

## **French Civil Code**

### **BOOK I. Of Persons.**

**Decreed 15th of March, 1803. Promulgated 25th of the same Month.**

#### **TITLE IV.**

##### *Of Absent Persons.*

#### **CHAPTER I.**

##### *Of Presumption of Absence.*

112. If there be necessity to provide for the administration of the whole or part of the effects, left by a person presumed absent, or who has no accredited agent, a decree shall be therefore made by a court of first instance, on the petition of the parties interested.
113. The court, on the request of the most diligent party, shall appoint a notary to represent the presumed absentees as to inventories, accounts, distribution, and payments, in which they shall be interested.
114. The public ministry is specially charged to watch over the interests of persons presumed absent; and shall be heard upon all actions which concern them.

#### **CHAPTER II.**

##### *Of the Declaration of Absence.*

115. Wherever a person shall have ceased to appear at the place of his domicile or residence, and where no tidings shall have been heard of him during four years; the parties interested may make application to a court of first instance in order that his absence may be declared.
116. In order to verify the absence, the court shall, after the production of papers and documents, give order that an inquiry be made peremptorily with the commissioner of the government, in the circle of the domicile or actual residence, if they are distinct from each other.
117. The court, in adjudging upon such application, shall moreover have regard to the motives of absence, and to the causes which may have prevented the reception of tidings respecting the individual presumed absent.
118. The commissioner of the government shall, immediately upon their being given, transmit all judgments, as well interlocutory as final, to the chief judge, the minister of justice, who shall make them public.
119. The judgment, declaratory of absence, shall not be given until the expiration of a year after that directing an inquiry.

## CHAPTER III.

### *Of the Effects of Absence.*

#### SECTION I.

#### *Of the Effects of Absence, as respects the Property possessed by the Absentee at the Date of his Disappearance.*

120. In cases where an absent person shall not have left a procuration for the administration of his property, his heirs presumptive at the date of his disappearance, or at the date of the last tidings respecting him, are empowered, by virtue of a definitive judgment declaring his absence, to take upon themselves provisional possession of the property which belonged to the absentee at the date of his departure, or of the last tidings respecting him, on condition of giving security for the fidelity of their administration.
121. If the absentee have left behind him a procuration, his heirs presumptive shall not be at liberty to prosecute a declaration of absence, or to enter upon provisional possession, until after the lapse of ten years from the disappearance, or the last tidings respecting him.
122. The same rule shall prevail where the procuration is extinguished; and, in such case, provision shall be made for the administration of the property of the absentee, as directed in the 1st chapter of the present title.
123. When the heirs presumptive shall have obtained provisional possession, the will, if any exists, shall be opened on the requisition of the parties interested, or of the commissioner of government in the court; and the legatees, donees, as well as all those who have any claims upon the property of the absentee, contingent upon his death, are empowered to exercise such claims provisionally, on condition of giving security.
124. The married party in community desirous of the continuance thereof, may prevent the provisional possession and the provisional exercise of all rights subject to the contingency of the death of the absentee, and take, or retain by preference, the administration of the property of the absentee. If the spouse demand provisional dissolution of the community, he shall exercise his claims, and all his legal and conventional rights, on condition of giving security for things susceptible of restitution. The wife, after exercising an option for the continuance of community, may still renounce it subsequently.
125. Provisional possession shall only be regarded as a trust which shall confer on those who obtain it the administration of the property of the absentee, and which shall render them accountable to him, in case of his reappearance, or the receipt of tidings respecting him.
126. The parties obtaining provisional possession, or the spouse who shall have elected a continuance of community, must cause an inventory to be made of the moveable effects and papers of the absentee, in presence of the commissioner of the government of the court of first instance, or of a justice of the peace required by the said commissioner.

The court shall order, if there be foundation for doing so, a sale of the whole or part of the moveable effects. In case of sale, the produce shall be employed, as of goods fallen to the party.

Those who obtain provisional possession are empowered to demand, for their own security, that the proceeding be conducted by a man of skill, nominated by the court, to view the immovable property, in order to verify its condition. This report shall be allowed in presence of the commissioner of the government, the costs of which shall

be paid from the property of the absentee.

127. They who, by means of provisional possession, or of legal administration, shall have obtained the property of the absentee, shall only be bound to render to him the fifth part of his revenues, in case he shall re-appear within fifteen complete years from the day of his disappearance; and the tenth part, in case he shall not re-appear until after fifteen years.

After thirty years' absence, the whole of his revenues shall belong to them.

128. None of those who shall have obtained property only by virtue of provisional possession, shall be at liberty to alienate or pledge the immoveable property of the absentee.

129. Where the absence has continued during thirty years from the provisional possession, or from the date at which the spouse in community shall have taken upon him the administration of the property of the absentee, or where a hundred years shall have elapsed since the birth of the absentee, the securities shall be discharged: all those who have claim may demand a distribution of the property of the absentee, and have the provisional possession pronounced final, by the court of first instance.

130. A succession to the absentee shall be opened from the day of his decease proved, for the benefit of his next heirs at that date; and they who shall have obtained the goods of the absentee, are required to restore them, with reservation of the fruits acquired by them, by virtue of article 127.

131. If the absentee re-appears, or if his existence is proved during provisional possession, the effects of the judgment which shall have declared his absence shall cease: without prejudice if there be ground to the precautionary measures prescribed in the first chapter of the present title for the administration of his goods.

132. If the absentee re-appears, or if his existence is proved, even after final possession, he shall recover his property in the state in which it shall then be, the price of that part of it which shall have been sold, or the profits accruing from the employment which shall have been made of the price of his property sold.

133. The children and direct descendants of the absentee are empowered equally, within thirty years to be computed from final possession, to demand restitution of his property, as is mentioned in the preceding article.

134. After the judgment declaratory of absence, every person who shall have claims to exercise against the absentee shall prosecute them against those only who shall have been part in possession of his property, or who shall have the legal administration thereof.

## **SECTION II.**

### ***Of the Effects of Absence, with regard to eventual Rights which may belong to the Absentee.***

135. Whoever shall claim a right fallen to an individual whose existence shall not be known, must prove that the said individual was alive when the right was open: until such proof, he shall be declared incapable of being admitted to sue for it.

136. If a succession opens to which an individual shall be called whose existence is not known; it shall devolve exclusively upon those with whom he would have had a right to put in his claim, or upon those who shall be entitled to the succession in his default.

137. The regulations of the two preceding articles shall take place without prejudice to the suits or petition of inheritance and other rights which shall belong to the absentee or to his representatives or assigns, and shall only be extinguished by the lapse of time

established for prescription.

138. As long as the absentee shall fail to appear, or that actions shall fail to be brought in his right, those who shall have gained the succession, shall enjoy the fruits bona fide received by them.

### **SECTION III.**

#### ***Of the Effects of Absence, as they relate to Marriage.***

139. The absent spouse whose consort shall have contracted a new union, shall alone be admissible to impeach such marriage in person or by attorney furnished with proof of his existence.
140. If the absent spouse has not left relations capable of succeeding to him, the consort may petition to be put into provisional possession of his property.

### **CHAPTER IV.**

#### ***Of the Superintendence of Minors whose Father has disappeared.***

141. If a father has disappeared leaving children minor, the issue of a common marriage, the mother shall have the superintendence of them, and she shall exercise all the rights of her husband, as regards their education and the administration of their property.
142. Six months after the fathers disappearance, if the mother were dead at the time of such disappearance, or if she shall die before the absence of the father is declared, the superintendence of the children shall be yielded up by the family council, to the nearest relation in the ascending line, and in their default to a provisional guardian.
143. The same shall be done in the case where one of the spouses who shall have disappeared, shall leave children under age the issue of a former marriage.