial.

1267. The voluntary cession of property is that which tbe creditors accept voluntarily, and which has no effect beyond that which results from the contract passed between them and the debtor.

1268.J udicial cession is a benefit which the law accords to the unfortunate and bona fide debtor, to whom it is allowed, in order to secure the liberty of his person, to make judicially an abandonment of all his property to his creditors, notwithstanding any stipulation to the contrary.

1269. Judicial cession confers no property on the creditors; it gives them the right only of making sale of the property for their own benefit, and of enjoying the revenues thereof until the sale.

1270. Creditors cannot refuse a judicial cession unless it be within the cases excepted by the law. It operates a discharge from corporeal restraint. Further, it does not liberate the debtor beyond the amount of the value of the property abandoned: and in the cases where that shall prove insufficient, and other property shall come to his hands, he is compelled to abandon it until complete payment.

SECTION II.

Of Novation.

1271. Novation is effected in three ways; 1st. When the debtor contracts towards his creditor a new debt which is substituted for the ancient one, which latter is extinguished; 2d. When a new debtor is substituted for the ancient one who is discharged by the creditor; 3d, When, by the effect of a new engagement, a new creditor is substituted for the ancient one, towards whom the debtor becomes discharged.

1272. Novation can only be effected between persons capable of contracting.

1273. Novation is not to be presumed; it is necessary that the intention to effect it should clearly result from the act.

1274. Novation by the substitution of a new debtor, may be effected without the concurrence of the first.

1275. The delegation by which a debtor gives to a creditor another debtor who binds himself towards the creditor, does not operate novation, if the creditor has not expressly declared that he intended to discharge his debtor who has made the delegation.

1276. The creditor who has discharged the debtor by whom delegation has been made, has no remedy against such debtor, if the delegated person become insolvent, unless the acts contain an express reservation thereof, or that the delegated party has been already openly a bankrupt, or has fallen into embarrassment at the moment of the delegation.

1277. The simple indication made by the debtor, of a person who is to pay in his place, does not operate novation. The same rule applies to the simple indication made by the creditor, of a person who is to receive for him.

1278. The privileges and mortgages of an ancient debt do not pass to that which is substituted for it, unless the creditor have expressly reserved them.

1279. When the novation is effected by the substitution of a new debtor, the original privileges and mortgages of the debt cannot pass to tbe property of the new debtor.

1280. When the novation is effected between the creditor and one of tbe joint and several debtors, the privileges and mortgages of the ancient debt cannot be reserved except upon his property who contracts the new debt.

1281. Joint debtors are discharged by novation made between the creditor and one of the joint debtors. Novation operated with respect to the principal debtor discharges his securities. Nevertheless, if the creditor have required in the first case the addition of the joint debtors, or in the second that of the securities, the ancient debt subsists, if the joint debtors or the securities refuse to accede to the new arrangement.

SECTION III.

Of the Remission of a Debt.

1282. Voluntary remittance of the original document under private signature, by the creditor to the debtor, forms proof of discharge.

1283. Voluntary surrender of an obligatory deed forms presumption of the remission of the debt or payment, without prejudice to contrary proof.

1284. The surrender of the original document under private signature, or of an engrossed copy of the document to one of the joint and several debtors, has the same effect for the benefit of his joint debtors.

1285. Conventional remittance or discharge for the benefit of one of the joint and several debtors, liberates all the rest, unless the creditor have expressly reserved his rights against them. In which latter case, he can no longer recover the debt without deduction made of his share to whom he has made remittance.

1286. Delivery of a thing given by way of security does not suffice to raise presumption of the remission of the debt.

1287. Conventional remission or discharge accorded to the principal debtor discharges the sureties; The same accorded to the surety does not liberate the principal debtor; The same accorded to one of the sureties does not discharge the others.

1288. What a creditor has received from a surety in discharge of his suretyship, must be deducted from the debt, and applied to the discharge of the principal debtor and of the other sureties.

SECTION IV.

Of Compensation.

1289. When two persons find themselves in each other's debt, a compensation is effected between them extinguishing both debts in the manner and in the cases hereafter expressed.

1290. Compensation is effected absolutely by force of law only, even without the knowledge of the debtors; the two debts are reciprocally extinguished the instant at which they are found to exist at the same time up to the amount of their respective proportions.

1291. Compensation only takes place between two debts which have equally for their object a sum of money, or a certain quantity of articles of consumption of the same species, and which are equally liquidated and demandable. Loans of grain or commodities not contested, and of which the value is regulated by the prices current, may be balanced against sums liquidated and demandable.

1292. The term of grace is not an obstacle to compensation.

1293. Compensation takes place whatever may be the causes of one or other of the debts, except in the case,
lst. Of a demand for restitution of a thing of which the proprietor has been unjustly deprived;
2d. Of the demand of restitution of a deposit and of a loan on usance;
3d. Of a debt founded on alimony declared not seisable.

1294. The surety may oppose the compensation of that which the creditor owes to the principal debtor; But the principal debtor cannot oppose the compensation of that which the creditor owes to the surety. The joint and several debtor may in like manner oppose the compensation of that which the creditor owes to his co-debtor.

1295. The debtor who has accepted absolutely and unconditionally the cession which a creditor has made of his rights to a third person, can no longer oppose to the assignee the compensation, which he might before acceptance have opposed to the ceder. With respect to cession which has not been accepted by the debtor, but which has been notified to him, it only prevents the compensation of debts posterior to such notification.

1296. When the two debts are not payable in the same place, compensation thereof can only be opposed by accounting for the expenses of the remission.

1297. When there are several debts subject to compensation due from the same person, the rules must be followed for their compensation, which are established touching deduction by article 1256.

1298. Compensation does not take place to the prejudice of rights acquired by a third person. Thus he who, being a debtor, is become creditor subsequently to seisure and arrest made by a third person into his hands, cannot oppose compensation to the prejudice of such seiser.

1299. He who has paid a debt which was of right extinguished by compensation, can no longer, by pursuing the demand, the compensation of which lie has neglected to oppose, avail himself, to the prejudice of third persons, of the privileges and mortgages which were attached thereto, unless he had a sufficient excuse for not being aware of the claim which was to compensate his debt.

SECTION V.

Of Confusion.

1300. When the characters of debtor and creditor are united in the same person, a confusion arises by law which extinguishes the two claims.

1301. The confusion which is effected in the person of the principal debtor, benefits his sureties.

The same effected in the person of the surety does not draw after it the extinction of the principal obligation; that which is effected in the person of the creditor, does not benefit those jointly and severally indebted with him, except for the portion in which he was debtor.

SECTION VI.

Of the Loss of the Thing due.

1302. When the certain and determinate property which was the object of the obligation happens to perish, is put out of traffic, or is lost in such manner that its existence is absolutely unknown, the obligation is extinguished if the thing have perished, or have been lost without the fault of the debtor, and before he have been in delay. Even when the debtor is in delay, and if he have not been charged with fortuitous occurrences, the obligation is extinguished in the case where the thing would equally have perished at the house of the creditor if it had been delivered to him. The debtor is bound to prove the fortuitous occurrence which he alleges. In whatsoever manner a thing stolen have perished, or have been lost, its loss does not exonerate him who has removed it from restitution of the price.

1303. When the thing has perished, been put out of traffic, or lost, without fault on the part of the debtor, he is bound, if there are any claims or actions for indemnity in reference to such thing, to yield them to his creditor.

SECTION VII.

Of the Action for Nullity, or for Rescission of Agreements.

1304. In all cases in which the action for nullity or for rescission of an agreement is not limited to a less time by the law, such action enures for ten years. Such time does not run, in the case of duress, except from the day on which it ceases; in the case of mistake or fraud from the day on which they have been discovered; and as respects acts passed by married women unauthorized, from the day of the dissolution of the marriage. The time does not run with respect to acts made by interdicted persons, except from the day on which the interdiction is removed; and with respect to those made by minors, only from the day of majority.

1305. Simple injury gives ground for rescission in favor of the minor not emancipated, against all kinds of agreements; and in favor of the minor emancipated against all agreements which exceed the bounds of his capacity, as was determined under the title "Of Minority, Guardianship, and Emancipation."

1306. The minor is not relievable for cause of injury, when it was merely the result of a casual and unforeseen event.

1307. The simple declaration of majority, made by the minor, forms no obstacle to his relief.

1308. The minor being a tradesman, banker, or artisan, is not relievable against engagements to which he is liable in respect of his trade or craft.

1309. The minor is not relievable against agreements contained in his contract of

marriage, when they have been made with the consent and assistance of those whose consent is requisite for the validity of his marriage.

1310. He is not relievable against obligations resulting from his own wrong or quasi wrong.

1311. He is no longer permitted to disclaim an engagement which he subscribed in minority, when he has ratified it in majority, whether such engagement were null in its form, or whether it were only liable to be relieved against.

1312. When minors, interdicted persons, or married women, are admitted in such capacities to obtain relief against their engagements, the reimbursement of what, in consequence of such engagements, shall have been paid during minority, interdiction, or marriage, cannot be exacted from them, unless it be proved that what has been paid has turned to their advantage.

1313. Persons of full age are not relieved for cause of injury except in the cases and under the condition. especially mentioned in the present code.

1314. When the formalities required with respect to minors or interdicted persons, either for alienation of immoveables, or in a distribution of succession, have been complied with, they are in reference to such acts considered as having done them during majority or before interdiction.

CHAPTER VI.

Of the Proof of Obligations and of that of Payment.

1315. The party who claims performance of an obligation, must prove it. On the other hand, he who claims to be exonerated, must establish payment, or verify the act which led to the extinction of his obligation.

1316. The rules which relate to literal proof, testimonial proof, presumptions, acknowledgment, and oath of parties, are explained in the following sections.

SECTION I.

Of Literal Proof.

§ I. Of an authentic Document.

1317. An authentic act is that which has been taken by public officers whose duty it is to draw up instruments in the place where the act was reduced to writing, and with the requisite solemnities.

1318. The act which is not authentic through the incompetence or incapacity of the officer, or through a defect of form, is equivalent to a private writing, if it were signed by the parties.

1319. The authentic act supplies full credit to the agreement which it contains between the contracting parties and their heirs or assigns. Nevertheless, in case of complaint of capital forgery, the execution of[1] the act charged to be forged shall be suspended by the institution of the charge; and in case of inscription of forgery incidentally made, the courts may, according to circumstances, suspend provisionally the execution of the act.

1320. The act, whether authentic or under private signature, affords proof between the parties even of that which is expressed therein only in declaratory terms, provided the declaration have a direct reference to the disposition. Declarations foreign to the disposition can only serve as commencement of proof.

1321. Defeasances can only produce their effect between the contracting parties; they have no operation against third persons.

§ II. Of an Act under private Signature.

1322. The act under private signature, acknowledged by the party against whom it is produced, or held by law to have been acknowledged, obtains between those who have subscribed it, their heirs and assigns, the same credit as an authentic act.

1323. The party against whom an act under private signature is produced, is obliged formally to avow or disavow his writing or signature. His heirs or assigns way content themselves with declaring that they do not know the writing or the signature of their principal.

1324. In the case in which the party disavows his writing or his signature, and in the case in which his heirs or assigns declare they do not know it, the verification thereof is ordered by the court.

1325. Acts under private signature which contain synallagmatical agreements are not valid except so far as there has been made a number of originals equal to that of the parties who have a distinct interest. One original is sufficient for all the parties having the same interest. Every original must include mention of the number of originals which have been made thereof. Nevertheless, failure in mentioning that the originals have been made double, triple, &c. cannot be objected by him who has executed on his part the agreement contained in the act.

1326. A note or promise under private signature, by which one single party binds himself towards another in the payment of a sum of money, or of a thing capable of being valued, must be written throughout by the hand of the subscriber; or at least it is necessary that besides his signature he should write "bon," or "approure," bearing in all letters the sum or the quantity of the thing: Excepting in the case where the act emanates from tradesmen, artisans, laborers, vine-dressers, day-laborers, and servants.

1327. When the sum expressed in the body of the instrument is different from that which is expressed in the "bon," the obligation is presumed only to extend to the smaller sum, even when the act, as well as the "bon," are written throughout by the hand of the party bound, unless it can be proved on whose part the mistake lies.

1328. Acts under private signature only take date against third persons from the day on which they have been registered, from the day of the death of the subscriber, or one of the subscribers, or from the day on which the substance of them is verified in acts drawn up by public officers, such as statements of sealing or of inventory.

1329. The registers of tradesmen do not supply against those who are not so, proof of goods furnished as contained therein, saving what shall be said with respect to the oath.

1330. The books of tradesmen afford proof against them; but the party who desires to derive advantage there-from, cannot separate them as to what they contain contrary to his claim.

1331. Domestic registers and papers do not form vouchers for the party who has written them. They furnish proof against him, 1st, in all cases where they declare formally payment received; 2d, where they contain express mention that the memorandum has been made to supply the want of a document in favor of him for whose benefit they declare an obligation.

1332. Writing inserted by the creditor at the end, in the margin, or on the back of a document which has always remained in his possession, is evidence, though not signed

and dated by him, when it tends to establish the liberation of the debtor. The same applies to writing inserted by the creditor on the back, or in the margin, or at the end of the duplicate of a document or quittance, provided such duplicate be in the hands of the debtor.

§ III. Of Tallies.

1333. Tallies correlative to their patterns afford proof between parties who are in the habit of thus verifying commissions which they make and receive in retail.

§ IV. Of Copies of Documents.

1334. Where the original document is in existence, copies only afford proof of what is contained in such document, the production of which may always be required.

1335. When the original document no longer exists, copies furnish proof, agreeably to the following distinctions:

1st. Engrossments, or the first copies, supply the same proof as the original. It is the same with regard to copies which have been taken by authority of the magistrate, the parties having been present or duly summoned, or with regard to such as have been taken in presence of the parties, and with their mutual consent.

2d. Copies which, without the authority of the magistrate, or without the consent of the parties, and subsequently to the deliverance of the engrossments or first copies, shall have been taken from the minute of the act by the notary who received it, or by one of his successors, or by public officers, who in such capacity are the depositaries of the minutes, may in case of the loss of the original, be made evidence when they are ancient. They are considered as ancient when they are more than thirty years old. If they are less than thirty years old they can only be made use of as commencement of proof in writing.

3d. When copies taken from the minute of an act shall not have been so by the notary who received it, or by one of his successors, or by public officers who are in such capacity depositaries of the minutes, they can only be made use of; notwithstanding any degree of antiquity, as the commencement of proof in writing.

4th. Copies of copies may, according to circumstances, be considered as corroborative.

1336. The transcription of an act upon the public registers shall only be made use of as commencement of proof in writing; and it is necessary even for that, 1st. That it be manifest that all the minutes of the notary, of the year in which the act appears to have been made, are lost, or that it be proved that the loss of the minute of this act have arisen from a particular accident; 2d. That there exist a regular docket of the notary, proving that the act was made at the precise date. When, by reason of the concurrence of these two circumstances, proof by witnesses shall be admitted, it shall be necessary that those who were witnesses of the act, if they are still in existence, should be heard.

§ V. Of Acts of Recognition and Confirmation.

1337. Acts of recognition do not dispense with the production of the original document, unless its tenor be therein specially set forth. That which they contain in addition to the original document, or that which is found therein different from it, has no effect. Nevertheless, where there are several corresponding acknowledgments confirmed by possession, and of which one is thirty years old, the creditor may be excused from producing the original document.

1338. An act confirming or ratifying an obligation against which the law admits an action for nullity or rescission, is only valid when it contains within it the substance of such obligation, mention of the motive for the action for rescission, and an intention to

remedy the defect on which such action was founded. Failing such act of confirmation or ratification, it is sufficient that the obligation he executed voluntarily after the period at which the obligation may be validly confirmed or ratified. Confirmation, ratification, or voluntary execution, in the forms and at the period determined by the law, imports renunciation of the arguments and exceptions which may be opposed to such act, without prejudice nevertheless to the right of third persons.

1339. The donor cannot remedy by any confirmative act the defects of a donation during life; null in form, it is necessary that it should be re-executed in legal form.

1340. Confirmation, ratification, or voluntary performance of a donation by the heirs or assigns of the donor, after his decease, imports their renunciation of opposition either to defects of form or any other objection.

SECTION II.

Of Testimonial Proof.

1341. An act must be made before notaries or under private signature, respecting all things exceeding the sum or value of one hundred and fifty francs, even in the case of voluntary deposits; and no proof can be received by witnesses against or beyond what is contained in such acts, nor touching what shall be alleged to have been said before, at the time of or subsequently to such acts, although there may be question of a sum or value less than 150 francs; The whole without prejudice to what is prescribed in the laws relative to commerce.

1342. The above rule applies to the case in which the instrument contains, besides the demand of capital, a demand for interest, which, added to the capital, exceeds the sum of one hundred and fifty francs.

1343. The party who has made a demand exceeding one hundred and fifty francs, can no longer be admitted to testimonial proof even on reducing his original demand.

1344. Proof testimonial, on the demand of a sum even less than one hundred and fifty francs, cannot be admitted when such sum is declared to be the residue or to form part of a larger credit which is not proved by writing.

1345. If in the same suit a party make several demands of which there is no evidence in writing, and where, if united together, they exceed the sum of one hundred and fifty francs, proof by witnesses cannot be admitted thereon, although the party allege that inch credits arise from different causes, and that they accrued at different times, unless it be that such claims proceed from succession, donation, or otherwise from different persons.

1346. All demands, of whatsoever description they may be, which shall not be entirely proved by writing, shall be formed by one single instrument; after which, other demands, of which there shall be no proof in writing, shall not be admitted.

1347. The rules above-mentioned admit of exception when there is a commencement of proof in writing. This denomination is applied to every act in writing which emanates from the party against whom the demand is made, or from him whom such party represents, and who renders probable the fact alleged.

1348. They admit moreover of exception in all cases where it is impossible for the creditor to obtain a literal proof of the obligation which has been contracted with him. This second exception applies, 1st. To obligations which spring from quasi-contracts and from crimes or quasi-crimes; 2d. To necessary deposits made in case of fire, fall of buildings, tumult or shipwreck, and to those made by travellers lodging at an inn, the whole according to the condition of the persons and the circumstances of the act;

3d. To obligations contracted on the occurrence of unforeseen accidents, in which it would have been impossible to have had acts in writing; 4th. In the case where the creditor has lost the document which served him for literal proof, in consequence of a fortuitous circumstance, unforeseen, and resulting from superior force.

SECTION III.

Of Presumptions.

1349. Presumptions are the conclusions which the law or the magistrate draws from a fact known or a fact unknown.

§ I. Of Presumptions established by Law.

1350. Legal presumption is that which is attached by an express law to certain acts or to certain facts; such are, 1st. Acts which the law declares null, as presumed to have been made in fraud of its regulations, regarding their quality only; 2d. Cases in which the law declares property or liberation to result from certain determinate circumstances; 3d. The authority which the law attributes to a matter decided; 4th. The force which the law attaches to the confession of the party or to his oath.

1351. The authority of a matter decided has no place except with regard to that which formed the object of the judgment. It is necessary that the thing demanded should be the same; that the demand should be founded on the same cause; that the demand should be between the same parties, and made by and against them in the same capacity.

1352. Legal presumption dispenses with all proof on his part for whose benefit it exists. No proof is admitted against presumption of law, when, on the basis of such presumption, it annuls certain acts or restrains an action, unless it have reserved contrary proof, and saving what shall be said touching the oath and judicial confession.

§ II. Of Presumptions which are not established by Law.

1353. Those presumptions which are not established by law are committed to the sagacity and prudence of the magistrate, who must only admit presumptions grave, precise, and concordant, and in those cases only in which the law admits testimonial proofs, unless the act should be impeached for cause of fraud or deceit.

SECTION IV.

Of the Acknowledgment of the Party.

1354. The acknowledgment which is objected to a party, is either judicial or extrajudicial.

1355. The allegation of an extrajudicial acknowledgment purely is useless in all cases where a demand is in question in which testimonial proof would not be admissible.

1356. Judicial acknowledgment is a declaration made in court by the party or his attorney specially appointed.
It furnishes complete proof against the party who made it.
It cannot be divided against him.
It cannot be revoked, unless it can be proved that it proceeded from a mistake of fact.
It cannot be revoked under pretext of a mistake in law.

SECTION V.

Of Oath.

1357. The judicial oath is of two species;
1st. That which one party tenders to another in order to make the judgment of the cause depend thereon: it is called "decisory;"

2d. That which is administered officially by the judge to either of the parties.

§ I. Of the Oath decisory.

1358. The oath decisory maybe tendered in any description of dispute whatsoever.

1359. It can only be tendered touching a fact personal to the party to whom it is put.

1360. It may be tendered in every stage of a cause, and although there exist no commencement of proof of the demand or of the objection on which it is claimed.

1361. The party to whom the oath is tendered, who refuses it or who does not consent to tender it in return to his adversary, or the adversary to whom it has been tendered in return and who refuses it, must yield in his claim or in his objection.

1362. The oath cannot be tendered in return when the fact which is the object thereof does not lie between the two parties, but is purely personal to him to whom the oath was originally tendered.

1363. When the oath tendered or offered in return has been taken, the adversary is not admissible to prove the falsity thereof.

1364. The party who has tendered the oath or offered it in return, is not allowed to retract after the adversary has declared that he is ready to take such oath.

1365. The oath when taken only affords proof in favor of the party taking it, or against him and in favor of his heirs and assigns, or against them. Nevertheless the oath tendered by one of the joint and several creditors to the debtor, only discharges the latter as regards the share of such creditor; The oath tendered to the principal debtor discharges equally his sureties; The same tendered to one of the joint and several debtors benefits those jointly indebted with him; And the same tendered to a surety benefits the principal debtor. In the two latter cases, the oath of the joint and several debtor or of the surety, does not benefit the other joint debtors or the principal debtor except when it has been tendered touching the debt, and not in respect of the fact of the joint and several claims or security.

§ II. Of the Oath officially administered.

1366. The judge may tender the oath to one of the parties, either to make the decision of the cause depend thereon, or simply in order to determine the amount of the sentence.

1367. The judge cannot administer the oath officially, either upon the demand, or on the objection which is opposed thereto, except under the two following conditions: it is necessary,

1st. That the demand or the objection should not be fully proved;

2d. That it be not totally destitute of proofs. Except in these two cases, the judge must either admit or reject the demand absolutely and unconditionally.

1368. The oath administered officially by the judge to one of the parties, cannot be offered in return by such party to the other.

1369. The oath touching the value of the thing demanded cannot be administered by the judge to the demandant, except where it is impossible by other means to verify such value.

The judge must, even in this case, determine the sum up to the amount of which the demandant shall be thereon worthy of credit upon his oath.