French Civil Code

BOOK III. Of The Different Modes Of Acquiring Property.

TITLE V.

OF THE CONTRACT OF MARRIAGE AND OF THE RESPECTIVE RIGHTS OF MARRIED PERSONS.

Decreed the 10th of February, 1804. Promulgated the 20th of the same Month

CHAPTER I.

General Regulations.

1387. The law does not regulate the conjugal association, as respects property, except in default of special agreements, which the married parties may make as they shall judge convenient, provided they are not contrary to good morals, and, moreover, subject to the modifications which follow.

1388. Married persons cannot derogate from the rights resulting from the power of the husband over the persons of his wife and of his children, or which belong to the husband as head, nor from the rights conferred on the survivor of the married parties by the title "Of the Paternal Power," and by the title "Of Minority, Guardianship, and Emancipation," nor from the prohibitory regulations of the present code.

1389. They are not allowed to make any agreement or renunciation, the object of which shall be to change the legal order of successions, whether with reference to themselves in the succession of their children or descendants, or with reference to their children between themselves; without prejudice to donations during life or by will, which may take place according to the forms and in the cases determined by the present code.

1390. The married parties can no longer stipulate in a general manner that their union shall be regulated by one of the customs, laws, or local ordinances which heretofore governed the different parts of the French territory, and which are repealed by the present code.

1391. They may nevertheless declare in a general manner that they intend to be married either under the law of community, or under the law of dowry. In the first case, and under the law of community, the rights of the married parties, and of their heirs, shall be governed by the regulations of chapter 2 of the present title. In the second case, and under the law of dowry, their rights shall be governed by the regulations of chapter 3.

1392. The simple stipulation that the wife settles upon herself, or that there is settled upon her property in dowry, does not suffice to subject such property to law of dowry, if there be not in the marriage contract an express declaration in this respect. Neither does liability to law of dowry result from the simple declaration of the married parties, that they are married without community, or that they shall be separated as to property.

1393. In default of special stipulations which derogate from the law of community or modify it, the rules established in the first part of chapter 2, shall form the common law of France.

1394. All matrimonial agreements shall be reduced to writing before the marriage, by act before a notary.

1395. They cannot receive any alteration after the celebration of marriage.

1396. The changes which shall be made therein before such celebration must be verified by act passed in the same form as the contract of marriage. No change or defeasance moreover is valid without the presence and simultaneous consent of all the persons who have been parties in the contract of marriage.

1397. All changes and defeasances, even invested with the forms prescribed by the preceding article, shall be without effect as regards third persons, unless they have been reduced to writing at the end of the minute of the contract of marriage: and the notary is forbidden, on pain of damages to the parties, and under the greatest penalty if there be ground for it, to deliver either engrossments or copies of the contract of marriage without transcribing at the end the change or the defeasance.

1398. The minor competent to contract marriage is competent to consent to all the agreements of which such contract is susceptible; and the agreements and donations which he has made therein are valid, provided he have been assisted in the contract by the persons whose consent is necessary to render such marriage valid.

CHAPTER II.

Of the law respecting Community.

1399. The community, whether legal or conventional, commences from the day of the marriage contracted before the officer of the civil power: they cannot stipulate that it shall commence at another date.

PART I. OF LEGAL COMMUNITY.

1400. The community which is established by the simple declaration that the parties marry under the law of community, or in default of contract, is subjected to the rules explained in the six following sections.

SECTION I.

Of that which composes Community actively and passively.

§ I. Of the active Part of the Community.

1401. Community is composed actively, 1st. Of all the moveable property which the married parties possessed at the day of the celebration of the marriage, together with all moveable property which falls to them during the marriage by title of succession, or even of donation, if the donor have not expressed himself to the contrary; 2d. Of all the fruits, revenues, interests, and arrears, of what nature soever they may be, fallen due or received during the marriage, and arising from property which belonged to the married persons at the time of the celebration, or from such as has fallen to them during the marriage, by any title whatsoever; 3d. Of all the immoveables which are acquired during marriage.

1402. Every immoveable is reputed to have been acquired in community, unless it be proved that one of the married parties had the property or legal possession thereof at a period anterior to the marriage, or that it has fallen to such party since by title of succession or donation.

1403. Cuttings of wood and the productions of quarries and mines fall under community as regards all which can be considered as usufruct, according to the rules explained under the title "Of Usufruct, Right of Common and Habitation." If the cuttings of wood which, according to those rules, might have been made during community, have not been so, recompense shall therefore be payable to the married party not being

proprietor of the estate, or to his heirs. If the quarries and mines have been opened during the marriage, the produce thereof only falls under community saving a compensation or indemnity to the married party who has claim thereto.

1404. The immoveables which married persons possess on the day of the celebration of marriage, or which fall to them during its continuance by title of succession, do not eater into community. Nevertheless, if one of the married persons have acquired an immoveable subsequently to the contract of marriage containing condition of community, but before the celebration of the marriage, the immoveable acquired in such interval shall enter into community, unless the acquisition have been made in the execution of some article of marriage; in which case it shall be regulated according to tbe agreement.

1405. Donations of immoveables which are made during marriage to one only of the married parties, do not fall into community, but belong to the donee only, unless tbe donation expressly declare that the thing given shall belong to both in community.

1406. An immoveable abandoned or ceded by the father, mother, or other ancestor, to one of the two married parties, either to satisfy what shall be owing to such party, or on condition of paying debts due from the donor to strangers, does not enter into community, saving compensation or indemnity.

1407. An immoveable acquired during marriage, by title of exchange for an immoveable belonging to one of the two married parties, does not enter into community; but is substituted instead and in place of that which was alienated, saving recompense, if there be any difference of value.

1408. The acquisition made during the marriage, by title of auction or otherwise, of the portion of an immoveable, of which one of the married parties was proprietor in coparcenary, does not constitute a purchase; saving indemnity to the community for the sum which it has supplied for such acquisition. In the case where the husband shall become, alone and in his own proper name, purchaser or highest bidder for a portion or the entirety of an immoveable belonging in coparcenary to his wife, the latter, at the dissolution of the community, has the election either to abandon the object to the community, which thereupon becomes debtor to the wife in the price of the portion which belonged to her, or to withdraw the immoveable, reimbursing to the community the price of its acquisition.

§ II. Of the passive Part of Community, and of Actions which result therefrom against the Community.

1409. Community is composed passively,

1st. Of all personal debts with which the married parties were encumbered on the day of the celebration of their marriage, or with which those succession were charged which fell to them during the marriage, saving compensation for those relating to immoveables proper to one or other of the married parties;

2d. Of debts, as well in capital sums as in arrears or interest, contracted by tbe husband during the community, or by the wife with her husband[1]s consent, saving compensation in cases where there is ground for it;

3d. Of those arrears and interest only of rents or debts due to others which are personal to the two married parties;

4th. Of usufructuary repairs of immoveables which do not enter into community;

5th. Of alimony of married persons, of the education and maintenance of children, and of every other charge of marriage.

1410. Community is not maintained with respect to personal debts contracted by the wife before marriage, except so far as they result from an authentic act anterior to marriage,

or as they have received before that event a certain date, either by enrolment, or by the decease of one or more of those who signed the said act. The creditor of the wife cannot, by virtue of an act which has not received a certain date before the marriage, sue for the payment of his debt against her, except on the bare property of her personal immoveables.

The husband, who has undertaken to pay for his wife a debt of this nature, cannot demand compen-sation therefor, either of his wife or of her heirs.

1411. The debts of successions purely moveable, which have fallen to married persons during the marriage, are entirely at the charge of the community.

1412. The debts of a succession purely immoveable which falls to one of the married parties during the marriage, are not at the charge of the community; saving the right which the creditors have to sue for their payment out of the immoveables of the said succession.

Nevertheless, if the succession have fallen to the husband, the creditors of the succession may sue for their payment, either out of all the property peculiar to the husband, or even out of that of the community; saving in the second case, the compensation due to the wife, or to her heirs.

1413. If a succession purely immoveable have fallen to the wife, and the latter have accepted it with the consent of her husband, the creditors of the succession may sue for their payment out of all the wife's personal property; but if the succession have only been accepted by the wife with the authority of the law on her husband[1]s refusal, the creditors, in case of deficiency in the immoveables of the succession, can only obtain relief out of the wife's bare property in other personal goods.

1414. When a succession fallen to one of the married persons is partly moveable and partly immoveable, the debts with which it is encumbered are not at the charge of the community, except to the amount of tbe rateable proportion of personalty in such debts, regard being had to the value of such moveables compared with that of the immoveables.

Such reateable portion is regulated by the inventory to which the husband must cause them to proceed, either in his own right, if the succession concern him personally, or as directing and authorizing the actions of his wife, if the question relate to a succession fallen to her.

1415. In default of the inventory, and in all cases where such default prejudices the wife, she or her heirs may, at the dissolution of the community, sue for compensation of right, and even make proof as well by private documents and papers as by witnesses, and in case of necessity by common rumor, of the existence and value of the personalty not inventoried. The husband is never admissible to make such proof.

1416. The regulations of article 1414 do not form any obstacles to the creditors of a succession partly moveable and partly immoveable suing for payment out of the property of the community, whether the succession have fallen to the husband, or whether it have fallen to the wife, when the latter has accepted it with the consent of her husband; the whole saving the respective compensations. The same rule applies where the succession has only been accepted by the wife as authorized by the law, and though the moveables thereof have nevertheless been confounded with those of the community without a previous inventory.

1417. If the succession have only been accepted by the wife as authorized by the law on the refusal of her husband, and if there have been an inventory, the creditors can only sue for payment out of the property as well moveable as immoveable of the said succession, and in case of insufficiency, on the bare property of the wife in the other

personal goods.

1418. The rules established by article 1411 and those following govern debts dependent upon a donation, as well as those resulting from a succession.

1419. Creditors may sue for the payment of debts contracted by the wife with her husband's consent, as well out of the whole property of the community as out of that of the husband or wife; saving compensation due to the community, or indemnity due to the husband.

1420. Every debt which is contracted by the wife in virtue only of the general or special procuration of her husband, is at the charge of the community; and the creditor cannot sue for the payment thereof either against the wife or against her personal property.

SECTION II.

Of the Administration of the Community, and of the Effect of the Acts of either of the married Parties relating to the conjugal Union.

1421. The husband alone administers the property of the community. He may sell it, alienate and pledge it without the concurrence of his wife.

1422. He cannot make disposition during life by gratuitous title of the immoveables of the community, nor of the entirety or a proportion of the moveables, except for the establishment of their common children. He may nevertheless dispose of moveable effects by gratuitous and particular title, for the benefit of any persons, provided he do not reserve to himself the usufruct thereof.

1423. A testamentary donation made by the husband must not exceed his portion in the community.

If be have given in this form any article of the community, the donee cannot claim it in kind, except so far as such article by the event of distribution fall to the lot of the heirs of the husband; if the article do not fall to the lot of such heirs, the legatee has his recompense for the total value of the article given, out of the portion of the heirs of the husband in the community and out of the personal property of the latter.

1424. Fines incurred by the husband for a crime not importing civil death, may be sued for out of the property of the community, saving the compensation due to the wife; such as are incurred by the wife cannot be put in execution except out of her bare property in her personal goods, so long as the community continues.

1425. Sentences pronounced against one of the married parties for crime importing civil death, affect only such party's portion in the community, and his or her personal property.

1426. Acts done by the wife without her husband's consent and even with the authority of the law, do not bind the property of the community, except when she contracts as a public trader and for the purposes of her traffic.

1427. The wife cannot bind herself nor engage the property of the community, even to free her husband from prison, or for the establishment of their children in case of her husband's absence, until she shall have been thereto authorized by the law.

1428. The husband has the management of all the personal property of the wife. He may prosecute alone all possessory actions and those relating to moveables, which belong to his wife. He cannot alienate the personal immoveables of his wife without her consent. He is responsible for all waste in the personal goods of his wife, occasioned by the neglect of conservatory acts.

1429. Leases which the husband has made alone of the property of his wife for a time

which exceeds nine year., are not, in case of the dissolution of the community, obligatory against the wife or her heirs, except for the time which has still to run either of the first period of nine years, if the parties are still within it, or of the second, and so in succession, in such manner that the former shall only have a right to complete his enjoyment for that period of nine years which may be in progress.

1430. Leases of his wife's property, which the husband has made or renewed alone for nine years or under, more than three years before the expiration of the current lease, if it relate to rural property, and more than two years before the same period if houses be in question, are void, unless their execution have commenced before the dissolution of the community.

1431. The wife who becomes bound jointly and severally with her husband in respect of affairs in the community, or of her husband, is not deemed bound with regard to the latter, except as security; she may be indemnified against the obligation which she has contracted.

1432. The husband who guarantees jointly and severally, or otherwise, the sale which his wife has made of a personal immoveable, has in like manner a remedy against her, either out of her portion in the community, or out of her personal goods, if he be troubled thereon.

1433. If an immoveable belonging to one of the married parties be sold, as also if redemption be made in money of manorial services claimable from estates peculiar to one of them, and the price thereof be paid into the community, and all without compensation, there is ground for deduction of the price from the community, for the benefit of the married party who was proprietor, either of the immoveable sold, or of the services redeemed.

1434. Compensation is deemed to have been made with respect to the husband whenever at the period of a purchase he has declared that it was made with money arising from the alienation of an immoveable which was personal to himself, and to be in lien of compensation.

1435. The declaration of the husband that the acquisition is made with money arising from an immoveable mold by the wife, and as regards her to serve instead of compensation, is not sufficient, if such compensation have not been formally accepted by the wife; if she have not accepted it, she has simply the right, at the dissolution of the community, to reimbursement of the price of her immoveable sold.

1436. Recompense for the price of an immoveable belonging to the husband can only be claimed out of the mass of the community: that for the price of the immoveable belonging to the wife is claimable out of the personal goods of the husband, in case of insufficiency in the goods of the community. In all cases, the compensation only takes place on the footing of the sale, whatever allegation may be made touching the value of the immoveable alienated.

1437. As often as a sum is withdrawn from the community, whether to discharge debts or incumbrances personal to one of the married parties, such as the price or part of the price of an immoveable peculiar to much party, or the redemption of manorial services, or for the recovery, preservation, or improvement of their personal property, and generally whenever one of the married parties has derived a personal profit from the goods of the community, a compensation is therefore due.

1438. If the father and mother have conjointly endowed their common child without expressing the proportion in which they intended to contribute thereto, they are deemed to have endowed it each in a moiety, whether the dowry have been paid or

promised in the effects of the community, or whether it have been so in goods personal to one of the two married parties. In the second case, the married party whose immoveable or personal effects have been settled as dowry, has an action for indemnity in a moiety of the said dowry, against the goods of the other; regard being had to the value of the article given at the time of the donation.

1439. A dowry settled by the husband alone on a common child, in the effects of the community, is at the charge of the community; and in the case in which community is accepted by the wife, the latter may contribute a moiety of the dowry, unless the husband have expressly declared that he charged himself with the whole thereof, or with a portion greater than a moiety.

1440. Warranty of dower is due from every person who has settled it; and interest thereon runs from the day of marriage, even though there be a fixed time for payment, unless there be a stipulation to the contrary.

SECTION III.

Of the Dissolution of Community and of some of its Consequences.

1441. Community is dissolved, 1st, by natural death; 2d, by civil death; 3d, by divorce; 4th, by separation of body; 5th, by separation of goods.

1442. The want of an inventory after the natural or civil death of one of the married parties, does not give rise to a continuation of community; saving the prosecutions of parties interested, relatively to the condition of goods and effects in community of which the proof may be made as well by document as by common rumor. If there be children under age, the want of inventory causes in addition a loss to the surviving married party of the enjoyment of their revenues; and the supplementary guardian who shall not have compelled such party to make inventory, is bound jointly and severally with the party by all sentences which may be pronounced for the benefit of minors.

1443. Separation of goods can only be sued for in court by the wife whose dowry is put in peril, and when the disorder of the husband's affairs gives room to fear that the goods of the latter will not be sufficient to satisfy the prior claims and demands of the wife. Every voluntary separation is null.

1444. The separation of property, though pronounced in court, is null, unless it have been executed by the actual payment of the claims and demands of the wife, effectuated by authentic act, up to the amount of the husband's goods, or at least by prosecutions commenced within the fortnight following the judgment, and not interrupted since.

1445. Every separation of goods must, before its execution, be made public by a notice upon a list destined to this purpose, in the principal hall of the court of first instance, and further, if the husband be a merchant, banker, or tradesman, in that of the court of commerce at the place of his domicil; and this on pain of nullity of the execution. The judgment pronouncing separation of goods, has relation backward, as to its effects, to the day of the petition.

1446. The personal creditors of the wife cannot, without her consent, demand separation of goods. Nevertheless, in case of bankruptcy or embarrassment of the husband, they may avail themselves of the claims of their debtor up to the amount of their debts.

1447. The creditors of the husband may obtain redress against the separation of property pronounced and even executed in fraud of their rights; they may even interpose in the suit on the petition for separation in order to contest it.

1448. The wife who has obtained separation of goods, must contribute, in proportion to her means and those of her husband, as well to the charges of the household as to those

of the education of their common children. She must entirely sustain those charges, if nothing remain to the husband.

1449. The wife separated either in body and goods, or in goods only, regains the uncontrolled government thereof. She may dispose of her moveables, and alienate them. She cannot alienate her immoveables without the consent of her husband, or without being thereto authorized by the court on his refusal.

1450. The husband is not responsible for any failure in the employment or re-employment of the price of an immoveable which the wife after separation has alienated under the authority of the court, unless he have concurred in the contract, or unless it be proved that the money has been received by him, or has been turned to his advantage. He is responsible for failure in its employment or re-employment if the sale have been made in his presence and with his consent ; he is not so with regard to the utility of such employment.

1451. Community dissolved either by separation of body and goods, or of goods only, may be re-established with the consent of both parties. This can only be done by an act before notaries and with a minute, of which a copy must be hung up in the form of article 1445. In this case community re-established resumes its operation from the day of marriage; affairs return to the same state as though there had been no separation, without prejudice nevertheless to the execution of acts which, during such interval, may have been made by the wife in conformity with article 1449. Every agreement by which the married parties would re-establish their community under conditions different from those which regulated it previously, is null.

1452. The dissolution of community operated by divorce or by separation either of body and goods, or of goods only, does not give origin to claims of survivorship by the wife; but the latter retains the power of exercising them at the civil or natural death of her husband.

SECTION IV.

Of the Acceptance of Community, and of the Renunciation which may be made thereof, with the Conditions relating thereto.

1453. After the dissolution of community, the wife or her heirs and assigns have the power of accepting or renouncing it. Every agreement to the contrary is null.

1454. The wife who has intermeddled in the goods of the community, cannot afterwards renounce. Acts purely administrative or conservatory do not imply intermeddling.

1455. A wife of age who has admitted in an act the existence of community, is no longer at liberty to renounce, or relievable against the character she has assumed, although she have made such admission before the forming an inventory, provided there be no fraud on tbe part of her husband's heirs.

1456. The surviving wife who is desirous of retaining the power of renouncing community, must, within three months from the day of her husband's decease, cause an exact and faithful inventory to be made of all the goods of the community, in the presence of the heirs of the husband, or after having duly summoned them. Such inventory must be by her affirmed to be just and veritable, at the time of its closure, before the public officer who took it.

1457. Within three months and forty days after the decease of the husband, she must make her renunciation at the registry of the court of first instance in the circle in which the husband had his domicil; this act must be enrolled on the register established for the reception of renunciations of succession.

1458. The widow may, according to circumstances, demand of the civil court an extension of the interval prescribed by the preceding article for her renunciation; such extension is, if there be ground, pronounced in presence of the heirs of the husband, or after they have been duly summoned.

1459. The widow who has not made her renunciation within the interval above prescribed, is not deprived of the power of renouncing if she have not inter-meddled and if she have formed an inventory; she can only be sued as in community until she have renounced, and she is liable to charges incurred against her up to her renunciation.

She may equally be sued after the expiration of the forty days from the closing of the inventory, if it have been closed within the three months.

1460. The widow who has converted or concealed any of the effects of the community, is declared subject thereto, notwithstanding her renunciation: it is the same with regard to her heirs.

1461. If the widow die before the expiration of the three months without having made or completed the inventory, the heirs shall for the purpose of making or completing the inventory, have a new interval of three months, to be computed from the decease of the widow, and of forty days for deliberation after the closing of the inventory. If the widow die after the termination of the inventory, her heirs shall have a fresh interval of forty days for deliberation, to be computed from her decease. They may moreover renounce community in the forms established above; and articles 1458 and 1459 are applicable to them.

1462. The regulations of articles 1456 and those following are applicable to the wives of individuals civilly dead, commencing from the moment at which civil death took place.

1463. The wife divorced or separated in body, who has not within three months and forty days after the divorce or separation definitively pronounced, accepted community, is deemed to have renounced it, unless, while yet within the interval, she has obtained an extension from the court, in her husband's presence, or after having daily summoned him.

1464. The creditors of the wife may impeach renunciation which shall have been made by her or by her heirs in fraud of their demands, and accept community in their own right.

1465. The widow, whether she accept or whether she renounce, has a right during the three months and forty days which are allowed her to form the inventory and to deliberate, to take for her own sustenance and that of her domestics from the provisions which remain, and in default thereof to borrow on account of the common stock, on condition of making moderate use thereof. She is not liable to any rent by reason of her residence, during such intervals, in a house dependent on the community or belonging to the heirs of her husband; and if the house which the married parties occupied at the period of the dissolution of the community, was held by them subject to rent, the wife shall not contribute, during the same intervals, to the payment of the said rent, but it shall be deducted from the mass.

1466. In the case of dissolution of community by the death of the wife, her heirs may renounce the community within the intervals and in the forms which the law prescribes to the surviving wife.

SECTION V.

Of the Distribution of the Community after Acceptance.

1467. After the acceptance of community by the wife or her heirs, the active is distributed

and the passive is sustained in the manner hereinafter determined.

§ I. Of the Partition of the Active.

1468. The married persons or their heirs bring into the mass of existing goods every thing in which they are debtors to the community by title of compensation or indemnity, according to the rules above prescribed, in section 2 of the first part of the present chapter.

1469. Every married person or the heir brings in in like manner the sums which have been drawn from the community, or the value of the property which the married party may have taken therefrom to endow a child by another bed, or to endow personally a common child.

1470. From the mass of property, each married person or the heir deducts,
1st. Personal goods which have not entered into community if they exist in kind, or those which have been acquired in compensation;
2d. The price of immoveables which have been alienated during the community, and for which compensation has not been made;
3d. Indemnities due to such party from the community.

1471. The shares of the wife take precedence of those of her husband. This right is exercised in respect of goods which no longer exist in kind, first out of ready money, next out of moveable properly, and subsidiarily out of the immoveables of the community ; in the last case, the election of the immoveables is yielded to the wife and to her heirs.

1472. The husband cannot exercise his claims, except out of the goods of the community. The wife and her heirs are entitled, in case of insufficiency in the community, to exercise their claims out of the personal goods of the husband.

1473. The repayments and compensations due from the community to the married parties, and the compensations and indemnities due from them to the community, carry interest absolutely from the day of the dissolution of the community.

1474. After all the deductions of the two married parties from the mass have been completed, the residue is distributed in moieties between the parties or their representatives.

1475. If the heirs of the wife are divided, so that one has accepted the community which the other has renounced, he who has accepted can only take his personal and hereditary share in the property which fell to the lot of the wife. The residue remains with the husband, who is charged towards the heir renouncing, with the claims which the wife would have been permitted to exercise in case of renunciation, but up to the amount only of the personal hereditary share of the party renouncing.

1476. Further, the partition of the community, as to all which concerns its forms, the auction of the immoveables when there is ground for it, the effects of the partition, the warranty which results therefrom, and the balance, are submitted to the rules which are established under the title ŒOf Successions," for distributions among heirs.

1477. Such of the married parties as shall have converted or concealed any effects of the community, is deprived of a portion in the said effects.

1478. After partition consummated, if one of the married parties is the creditor of the other, as when the price of the property of one has been employed in paying the personal debt of the other, or through any other means, such party exercises his claim over the property in the community which has fallen to the latter, or over the personal property of the latter.

1479. Personal credits which married persons have to put in force against each other, do not carry interest except from the day of demand in court.

1480. Donations which one of the married parties may have made to the other, are executed only out of the portion of the donor in the community, or out of his personal property.

1481. The mourning of the wife is at the charge of tbe heirs of her husband previously deceased. The value of such mourning is regulated by the fortune of the husband. It is claimable even by a wife who renounces community.

§ II. Of the Passive in the Community, and of Contribution to Debts.

1482. The debts of the community are to the amount of a moiety at the charge of each of the married parties or of their heirs: the expenses of sealing, inventory, sale of moveables, liquidation, auction and partition form part of such debts.

1483. The wife is not bound for the debts of the community either with respect to her husband or with respect to creditors, except to the amount of her emolument, provided that there have been a good and faithful inventory, and provided she render account as well of the contents of such inventory as of that which has fallen to her in the partition.

1484. The husband is bound for the whole of the debts of the community contracted by him, saving his remedy against his wife or her heirs for a moiety of such debts.

1485. He is not bound beyond a moiety, for those personal to his wife and which fell to the charge of the community.

1486. The wife may be sued for the whole of the debt which accrued in he own right and which entered into the community, saving her remedy against her husband or his heir, for a moiety of the said debts.

1487. The wife even personally bound for a debt of the community, cannot be sued for more than a moiety of such debt, unless the obligation be joint and several.

1488. The wife who has paid a debt of the community beyond her moiety has no right to recover against the creditor the excess, unless the acquittance express that what she has paid was for her moiety.

1489. The one of two married persons who, by the effect of a mortgage executed upon an immoveable which has fallen to him by partition, finds himself sued for the whole of a debt of the community, has of right his remedy for a moiety of such debt against the other married party or her heirs.

1490. The preceding regulations form no impediment to this; that by the partition, either of the coparceners should be charged with the payment of a proportion of the debts other than the moiety, even with discharging them entirely. As often as one of the coparceners has paid the debts of the community beyond the portion in which he was bound, there is ground for a remedy for him who has paid too much against the other.

1491. All which has been said above with regard to the husband or the wife, applies with regard to the heirs of either; and such heirs exercise the same rights and are subject to the same actions as the married party whom they represent.

SECTION VI.

Of the Renunciation of Community and of its Effects.

1492. The wife who renounces forfeits every description of claim upon the goods of the community, and even upon the moveables which have become part thereof in her right. She retains only linen and clothes for her own use.

1493. The wife who renounces has a right to resume,

1st. The immoveables belonging to her when they exist in kind, or the immoveable which has been acquired by compensation;

2d. The price of her immoveables alienated for which compensation has not been made and accepted, as is mentioned above;

3d. All indemnities which may be due to her from the community.

1494. The wife renouncing is discharged from all contribution to the debts of the community as well with regard to the husband as with regard to creditors. She nevertheless remains bound towards the latter, when she is under obligation conjointly with her husband, or when the debt, become a debt of the community, accrued originally in her right; the whole saving a remedy against the husband or his heirs.

1495. She may exercise all actions and previous demands above detailed, as well against the goods of tbe community as against the personal goods of her husband. Her heirs may do the same, saving in what relates to deduction of linen and clothes, as well as lodging and sustenance during tbe interval given for making the inventory and for deliberating; which rights are purely personal to the wife surviving.

Regulation relative to legal Community, when one of the married Parties or both of them have Children of previous Marriages.

1496. All which has been said above shall be observed even when one of the married parties or both of them shall have children by precedent marriages. If however the intermixture of the personalty and of the debts operate, for the benefit of one of the married parties, an advantage superior to that which is authorized by article 1098, under the title "Of Donations during Life, and of Wills," the children of tbe first bed of the other married party shall have an action for compensation.

PART II. OF CONVENTIONAL COMMUNITY, AND OF AGREEMENTS WHICH MAY MODIFY AND EVEN EXCLUDE LEGAL COMMUNITY.

149. Married persons may modify legal community by every description of agreements not contrary to articles 1387, 1388, 1389, and 1390.

The principal modifications are those which take place in stipulating in one or other of the modes following; that is to say,

1st. That the community shall only embrace purchases;

2d. That the present or future moveables shall not form part of the community, or shall only form part of it for one party;

3d. That the whole or part of the present or future immoveables shall be comprehended therein, by making them moveable;

4th. That the married parties shall pay separately their debts anterior to marriage;

5th. That in cases of renunciation, the wife may resume her contributions free and unencumbered;

6th. That the survivor shall have a reversion;

7th. That the married parties shall have unequal shares;

8th. That there shall be between them community by general title.

SECTION I.

Of Community confined to Property acquired.

1498. When married persons stipulate that there shall be a community between them of acquisitions only, they are deemed to exclude from community both the debts of each of them existing and future, and their respective moveables present and future. In this case, and after that each of the married persons has deducted the contributions, duly proved, the partition is limited to acquisitions made by the married persons

together or separately during the marriage, and arising as well from their common industry as from the savings out of the fruits and revenues of the property of both the married persons.

1499. If the moveable property existing at the time of the marriage, or fallen since, have not been proved by inventory or statement in correct form, it is reputed acquired.

SECTION II.

Of the Clause which excludes from the Community the moveable Property in Whole or in Part.

1500. The married parties may exclude from their community all their moveable property present and future. When they stipulate that they will thereout mutually contribute to the amount of a sum or value determinate, they are by that alone deemed to have reserved the surplus.

1501. This article renders the married party debtor to the community in the sum promised to be brought in, and obliges such party to prove such contributions.

1502. The contribution is sufficiently proved as regards the husband, by the declaration contained in the marriage contract, that his moveable property is of such value. It is sufficiently proved with regard to the wife, by the acquittance which the husband gives her, or those who have endowed her.

1503. Every married person has the right to resume and take up, at the time of dissolving the community, the value of that in which the moveable property brought in by him at the time of the marriage, or which bas fallen to him since, exceeded his contribution to the community.

1504. The moveable property which falls to each of the married parties during the marriage, must be verified by an inventory. In default of such inventory of moveable property fallen to the husband, or of a title proper to justify its existence and value, deduction being made of debts, the husband cannot exercise his previous claim thereon.

If the default of inventory reach to moveables fallen to the wife, the latter or her heirs are admitted to make proof, either by documents or by witnesses, or even by common rumor, of the value of such moveables.

SECTION III.

Of the Clause making moveable.

1505. When the married parties or one of them cause the whole or a portion of their immoveables present or future to form part of the community, such clause is called "making moveable."

1506. The act of making moveable may be determinate or indeterminate. It is determinate when the married party has declared that such an immoveable is rendered moveable and added to the community, wholly or up to the amount of a given sum. It is indeterminate when the married party has simply declared that the immoveables are brought into community up to the amount of a certain sum.

1507. The effects of determinately making moveable is to render the immoveable or the immoveables which are affected thereby, goods of the community even as moveables. When the immoveable or immoveables of tbe wife are wholly rendered moveable, the husband may dispose thereof as of the other goods of the community and alienate them entirely. If the immoveable is only rendered moveable for a certain sum, the husband cannot alienate it but with the consent of his wife; but he may pledge it without her consent, to the amount only of the portion rendered moveable.

1508. The act of making moveable indeterminately does not render the community proprietor of immoveables which are affected thereby; its effect is limited to obliging the married party, who has consented to it, to include within the mass, at the time of dissolving the community, some of the immoveables of such party up to the amount promised.

The husband cannot, as in the preceding article, alienate in whole or in part, without the consent of his wife, the immoveables which have been rendered moveable indeterminately; but he may pledge them up to the amount to which they have been made moveable.

1509. The married party who has rendered an estate moveable, has, at the time of partition, the power of retaining it, on making a deduction from his portion of its then value; and his heirs have the same right.

SECTION IV.

Of the Article of Separation of Debts.

1510. The article by which married persons stipulate that they will separately pay their personal debts, compels them, at the dissolution of the community, to render to each other mutual accounts of the debts which are proved to have been paid by the community in discharge of such of the married parties as was debtor therein. This obligation remains the same, whether, there have been an inventory or not; but if the moveable property contributed by the married parties have not been verified by an inventory or authentic statement anterior to marriage, the creditors of both the married parties may, without having regard to any of the distinctions which shall be claimed, sue for payment out of the moveable property not contained in the inventory, as well as out of all the other goods of the community. The creditors have the same right over the moveable property which shall have fallen to the married parties during community, unless it have been likewise verified by an inventory or authentic statement.

1511. When married persons bring into the community a sum certain, or a certain property, such a contribution carries with it a tacit agreement that it is not burdened with debts anterior to marriage; and an account must be rendered by the married party who has debts to the other, of all those which will diminish the contribution promised.

1512. The article of separation of debts does not prevent the community from being charged with interest and arrears which have accrued subsequently to marriage.

1513. When the community is sued for debts of one of the married parties, declared by the contract free and unburthened with any debts anterior to the marriage, the other party has a right to an indemnity operating either upon that portion in the community which would revert to the married party debtor, or upon the personal goods of the said party; and in case of insufficiency, such indemnity may be prosecuted by way of warranty against the father, mother, ancestor or guardian who shall have declared such party free and unburthened. This warranty may even be exercised by the husband during the community, if the debt accrue on the part of the wife; saving in such case compensation due from the wife or her heirs to the warrantors, after the dissolution of the community.

SECTION V.

Of the Power granted to the Wife of resuming her Contribution free and unencumbered.

1514. The wife may stipulate that in case of renunciation of the community, she shall resume the whole or part of what she shall have contributed thereto, either at the time of the marriage, or since ; but this stipulation cannot be extended beyond things

formally expressed, nor for the benefit of persons other than those designated. Thus the power of resuming the moveables which the wife contributed at the time of the marriage does not extend to those which fell during the marriage. So also this power allowed to the wife does not extend to children; the same allowed to the wife and children does not extend to heirs ascending or collateral. In no case can the contributions be resumed without deduction made of debts personal to the wife, and which the community shall have discharged.

SECTION VI.

Of conventional Reversion (Préciput).

1515. The article by which the married party surviving is authorized to deduct and retain, before any partition, a certain sum or a certain quantity of moveable effects in kind, does not confer a right to the benefit of such deduction on the surviving wife, only when she accepted community, unless the contract of marriage have reserved to her such right even on renunciation thereof. Except in case of such reservation, reservation is only exercised over the distributable mass, and not over the personal property of the married party previously deceased.

1516. Reversion is not regarded as an advantage subject to the formalities of donations, but as a covenant of marriage.

1517. Natural or civil death gives opening to reversion.

1518. When the dissolution of the community is effected by divorce or by separation of body, there is no ground for the actual delivery of the reversionary property; but the married party who has obtained either divorce or separation of body retains reversionary rights in case of survivorship. If it be the wife, the sum or the thing which constitutes her jointure remains always with the husband provisionally, on condition of giving security.

1519. The creditors of the community have always the right to effect a sale of the property comprised in the reversion, saving the remedy of the married party, conformably to article 1515.

SECTION VII.

Of the Articles by which unequal Portions in the Community are assigned to either of the Married Parties.

1520. Married persons may depart from the equal partition established by the law, either by only giving the survivor or the heirs of such survivor a portion in the community less than a moiety, or by giving the survivor a fixed sum in lieu of every claim upon the community, or by stipulating that the entire community shall, in certain cases, belong to the survivor or to one of the parties only.

1521. Where it has been stipulated that a married person or his heirs shall have only a certain portion in the community, as a third or a fourth, the party thus limited or his heirs shall not be liable to the debts of the community, except proportionably to the share they take in the active. The agreement is null if it binds the party thus limited or his heirs to sustain a larger share, or if it exonerate them from sustaining a share in the debts equal to that which they take in the active.

1522. Where it is stipulated that one of the married parties or the heirs of such party shall not claim beyond a certain sum in lieu of every right in the community, the article is a penal obligation which binds the other party or the

heirs of such latter party to pay the sum agreed on, whether the community be good or bad, sufficient or not to discharge such sum.

1523. If the article only establish the penal undertaking with regard to the heirs of the married party, the latter, in case of survivorship, has a right to legal partition by moieties.

1524. The husband or his heirs who retain, by virtue of the stipulation set forth in article 1520, the entirety of the community, is obliged to discharge all the debts thereof. The creditors have not in such case any action against the wife or against her heirs. If the wife be the survivor who has, for a sum agreed upon, the right of retaining all the community against the heirs of the husband, she has her election either to pay them such sum, becoming bound for all the debts, or to renounce the community, and abandon the goods and charges thereof to the heirs of her husband.

1525. It is permitted to the married parties to stipulate that the entirety of the community shall belong to the survivor or to one of them only, saving to the heirs of the other the previous resumption of contributions and capital sums fallen into the community in right of their principal. This stipulation is not deemed an advantage subject to the rules relative to donations, whether as to substance, or as to form, but simply a covenant of marriage and between partners.

SECTION VIII.

Of Community by general Title.

1526. Married persons may establish by their contract a general community of their property as well moveable as immoveable, present and future, or of all their present property only, or of all their future property only. Regulations common to the eight preceding Sections.

1526. That which has been said in the eight previous sections, does not confine to their precise regulations the stipulations of which conventional community is susceptible.

Married persons may make any other agreements, as has been said in article 1387, and saving the modifications contained in articles 1388, 1389 and 1390. Nevertheless, in the case where there shall have been children by a preceding marriage, every agreement which shall tend to give to one of the married parties more than the portion regulated by article 1098, under the title "Of Donations during Life and by Will," shall be void as to all which exceeds such portion; but the simple benefit resulting from the common labor and savings of the two married persons out of their respective revenues, though unequal, shall not be considered as an advantage made to the prejudice of the children of the former bed.

1527. Conventional community continues subject to the rules of legal community in all cases in which they have not been superseded explicitly or impliedly by the contract.

SECTION IX.

Of Agreements excluding Community.

1529. If, without submitting to condition of dower, the parties declare that they marry without community, or that they will be separate in property, the effects of such stipulation are regulated as follows.

§ I. Of the Clause implying that the Parties marry without Community.

1530. The article importing that the parties marry without community does not confer upon the wife a right to administer her property, nor to enjoy the fruits thereof: such fruits are deemed to have been given to the husband to sustain the expenses of marriage.

1528. The husband retains the administration of the property of his wife moveable and immoveable, and by consequence, the right to the enjoyment of all the moveable property which she brings as dowry, or which falls to her during the marriage; saving the restitution thereof which he is bound to make after the dissolution of the marriage, or after the separation of property which shall be pronounced by the court.

1529. If among the moveables brought as dowry by the wife, or which have fallen to her during the marriage, there are things which cannot be enjoyed without consuming them, an estimatory statement thereof must be annexed to the contract of marriage, or an inventory thereof must be made at the time they so fall to the wife, and the husband must restore their value according to the estimate.

1530. The husband is bound for all charges of the usufruct.

1531. The article set forth in the present section forms no objection to an agreement that the wife shall receive annually, on her single acquittance, a certain portion of her revenues for her support and personal wants.

1532. The immoveables settled as dower, in the case of the present section, are not inalienable.
Nevertheless they cannot be alienated without the consent of the husband, and upon his refusal, without the authority of the court.

§ II. Of the Clause of Separation of Property.

1536. Where the parties have stipulated by their marriage contract that they will be separate in goods, the wife retains the entire management of her property moveable and immoveable, and the free enjoyment of her revenues.

1533. Each of the parties contributes to the expenses of marriage, according to the covenants contained in their contract; and if there be none on this head, the wife contributes to such expenses up to the amount of one third of her income.

1534. In no case, nor by virtue of any stipulation, can the wife alienate her immoveables without the special consent of her husband, or upon his refusal, without being authorized by the court. Every general authority granted to the wife of alienating immoveables, either by the marriage contracts or subsequently, is null.

1535. Where the wife under separation has given up to her husband the enjoyment of her property, the latter is only bound, either upon demand made by his wife, or upon the dissolution of the marriage, to a production of the existing fruits, and he is not accountable for those which have been consumed up to that period.

CHAPTER III.

Of Regulation of Dowry.

1540. The dowry, under this regulation as under that of chap. 2, is the property

which the wife brings to her husband in support of the charges of marriage.

1536. All that which the wife settles or which is conferred upon her by contract of marriage, appertains to her dowry, if there be no stipulation to the contrary.

SECTION I.

Of Settlement of Dowry.

1542. The settlement of dowry may reach to all the present and future property of the wife, or all her present property only, or a part of her present and future property, or even an individual article. The settlement in general terms, of all the wife's property, does not comprehend future property.

1537. Dowry cannot be settled or even augmented during the marriage.

1538. If the father and mother settle a dowry conjointly, without distinguishing the share of each, it shall be taken to be settled by equal portions. If the dowry be settled by the father only in respect both of paternal and maternal rights, the mother, though present at the contract, shall not be bound, and the dowry remains entirely at the charge of the father.

1539. If the father or mother surviving settle a dowry in respect of paternal and maternal property, without specifying the portions, the dowry shall be taken first from the rights of the intended husband in the property of the party previously deceased, and the residue out of the property of the party making settlement.

1540. Although the daughter endowed by her father and mother have property in her own right of which they have the enjoyment, the dowry shall be taken from the property of the settlers, if there be no stipulation to the contrary.

1541. Those who settle a dowry are bound to warranty of the objects settled.

1542. Interest upon a dowry runs absolutely, from the day of marriage, against those who have promised it, although a term be fixed for its payment, unless there be a stipulation to the contrary.

SECTION II.

Of the Rights of the Husband over the Property in Dowry, and of the inalienable Nature of the Funds of the Dower.

1549. The husband alone has the management of the property in dowry, during the marriage.

He has alone the right to sue the debtors and detainers thereof, to enjoy the fruits and interest thereof, and to receive reimbursements of capital. Nevertheless it may be agreed, by the marriage contract, that the wife shall receive annually, on her single acquittance, a part of her revenues for her maintenance and personal wants.

1543. The husband is not bound to find security for the receipt of the dowry, unless he have been subjected thereto by the contract of marriage.

1544. If the dowry or part of the dowry consist of moveable articles fixed at a price by the contract, without declaration that such estimate does not amount to a sale, the husband becomes proprietor thereof, and is only debtor in the price given to the moveables.

1545. An estimate put upon an immoveable settled in dowry does not transfer property therein to the husband without an express declaration thereof.

1546. An immoveable acquired by money in dowry does not appertain to the dowry unless the condition of expending it have been stipulated by the marriage contract. It is the same with respect to an immoveable given in payment of dowry settled in money.

1547. Immoveables settled in dowry cannot be alienated or pledged during the marriage, either by the husband, or by the wife, or by the two conjointly; saving the exceptions which follow.

1548. The wife may, with the authority of her husband or upon his refusal, with the permission of the court, bestow the goods of her dowry in the establishment of children which she may have by a former marriage; but if she is only authorized by the court, she must reserve the enjoyment to her husband.

1549. She may also with the authority of her husband, bestow the goods of her dowry for the establishment of their common children.

1550. The immoveable in dowry may be alienated whenever the alienation thereof has been permitted by the marriage contract.

1551. The immoveable in dowry may also be alienated with the permission of the court, and by auction, after three public notices, In order to relieve the husband or wife from prison; To furnish sustenance for the family in the cases provided for by articles 203, 205, and 206, under the title "Of Marriage;" To pay the debts of the wife or of those who have settled the dowry, when such debts have a certain date anterior to the contract of marriage; To make substantial reparations indispensable to the preservation of the immoveable in dowry; In short, when such immoveable is found in coparcenary with third persons, and when it is acknowledged to be indistributable. In all these cases, the excess of the price of the sale above the acknowledged exigencies shall continue to form part of the dowry, and shall as such be expended for the benefit of the wife.

1552. The immoveable in dowry may be exchanged, but with the consent of the wife, for another immoveable of equal value, of four-fifths at least, on proving the utility of tbe exchange, or obtaining the authority of the court, and after an estimate by competent persons officially named by the court. In this case, the immoveable received in exchange shall appertain to the dowry; so also shall the excess of price, if there be any, and it shall be expended as such for the benefit of the wife.

1553. If out of the excepted case, which is hereafter to be explained, the wife or the husband, or both conjointly alienate the funds of the dower, the wife or her heirs may cause the alienation to be revoked after the dissolution of the marriage, without power of objecting any prescription during its continuance; the wife shall have the same right after separation of property. The husband himself may cause the alienation to be revoked during the marriage, becoming nevertheless liable in damages to the purchaser, unless he have declared in the contract that the property sold was in dower.

1554. Immoveables in dower not declared alienable by the contract of marriage are imprescriptible during the marriage, unless the prescription have commenced before. They become nevertheless liable to prescription after separation of property, at whatever period the prescription may have begun.

1555. The husband is bound, as respects all property in dower, by all the obligations of the usufructuary. He is responsible for all prescriptions gained

and deteriorations occurring by his negligence.

1556. If the dowry be put in peril, the wife may sue for separation of property, as has been mentioned in article 1443 and those following.

SECTION III.

Of the Restitution of Dower.

1564. If the dowry consist of immoveables, Or of moveables not estimated by the marriage contract, or fixed at a just price, with a declaration that the estimate does not take away the wife's property therein, The husband or his heirs may be compelled to restore it without delay, after the dissolution of the marriage.

1557. If it consist of a sum in money, Or in moveables, to which a price has been affixed by the contract, without declaration that the estimate does not render the husband proprietor thereof, The restitution cannot be exacted within a year after the dissolution.

1558. If the moveables of which the wife retains the property have perished by using and without the fault of the husband, he shall be only bound to restore those which remain, and in the state in which they shall happen to be. Nevertheless the wife may, in all cases, select linen and clothes for her actual use, saving a deduction of their value when such linen and clothes shall have been originally settled with estimate.

1559. If the dowry comprehend obligations and annuities which have perished, or suffered retrenchments which cannot be imputed to negligence in the husband, he shall not be responsible for them, but shall be entirely discharged on restoring the contracts.

1560. If an usufruct have been settled in dowry, the husband or his heirs are only bound, at the dissolution of the marriage, to restore the right of usufruct, and not the fruits fallen in during the marriage.

1561. If the marriage have continued ten years subsequently to the expiration of the term assigned for the payment of the dowry, the wife or her heirs may demand it again from the husband after the dissolution of marriage, without being held to prove that he has received it, unless he is able to show diligence employed in vain in order to procure the payment thereof to himself.

1562. If the marriage be dissolved by the death of the wife, the interest and fruits of the dowry to be restored run in full right for the benefit of her heirs subsequently to the day of the dissolution. If it be so by the death of the husband, the wife has the choice of demanding the interest of the dowry during the year of mourning, or of causing alimony to be supplied to her during the said period at the expense of her husband's succession; but, in both cases, her lodging during such year, and her mourning weeds, must be supplied to her from the succession, and without deduction from the interest due to her.

1563. On the dissolution of the marriage, the fruits of the immoveables in dowry are distributed between the husband and the wife, or their heirs, in proportion to the time it has continued, during the last year. The year begins to run from the day on which the marriage was celebrated.

1564. The wife and her heirs have no privilege for the recovery of the dowry from mortgage creditors prior to herself.

1565. If the husband were already insolvent, and had no trade or profession when the father settled a dowry on his daughter, the latter shall only be bound to

bring into the succession of her father the action which she has against that of her husband, in order to procure reimbursement thereof. But if the husband have not become insolvent until after the marriage, Or if he have a calling or profession which serves him in place of fortune, The loss of the dowry falls singly on the wife.

SECTION IV.

Of paraphernalia.

1574. All the property of the wife which has not been settled in dowry constitutes paraphernalia.

1566. If all the goods of the wife are paraphernalia, and if there be no covenant in the contract that she shall sustain a portion of the expenses of marriage, the wife contributes thereto to the amount of one third of her revenues.

1567. The wife has the management and enjoyment of her paraphernalia. But she cannot alienate such property, nor become party to a suit in respect of the said property, without the authority of her husband, or upon his refusal, without the permission of the court.

1568. If the wife give her procuration to her husband to administer her paraphernalia, on condition, of rendering account to her of the fruits, he shall be bound towards her as every other agent.

1569. If the husband have enjoyed the paraphernalia of his wife not as her agent, and nevertheless without opposition on her part, he is only bound, on the dissolution of the marriage, or at the first demand of his wife, to the production of the existing fruits, and he is not accountable for those which have been consumed up to that period.

1570. If the husband have enjoyed the paraphernalia, in spite of opposition manifested by his wife, he is accountable to her for all the fruits as well existing as consumed.

1571. The husband enjoying the paraphernalia, is bound by all the obligations of the usufructuary.

PARTICULAR REGULATION.

1581. On submitting to condition of dowry, married parties may nevertheless stipulate for an union of acquisitions, and the effects of such union are regulated as is mentioned in articles 1498 and 1499.