

French Civil Code

BOOK III. Of The Different Modes Of Acquiring Property.

TITLE XIV.

OF SECURITY.

Decreed the 14th February, 1804. Promulgated the 24th of the same Month.

CHAPTER I.

Of the Nature and Extent of Security.

2011. He who becomes security for an obligation, subjects himself to the satisfaction of such obligation in respect of the creditor, if the debtor fails to satisfy it himself.
2012. Security can only exist in a valid obligation. A party may, nevertheless, guarantee an obligation, although it may be annulled by an exception purely personal to the party bound, for example, in the case of minority.
2013. The security must not exceed what is due from the debtor, nor be contracted under conditions more burthensome. It may be contracted for a part of a debt only, and under conditions less burthensome. The security which exceeds the debt, or which is contracted under conditions more burthensome, is not void: it is only reducible in proportion to the principal obligation.
2014. A person may become security without the direction of the party for whom he binds himself, and even without his knowledge. A person may also become security, not only for the principal debtor, but also for the party who barn secured him.
2015. Security cannot be presumed; it must be express, and the party cannot extend it beyond the limits within which it has been contracted.
2016. The indefinite security of a principal obligation extends to all the appendages of the debt, even to the costs of the first demand, and to all those posterior to the declaration which is made thereof to the surety.
2017. The engagements of sureties pass to their heirs, with the exception of personal arrest, if the engagement were such that the surety was compelled thereto.
2018. A debtor compelled to furnish a security must produce one who has the capacity to contract, who has property sufficient to answer for the object of the obligation, and whose domicil is within the jurisdiction of the court of appeal where it is to be given.
2019. The solvency of a surety is only estimated by having regard to his landed property, excepting in a commercial transaction, or where the debt is moderate. No attention is paid to immoveables disputed, or respecting which inquiry would become too difficult by the distance of their situation.
2020. When the surety accepted by a creditor, voluntarily or by act of law, afterwards becomes insolvent, another must be given him. This rule admits of exception in the case only where the security has merely been given by virtue of an agreement by which the creditor required one particular person as security.

CHAPTER II.

Of the Effect of Security.

SECTION I.

Of the Effect of Security between the Creditor and the Surety.

2021. The surety is only bound towards the creditor to pay him on the debtor's default, whose property must previously be seised, unless the surety have renounced the benefit of such seisure, or unless he be bound jointly and severally with the debtor; in which case his engagement is regulated by the principles which have been established for joint and several debts.
2022. The creditor is not obliged to seise the property of the principal debtor, except when the surety requires it, on the first proceedings commenced against him.
2023. The surety who requires the seisure must point out to the creditor the property of the principal debtor, and advance money sufficient to make such seisure. He must not point out either property of the principal debtor, situated beyond the jurisdiction of the court of appeal of the place where the payment is to be made, or property in dispute, nor that pledged for a debt, and which is no longer in the possession of the debtor.
2024. In all cases where the surety has pointed out property, as authorized by the preceding article, and has furnished a sufficient sum for the seisure and sale, the creditor is, up to the amount of the property pointed out, responsible, as regards the surety, for the insolvency of the principal debtor occurring through his neglect to proceed.
2025. Where several persons have become sureties for the same debtor and the same debt, they are bound each for the whole of the debt.
2026. Nevertheless, each of them may, unless he have renounced the benefit of division, require that the creditor should previously divide his demand, and reduce it to the share and portion of each surety.
When, within the time at which one of the sureties has caused division to be pronounced, some have become insolvent, such surety is bound in his proportion for such insolvencies ; but he can no longer be required on account of insolvencies occurring subsequently to the division.
2027. If the creditor have voluntarily and of himself divided his action, he cannot contravene such division, although there were, even anterior to the time at which he consented to it, insolvent sureties.

SECTION II.

Of the Effect of Security between Debtor and Surety.

2028. The surety who has made payment, has his remedy against the principal debtor, whether the security were given with or without the knowledge of the debtor. This remedy takes place as well with regard to principal as to interest and expenses; nevertheless the surety has no remedy except for the expenses made by him after he has given notice to the principal debtor of the proceedings directed against himself.
He has also his remedy for damages, if there be ground.
2029. The surety who has paid the debt, is invested with all the rights which the creditor had against the debtor.
2030. Where there were many joint and several principal debtors for one and the same

debt, the surety who has guaranteed them all has, against each of them, his remedy for the recovery, of the whole of what he has paid.

2031. The surety who has paid a first time has no remedy against the principal debtor who has paid a second time, when he has not advertised him of the payment which he has so made; saving his action for recovery against the creditor.

When the surety shall have paid without being proceeded against, and without having given notice to the principal debtor thereof, he shall not have a remedy against his debtor in the case where, at the moment of payment, such debtor shall have had means of making declaration of the extinction of his debt; saving his action for recovery against the creditor.

2032. The surety, even before having paid, may implead his debtor in order to be indemnified by him,

1st. When he is proceeded against at law for the payment;

2d. When the debtor has become bankrupt, or is in embarrassment;

3d. When the debtor is obliged to send him his discharge within a certain time;

4th. When the debt is become due by the lapse of the term subject to which it was contracted;

5th. At the end of ten years, where the principal obligation has no fixed term of lapse; unless the principal obligation, such as a guardianship, should not be of a nature capable of being extinguished before a determinate period.

SECTION III.

Of the effect of Security between Co-Sureties.

2033. Where several persons have become security for the same person and for the same debt, the surety who has acquitted the debt, has his remedy against the other sureties, each for his share and portion; But this remedy does not take place when the surety has paid in one of the cases set forth in the preceding article.

CHAPTER III.

Of the Extinction of Security.

2034. The obligation which results from security, is extinguished by the same causes as other obligations.

2035. The blending of interests which is effected in the person of the principal debtor and his surety, when they become heirs of each other, does not extinguish the action of the creditor against the party who has become security for the surety.

2036. The surety may oppose to the creditor all the objections which appertain to the principal debtor, and which are inherent to the debt; But he cannot oppose objections which are purely personal to the debtor.

2037. The surety is discharged, when substitution into the rights, mortgages, and privileges of the creditor, can, in consequence of the act of such creditor, no longer operate in favor of the surety.

2038. The voluntary acceptance which the creditor has made of an immoveable or of any effect whatsoever in payment of the principal debt, discharges the surety, although the creditor should hereafter be evicted therefrom.

2039. The simple prolongation of the term allowed by the creditor to the principal debtor, does not discharge the surety, who may, in such case, sue the debtor in order to compel payment.

CHAPTER IV.

Of legal and judicial Security.

2040. In all cases where a person is obliged, by the law or by a sentence, to provide a surety, the surety offered must fulfil the conditions prescribed by articles 2018 and 2019.

When judicial security is in question, the surety must moreover be liable to personal arrest.

2041. He who cannot find a surety is permitted to give in his place a sufficient pledge as security.

2042. The judicial surety cannot demand seizure and sale of the goods of the principal debtor.

2043. He who has simply become security for the judicial surety, cannot demand seizure and sale of the goods of the principal debtor and of the surety.