

**French Civil Code**

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

**TITLE XVIII.**

***OF PRIVILEGES AND MORTGAGES.***

**Decreed the 19th March, 1 804. Promulgated the 29th of the same Month.**

**CHAPTER I.**

***General Enactments.***

2092. Whosoever binds himself personally, is required to fulfil his engagement out of all his property moveable and immoveable, present and future.
2093. The goods of the debtor are the common pledge of his creditors; and the Value thereof is equally distributable among them, unless there exist among the creditors lawful causes of preference.
2094. The lawful causes of preference are privileges and mortgages.

**CHAPTER II.**

***Of Privileges.***

2095. Privilege is a right which the quality of his credit confers upon a creditor of being preferred to the others, though mortgage-creditors.
2096. Between privileged creditors, the preference is regulated by the different qualities of the privileges.
2097. Privileged creditors, who are in the same rank, are paid rateably.
2098. Privilege arising from the claims of the public exchequer and the order in which it is exercised, are governed by the laws relating thereto. Nevertheless the exchequer cannot obtain privilege to the prejudice of rights previously acquired by third persons.
2099. Privileges may exist either over moveables or immoveables.

**SECTION I.**

***Of Privileges over Moveables.***

2100. Privileges are either general, or peculiar to certain moveables.

**§ I. Of general Privileges over Moveables.**

2101. Privileged creditors over moveables in general are those hereafter expressed, and are exercised in the following order:
- 1st. Law expenses;
  - 2d. Funeral expenses ;
  - 3d. Expenses of whatever kind of the last sickness, concurrently among those to whom they are due;
  - 4th. The salaries of persons in service, for the year elapsed, and what is due for the current year;
  - 5th. Supplies afforded for the subsistence of the debtor and his family: that is to say, during the last six months, by retail shopkeepers, such as bakers, butchers, and others;

and during the last year, by masters of boarding houses and wholesale dealers.

§ II. Of Privileges over certain Moveables.

2102. Privileged credits over certain moveables are,

1st. The hire and rents of immoveables, on the fruits of the year's harvest, and on the value of all the stock and furniture of the house and farm, and of all that which serves to the cultivation of the farm; that is to say, to the amount of all which has accrued, or which may hereafter accrue, if the leases are authentic, or if, being under private signature, they have a certain date; and in both cases the other creditors have a right to under-let the house or farm for the remainder of the lease, and to make profit for themselves of the leases and rents, on condition however of paying to the proprietor all which shall still be due to him; And in default of authentic leases, or when being under private signature they have not a certain date, for a year commencing from the expiration of the current year; The same privilege takes place with regard to tenant's repairs, and with regard to all which relates to the execution of the lease; Nevertheless, sums due for seed-corn or for the expenses of the harvest of the year, are paid from the value of the harvest, and those due for implements, from the value of the implements, with a preference to the proprietor in both cases; The proprietor may seize the moveables which furnish his house or stock his farm when they have been removed without his consent, and he retains his privilege over them, provided he have laid claim to them; that is to say, in the case of moveables, stocking a farm, within an interval of forty days; and within one of fifteen, in the case of moveables furnishing a house; the, stock and furniture of the house and farm, and of all that which serves to the cultivation of the farm; that is to say, to the amount of all which has accrued, or which may hereafter accrue, if the leases are authentic, or if, being under private signature, they have a certain date; and in both cases the other creditors have a right to under-let the house or farm for the remainder of the lease, and to make profit for themselves of the leases and rents, on condition however of paying to the proprietor all which shall still be due to him; And in default of authentic leases, or when being under private signature they have not a certain date, for a year commencing from the expiration of the current year; The same privilege takes place with regard to tenant's repairs, and with regard to all which relates to the execution of the lease; Nevertheless, sums due for seed-corn or for the expenses of the harvest of the year, are paid from the value of the harvest, and those due for implements, from the value of the implements, with a preference to the proprietor in both cases; The proprietor may seize the moveables which furnish his house or stock his farm when they have been removed without his consent, and he retains his privilege over them, provided he have laid claim to them; that is to say, in the case of moveables, stocking a farm, within an interval of forty days; and within one of fifteen, in the case of moveables furnishing a house;

2d. The credit upon a pledge of which the creditor has got possession;

3d. The expenses incurred by the preservation of the article;

4th. The price of moveable effects not paid for, if they are still in the possession of the debtor, whether he have purchased them for a term or not; If the sale were made without a term, the seller may himself claim such effects as long as they are in the possession of the buyer, and prevent a resale thereof, provided the claim be made within eight days from the delivery, and that the effects are found in the same state in which such delivery was made; The privilege of the seller is not exercised, however, until after that of the proprietor of the house or of the farm, unless it be proved that the proprietor had knowledge that the moveables and other objects furnishing his house or stocking his farm, did not belong to the occupier; No innovation made upon the laws and usages of commerce with regard to claim;

- 5th. That which is furnished by an innkeeper, on the effects of the traveller which have been brought into his inn;
- 6th. Charges of carriage and additional expenses, on the thing conveyed;
- 7th. Credits resulting from want of integrity, and mistakes committed by public functionaries in the exercise of their functions, on the funds deposited as security, and on the interest which may be due thereon.

## **SECTION II.**

### ***Of Privileges over Immoveables.***

2103. Creditors having privileges over immoveables are,
- 1st. The seller, over the immoveables sold, for the payment of its price; If there be several successive sales, of which the price is due in whole or in part, the first seller is preferred to the second, the second to the third, and so in order;
- 2d. Those who have supplied money for the acquisition of an immoveable, provided it be authentically verified, by the act of loan, that the sum was designed for such use, and by the acquittance of the seller, that such payment was made with money borrowed;
- 3d. Coheirs, over the immoveables of the succession, for the warranty of the distributions made among them, and for the surplus and balance of the lots;
- 4th. Architects, contractors, masons, and others employed in building, rebuilding, or repairing houses, canals, or any other works whatsoever, provided nevertheless that an estimate have been previously drawn up by a competent person officially nominated by the court of first instance within whose jurisdiction such buildings are situated, for the purpose of verifying the state of the places in relation to the works which the proprietor shall declare he has an intention to form, and that such works have been, within six months from their completion, admitted by a competent person likewise nominated officially; But the amount of the privilege must not exceed the value set forth by the second statement, and it is reduced to the surplus value existing at the period of the alienation of the immoveable, and resulting from the works which have been done therein.
- 5th. Those who have lent money to pay or reimburse workmen enjoy the same privilege, provided such employment be authentically verified by the act of loan, and by the acquittance of the workmen, in the same manner as has been mentioned above with respect to those who have lent money for the acquisition of an immoveable.

## **SECTION III.**

### ***Of Privileges which extend over Moveables as well as Immoveables.***

2104. Privileges which extend over moveables and immoveables are those enumerated in article 2101.
2105. When in default of moveables the privileges enumerated in the preceding article are presented for payment from the price of an immoveable in concurrence with creditors having privilege over an immoveable, the payments are made in manner following:
- 1st. The law expenses and others enumerated in article 2101;
- 2d. Credits pointed out in article 2103.

## **SECTION IV.**

### ***Of the Manner in which Privileges are preserved.***

2106. Among creditors, privileges produce no effect with regard to immoveables, except so far as they are made public by enrolment on the registers of the keeper of the mortgages, in the manner regulated by -the law, and computing from the date of such

enrolment, subject to those exceptions only which follow.

2107. The credits enumerated in article 2101 are exempted from the formality of enrolment.
2108. The seller having privilege preserves such privilege by the transcription of the title which has passed the property to the purchaser, and which verifies that the whole or part of the price is due to him: in consequence of which, the transcription of the contract made by the purchaser shall be equivalent to inscription on the part of the seller, and on that of the lender who shall have supplied the money paid, and who shall be substituted into the rights of the seller, by the same contract: the keeper of the mortgages shall nevertheless be bound, under pain of all damages towards third persons, to cause an official insertion on his register, of credits resulting from the act conveying the property, as well in favor of the seller as in favor of the lenders, who may also cause to be made, if it have not been already done, a transcription of the contract of sale, for the purpose of acquiring the enrolment of what is due to them from the price.
2109. The coheir or the coparcener retains his privilege over the property of each lot or over the property put up to auction, for the surplus and balance of the lots, or for the price of the auction, by enrolment made at his instance, within sixty days, to be dated from the act of partition or of purchase by auction; during which time no mortgage can take place respecting the property charged with such balance or adjudged by auction, to the prejudice of the creditor of the balance or of the price.
2110. Architects, contractors, masons, and other work-men employed in building, rebuilding, or repairing edifices, canals, or other works, and those who, in order to pay and reimburse them, have lent money, of which the employment has been verified, retain, by the double enrolment made 1st of the statement which verifies the condition of the premises; 2d of the statement of allowance, their privilege at the date of the enrolment of the first statement.
2111. The creditors and legatees who demand a separation of the patrimony of the defunct, conformably to article 878, under the title "Of Successions," retain, with regard to the creditors of the heirs or representatives of the defunct, their privilege over the immoveables of the succession, by the enrolments made respecting each of such goods, within six months, to be computed from the opening of the succession. Before the expiration of this interval, no mortgage can effectually be established over such property by the heirs and representatives, to the prejudice of those creditors or legatees.
2112. The assignees of these different privileged credits may all exercise the same rights as the parties making cession, in their place and stead.
2113. All privileged credits subjected to the formality of enrolment, in regard to which the conditions above prescribed for retaining privilege have not been complied with, nevertheless do not cease to be hypothecary; but the mortgage takes date with respect to third persons, only from the period of the enrolments which ought to have been made, as shall be hereafter explained.

### **CHAPTER III.**

#### ***Of Mortgages.***

2114. Mortgage is a real right over immoveables charged with the acquittance of an obligation. It is in its nature indivisible, and subsists in entirety over all the immoveables affected by it, over each and over every portion of such immoveables. It

pursues them into whatever bands they may pass.

2115. Mortgage takes place only in the cases and according to the forms authorized by law.

2116. It is either legal, or judicial, or conventional.

2117. Legal mortgage is that resulting from the law. Judicial mortgage is the result of judgments or judicial acts. Conventional mortgage is that which depends on covenants, and on the external form of acts and contracts.

2118. The following only are susceptible of mortgage:

1st. Immoveable goods which relate to commerce, and their appendages reputed immoveable;

2d. The usufruct of the same goods and appendages during the time of its continuance.

2119. Moveables have no liability to mortgage.

2120. No innovation is made by the present code upon the regulations of the maritime laws concerning ships and other vessels.

## **SECTION I.**

### ***Of legal Mortgages.***

2121. The rights and credits to which legal mortgage is applicable, are, Those of married women, upon the goods of their husband; Those of minors and interdicted persons, upon the goods of their guardians; Those of the nation, of communes, and public establishments, upon the property of receivers, and accountable administrators.

2122. The creditor, who has a legal mortgage, may exercise his right over all the immoveables belonging to his debtor, and over those which may belong to him hereafter, under the modifications which shall be hereafter expressed.

## **SECTION II.**

### ***Of judicial Mortgages.***

2123. The judicial mortgage is the result of judgments, either upon a hearing, or by default, final or provisional, in favor of the party who has obtained them. It is the result of acknowledgments or verifications made in the judgment, of signatures affixed to an obligatory act under private signature. It may be exercised over the existing immoveables of the debtor, and over those which he may acquire, saving also the modifications which shall be hereafter expressed. Judgments on arbitration do not import mortgage, except so far as they are invested with a judicial order for their execution.

Mortgage in like manner is the result of judgments given in a foreign country, only so far as they have been declared executory by a French court; without prejudice to contrary regulations in political laws, or in treaties.

## **SECTION III.**

### ***Of judicial Mortgages.***

2124. Those only are permitted to assent to conventional mortgages who have the capacity of alienating the immoveables which they subject thereto.

2125. Those who only possess over an immoveable a right suspended by a condition, or voidable in certain cases, or subject to annulment, can only consent to a mortgage subject to the same conditions, or to the same annulment.

2126. The property of minors, of interdicted persons, and that of absentees, so long as the

possession thereof is only provisionally conferred, cannot be pledged except for the causes and in the forms established by the law, or by virtue of judgments.

2127. Conventional mortgage can only be consented to by an act passed in authentic form before two notaries, or before one notary and two witnesses.
2128. Contracts made in a foreign country cannot give a mortgage upon property in France, unless there be stipulations contrary to this principle in the political laws, or in treaties.
2129. No conventional mortgage is valid, except that which, either in the authentic document constituting the credit, or in a subsequent authentic act, declares specially the nature and situation of each of the immoveables actually belonging to the debtor, over which he grants the mortgage of the credit. Every article of his present personal property may be by name subjected to mortgage. Future property cannot be mortgaged.
2130. Nevertheless, if the present and unencumbered goods of the debtor are insufficient for the security of the debt, he may, on expressing such insufficiency, consent that the whole of the property which he may hereafter acquire, shall continue charged as soon as acquired.
2131. In like manner, in case the present immoveable or immoveables, subjected to mortgage, have perished, or sustained deterioration, in such manner that they have become insufficient for the security of the creditor, the latter shall be permitted either to sue immediately for repayment, or to obtain an additional mortgage.
2132. Conventional mortgage is Dot valid except so far as the sum for which it is granted is certain and determined by the act: if the credit resulting from the obligation is conditional as to its existence, or indeterminate as to its value, the creditor shall not be permitted to require the enrolment of which mention shall be made hereafter, except to the amount of an estimated value expressly declared by him, and of which the debtor shall have a right to make reduction if there be ground.
2133. A mortgage acquired extends to all the improvements which may occur in the immoveable mortgaged.

#### **SECTION IV.**

##### ***Of the Order of Mortgages with Regard to each other.***

2134. Among creditors, the mortgage, whether legal, or judicial, or conventional, takes order only from the day of the enrolment made by the creditor with the keeper of the registers, in the form and in the manner prescribed by the law, saving the exceptions contained in the following article.
2135. Mortgage exists, independently of every enrolment,
- 1st. For the benefit of minors and interdicted persons, over the immoveable. belonging to their guardian, in the proportion of his administration, from the day of his acceptance of the guardianship;
- 2d. For the benefit of women, by reason of their dowry and matrimonial covenants over the immoveables of their husbands, and computing from the day of marriage. The wife has no mortgage for sums in dowry arising from successions fallen to her, or from donations made to her during marriage, except computing from the opening of the successions, or from the day on which the donations have taken place. She has no mortgage as indemnity for debts which she has contracted with her husband and for compensation for her property alienated, except computing from the day of the obligation or of the sale. In no case, shall the regulation of the present article prejudice rights acquired by third persons before the publication of the present

title.

2136. Nevertheless, husbands and guardians are bound to make public the mortgages with which their property is encumbered; and for this purpose, they are to require without any delay, at the offices established for them, enrolment against the immoveables belonging to them as well as those which may belong to them hereafter.

Husbands and guardians, who, having failed to require and cause to be made the enrolments directed by the present article, shall have granted or suffered to be taken privileges or mortgages over their immoveables, without declaring expressly that the said immoveables were charged with the legal mortgage of their wives or wards, shall be deemed guilty of stellionate, and as such liable to arrest.

2137. Supplementary guardians shall be bound, under their personal responsibility, and under pain of damages, to take care that the enrolments be made without delay touching the goods of the guardian, by reason of his administration, even to cause the said enrolments to be made.

2138. On default by the husbands, guardians, and supplementary guardians, in causing the enrolments directed by the preceding articles to be made, they shall be demanded by the commissioner of government in the civil court at the domicile of the husbands and guardians, or at the place where the property is situated.

2139. The relations, either of the husband or of the wife, and the relations of the minor, or in default of relations, their friends, may require the said enrolments; they may also be demanded by the wife and by minors.

2140. Where, in the contract of marriage, the parties being of age shall have covenanted that enrolment shall not be made except over one or certain immoveables of the husband, the immoveables which shall not be indicated for enrolment shall remain free and unencumbered by mortgage for the dowry of the wife, and for her claims and matrimonial stipulations. It cannot be covenanted that no enrolment shall take place.

2141. The same rule shall apply to the immoveables of the guardian when the relations, in a family-council, shall have resolved that the enrolment shall only be made touching certain immoveables.

2142. In the case of the two preceding articles, the husband, the guardian, and the supplementary guardian, shall not be bound to require enrolment, except of the immoveables pointed out.

2143. Where the mortgage shall not have been restricted by the act nominating the guardian, the latter may, in the case in which the general mortgage upon his immoveables shall manifestly exceed the security sufficient for his administration, demand a restriction of the mortgage to immoveables sufficient to effect a full guaranty in favor of the minor. The demand shall be made against the supplementary guardian, and it ought to be preceded by a resolution of the family.

2144. The husband also in like manner, with the consent of his wife, and after having taken the advice of her four nearest relations in an assembly of the family, may demand that the general mortgage upon the whole of his immoveables, by reason of dower, first claims, and matrimonial covenants, shall be restricted to immoveables sufficient for the entire preservation of the right, of the wife.

2145. Judgments, on the petitions of the husbands and guardians, shall not be given without having heard the commissioner of government, and the parties interested. In the case in which the court shall pronounce reduction of the mortgage to certain immoveables, the enrolments made, with regard to all the others, shall be cancelled.

## CHAPTER IV.

### *Of the Mode of Enrolment of Privileges and Mortgages.*

2146. The enrolments are made at the office for preserving the mortgages, within the jurisdiction of which is situated the property subjected to privilege or to mortgage. They do not produce any effect if they are taken within the interval during which acts made previously to the opening of bankruptcies are declared null. It is the same between the creditors of a succession, if the enrolment were not made by one of them until subsequently to the opening, and in the case in which the succession is accepted only with benefit of inventory.
2147. All the creditors inscribed the same day exercise in concurrence a mortgage of the same date, without distinction of an enrolment of the morning and that of the evening, although such difference shall be marked by the keeper.
2148. In order to effect enrolment, the creditor must produce, either by himself, or by a third person, to the keeper of the mortgages, the original or an authentic copy of the judgment, or of the act which gives rise to the privilege or to the mortgage. Added thereto are two accounts upon stamped paper, of which one may be upon the copy of the document; they must contain,
- 1st. The name, Christian name, domicile of the creditor, his profession if he have one, and the election of a domicile for him in any place whatsoever within the jurisdiction of the office;
  - 2d. The name, Christian name, domicile of the debtor, his profession, if he have one known, or an individual and special designation, such as that the keeper may recognise and distinguish in all cases the individual encumbered with mortgage;
  - 3d. The date and nature of the document;
  - 4th. The amount of the capital of the credits expressed in the document, or estimated by the party making enrolment, for rents or sums lent, or for rights eventual, conditional, or indeterminate, in the cases in which such estimate is directed; as also the amount of the appendages of such capital sums, and the period of their becoming due;
  - 5th. The indication of the description and situation of the property over which he intends to preserve his privilege or his mortgage. This last regulation is not imperative in the case of legal or judicial mortgages: in default of agreement, a single enrolment for such mortgages, affects all the immoveables comprehended within the jurisdiction of the office.
2149. Enrolments to be made touching the property of a party deceased, may be made under the simple designation of the defunct, as was mentioned in number 2 of the preceding article.
2150. The keeper makes mention, upon his register, of the contents of the accounts, and returns to the petitioner as well the document or copy of the document, as one of the accounts, at the foot of which he certifies having made enrolment.
2151. The creditor enrolled for a capital producing interest or arrears has a right to be placed for two years only, and for the current year, in the same order of mortgage as for his capital; without prejudice to particular enrolments to be taken, importing mortgage to be computed from their date, for other arrears than those reserved by the first enrolment.
2152. It is lawful for the party who has demanded enrolment, as well as for his representatives or assignees, by authentic act, to change upon the register of mortgages the domicile elected by him, on condition of choosing and pointing out another within the same jurisdiction.



2153. The right of a mortgage purely legal belonging to the nation, to communes, and to public establishments upon the property of parties accountable, those of minors and interdicted persons upon their guardians, married women upon their husbands, shall be enrolled, on the production of two lists, containing only,
- 1st. The Christian and surname, profession and real domicil of the creditor, and the domicil which shall be elected by him or for him, within the jurisdiction;
  - 2d. The Christian and surname, profession, domicil, or precise designation of the debtor;
  - 3d. The nature of the rights to be preserved, and the amount of their value as relates to determinate objects, without being bound to fix it as to those which are conditional, eventual, or indeterminate.
2154. Enrolments keep alive mortgage and privilege during ten years, computing from the day of their date: their effect ceases, if such enrolments have not been renewed before the expiration of such interval.
2155. The expenses of the enrolment are charged upon the debtor if there be no stipulation to the contrary; they are advanced by the party making enrolment, except in the case of legal mortgagee, for the enrolment of which the keeper has his remedy against the debtor. The charges of the transcription, which may be required by the seller, are laid upon the purchaser.
2156. The actions to which the enrolments may give rise against creditors shall be brought before the competent tribunal, by summons given personally or at the last domicil elected on the register; and this, notwithstanding the decease either of creditors, or of those at whose houses they shall have made election of domicil.

## **CHAPTER V.**

### ***Of Cancellling and Reducing Enrolments.***

2157. Enrolments are cancelled by the consent of the parties interested, and who have the requisite power for this end, or by virtue of a judgment in the last resort or passed with the force of a matter decided.
2158. In either case, they who require cancellation deposit in the office of the keeper a copy of the authentic act containing consent, or that of the judgment.
2159. Cancellation not consented to is to be demanded in the court within whose jurisdiction the enrolment has been made, unless such enrolment have taken place for the security of an eventual or indeterminate sentence, touching the execution or liquidation of which the debtor and pretended creditor are in litigation, or are to be judged in another court; in which case the demand for cancellation must be brought there or remitted thither.
- Nevertheless, an agreement made between the creditor and the debtor to bring, in case of dispute, a petition before a court determined on by themselves, shall be executed by them.
2160. Cancellation may be directed by the courts, when the enrolment has been made without being founded either in law, or on a title, or when it has been so by virtue of a title, either irregular, or extinguished or discharged, or when the rights of privilege or of mortgage are destroyed by legal means.
2161. Whenever enrolments made by a creditor, who, according to law, would have had right to make them upon the present and future property of the debtor, without a covenant of restriction, shall be made over a greater portion of different estates than is

necessary for the security of the debts, an action is permitted to the debtor for reduction of the enrolments, or for the cancellation of that part which shall exceed the due proportion. The rules concerning jurisdiction are to be followed as established in article 2159.

The enactment of the present article does not apply to conventional mortgages.

2162. Those enrolments are deemed excessive which extend over several domains, when the value of one alone or of some of them exceeds by more than one third in unencumbered property the amount of the claims in capital and legal charges.
2163. Those enrolments also are reducible as excessive which are made according to an estimate by the creditor, of claims, which, so far as concerns the mortgage to be established for securing them, have not been regulated by agreement, and which in their nature are conditional, eventual, or indeterminate.
2164. The excess in this case is determined by the judges, according to circumstances, the probabilities of contingencies and presumptions of fact in such a manner as to reconcile the probable rights of the creditor with the interest of the reasonable credit to be preserved to the debtor; without prejudice to new enrolments to be made with right of mortgage from the day of their date, when the event shall have raised uncertain credits to a larger sum.
2165. The value of immoveables of which a comparison is to be made with that of credits and one third beyond, is determined by fifteen times the value of the revenue declared by the standard of the returns to the land-tax, or indicated by the quota of contribution upon such return, according to the proportion which exists in the communes of the situation between such standard, or such quota and revenue, for immoveables not liable to perish, and ten times such value for those which are subject thereto. The judges, nevertheless, may avail themselves, moreover, of discoveries which may be drawn from unsuspected leases, from statements of valuation which may have been drawn up previously to the arrival of such periods, and from other similar acts, and value the revenue at an average rate derived from the results of such different information.

## **CHAPTER VI.**

### ***Of the Effect of Privileges and Mortgages against third Persons in wrongful Possession.***

2166. Creditors having privilege or mortgage enrolled over an immovable may follow it into whatever hands it passes, in order to be arranged and paid according to the order of their credits or enrolments.
2167. If the third person in wrongful possession do not comply with the formalities which shall be hereafter established, in order to clear his title, he remains, by the single operation of enrolment, bound as wrongful possessor for all mortgage debts, and enjoys the same terms and delays allowed to the original debtor.
2168. A third person in wrongful possession is bound, in the same case, either to pay interest and capital sums due to whatever amount they may reach, or to abandon the immovable subjected to mortgage without any reservation.
2169. In default by the third person wrongfully possessed to satisfy fully each of these obligations, every mortgage creditor has a right to cause the immovable mortgaged to be sold, thirty days after notice to the original debtor, and summons given to the wrongful detainer to pay the debt due or abandon possession.
2170. Nevertheless the wrongful possessor, who is not personally bound for the debt,

may oppose the sale of the mortgaged estate conveyed to him, if other immoveables mortgaged for the same debt remain in the possession of the principal debtor or debtors, and may require the previous seizure and sale of them according to the form regulated under the title "Of Security:" pending such seizure, the sale of the estate mortgaged is postponed.

2171. Exception to seizure and sale cannot be made to a creditor privileged or having a special mortgage upon an immoveable.
2172. As respects abandonment by mortgage, it may be made by all third parties wrongfully possessed who are not personally bound for the debt, and who have power of alienation.
2173. It may be so even after the third party in wrongful possession has acknowledged the obligation or incurred sentence in this character only: abandonment does not, up to adjudication, prevent the third party in wrongful possession from regaining the immoveable on paying the whole debt and costs.
2174. The abandonment by mortgage is made at the record-office of the court where such property is situated, and an act thereof is granted by such court. On the petition of the more diligent of the interested parties, there is created for the immoveable abandoned a curator against whom the sale of the immoveable is sued for in the forms prescribed for ejectments.
2175. Deteriorations proceeding from the act or the negligence of third parties in wrongful possession to the prejudice of mortgage or privileged creditors, afford ground for an action of indemnity against them: but they cannot recover sums expended and improvements, except to the amount of the additional value resulting from such improvement.
2176. The fruits of the immoveable mortgaged are only due from the third party in wrongful possession computing from the day of the summons to pay or to abandon it, and if the proceedings commenced have been discontinued during three years, computing from the making of a new summons.
2177. Servitude and real claims which a third party in wrongful possession had upon it before such possession, revive after abandonment or adjudication made against him. His personal creditors, after all those who are enrolled against previous proprietors, exercise their mortgage in their turn, over the property abandoned or adjudicated.
2178. A third party in wrongful possession who has paid the mortgage debt, or abandoned the immoveable mortgaged, or been subject to ejectment from such immoveable, has his remedy for warranty, as of right against the principal debtor.
2179. A third party in wrongful possession who is desirous of clearing his title by paying the sum, must observe the formalities which are established in the 8th chapter of the present title.

## **CHAPTER VII.**

### ***Of the Extinction of Privileges and Mortgages.***

2180. Privileges and mortgages are extinguished,
- 1st. By the extinction of the principal obligation;
  - 2d. By the renunciation of the mortgage by the creditor;
  - 3d. By compliance with the formalities and conditions proscribed to third persons in wrongful possession for the purpose of clearing property acquired by them;
  - 4th. By prescription.

Prescription is acquired by the debtor, with regard to property in his hands, by the time fixed for the prescription of actions which confer mortgage or privilege. As regards property in the hands of a third person wrongfully possessed, it is acquired in his favor by the time regulated for the prescription of property for his benefit: in the case in which prescription supposes a title, it only begins to run from the day on which it has been transcribed on the registers of the keeper. Enrolments made by the creditor do not interrupt the course of prescription established by the law in favor of the debtor or of a third party in wrongful possession.

## **CHAPTER VIII.**

### ***Of the Mode of clearing Property of Privileges and Mortgages.***

2181. Contracts conveying right of ownership in immoveables, or real rights over immoveables, which third persons in wrongful possession shall wish to clear of privileges and mortgages, shall be transcribed throughout by the keeper of the mortgages within the jurisdiction in which the property is situated. Such transcription shall be made upon a roll destined for this purpose, and the keeper shall be bound to give an acknowledgment thereof to the party requiring it.
2182. The simple transcription of deeds conveying property upon the register of the keeper, does not exonerate from mortgages and privileges established over the immoveable. The seller transfers to the purchaser that property and those rights only which he had himself over the thing sold: he transfers them subject to the same encumbrances of privilege and mortgage with which he was charged.
2183. If the new proprietor is desirous of<sup>1</sup> protecting himself from the effect of the proceedings authorized in the 6th chapter of the present title, he is bound, either previously to such proceedings, or within a month at the latest, computing from the day on which the first summons was given, to notify to the creditors, at the domicils by them chosen in their enrolments,
- 1st. An extract from his title, containing only the date and quality of the act, the name and precise designation of the seller or donor, the nature and situation of the thing sold or given; and if a quantity of goods be in question, the general denomination only of the domain and of the circles within which they are situated, the price and the charges forming part of the price of the sale, or the estimate of the thing if it were the subject of donation;
  - 2d. An extract from the transcription of the act of sale;
  - 3d. A table of three columns, of which the first shall contain the date of the mortgages and that of the enrolments; the second, the names of the creditors; the third, the amount of the credits enrolled.
2184. The purchaser or donee shall declare, by the same act, that he is ready to satisfy immediately the debts and encumbrances by mortgage, up to the amount of the price only, without distinction of debts due or not due.
2185. Where the new proprietor has made such notification within the interval fixed, every creditor whose title is enrolled, may require the immoveable to be put up to public auction and sold to the highest bidder; on condition,
- 1st. That such requisition shall be signified to the new proprietor within forty days, at the latest, from the notification made at the instance of the latter; adding thereto two days for the distance of five myriameters between the domicile elected and the real domicile of each creditor making requisition;
  - 2d. That it shall contain the proposal of such creditor to raise the price or cause it to be raised to one-tenth above that which shall have been stipulated in the contract, or

declared by the new proprietor;

3d. That the same notification shall be made within the same interval to the preceding proprietor, the principal debtor;

4th. That the original and the copies of these instruments shall be signed by the creditor making requisition, or by his attorney expressly appointed, who in such case is bound to produce a copy of his warrant;

5th. That he shall offer to give security up to the amount of the price and the charges. The whole on pain of nullity.

2186. In default by the creditors of requiring the auction within the interval and in the forms prescribed, the value of the immoveable becomes finally fixed at the price stipulated in the contract, or declared by the new proprietor, who is in consequence exonerated from every privilege and mortgage, on paying the said price to the creditors who are authorized to receive it, or on depositing the same.

2187. In case of re-sale by auction, it shall take place according to the forms established for forcible ejectments, at the instance either of the creditor who shall have required it, or of the new proprietor. The prosecutor shall announce in the bills the price stipulated in the contract, or declared, and the additional sum to which the creditor has bound himself to raise it or cause it to be raised.

2188. The highest bidder is bound, beyond the price he bid, to repay to the purchaser or to the donee dispossessed, the charges and lawful costs of his contract, those of transcription upon the register of the keeper, those of notification, and those made by him for the purposes of re-sale.

2189. The purchaser or donee who retains the immoveable put up to auction by becoming highest bidder, is not bound to cause the judgment of adjudication to be transcribed.

2190. The creditor who has required the sale by auction, cannot by desisting therefrom, even though he should pay the amount of his proposal, prevent the public adjudication, except with the express consent of all the other mortgage creditors.

2191. The purchaser who shall become highest bidder shall have his remedy as of right against the seller, for the reimbursement of that which exceeds the price stipulated in his contract, and for interest on such excess, computing from the day of each payment.

2192. In the case in which the title of the new proprietor shall comprehend some immoveables, and some moveables, or several immoveables, some mortgaged, others not mortgaged, situated within the same or within different official jurisdictions, alienated for one and the same price, or for separate and distinct prices, subject or not to the same execution, the price of each immoveable affected by particular and separate enrolments shall be declared in the notification of the new proprietor, by valuation, if there be ground, of the total price expressed in the title. The creditor being highest bidder cannot in any case be compelled to extend his proposal either to moveable property, or to any other immoveables than those which are mortgaged for his credit, and situated within the same circle; saving the remedy of the new proprietor against his principals, for indemnity, from the damage which he would sustain, either from the division of the objects of his purchase, or from that of the execution.

## **CHAPTER IX.**

### ***Of the Mode of clearing Property of Privileges and Mortgages.***

2193. Purchasers of immoveables belonging to husbands or to guardians, when there shall be no enrolment over the said immoveables by reason of the administration of the guardian, or by reason of dower, the preferable claims and matrimonial covenants of

the wife, may clear off the mortgages which may exist upon property acquired by them.

2194. For this purpose, they shall deposit a copy, duly examined, of the contract conveying the property, among the rolls of the civil court of the place where such property is situated, and they shall certify, by an act notified, as well to the wife or supplementary guardian, as to the civil commissioner in the court, the deposit by them made. An abstract of such contract, containing its date, the Christian and surnames, professions and domicils of the contracting parties, a detail of the nature and situation of the property, the price and other charges of the sale, shall be and remain publicly affixed during two months in the hall of the court ; during which time the wives, husbands, guardians or supplementary guardians, minors, interdicted persons, relations or friends, and the commissioner of government, shall be permitted to require, if there be ground, and to cause to be made at the office of the keeper of the mortgages, the enrolments upon the immoveable alienated, which shall have the same effect as if they had been made on the day of the marriage-contract, or on the day on which the guardian entered upon his administration ; without prejudice to proceedings which may take place against husbands and guardians, as was mentioned above, with regard to mortgages consented to by them for the benefit of third persons, without having declared to them that the immoveables were already encumbered with mortgages, by reason of marriage or guardianship.

2195. If, in the course of two months from the exposition of the contract, enrolment have not been made on the part of married women, minors, or interdicted persons, over the immoveables sold, they pass to the purchaser without any charge on account of the dowry, the matrimonial claims and covenants of the wife, or by reason of the administration of the guardian, and saving the remedy, if there be ground, against the husband and guardian. If enrolments have been made in right of the said married women, minors, or interdicted persons, and if there are anterior creditors who absorb the whole or part of the price, the purchaser is exonerated from the price or from the portion of the price paid by him to creditors arranged in the order to which they are entitled ; and the enrolments in right of such married women, minors, and interdicted persons, shall be cancelled, either entirely, or up to the due amount. If the enrolments on the part of the married women, minors, and interdicted persons, are the more ancient, the purchaser shall not be at liberty to make any payment of the price to the prejudice of the said enrolments, which shall always, as was mentioned above, bear the date of the contract of marriage, or of the entry upon administration by the guardian: and in this case, the enrolments of the other creditors who do not come in beneficial order shall be cancelled.

## **CHAPTER X.**

### ***Of the Publicity of the Registers, and of the Responsibility of the Keepers.***

2196. The keepers of the mortgages are bound to deliver to all those who require it, a copy of the acts transcribed upon their registers as well as of enrolments existing, or a certificate that none exist.

2197. They are responsible for injury resulting,

1st. From omission in their registers of the transcription of acts of transfer, and of enrolments demanded in their offices;

2d. For failure in mentioning in their certificates the existence of one or more enrolments, unless in the latter case the error has proceeded from insufficient instructions which cannot be charged upon them.

2198. The immovable with regard to which the keeper shall have omitted in his certificates one or more charges enrolled, remains, saving the responsibility of the keeper, disencumbered thereof in the hands of the new purchaser, provided he have demanded the certificate subsequently to the transcription of his title; without prejudice nevertheless to the right of creditors to cause themselves to be arranged according to the order which belongs to them, as long as the price has not been paid by the purchaser, or so long as the order made among the creditors has not been allowed.
2199. In no case can the keepers refuse or delay the transcription of the acts of transfer, the enrolment of mortgage rights, or the delivery of certificates demanded, under pain of damages to the parties; for the effecting of which, statements of refusal or delay shall, at the instance of the parties requiring them, be drawn up forthwith, either by a justice of the peace or by the clerk of the court, or by another officer or a notary, in the presence of two witnesses.
2200. Nevertheless, the keepers shall be bound to have a register on which they shall inscribe, day by day, and in numerical order, deliveries which shall be made to them of acts of transfer for the purpose of being transcribed, or of the lists to be enrolled; they shall give, on request, an acknowledgment on stamped paper, which shall set forth the number of the register on which the enrolment shall have been made, and they shall not be at liberty to transcribe the acts of transfer, or to enrol the abstracts upon the registers designed for this purpose, except at the date and in the order of the deliveries thereof which shall be made to them.
2201. All the registers of the keepers must be on stamped paper, endorsed, and signed on each page, from first to last, by one of the judges of the court within whose jurisdiction the office is established. The registers shall be bound up every day like those used in the enrolment of acts.
2202. The keepers are bound in the exercise of their functions to conform to all the regulations of the present chapter, on pain of a fine from 200 to 1000 francs for the first infringement, and of deprivation for the second; over and above damages to the parties, which shall be paid before the fine.
2203. The mention of deposits, enrolments, and transcriptions, are made upon the registers, in order, without any blank or interlineation, on pain of a fine of from 1000 to 2000 francs against the keeper, and damages to the parties, payable also previously to the fine.