French Civil Code

BOOK III. Of The Different Modes Of Acquiring Property.

TITLE VI.

OF SALES.

Decreed the 6th of March, 1804. Promulgated the 16th of the same Month.

CHAPTER I.

Of the Nature and Form of Sales.

1582. A sale is an agreement by which one person is bound to deliver a thing, and another to pay for it. It may be made by authentic act, or under private signature.

1583. It is complete between the parties, and the property is acquired in law by the purchaser with regard to the seller, as soon as the thing and the price are agreed on, though the thing have not been delivered nor the price paid.

1584. The sale may be made absolutely and unconditionally, or subject to a condition which may either suspend or annul it. It may also have for its object the alternative of two things or more. In all these cases its effect is regulated by the general principles of agreements.

1585. When merchandise is sold not in bulk, but by weight, tale, or measure, the sale is not complete, in this sense, that the articles sold remain at the risk of the vendor until they shall be weighed, counted, or measured; but the purchaser may demand either delivery thereof or damages, if there be ground, in case of non-performance of the engagement.

1586. If, on the contrary, the merchandise have been sold in bulk, the sale is perfect, although the merchandise have not been weighed, counted, or measured.

1587. With respect to wine, oil, and other things which persons are in the habit of tasting before making purchase thereof, there is no sale so long as the purchaser have not tasted or approved of them.

1588. A sale made on trial is always presumed to have been made under a suspensive condition.

1589. The promise of sale is equivalent to a sale, where there is a mutual agreement of the two parties upon the article and the price.

1590. If the promise to sell have been made with earnest, each of the contracting parties is at liberty to depart therefrom; He who has given it, on losing it; He who has received it, by restoring double.

1591. The price of the sale must be determined and designated by the parties.

1592. It may nevertheless be left to the arbitration of a third person: if such third party will not or cannot make an estimate, there is no sale.

1593. The expenses of acts and other appendages of the sale, are at the charge of the purchaser.

CHAPTER II.

Who may buy or sell.

1594. All persons not interdicted by the law are capable of buying or selling.

1595. The contract of sale cannot take place between married persons, except in the three following cases:
1st. That in which one of the married parties cedes property to the other judicially separated, in payment of the claims of such separated party;
2d. That in which the cession which the husband makes to the wife, even when not separated, has a lawful cause, such as reimbursement of her immoveables alienated, or of money belonging to her, if such immoveables or money do not fall into community;
3d. That in which the wife cedes property to her husband in satisfaction of a sum which she has promised him in dowry, and where community has been excluded;
Saving, in these three cases, the rights of the heirs of the contracting parties, if there be indirect advantage.

1596. The following persons are forbidden to become purchasers, either by themselves or by the intervention of others, on pain of nullity:
Guardians of the property of those of whom they have the guardianship;
Factors of goods which they are charged to sell; Administrators of the property of communes and public establishments confided to their care;
Public officers of national property, of which sale is made by their means.

1597. Judges, their deputies, the commissaries of government, their substitutes, registrars, tipstaves, pastors of churches, official conductors of defences and notaries, cannot become assignees of suits, claims, and actions at law which are within the jurisdiction of the court within whose cognizance they exercise their functions, on pain of nullity, and expenses and damages.

CHAPTER III.

Who may buy or sell.

1598. Every thing which is the object of commerce may be sold, where particular laws have not prohibited the alienation thereof.

1599. A sale of another's property is null: it may afford ground for damages where the purchaser was ignorant that the thing belonged to another.

1600. The succession to a living person cannot be sold, even with his consent.

1601. If at the moment of sale the thing sold had entirely perished, the sale shall be null.
If a part only of the thing have perished, it is in the election of the purchaser to relinquish the sale, or to demand the part preserved, causing the price thereof to be determined by valuation.

CHAPTER IV.

Of the Obligations of the Seller.

SECTION I.

General Regulations.

1602. The seller is bound to explain clearly what it is he binds himself to. Every obscure or ambiguous bargain is construed against the seller.

1603. The has two principal obligations, that of delivering and that of warranting the

thing which he sells.

SECTION II.

Of Delivery.

1604. Delivery is the transferring the thing sold into the power and possession of the purchaser.

1605. The obligation to deliver immoveables is fulfilled on the part of the vendor, when he has handed over the keys, if the question be of a building, or when he has handed over the titles to the property.

1606. Delivery of moveable effects is completed, Either by actual transfer, or by handing over the keys of the buildings which contain them, Or even by the single consent of the parties, if the transfer thereof cannot be made at the moment of the sale, or if the purchaser have them already in his custody by another title.

1607. The delivery of incorporeal rights is made, either by surrender of the titles, or by the use which the purchaser makes thereof with the consent of the seller.

1608. The expenses of the delivery are at the charge of the seller, and those of removal at the charge of the purchaser, if there be no stipulation to the contrary.

1609. The delivery must be made at the place where, at the time of sale, the thing which formed the object thereof, was, unless it be otherwise agreed upon.

1610. If the seller fail to make delivery within the time agreed between the parties, the purchaser may at his election demand the rescinding of the sale, or to be put into possession, if the delay have occurred entirely through the act of the seller.

1611. The seller must, in all cases, be condemned in damages, if an injury result to the purchaser through failure in delivery at the term agreed on.

1612. The seller is not bound to deliver the article if the purchaser do not pay the price thereof, provided the seller have not allowed him an interval for the payment.

1613. Further he shall not be obliged to delivery, although he may have allowed an interval of payment, if subsequently to the sale, the purchaser has become bankrupt, or be in a state of embarrassment, in such sort that the seller finds himself in imminent peril of losing the price; unless the purchaser give him security to pay at the end of the term.

1614. The article must be delivered in the state in which it is at the moment of sale. After that day all the fruits belong to the purchaser.

1615. The obligation to deliver the article comprises its appurtenances, and every thing which has been designed for its perpetual use.

1616. The seller is bound to deliver the full extent as contained in the contract, subject to the modifications hereafter expressed.

1617. If the sale of an immoveable have been made with indication of extent, at the rate of so much measure, the seller is bound to deliver to the purchaser, if be require it, the quantity indicated in the contract; And if the thing is impossible to him, or if the purchaser do not require it, the seller is compelled to suffer a proportional diminution of the price.

1618. If on the contrary, in the case of the preceding article, there be found an extent greater than that expressed in the contract, the purchaser has the election to supply the remainder of the price, or to relinquish the contract, if the excess be a twentieth beyond the extent declared.

1619. In all other cases,

Whether sale be made of a certain and limited property,

Whether it have for its object funds distinct and separate,

Whether it commence by the measure, or by designation of the object sold followed by measure,

The expression of such measure does not give place to any additional price in favor of the seller, to any diminution of the price for less measure, except when the difference between the real measure and that expressed in the contract is a twentieth more or less, regard being had to the total value of the objects sold, if there be no contrary stipulation.

1620. In the case in which, according to the preceding article, there is ground for augmenting the price on account of excess of measure, the purchaser has the election either to recede from the contract, or to furnish the additional price, and this with interest if he have kept the immoveable.

1621. In all cases in which the purchaser has a right to recede from the contract, the seller is bound to restore to him, beyond the price, if he have received it, the expenses of the contract.

1622. The action for addition to the price on the part of the seller and that for diminution of price or that for disengagement from the contract on the part of the purchaser, must be brought within a year, computing from the day of the contract, on pain of non-suit.

1623. If two estates be sold by the same contract, and for one and the same price, with designation of the measure of each, and there be found too little extent in the one and too much in the other, compensation takes place until both be rendered accurate; and the action, either for addition, or for diminution of price, only holds according to the rules established above.

1624. The inquiry for ascertaining upon whom the loss or deterioration of the thing sold must fall before delivery, whether on the seller or on the purchaser, is determined according to the rules prescribed under the title "Of Contracts or Conventional Obligations in general."

SECTION III.

Of Warranty.

1625. The warranty due from the vendor to the purchaser embraces two points: the first is the peaceable possession of the thing sold; the second, the secret defects of the article, or such as would annul the sale.

§ I. Of Warranty in case of Eviction.

1626. Although at the time of sale no stipulation have been made respecting warranty, the seller is obliged by the law to warrant the purchaser against eviction which he may sustain in the whole or part of the thing sold, or against encumbrances on such object, and not declared at the time of sale.

1627. The parties may, by private agreements, add to such obligation of law, or diminish the effect thereof; they may even covenant that the seller shall not be subject to any warranty.

1628. Although it be said that the seller shall not be subject to any warranty, he continues nevertheless bound by that which results from an act personal to himself: every agreement to the contrary is void.

1629. In the same case of stipulation of non-warranty, the seller in case of eviction is bound to restitution of the price;

Unless the purchaser knew at the time of the sale the danger of eviction, or unless he purchased at his own peril and risk.

1630. When warranty has been promised, or nothing has been stipulated on the subject, if the purchaser is evicted, he has a right to demand from the seller,
1st. Restitution of the price;
2d. That of the fruits, when he is compelled to give them up to the proprietor who has evicted him;
3d. The expenses incurred by the demand of warranty from the purchaser, and those incurred by the original demandant;
4th. In short, damages as well as the expenses and lawful Costs of the contract.

1631. Where at the period of eviction the thing sold is found to he diminished in value, or considerably deteriorated, either by the negligence of the purchaser, or by the intervention of superior force, the seller is not bound to restore the entirety of the price thereof.

1632. But if the purchaser have derived profit from the spoliations committed by him, the seller has a right to keep back from the price a sum equal to such profit.

1633. If the thing sold be found augmented in price at the period of eviction, although independently of the act of the purchaser, the seller is bound to pay him what it is worth beyond the price of sale.

1634. The seller is bound to reimburse, or to cause to be reimbursed, to the purchaser, by the party evicting, all the useful reparations and improvements which he shall have made in the estate.

1635. If the seller have in bad faith disposed of the estate of another, he shall be compelled to reimburse to the purchaser all the expenses, even though mere matters of taste, which the latter shall have made on the estate.

1636. If the purchaser be evicted only from one part of the thing, but which is of such consequence, as respects the whole, that the purchaser would not have bought it without the part from which he has been evicted, he may be permitted to recede from the purchase.

1637. If, in the case of eviction from one part of the estate sold, the sale have not been rescinded, the value of the part from which the purchaser is found to be evicted is reimbursed to him according to its value at the period of eviction, and not in proportion to the total price of the sale, whether the thing sold have augmented or diminished in value.

1638. If the estate sold be found to be burthened, a declaration thereof having been made, with non-apparent servitudes, which shall be of such importance that there is ground for presuming that the purchaser would not have bought if he had been informed thereof, he may demand to have the contract rescinded, unless he shall rather prefer an indemnity.

1639. The other questions which may arise respecting damages accruing to the purchaser from the non-performance of the sale, must be decided according to the general rules established under the title "Of Contracts or Conventional Obligations in general."

1640. The warranty for cause of eviction ceases when the purchaser has suffered himself to be condemned in a judgment in the last resort, or from which an appeal is not allowed, without summoning his vendor, if the latter prove that sufficient grounds existed for rejecting the suit.

§ II. Of the Warranty against Defects in the Thing sold.

1641. The seller is bound to warranty in respect of secret defects in the thing sold which render it improper for the use to which it is destined, or which so far diminish such use, that the buyer would not have purchased it, or would not have given so large a price, if he had known them.

1642. The seller is not bound against apparent faults and such as the purchaser might have taken cognizance of himself.

1643. He is bound against concealed faults, even though he was not aware of them, unless in such case it have been stipulated that he should not be bound to any warranty.

1644. In the cases of articles 1641 and 1643, the purchaser has the election to return the thing and to obtain restitution of the price, or to keep the thing and to cause such a portion of the price to be restored to him as shall be settled by competent persons.

1645. If the seller was acquainted with the faults of the thing, he is bound, beyond the restitution of the price which he has received for it, in all damages towards the purchaser.

1646. If the seller was ignorant of the fault of the thing, he shall only be bound to a restitution of the price, and to reimburse to the purchaser the expenses occasioned by the sale.

1647. If the faulty thing have perished in consequence of such bad qualities, the loss falls upon the seller, who shall be bound towards the purchaser to a restitution of the price and to other compensations explained in the two preceding articles.

But a loss happening by accident is placed to the account of the purchaser.

1648. The action resulting from faults annulling the sale must be brought by the purchaser, within a short interval, according to the nature of such faults, and the usage of the place where the sale was made.

1649. It does not take place with respect to sales made by authority of law.

CHAPTER V.

Of the Obligations of the Purchaser.

1650. The principal obligation of the purchaser is to pay the price at the day and in the place appointed by the sale.

1651. If nothing be settled on this head at the time of sale, the purchaser must pay at the time and in the place where delivery is to be made.

1652. The purchaser is indebted in interest on the price of sale up to the payment of the capital, in tbe three following cases:
If it have been already agreed on at the time of sale;
If the thing sold and delivered produces fruits or other revenues;
If the purchaser have been summoned to pay.
In the last case, interest runs only from the day of the summons.

1653. If the purchaser be harassed or has a just ground for fearing he shall be troubled by an action either of mortgage, or of counter-claim, he may suspend the payment of the price until the seller have put an end to such harassment, unless the latter prefer giving security, or unless it have been stipulated, that notwithstanding such annoyance, the purchaser shall pay.

1654. If the purchaser does not pay the price, the seller may demand annulment of the contract.

1655. Annulling of the sale of immoveables is pronounced immediately if the seller is in danger of losing the thing and the price. If such danger do not exist, the judge may accord to the purchaser a delay more or less extended according to circumstances. Such interval being passed without the purchaser having paid, rescission of the sale shall be pronounced.

1656. If it have been stipulated at the time of the sale of immoveables, that on failure of payment of the price within the term agreed on, the sale shall be annulled absolutely, the purchaser may nevertheless pay after the expiration of the interval, so long as he shall not have been sued for payment; but after such suit, the judge cannot grant him any delay.

1657. In the matter of sale of provisions and moveable effects, the disannulling of the sale shall take place absolutely and without summons, for the benefit of the purchaser, after the expiration of the term agreed on for taking them away.

CHAPTER VI.

Of the Nullity and Rescinding of Sales.

1658. Independently of the causes of nullity or of rescinding already explained in this title, and of those which are common to all agreements, the contract of sale may be rescinded by the exercise of the power of repurchase and by the inconsiderableness of the price.

SECTION I.

Of the Power of Repurchase.

1659. The power of repurchase or of redemption is a compact by which the seller reserves to himself the resumption of the thing sold, on restitution of the principal price, and the reimbursement of which mention is made in article 1673.

1660. The power of repurchase cannot be stipulated for, for a term exceeding five years. If it have been stipulated for, for a longer term, it is reduced to such term.

1661. The term fixed is imperative, and must not be prolonged by the judge.

1662. On failure by the seller to exercise his action of redemption within the term prescribed, the purchaser becomes irrevocable proprietor.

1663. The interval runs against all persons, even against a minor, saving, if there be ground, legal remedy.

1664. The seller with covenant of repurchase may put his action in force against a second purchaser, even though the power of redemption shall not have been declared in the second contract.

1665. The purchaser with covenant of repurchase exercises all the rights of his vendor; he may prescribe as well against the true owner as against those who set up claims or mortgages against the thing sold.

1666. He may oppose the benefit of seizure and sale to the creditors of his vendor.

1667. If the purchaser with covenant of redemption of an undivided portion of an estate have become highest bidder for the entirety at an auction claimed against him, he may oblige the vendor to redeem the whole when the latter is desirous to make use of his covenant.

1668. If several persons have sold conjointly, and by a single contract, an estate common to them all, each one can only exercise his action for redemption as to the portion which he had therein.

1669. It is the same if the party who has sold an estate alone leaves several heirs. Each of such coheirs can only use the power of repurchase as regards the portion which he takes in the succession.

1670. But, in the case of the two preceding articles, the purchaser may demand that all the co-vendors or all their coheirs should be made parties to the suit, in order to obtain their agreement to the resumption of the entire estate; and if they cannot agree, the petition shall be remanded.

1671. If the sale of an estate belonging to several persons have not been made conjointly and of the whole estate together, and if each have sold only the portion which he had therein, they may put in force separately the action for redemption in respect to the portion which belonged to them; And the purchaser cannot compel the party who shall exercise it in such manner, to redeem the whole.

1672. If the purchaser have left several heirs, the action for redemption can be exercised against each of them only for his portion, in the case in which it is still undivided, and in that in which the thing sold has been distributed between them. But if distribution of the inheritance have been made, and the thing sold have fallen to the lot of one of the heirs, the action for redemption may be brought against him for the whole.

1673. The seller who makes use of the covenant of repurchase, must reimburse not only the principal price, but also the expenses and lawful costs of the sale, the necessary repairs, and those which have augmented the value of the estate, up to the amount of such augmentation. He cannot enter into possession until after having satisfied all these obligations. Where the seller re-enters into his estate by virtue of the covenant of redemption, he takes it exempt from all the charges and mortgages with which the purchaser has encumbered it: he is bound to execute leases made without fraud by the purchaser.

SECTION II.

Of annulling Sales for Cause of Injury.

1674. If the vendor have been damnified in more than seven-twelfths of the price of an immoveable, he has a right to demand annulment of the sale, even though he should have expressly renounced in the contract the power of demanding such annulment, and though he shall have declared he has given up the excess.

1675. In order to ascertain if there be injury to the amount of more than seven-twelfths, it is necessary to estimate the immoveable according to its state and value at the moment of sale.

1676. The petition is not admissible after the expiration of two years, computing from the day of sale. Such interval runs against married women, and against absentees, interdicted persons, and minors coming in right of a vendor of full age.

1677. Proof of injury cannot be admitted except by a judgment. and in the came only in which the facts alleged shall be sufficiently probable and sufficiently important to raise presumption of injury.

1678. Such proof cannot be made except by a report from three competent persona, who shall be bound to draw up one single common statement, and to form only one single resolution by plurality of voices.

1679. If there be different opinions, the statement shall contain the motives thereof,

without its being permitted to appear of what opinion each competent person was.

1680. The three competent persons shall be named officially, unless the parties shall agree in naming all three conjointly.

1681. In the case in which the action for annulment is permitted, the purchaser has the election either to restore the thing, receiving back the price which he has paid therefor, or to keep the estate on paying the remainder of tbe just price, subject to a deduction of a tenth of the total price.

The third possessor has the same right, saving the warranty against his vendor.

1682. If the purchaser prefer keeping the thing on furnishing the remainder regulated by the preceding article, be is indebted in interest on the remainder, from the day of the petition for rescission. If he prefer restoring it and receiving the price, he must restore the fruits from the day of the petition. The interest on the price which he has paid, is also calculated to him from the day of the same petition or from the day of payment, if be have not received any fruits.

1683. Annulment for injury does not take place in favor of the purchaser.

1684. It does not take place in any sales, which, according to law, can only be made with the authority of the court.

1685. The rules explained in the preceding section for cases in which several persons have sold conjointly or separately, and for that in which the seller or purchaser has left several heirs, are equally observed for the exercise of the action for rescission.

CHAPTER VII.

Of Auctions.

1686. If one thing common to several persons cannot be commodiously divided and without loss; Or if in a partition made with mutual consent of common property, there be found some goods which none of the coparceners can or will take. The sale thereof is made by auction, and the price thereof is distributed between the joint-proprietors.

1687. Each of the joint-proprietors is at liberty to demand that strangers should be summoned to the auction: they are necessarily summoned when one of the joint-proprietors is a minor.

1688. The mode and the formalities to be observed in the auction are explained under the title "Of Successions," and in the judicial code.

CHAPTER VIII.

Of the Transfer of Credits and other Incorporeal Rights.

1689. In the transfer of a credit, of a claim, or of an action against a third person, the delivery is effected between the party ceding and the party receiving by assignment of the title.

1690. The assignee is not seized with regard to third persons, except by the notification of the transfer made to the debtor. Nevertheless the assignee may be equally seized by the acceptance of the transfer made by the debtor in an authentic act.

1691. If, before the assignor or the assignee have signified the transfer to the debtor, the latter have paid the assignor, he shall be validly discharged.

1692. The sale or cession of a credit comprises the accessories of the credit, such as

security, privilege, and mortgage.

1693. He who sells a credit or other incorporeal right, must guarantee the existence thereof at the time of the transfer, although it be made without warranty.

1694. He does not answer for the solvency of the debtor, except when he is bound thereto, and up to the amount only of the price which he has gained for the credit.

1695. Where he has promised to guarantee the solvency of the debtor, such promise is only understood of actual solvency, and does not extend to a future time, if the assignor have not expressly stipulated for it.

1696. He who sells an inheritance without specifying in detail the objects thereof, is only bound to warrant his quality of heir.

1697. If he have already profited by the fruits of any estate, or received the amount of any credit belonging to such inheritance, or sold any effects of the succession, he is bound to reimburse them to the purchaser, if he have not expressly reserved them at the time of the sale.

1698. The purchaser must on his part reimburse to the vendor what the latter has paid for the debts and charges of the succession, and render him an account of all in which he was creditor, if there be no contrary stipulation.

1699. He against whom has been ceded a disputed right may get himself relieved therefrom by the assignee, on reimbursing to him the real price of the cession with the charges and lawful costs, and with interest to be computed from the day on which the assignee paid the price of the cession made to him.

1700. The thing is deemed disputed as soon as there is a suit and contest on the ground of right.

1701. The regulation contained in article 1699 ceases,

1st. In the case in which the cession has been made to a co-heir or co-proprietor of the right ceded;

2d. When it has been made to a creditor in payment of what is due to him;

3d. When it has been made to the possessor of the estate subject to disputed claim.