French Civil Code

BOOK III. Of The Different Modes Of Acquiring Property.

TITLE II.

OF DONATIONS DURING LIFE, AND OF WILLS.

Decreed the 3d of May, 1803. Promulgated the 3d of the same Month.

CHAPTER I.

General Regulations.

893. Successions are decreed to the children and descendants of the deceased, to his ancestors and collateral relations, in the order and according to the rules hereafter determined.

894. A man shall not be allowed to dispose of his property by gratuitous title, except by donation during life or by will, in the form hereafter established.

895. A donation during life is an act by which the donor deprives himself actually and irrevocably of the thing given, in favor of the donee who accepts it.

896. A will is an act by which the testator disposes, for the time when he shall no longer exist, of the whole or of part of his property, and which he is at liberty to revoke.

897. Entails are prohibited. Every disposition by which the donee, the heir appointed or the legatee, shall be charged to preserve and render to a third person, shall be null, even with regard to the donee, the heir appointed and the legatee.

898. Excepted from the preceding article are those dispositions permitted to fathers and mothers, to brothers and sisters, in the sixth chapter of the present title.

899. The disposition by which a third person shall be called to receive the donation, the inheritance, or legacy, in the case where the donee, the heir appointed or the legatee, will not receive it, shall not be regarded as an entail, and shall be valid.

900. It shall be the same with a disposition during life or by will, by which the usufruct shall be given to one, and the naked property to another. In every disposition during life or by will, impossible conditions, such as shall be contrary to the laws and to morals, shall be reputed not written.

CHAPTER II.

Of the Capability of disposing or of receiving by Donation during Life or by Will.

901. In order to make a donation during life or by will, it is necessary to be of sane mind.

902. All persons may dispose or receive, either by donation during life, or by will, excepting such as are declared incapable of doing so by the law.

903. A minor under the age of sixteen years is capable of disposing in no way, saving that which is ordained in cap. 9 of the present title.

904. A minor who has reached the age of sixteen years can make disposition by will only, and to the amount of not more than half the property of which the law permits an adult to dispose.

905. A married woman cannot make donation during life without the assistance or the special consent of her husband, or without being thereto authorized by the law, conformably to what is prescribed by articles 217 and 219, under the title "Of Marriage." She shall not need either the consent of her husband, or the authorization of the law, in order to dispose by will.

906. In order to be capable of receiving during life, it suffices to be conceived at the moment of the donation. In order to be capable of receiving by will, it suffices to be conceived at the period of the testator's death. Nevertheless the donation or the will shall not have their effect, except so far as the infant shall be born likely to live.

907. A minor, although arrived at the age of sixteen years, shall not be permitted, even by will, to make disposition for the benefit of his guardian. A minor shall not be permitted, on arriving at majority, to make disposition either by donation during life, or by will, for the benefit of him who was formerly his guardian, unless the final accounts of the guardianship have been previously rendered and settled. Excepted in the two cases above mentioned are the ancestors of minors, who are or who have been their guardians.

908. Natural children shall not be permitted, by donation during life or by will, to receive any thing beyond what is accorded to them under the title "Of Successions."

909. Doctors in physic or in surgery, officers of health and apothecaries, who shall have attended a person during the malady of which be dies, shall not be allowed to profit by donations during life or by will which such person shall have made in their favor in the progress of the disorder. Excepted 1st, are remunerative dispositions made by particular documents, regard being had to the ability of the disposer and to the services rendered. 2d. General dispositions, in the case of relationship even to the fourth degree inclusive, provided however the deceased has not heirs in direct line; unless he to whose profit the disposition has been made shall be himself among the number of such heirs. The same rules shall be observed with regard to the minister of religion.

910. Dispositions during life or by will, for the benefit of hospitals, of the poor of a commune, or of establishments of public utility, shall not take effect, except so far as they shall be authorized by an ordinance of the government.

911. Every disposition for the benefit of an incapacitated person shall be null, whether disguised under the form of a chargeable contract, or made under the name of substituted persons. The fathers and mothers, the children and descendants, and the husband or wife of the incapacitated person shall be deemed substituted.

912. Dispositions shall not be allowed for the benefit of a foreigner, except in a case where such foreigner might be allowed to make disposition for the benefit of a Frenchman.

CHAPTER III.

Of the disposable Portion of Goods, and of Reduction.

SECTION I.

Of the disposable Portion of Goods.

913. Free gifts, whether by acts during life, or by will, shall not exceed the half of the property of the disposer, if he leave at his decease but one legitimate child; the third part if he leave two children; the fourth part if he leave three or more of them.

914. Comprehended in the preceding article, under the name of children, are descendants in any degree whatsoever; nevertheless they are only reckoned for the child whom

they represent in the succession of the disposer.

915. Free gifts, by acts during life or by will, shall not exceed a moiety of the property, if in default of children, the deceased leaves one or more ancestors in both the paternal and maternal line; and three fourths if he leave ancestors only in one line. The property thus preserved for the benefit of ancestors shall be received by them in the order in which the law calls them to succeed; they shall alone enjoy the right to this reservation, in all cases in which a distribution in competition with the collaterals shall not have given them their disposable proportion of the goods at which it is fixed.

916. In default of ancestors and descendants, free gifts by acts during life or by will may exhaust the whole of the property.

917. If the disposition by act during life or by will is of an usufruct or life-annuity of which the value exceeds the disposable proportion, the heirs for whose benefit the law makes a reservation, shall have the option either of executing such disposition, or of abandoning the property of the disposable proportion.

918. The value in full property of goods alienated, either on condition of a life-annuity, or by sinking the money, or with reservation of usufruct, to one of those capable of succeeding in the direct line, shall be deducted from the disposable proportion; and the excess, if there be any, shall be carried to the mass. Such deduction and such carrying to account cannot be demanded by such of the other persons capable of succeeding in direct line as shall have consented to those alienations, nor in any case by those capable of succeeding in the collateral line.

919. The disposable proportion may be given in whole or in part, either by act during life, or by will, to children or others, successors of the donor, without being subject to restitution by the donee or legatee coming to the succession, provided the disposition has been made expressly by gratuitous title, and not subject to distribution. The declaration that the gift or legacy is by gratuitous title, or not subject to distribution, may be made, either by the act which shall contain the disposition, or subsequently in the form of dispositions during life, or by will.

SECTION II.

Of the Reduction of Donations and Legacies.

920. Dispositions, either during life, or by reason of death, which shall exceed the disposable proportion, shall be reducible to such proportion at the opening of the succession.

921. The reductions of dispositions during life shall not be demanded except by those for whose profit the law makes reservation, by their heirs or assigns; the donees, legatees, and creditors of the deceased shall not be allowed to demand such reduction nor to profit thereby.

922. The reduction is settled by forming one mass of all the property existing at the decease of the donor or testator. By a fiction such property is added thereto as he shall have disposed of by donations during life, according to their condition at the period of such donations, and their value at the time of the donor[1]s death. After having deducted the debts, a calculation is made upon the whole property, of what proportion, regard being had to the quality of the heirs whom he leaves, he was empowered to dispose.

923. It shall never be allowed to reduce donations during life until after having exhausted the value of all the property comprised in the testamentary dispositions; and when there shall be room for such reduction, it shall be made by commencing with the last donation, and so returning in their order to the more distant ones.

924. If the donation during life to be reduced has been made to one of the successors, he may retain, out of the property bestowed, the value of the portion which belongs to him as heir, in goods not disposable if they are of the same nature.

925. When the value of the donations during life shall exceed or equal the disposable proportion, all the testamentary dispositions shall be lapsed.

926. When the testamentary dispositions shall exceed either the disposable proportion, or the portion of such proportion which shall remain after having deducted the value of the donations during life, the reduction shall be made rateably, without any distinction between general and particular legacies.

927. Nevertheless in all cases where the testator shall have expressly declared his intention to be that such legacy should be acquitted in preference to others, such preference shall take place; and the legacy which shall be the object thereof shall not be reduced except inasmuch as the value of the others shall fail to complete the legal reservation.

928. The donee shall restore the fruits of that which shall exceed the disposable proportion, computing from the day of the donor's decease, if the demand for reduction has been made within the year; if not, from the day of such demand.

929. The immoveables recovered by the effect of the reduction shall be unencumbered by the debts or mortgages of the donee.

930. The action for reduction or reclaim may be maintained by the heirs against third persons detaining immoveables forming part of donations and alienated by the donees, in the same manner and in the same order as against the donees themselves, seizure being previously made of their property. This action ought to be maintained according to the order of the dates of the alienators, beginning with the most recent.

CHAPTER IV.

Of Donations during Life.

SECTION I.

Of the Form of Donations during Life.

931. All acts importing donation during life shall be passed before notaries, in the ordinary form of contracts; and a minute thereof shall be left, on pain of nullity.

932. A donation during life shall not bind the donor, or produce any effect, except from the day on which it shall have been accepted in express terms. The acceptance may be made, living the donor, by a subsequent and authentic act, of which a minute shall remain; but then the donation shall not have effect with regard to the donor, except from the day on which the act which shall verify such acceptance shall have been notified to him.

933. If the donee be of age, the acceptance must be made by him or in his name, by a person holding his power of attorney importing power to accept the donation made, or a general power of accepting donations which shall have been or which may hereafter be made. Such procuration ought to be executed before notaries; and a copy thereof must be annexed to the minute of the donation, or to the minute of acceptance if made by a separate act.

934. A married woman shall not be allowed to accept a donation without the consent of her husband, or, in case of her husband's refusal, without the authority of the law, conformably to what is prescribed by articles 217 and 219, under the title "Of

Marriage."

935. A donation made to a minor not emancipated, or to an interdicted person, must be accepted by his guardian, conformably to article 463, under the title "Of Minority, Guardianship, and Emancipation."

A minor emancipated may accept with the assistance of his curator. Nevertheless the father and mother of the minor emancipated or not emancipated, or the other ancestors, may, though neither the tutors nor curators of the minor accept from him even during the life of his father and mother.

936. A person deaf and dumb, who knows how to write, shall be capable of accepting by himself or by attorney. If he is unable to write, the acceptance must be made by a curator nominated for this purpose, according to the rules established under the title "Of Minority, Guardianship, and Emancipation."

937. Donations made for the benefit of hospitals, of die poor of a commune, or of establishments for public utility, shall be accepted by the managers of such communes or establishments, having been thereto duly authorized.

938. A donation duly accepted shall be perfect by the simple consent of the parties; and the property in the objects bestowed shall be transferred to the donee without necessity of any other conveyance.

939. When there shall be a donation of property susceptible of mortgages, the transcription of the acts containing the donation and acceptance, as well as the notification of the acceptance which shall have taken place by separate act, ought to be made at the offices for mortgages within the circle in which the property is situated.

940. Such transcription shall be made at the instance of the husband, when the property shall have been given to his wife; and if the husband does not satisfy such formality, the wife may proceed therein without authority. When the donation shall be made to minors, to interdicted persons, or to public establishments, the transcription shall be made at the instance of the guardians, curators, or managers.

941. The want of transcription may be objected by all persons having interest, those however excepted whose duty it is to cause the transcription to be made, or their assigns, and the donor.

942. Minors, interdicted persons, married women, shall not be reinstated after default of acceptance or transcription of donations; saving the remedy against their guardians or husbands, if occasion be, and without power of restitution. in the case even where the said guardians and husbands shall be found insolvent.

943. A donation during life shall only comprehend the present property of the donor; if it comprehend future property, it shall in that respect be null.

944. Every donation during life made under conditions, the execution of which depends on the single will of the donor, shall be null.

945. It shall be in like manner null, if it have been made under the condition of discharging other debts or encumbrances than those which existed at the period of the donation, or which shall be expressed either in the act of donation, or in the statement which ought to be thereto annexed.

946. In a case where the donor has reserved to himself the liberty of disposing of an article comprehended in the donation, or of a fixed sum in the property bestowed; if he dies without having disposed thereof, the said sum or the said article shall belong to the heirs of the donor, notwithstanding any clauses or stipulations to the contrary.

947. The four preceding articles do not apply to donations whereof mention is made in chapters 8 and 9 of the present title.

948. No act of donation of personal property shall be valid, except for effects of which an estimatory statement, signed by the donor and the donee, or those who accept for him, shall have been annexed to the minute of the donation.

949. It is permitted to the donor to make reservation for his own benefit, or to dispose for the benefit of another, of the enjoyment or usufruct of the move-able or immoveable property bestowed.

950. When the donation of moveable effects shall have been made with reservation of usufruct, the donee shall be bound at the expiration of the usufruct, to take the effects bestowed which shall be found in kind, in the state in which they are; and he shall have an action against the donor or his heirs, by reason of articles not in existence to the amount of the value which shall have been given them in the estimatory statement.

951. The donor may stipulate for the right of a return of the objects bestowed, either in case of the previous decease of the donee only, or in case of the previous decease of the donee and of his descendants. This right shall not be contracted for except for the benefit of the donor only.

952. The effect of the right of return shall be to rescind all alienations of property bestowed, and to cause such property to revert to the donor, free and quit of all charges and mortgages, saving nevertheless the mortgage of dowry and of matrimonial conventions, if the other property of the married party donor does not suffice, and in the case only where the donation shall have been made to the party by the same contract of marriage, from which result such rights and mortgages.

SECTION II.

Of Exceptions to the Rule on the Irrevocability of Donations during Life.

953. The donation during life shall not be revoked except for cause of the non-performance of the conditions subject to which it shall have been made, for cause of ingratitude, and by reason of the unexpected birth of children.

954. In the case of revocation for cause of non-performance of conditions, the property shall return into the hands of the donor, free of all charges and mortgages on account of the donee; and the donor shall have, against third persons detaining immoveable property bestowed, all the rights which he would have had against the donee himself.

955. The donation during life shall not be revoked for cause of ingratitude except in the following cases:
1st. If the donee have attempted the life of the donor;
2d. If he have become guilty of cruelty, crimes, or heinous injury towards him;
3d. If he refuses him subsistence.

956. The revocation for non-performance of conditions, or for cause of ingratitude, shall never take place absolutely.

957. The petitions for revocation on account of ingratitude ought to be made within the year, to be computed from the date of the crime imputed by the donor to the donee, or from the date at which the crime might have been known to the donor. Such revocation is not allowed to be petitioned for by the donor against the heirs of the donee, nor by the heirs of the donor against the donee, unless in the last case the action have been instituted by the donor, or unless he have died within a year after the crime.

958. The revocation for cause of ingratitude shall not prejudice either alienations made by the donee, or mortgages and other real charges which he may have imposed on the

object of the donation, provided that the whole be anterior to the inscription which shall have been made of the abstract of the petition for revocation in the margin of the transcription prescribed by article 939. In case of revocation, the donee shall be condemned to restore the value of the objects alienated, regard being had to the time of the petition and the fruits computing from the day of such petition.

959. Donations in favor of marriage shall not be revocable on account of ingratitude.

960. All donations during life made by persons who had no children or descendants actually living at the time of the donation, of what value soever such do-nations may be, and by what title soever they may have been made, and although they may have been mutual or remuneratory, except such as shall have been made in favor of marriage by others than the ancestors of the married parties, or by the married parties to each other, shall be absolutely revoked by the birth of a legitimate child to the donor, even of a posthumous one, or by the legitimation of a natural child by subsequent marriage, if it be born subsequently to the donation.

961. Such revocation shall take place, although the child of the donor were conceived at the time of the donation.

962. The donation shall be in like manner revoked, even when the donee shall have entered into possession of the property bestowed, and when it shall have been ceded by the donor subsequently to the birth of the child; provided, nevertheless, that the donee shall not be bound to restore the profits received by him, of what nature soever they may be, except from the day, on which the birth of the child or his legitimation by subsequent marriage shall have been notified to him by summons or other act in regular form; and this, although the petition for re-entry into the property bestowed shall only have been formed subsequently to such notification.

963. The property comprised in the donation absolutely revoked, shall be restored to the patrimony of the donor, free of all charges and mortgages on the part of the donee, without liability to be affected, even subsidiarily, by the restitution of the dowry of the wife of such donee, by her previous claims or other matrimonial covenants; which shall take place even though the donation shall have been made in favor of the marriage of the donee and inserted in the contract, and though the donee shall be bound by way of security, by the donor, to the execution of the contract of marriage.

964. The donations thus revoked shall not be revived or take effect anew either by the death of the child of the donor or by any confirmatory act; and if the donor is desirous of conferring the same property on the same donee, either before or after the death of the child by whose birth the donation was revoked, he can only accomplish it by a new disposition.

965. Every clause or covenant by which the donor shall have renounced his right to revoke a donation on account of the birth of a child, shall be regarded as null, and shall be incapable of producing any effect.

966. The donee, his heirs or assigns, or others detaining things bestowed, shall not be allowed to object prescription in order to make valid a donation revoked by the birth of a child, until after a possession of thirty years, which shall only begin to run from the day of the birth of the last child of the donor, though posthumous; and this, without prejudice to interruptions, such as of claim.

CHAPTER V.

Of Testamentary Dispositions.

SECTION I.

Of general Rules on the Form of Wills.

967. Every person shall be at liberty to dispose by will, either under the title of appointment of an heir, or under the title of legacy, or under any other denomination proper to manifest his will.

968. Two or more persons shall not be permitted to make a will in the same act, either for the benefit of a third person, or under the title of a reciprocal and mutual disposition.

969. A will may be an olographe, or made by public act or in the mystic form.

970. An olographic will shall not be valid unless it be written throughout, dated and signed by the hand of the testator: it is not subjected to any other formality.

971. The will by public act is that which is received by two notaries in the presence of two witnesses, or by one notary in the presence of four witnesses.

972. If the will is received by two notaries, it is dictated to them by the testator, and it must be written by one of such notaries, as it is dictated. If there be only one notary, it must equally be dictated by the testator, and written by such notary. In both cases, it must be read over to the testator, in presence of the witnesses. Express mention of the whole must be made.

973. This will must be signed by the testator; if he declare that he knows not how or is unable to sign, express mention shall be made of his declaration in the act, as well as of the cause which prevents him from signing.

974. The will must also be signed by the witnesses; nevertheless in the country it shall suffice that one of the two witnesses signs, if the will is received by two notaries, and that two of the four witnesses sign if it is received by one notary.

975. Neither of the legatees by what title soever they are so, nor their relations nor Connections even to the fourth degree inclusively, nor the clerks of the notaries by whom the acts shall be taken, shall be capable of being received as witnesses of the will by public act.

976. When the testator shall be desirous of making a mystic or secret will, he shall be bound to sign his dispositions, whether he has written them himself, or whether he has caused them to be written by another. The paper which shall contain his dispositions, or the paper which shall serve as envelope, if there be one, shall be closed and sealed. The testator shall present it thus closed and sealed to the notary and to six witnesses at the least, or he shall cause it to be closed and sealed in their presence; and he shall declare that the contents of such paper are his will, written and signed by himself, or written by another and signed by him: the notary shall thereon draw up the act of superscription, which shall be written on the paper or on the sheet which shall serve for envelope; this act shall be signed as well by the testator as by the notary, together with the witnesses. All the above shall be done immediately and without diversion to other acts; and in case the testator, by an impediment happening subsequently to the signature of the will, is rendered unable to sign the act of superscription, mention shall be made of his declaration on that subject, and it shall not be necessary, in such case, to augment the number of witnesses.

977. If the testator knows not how to sign, or if be were unable to sign when he caused his dispositions to be written, a witness shall be called to the act of superscription in addition to the number contained in the preceding article, who shall sign the act with the other witnesses; and mention shall be made therein of the cause for which such witness was called.

978. Those who know not how or who are unable to read, shall not be allowed to make dispositions in the form of a mystic will.

979. In the case where a testator cannot speak but is able to write, he may make a mystic will, on condition that such will shall be written throughout, dated and signed with his one hand, that he shall present it to the notary and to the witnesses, and that at the head of the act of superscription, he shall write in their presence, that the paper which he presents is his will; after which the notary shall write the act of superscription, in which mention shall be made of the testators having written these words in presence of the notary and of the witnesses; and moreover every thing observed which is prescribed in article 976.

980. The witnesses called to be present at wills must be males, of age, republicans, and in the enjoyment of civil rights.

SECTION II.

Of particular Rules touching the Form of certain Wills.

981. The wills of military men and of individuals employed in the armies may be received in any country whatsoever, by the commander of a battalion or squadron, or by any other officer of a superior rank, in presence of two witnesses, or by two military commissaries, or by one of such commissaries in presence of two witnesses.

982. They may moreover be received, if the testator be sick or wounded, by the chief officer of health, assisted by the military commandant charged with the police of the hospital.

983. The regulations of the articles above shall not take place except in favour of those who shall be on a military expedition, or in quarters, or in garrison out of the territory of the republic, or prisoners in an enemy's country; but those who are in quarters or in garrison in the interior shall not have the benefit thereof unless they shall be in a place besieged or in a citadel or other place of which the gates shall be closed and the communications cut off by reason of war.

984. The will made according to the above established form shall be null six months after the testator shall have returned into a place in which he shall have the liberty of employing the ordinary forms.

985. Wills made in a place with which all communication shall be intercepted on account of the plague or other contagious distemper, may be made before the justice of the peace, or before one of the municipal officers of the commune in presence of two witnesses.

986. These regulations shall take place as well with respect to those who shall be attacked by such disorders, as to those who shall be in the places infected therewith, although they be not actually sick.

987. The wills mentioned in the two preceding articles, shall become null six months after the communications shall have been re-established in the place where the testator remains, or six months after he shall have past into a place where they shall not be interrupted.

988. Wills made at sea, in the course of a voyage, may be received, in manner following. On board ships and other vessels of the state, by the officer commanding the vessel, or, in his absence, by him who supplies his place in the order of the service, one or other conjointly with the officer of administration or with him who fulfils these functions: And on board commercial vessels, by the supercargo of the ship or him who performs the functions thereof, one or other conjointly with the captain, the master or

the commander, or in their absence by those who replace them. In all cases such wills must be received in the presence of two witnesses.

989. On board ships of the state, the will of the captain or that of the officer of administration, and on board commercial vessels, that of the captain, of the master or commander, or that of the supercargo, may be received by those who follow them in the order of service, on conforming themselves as to other points to the regulations of the preceding article.

990. In all cases, a double original shall be made of the wills mentioned in the two preceding articles.

991. If the vessel touch at a foreign port in which resides a commissary for the commercial relations of France, they who shall have received the will are required to deposit one of the originals closed or sealed, in the hands of such commissary, who shall cause it to be transmitted to the minister of marine; and the latter shall cause it to be deposited among the rolls of the justice of the peace at the place where the testator was domiciled.

992. On the return of the vessel to France, whether into the port of her fitting out, or into a different port from that of her fitting out, the two originals of the will, alike closed and sealed, or the one which shall remain, if the other have been deposited during the course of the voyage in conformity with the preceding article, shall be remitted to the office of the prefect of maritime inscription; such prefect shall transmit them without delay to the minister of marine, who shall order the deposit thereof according to the directions of the preceding article.

993. Mention shall be made on the roll of the ship, in the margin, at the name of the testator, of the disposal which shall have been made of the originals of the will, whether into the hands of a commissary for commercial relations, or to the office of a prefect of maritime inscription.

994. The will shall not be regarded as made at sea, although it be in the course of a voyage, if at the time when it was made the ship had touched land, either foreign, or within the French dominion, where there was a French public officer; in which case it shall not be valid except so far as it shall have been drawn up according to the forms prescribed in France, or according to those usual in the countries where it shall have been made.

995. The regulations above shall be common to passengers merely who shall not form part of the ship's crew.

996. A will made at sea, in the form prescribed by article 988, shall only be valid where the testator shall die at sea, or within three months after he shall have landed, and in a place where he shall be able to renew it in the ordinary forms.

997. A will made at sea shall not contain any dispositions for the benefit of the officers of the vessel, unless they are relations of the testator.

998. The wills comprehended in the preceding articles of the present section, shall be signed by the testators and by those who shall have taken them. If the testator declare that he cannot sign or knows not how to sign, mention of his declaration shall be made, as well as of the cause which prevents his signing. In cases where the presence of two witnesses is requisite, the will shall be signed at least by one of them, and mention shall be made of the cause for which the other shall not have signed.

999. A Frenchman who shall be in a foreign country, may make his testamentary dispositions by act under his private signature, as is prescribed in article 970, or by authentic act, with the forms usual in the place where such acts shall be passed.

1000. Wills made in a foreign country shall not be allowed to be executed on property situated in France, until after they have been registered in the office of the testator's domicil, if he have preserved one, otherwise at the office of his last known domicil in France; and in case the will shall contain dispositions of immoveables which shall be situated there, it must be moreover registered at the office where such immoveables are situated, without being charge-able with a double duty for it.

1001. The formalities to which different wills are subjected by the regulations of the present and of the preceding section, must be observed on pain of nullity.

SECTION III.

Of Appointments of Heir, and of Legacies in general.

1002. Testamentary dispositions are either general or by general title, or by particular title. Each of these dispositions, whether it have been made under the denomination of appointment of heir, or whether made under the denomination of legacy, shall produce its effect according to the rules hereafter established for general legacies, for legacies by general title, and for particular legacies.

SECTION IV.

Of the general Legacy.

1003. The general legacy is the testamentary disposition by which the testator gives to one or more persons the entirety of the property which he leaves at his death.

1004. When at the decease of the testator there are heirs to whom one portion of his property is reserved by the law, such heirs are seised absolutely, by his death, of all the property of the succession; and the general legatee is bound to demand from them a transfer of the property comprehended in the will.

1005. Nevertheless, in similar cases, the general legatee shall have the enjoyment of the property comprehended in the will, computing from the day of the death, if the demand of transfer were made within a year from that event; if otherwise such enjoyment shall only commence from the day of the demand legally made, or from the day on which such transfer shall have been voluntarily consented to.

1006. When at the decease of the testator there shall be no heirs to whom a portion of his property shall be reserved by the law, the general legatee shall be seised absolutely by the death of the testator, without being bound to demand a transfer.

1007. Every olographic will shall, before it is put in execution, be presented to the president of the court of first instance of the circle within which the succession is opened. Such will shall be opened, if it has been sealed. The president shall draw up a statement of the presentation, of the opening, and of the state of the will, which he shall order to be deposited in the hands of a notary appointed by himself. If the will is in the mystic form, its presentation, its opening, its description, and its deposit, shall be made in the same manner; but the opening shall not be permitted except in the presence of those of the notaries, and such of the witnesses who signed the act of superscription, as shall be found on the spot, or those summoned.

1008. In the case in article 1006, if the will is olographic or mystic, the general legatee shall be bound to procure himself to be put in possession by an ordinance of the president, placed at the bottom of a request, to which shall be joined the act of deposit.

1009. The general legatee who shall be in competition with an heir to whom the law reserves a portion of the property, shall be bound by debts and charges on the succession of the testator, personally for his own share and portion, and conditionally for the whole; he shall also be bound to discharge all legacies, saving the case of

reduction, as it is explained in articles 926 and 927.

SECTION V.

Of Legacy by general Title.

1010. The legacy by general title is that by which the testator bequeaths an aliquot part of the property of which the law allows him to dispose, such as a half, a third, or all his immoveables, or all his personalty, or a fixed proportion of all his immoveables, or of all his personalty. Every other legacy forms only a disposition by particular title.

1011. Legatees by general title shall be bound to demand a transfer to the heirs to whom a proportion of the property is reserved by the law; failing such, to general legatees, and failing the latter, to the heirs called in the order established under the title "Of Successions."

1012. The legatee by general title shall be bound like the general legatee, by the debts and charges of the succession of the testator, personally for his own share and portion, and conditionally for the whole.

1013. When the testator shall only have disposed of one part of the disposable portion, and shall have done so by general title, such legatee shall be bound to discharge the particular legacies by contribution with the natural heirs.

SECTION VI.

Of particular Legacies.

1014. Every legacy absolute and unconditional shall, from the day of the testator's decease, confer upon the legatee a right to the thing bequeathed, a right transmissible to his heirs or assigns. Nevertheless the particular legatee shall not be permitted to put himself in possession of the thing bequeathed, nor to claim the fruits or interests thereof, except as computing from the day of his demand of transfer, formed according to the order established by article 1011, or from the day on which such transfer shall have been voluntarily granted.

1015. The interests or fruits of the thing bequeathed shall accrue for the benefit of the legatee, from the day of the death, and without his having made a petition according to law.

1st. When the testator shall have expressly declared his intention, in this respect, in the will;

2d. When an annuity or a pension shall have been bequeathed under title of alimony.

1016. The expenses of the petition for transfer shall be at the charge of the succession, provided nevertheless that no reduction of the legal reserve shall be permitted to result therefrom. The fees on registration shall be demandable from the legatee. The whole if it have not been otherwise directed by the will. Every legacy may be registered separately, although such registration may profit no one but the legatee or his assigns.

1017. The heirs of the testator, or other debtors in a legacy, shall be personally bound to discharge it, each in proportion to the share and portion in which he shall have been benefited by the succession. They shall be conditionally bound for the whole thereof, up to the amount of the value of the immoveables of the succession of which they shall be holders.

1018. The thing bequeathed shall be transferred with all necessary appurtenances, and in the state in which it shall be found on the day of the donor's death.

1019. When he who has bequeathed the property of an immoveable, has afterwards

augmented it by acquisitions, such acquisitions, though they be contiguous, shall not be deemed to form part of the legacy without a new disposition. It shall be otherwise with embellishments, or new buildings formed on the estate bequeathed, or an enclosure with which the testator shall have enlarged the circumference.

1020. If before or after the will, the thing bequeathed has been mortgaged for a debt of the succession, or even for the debt of a third person, or it it is encumbered with an usufruct, he who ought to acquit such legacy is not bound to redeem it, unless he have been charged to do so by an express disposition of the testator.

1021. Where a testator shall have bequeathed an object belonging to another, the legacy shall be annulled, whether the testator were aware or not that it did not belong to him.

1022. When the legacy shall be of a thing undetermined, the heir shall not be compelled to give it of the best quality, nor shall he be permitted to offer the worst.

1023. A legacy made to a creditor shall not be deemed a compensation for his debt, nor the legacy made to a domestic a compensation for his wages.

1024. The legatee by particular title shall not be bound by the debts of the succession; saving the reduction of the legacy as is said above, and saving the mortgage deed of creditors.

SECTION VII.

Of testamentary Executors.

1025. The testator shall be at liberty to nominate one or more testamentary executors.

1026. He may give them seisin of the whole or only of one part of his personalty; but it shall not be allowed to continue beyond a year arid a day computing from his death.

If he has not given it them, they shall not be permitted to demand.

1027. The heir may put an end to such possession, by offering to place in the hands of the testamentary executors a sum sufficient for the payment of the personal legacies, or by guaranteeing such payment.

1028. He who is incapable of making a bond, cannot be a testamentary executor.

1029. A married woman shall not be allowed to accept testamentary executorship except with her husband's consent. If she enjoy separate property, either by the marriage-contract or by judgment, she may accept it with her husband's consent, or upon his refusal, with legal authority, conformably to what is prescribed by articles 217 and 219, under the title "Of marriage."

1030. A minor shall not be allowed to become testamentary executor even with the authority of his guardian or curator.

1031. Testamentary executors shall cause seals to be affixed if there are among the heirs, minors, interdicted persons, or absentees. They shall cause an inventory of the property of the succession to be made in the presence of the heir presumptive; or having duly summoned him, They shall proceed to a sale of the personalty, on failure of sufficient money to pay the legacies. They shall use vigilance that the will be executed; and they shall be authorized, in case of dispute respecting its execution, to interfere in order to sustain its validity. They must render an account of their management at the expiration of a year from the death of the testator.

1032. The powers of the testamentary executor shall not pass to his heirs.

1033. If there are several testamentary executors who have accepted, one only may act in default of the others; and they shall be responsible for the whole of the account of the

personalty, which was confided to them, unless the testator have divided their functions, and unless each of them is circumscribed in that which has been allotted him.

1034. The expenses incurred by the testamentary executor for the affixing of the seals, for the inventory, the account and other expenses relative to their functions, shall be at the charge of the succession.

SECTION VIII.

Of the Revocation and of the Lapse of Wills.

1035. Wills shall be incapable of being revoked, in whole or in part, except by a later will, or by an act before notaries, containing a declaration of the change of intention.

1036. Later wills, not revoking in an express manner the preceding ones, shall annul in the latter such dispositions only therein contained as shall be found inconsistent with the new ones, or which shall be contrary thereto.

1037. The revocation made in a latter will shall produce its complete effect, although the new act remain un-executed by reason of the incapacity of the heir appointed or of the legatee, or by reason of their refusal to accept the succession.

1038. Every alienation, even that by sale with power of repurchase or by exchange, which the testator shall make of the whole or of part of the thing bequeathed, shall import revocation of the legacy as respects all which has been alienated, although the posterior alienation be null, and the object be returned into the hands of the testator.

1039. Every testamentary disposition shall lapse if he in whose favor it has been made does not survive the testator.

1040. Every testamentary disposition made under a condition dependent on an uncertain event, and such that within the testator's intention, it must not be executed except so far as such event shall happen or not happen, shall be lapsed, if the heir appointed or the legatee dies before the accomplishment of the condition.

1041. The condition which, within the testator's intention, merely suspends the execution of the disposition, shall not prevent the heir appointed, or the legatee, from having a vested right and transmissible to his heirs.

1042. The legacy shall lapse, if the thing bequeathed have totally perished during the life of the testator. The same rule holds, if it have perished subsequently to his death, without the act and fault of the heir, although the latter have been guilty of delay in transferring it, provided it would have perished equally in the hands of the legatee.

1043. The testamentary disposition shall lapse, when the heir appointed or the legatee shall reject it, or shall be found incapable of receiving it.

1044. There shall be ground for increase for the benefit of legatees, in the case where the legacy shall be made to several conjointly. The legacy shall be taken to be made conjointly when it shall be so by one single and the same disposition, and when the testator shall not have assigned the proportion of any of the colegatees in the thing bequeathed.

1045. It shall moreover be taken to be made conjointly, when a thing which is not capable of being divided without deterioration, shall have been given by the same act to several persons, although separately.

1046. The same causes which, according to article 954 and the first two regulations of article 955, shall authorize the petition for revocation of the donation during life, shall be admitted as a petition for revocation of testamentary dispositions.

1047. If such petition be founded on a serious injury done to the memory of the testator, it must be instituted within the year, to be computed from the date of the crime.

CHAPTER VI.

Of Dispositions permitted in favor of the GrandChildren of the Donor or Testator, or of the Children of their Brothers and Sisters.

1048. The property which fathers and mothers have the power to dispose of, may be by them conferred in whole or in part, on one or more of their children, by acts during life or by will, with the condition of surrendering such property to the children born or to be born, in the first degree only, of the said donees.

1049. In case of death without children, the disposition which the deceased shall have made by act during life or testamentary, for the benefit of one or more of his brothers or sisters, of the whole or part of his property not reserved by the law in the succession. shall be valid on condition of restoring such property to children born and to be born, in the first degree only, to the said brothers and sisters donees.

1050. The dispositions allowed by the two preceding articles, shall only be valid as far as the condition of restitution shall be for the benefit of all the children born and to be born of the party subjected thereto, without exception or preference of age or sex.

1051. If in the cases mentioned above, the party subjected to restitution for the benefit of his children, dies, leaving children in the first degree and descendants of a child previously deceased, such last shall receive, by representation, the portion of the child previously deceased.

1052. If the child, the brother or the sister to whom property shall have been given by act during life, without charge of restitution, accept a new gift made by act during life or testamentary, on condition that the property previously conferred shall be encumbered with such charge, it is no longer permitted them to divide the two dispositions made for their benefit, or to renounce the second in order to get possession of the first, even though they should offer to restore the property comprised in the second disposition.

1053. The claims of parties summoned shall be opened at the period when, for any cause whatsoever, the enjoyment of the child of the brother or sister charged with restitution, shall cease: the previous renunciation of the enjoyment for the benefit of the parties summoned, shall not be permitted to prejudice the creditors of the party charged anterior to the abandonment.

1054. The wives of tenants for life shall not be allowed to have, over the property to be restored, subsidiary redress, in case of insufficiency of unencumbered property, except for the capital of dowry-money, and in the case only where the testator has expressly ordered it.

1055. He who shall make the dispositions authorized by the preceding articles, shall be allowed to nominate, in authentic form, by the same act or by a later one, a guardian charged with the execution of such dispositions; such guardian shall not be dispensed therefrom except for one of the causes expressed in section 6 of chap. 2, of the title "Of Minority, Guardianship, and Emancipation."

1056. In default of such guardian, one shall be named at the instance of the party charged, or of his guardian if he be a minor, within the interval of a month, to be computed from the day of the decease of the donor or testator, or from the day subsequent to such death, on which the act containing the disposition shall have been known.

1057. The party charged, who shall not have satisfied the preceding article, shall be

deprived of the benefit of the disposition ; and in inch case the right may be declared open for the benefit of the parties summoned, at the instance either of the summoned if they are of age, or of their guardian or curator if they are minors or interdicted persons, or of any relation of[1] the summoned of age, minors or interdicted persons, or even officially at the instance of the commissary of government in the court of first instance in the place where the succession is opened.

1058. After the decease of one who shall have made disposition with charge of restitution, it shall be proceeded in the ordinary forms, to the inventory of all the property and effects which shall compose his succession, excepting nevertheless the case where one particular legacy only is to be dealt with. This inventory shall contain a valuation at a fair price of the moveables and personal effects.

1059. It shall be done at the request of the party charged with restitution, and within the delay fixed under the title "Of Succession," in presence of the guardian nominated for execution. The expenses shall be deducted from the property comprehended in the disposition.

1060. If the inventory have not been made by the request of the tenant for life, within the interval above-mentioned, it shall be proceeded in in the month following, at the instance of the guardian nominated for the execution, in presence of the tenant for life, or of his guardian.

1061. If the two preceding articles have not been satisfied, the same inventory shall be proceeded in at the instance of the persons designated in article 1057, by calling thereto the tenant for life or his guardian, and the guardian nominated for the execution.

1062. The tenant for life shall be bound to take proceedings for a sale, by notices, arid to the highest bidder, of all the moveables and effects comprised in the disposition, with the exception nevertheless of those of which mention is made in the two following articles.

1063. Household goods and other moveable effects which shall have been comprised in the disposition, with the express condition of preserving them in kind, shall be restored in the state in which they shall be found at the period of restitution.

1064. Cattle and implements serving for the cultivation of lands, shall be taken to be comprised in donations of such lands during life or testamentary; and the tenant for life shall only be bound to get them appraised and estimated, in order to render an equal value at the period of restitution.

1065. The tenant for life shall, within the interval of six months, computing from the day of closing the inventory, employ the ready money, of such as arises from the price of the moveables and effects which shall have been sold, and of that which shall have been received from debts owing. Such interval may be prolonged, if there be ground for it.

1066. The tenant for life shall be in like manner bound to employ money proceeding from debts owing which shall be recovered and from payments of rents, and this within three months at the latest, after he shall have received such money.

1067. This employment shall be made in conformity to what shall have been directed by the author of the disposition, if he have pointed out the nature of the effects in which the employment is to be made ; if not, it can only be in immoveables, or with privilege over immoveables.

1068. The employment directed by the preceding articles shall be made in presence and at the instance of the guardian nominated for the execution.

1069. Dispositions by acts during life or testamentary, on condition of restitution, shall be made public, either by the party charged or by the guardian nominated for the execution; that is to say, as regards immoveables, by the transcription of the acts into the registers of the office of mortgages of the place where they are situated; and as regards sums placed out with priority of claim over immoveables, by inscription on the property subject to such priority.

1070. The default of transcription of the act containing the disposition, may be objected by creditors and third persons purchasers, even to minors or interdicted persons; saving the remedy against the tenant for life and against the guardian for the execution, and without minors and interdicted persons being capable of being reinstated in spite of such failure of transcription, even though the tenant for life and the guardian be found insolvent.

1071. The failure of transcription cannot be supplied nor regarded as cared by the knowledge which creditors or third persons creditors might have had of the disposition by other means than that of transcription.

1072. Neither donees, legatees, nor even the legitimate heirs of him who shall have made the disposition, nor in like manner their donees, legatees or heirs, shall be allowed, in any case, to object to parties summoned the want of transcription or inscription.

1073. The guardian nominated for the execution shall be personally responsible, unless he has, in every point, conformed to the rules above established for verifying the property, for the sale of the personalty, for the employment of the money, for transcription and inscription, and in general if he have not used all necessary diligence in order to the good and faithful acquittal of the condition of restitution.

1074. If the tenant for life is a minor, he cannot, even in case of the insolvency of his guardian, be reinstated against failure in complying with the rules prescribed to him by the articles of the present chapter.

CHAPTER VII.

Of Distributions made by the Father, Mother, or other Ancestors, among their Descendants.

1075. The father and mother and other ancestors may make division and distribution of their property among their children and descendants.

1076. These distributions are allowed to be made by acts during life or testamentary, with the formalities, conditions, and rules prescribed for donations during life and wills. Distributions made by acts during life can only have present property for their object.

1077. If all the property which the ancestor shall leave on the day of his death has not been comprised in the distribution, that portion of property which has not been comprehended therein shall be distributed conformably to law.

1078. If the distribution has not been made among all the children who shall exist at the time of the death and the descendants of those who have previously died, the distribution shall be entirely null. A new one may therefore be claimed in legal form, either by the children or descendants who shall not have received any portion thereof, or even by those among whom the distribution shall have been made.

1079. The distribution made by the ancestor may be impeached for cause of waste of more than a fourth; it may also be so in case it should result from the distribution and from the dispositions made in preciput, that one of the coparceners shall have an advantage greater than the law permits him.

1080. The child who, for one of the causes expressed in the preceding article, shall impeach the distribution made by the ancestor, must advance the expenses of the estimate; and he shall bear them eventually, as well as the charges of the contest, if the objection is not founded.

CHAPTER VIII.

Of Donations made by the Marriage-contract to the Parties, and to Children to be born of the Marriage.

1081. Every donation during life of present property, though made by contract of marriage to the married parties, or to one of them, shall be subject to the general rules prescribed for donations made under this title. It shall not take place for the benefit of children to be born, except in the cases enumerated in chap. 6 of the present title.

1082. The fathers and mothers, the other ancestors, the collateral relations of the married parties, and even strangers, may, by the contract of marriage, dispose of the whole or of part of the property which they shall leave at the day of their death, as well for the benefit of the married parties, as for the benefit of children to be born of their marriage, in the case in which the donor shall survive the married party donee.

A similar donation, although made for the benefit only of the married parties or of one of them, shall be always, in the said case of survivorship by the donor, presumed to have been made for the benefit of the children and descendants to be born of the marriage.

1083. The donation, in the form contained in the preceding article, shall be irrevocable, in this sense only that the donor shall be no longer capable of disposing by gratuitous title of the objects comprised in the donation, unless it be for moderate sums under the title of recompense or otherwise.

1084. The donation by marriage-contract may be made cumulatively of present and future property, in whole or in part, on condition that there shall be annexed to the act a statement of the debts and charges of the donor existing at the day of the donation; in which case it shall be competent to the donee, at the death of the donor, to make election of the present property, renouncing the residue of the property of the testator.

1085. If the statement of which mention is made in the preceding article has not been annexed to the act containing the donation of the present and future property, the donee shall be compelled to accept or reject such donation for the whole. In case of acceptance, he can only claim the property which shall be found in existence at the day of the donor's decease, and he shall be subject to the payment of all the debts and encumbrances of the succession.

1086. The donation by marriage-contract in favor of married persons and of children to be born of their marriage, may furthermore be made, on condition of paying without distinction all the debts and encumbrances on the succession of the donor, or under other conditions, the execution of which might depend on his will, by whomsoever the donation shall have been made; the donee shall be bound to fulfil such conditions, unless he prefer renouncing the donation; and in case the donor, by the marriage-contract, shall reserve to himself the liberty of disposing of an article comprised in the donation of his present property, or of a fixed sum to be taken out of the same property, the article or the sum, if he die without having disposed thereof, shall be taken to be comprised in the donation, and shall belong to the donee or to his heirs.

1087. Donations made by contract of marriage shall not be impeached, or declared null, under pretence of want of acceptance.

1088. Every donation made in favor of marriage shall be void, if the marriage do not follow.

1089. Donations made to one of the married parties, in the terms of articles 1082, 1084, and 1086, above-mentioned, shall become void, if the donor survive the married party donee and his posterity.

1090. All donations made to married persons by their marriage-contract shall, at the time of opening the succession of the donor, be reducible to the portion of which the law shall permit him to dispose.

CHAPTER IX.

Of Dispositions between Married Persons, either by Contract of Marriage, or during Marriage.

1091. Wedded persons shall be allowed, by the marriage-contract, to make to each other, or one of the two to the other, such donation as shall be deemed convenient, subject to the modifications hereafter expressed.

1092. Every donation during life of present property, made between wedded persons by the marriage-contract, shall be taken not to have been made with condition of survivorship by the donee, unless such condition has been formally expressed; and it shall be subject to all the rules and forms above prescribed touching donations of this description.

1093. The donation of future property, or of present and future property, made between wedded persons by marriage-contract, whether single or mutual, shall be subject to the rules established by the preceding chapter, with regard to similar donations which shall be made to them by a third person; saving that it shall not be transmissible to the issue of such marriage, in case of the death of the wedded person donee before the other.

1094. The husband shall be allowed, either by marriage-contract, or during the marriage, in the case where he shall leave neither children nor descendants, to dispose in favor of his wife, absolutely, of every thing which he might dispose of in favor of a stranger, and in addition of the usufruct of the entirety of the portion of which the law prohibits the disposition to the prejudice of heirs. And in the case where the husband donor shall leave children or descendants, he may give to his wife either a fourth absolutely, and another fourth in usufruct, or the moiety of his property in usufruct only.

1095. A minor shall not be allowed by marriage-contract to give to his wife, either by single or mutual donation, except with the consent and assistance of those whose consent is requisite for the validity of his marriage; but with such consent he is permitted to give all that the law allows a husband of full age to give to his wife.

1096. All donations made between wedded persons during marriage, shall be always revocable, although entitled as during life. The revocation may be made by the wife, without being thereto authorized by the husband or by the law. Such donations shall not be revoked by the circumstance of children.

1097. Wedded persons shall not be permitted during marriage to make to each other, either by act during life or by will, any mutual and reciprocal donation by one and the same act.

1098. The husband or wife who, having had children by another bed, shall contract a second or subsequent marriage, shall not be permitted to give to such new spouse more than one portion of a legitimate child, and provided that in no case such donations exceed a fourth of the property.

1099. Wedded persons shall not be permitted to give each other indirectly beyond what is allowed them by the above regulations. Every donation, either disguised, or made to intermediate persons, shall be null.

1100. Donations by one of the wedded persons to the children or to one of the children of the other, the issue of a former marriage, shall be deemed to have been made to intermediate persons as well as those made by the donor to relations to whom the other wedded party shall be heir presumptive on the day of the donation, although the latter may not have survived his relation donee.