FUNDAMENTAL PRINCIPLES

OF THE

Laws of Canada,

AS THEY EXISTED UNDER THE NATIVES, AS THEY WERE CHANGED UNDER THE FRENCH KINGS, AND AS THEY WERE MODIFIED AND ALTERED UNDER THE DOMINATION OF ENGLAND.

TOGETHER WITH

THE GENERAL PRINCIPLES OF THE CUSTOM OF PARIS, AS LAID DOWN BY THE MOST EMINENT AUTHORS, WITH THE TEXT, AND A LITERAL TRANSLATION OF THE TEXT.

THE IMPERIAL AND OTHER STATUTES, CHANGING THE JURISPRUDENCE IN EITHER OF THE PROVINCES OF CANADA, AT LARGE.

PREFACED

By an Historical Sketch of the Origin and Rise of Religious and Political Institutions amongst the principal nations of the world, from the remotest periods to the present time.

Of the Common, Canon, and Statute Laws of England, so far as they operate on the Jurisprudence of Canada.

Of the Origin, Rise, and Successive changes of the Laws of France.

Of the General Government, Religious, Military, Civil, and Criminal Laws of the Natives, particularly of Huron and Iroquois Indians, at the time the interior of the country was discovered by Cartier: the whole supported by authorities.

COMPILED WITH A VIEW OF ASSISTING LAW STUDENTS IN THEIR STUDIES.

BY N. B. DOUCET, ESQ.

CUSTOM OF PARIS.

☞ *This number to be read immediately after No. III. Vol. I.*

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PROVINCE OF LOWER CANADA,
DISTRICT OF MONTREAL.

BE it remembered, that on the fourteenth day of February, in the year of our Lord, one thousand eight hundred and forty, NICHOLAS BENJAMIN DOUCET, of the city of Montreal, in the district of Montreal, Esquire, Notary Public, hath deposited in our office the title of a book in the following words: "Fundamental Principles of the Laws of Canada, "compiled by N. B. Doucet, of Montreal, Notary Public," the right whereof he claims as author.

ENREGISTERED according to the Act of the Provincial Parliament by N. B. Doucet, Esquire, in the Office of the Prothonotary of the Court of King's Bench for the said District of Montreal.

(Signed,)

MONK & MORROGH,

P. K. B.

(A true copy.)

MONK, COFFIN & PAPINEAU,

P. K. B.

INTRODUCTION.

The country which is now called France, from the name of the Franks, who conquered it towards the close of the fifth century, was formerly called Gaul.

In times the most remote, two nations, the Iberians and the Celts, shared it. It had for its limits the Alps, the Rhine, the Pyrenees, and the Mediteranean Sea.

The Celts formed the greater part of the population: they drove the Iberians into Spain, and remained in possession of the whole country.

The Phœnicians afterwards established important colonies in the south of France, and among others, the city of Marseilles.

Another Celtic tribe: that of the Cimbrians made an erruption into Gaul, and maintained itself principally on the banks of the Seine and the Loire. They all received their Religion and their Laws from priests, called Druids, who exercised a very formidable power over all the country. They assisted at the Councils of the nation; they were the arbiters of war and peace; the controlers of the rights of men, the judges of public law; and gave over to general execration all who refused to submit to their decisions.

The invasion of the Cimbrians was succeeded by that of the Belgians, who spread over all Gaul.

The Gauls, the Cimbrians, and the Belgians, are indiscriminately known in history by the name of Gauls. They were divided into small tribes, almost always at war with each other, and seldom laid down their arms. Their wives assisted at their councils, fought by their sides, and excited their courage by frantic shrieks. They also (like the Germans) had bards who sang the exploits of their heroes. The Gauls were brave, but uncivilized. They neither foresaw the danger which menaced them by the increasing power of the Romans, nor the necessity of uniting to resist the arms of Julius Cesar, who vanquished their tribes one after other.

About the middle of the second century they embraced christianity, which was preached to them by St. Pothin, St. Denis, and others—and Gaul became one of the most flourishing provinces of the Roman empire.

Augustus and his successors founded in Gaul several military colonies. Lyons became the seat of the Roman empire. By degrees, and after many revolts, the conquered people adopted the language, the civilization, and even the religion of the Romans. Druidism resisted. The emperors endeavoured to exterminate it, but it found a refuge in the Island of Britain. It was its last.

The Gauls were divided into freemen and slaves. The proprietors of real estates, and those who professed any art or trade, were free; the immense majority of the nation attached to the culture of the soil, lived in slavery.

The Franks inhabited the northern forests of Germany. Like the Gauls, they were divided into many independent tribes; but, more prudent or better informed than the latter, they formed a strong confederacy for the purpose of resisting the attacks of the Romans. It is from this league that they took the name of Franks, which, it is said, signified at the time, "*Free-men.*" These people were half civilized and half savage. They lived upon pillage and the chase. Their chiefs were sometimes hereditary and sometimes elected.

About the year 420 they thought of taking advantage of the weakness of the Romans, who were then harassed by other barbarians in the bosom of Italy itself, and attempted to form a permanent establishment in the country they had so frequently laid waste.

Pharamond, one of their chiefs, fell upon Belgium, took Tournay, Cambray, and other towns, and kept possession during a few years; and, being thus possessed, caused himself to be considered as the founder of the French monarchy. Although that establishment did not last, this chief and his son Clodion were frequently obliged to abandon the country, and cross the Rhine; but they shewed as much constancy to defend their conquest as the Romans did to wrest it from them, until an unforseen event presented itself and insured their possession.

A barbarian, as ferocious as he was powerful: Attila, King of the Huns, who caused himself to be called the "Scourge of God," with an immense army issued forth from the recesses of the forests of Tartary and carried desolation into Gaul. To face the danger, all the nations in possession of the country, Romans, Burgundians, and Visigoths, conceived that it was necessary to unite and meet their common enemy.

Meroveus, a new chief of the Franks, came on with his warriors, took an active part in the battle at the Plain of Chalons in Champaign, and strongly contributed to defeat Attila. It is said that Ælius, the Roman General, to reward his bravery, left him in peaceful possession of that part of the country which was possessed by the Franks (1)—at least he was no more troubled by the Romans—and moreover transmitted the crown to his descendants. Thus he became the chief of the first race of the Kings of France.

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(1) A. D. 420.

CHAPTER XXIII.

CHIEFS OF THE FRANKS.

Pharamond, A. D. 420. *Clodion,* 428. *Merovee,* 448. *Childeric I.,* 456.

SECTION I.—KINGS OF THE FRANKS.

Clovis, A. D. 484, *to Childebert I.—Clodomir—Thierry—Clotarie I.—Caribert —Contran—Sigebert—Chilperic I.—Clolaire II., A. D.* 584—*Dagobert I. A. D.* 628—*Clovis II., A. D.* 638—*Childeric II., A. D.* 656—*Thierry III., A. D.* 673—*Clovis III., A. D.* 692—*Childebert III., A. D.* 696—*Dagobert III., A. D.* 714—*Chilperic II., A. D.* 716—*Thierry IV., A. D.* 721—*Interregnum,* 5 *years—Childeric III., A. D.* 742.

MANNERS AND CUSTOMS OF THE FRANKS DURING THE FIRST RACE OF THEIR KINGS.

The Franks, before the conquests of the Romans, in most respects, were similar to the savage tribes who still inhabit the forests of North America, accustomed to live by the chase and by pillage: murder and violence seemed to them faults so light that by their laws they could be expiated by a trifling fine. But cowardice was inexpiable: the man who fled or abandoned his arms in the battle, was for ever dishonoured.

The Franks fought on foot; cavalry to them was unknown. Their arms were, the battle axe or spear, and the javelin.

The booty was common property—and the share of each, without distinction, was regulated by drawing lots. The history of Clovis presents a remarkable instance of that law. St. Remy, bishop of Rheims, having claimed a consecrated vase, taken at the Saccage of Soissons, Clovis thought he might promise it; and, before the division, he claimed it as a reward for his bravery. "Thou shall have it, if it falls to your lot," replied a soldier; and as Clovis insisted, the fierce warrior smashed the vase into pieces with a blow of his axe. His right to do so must have been evident from the circumstance that Clovis did not dare to punish him instantly, but he waited his time; and, in the spirit of the age, as he was some days afterwards making a review of his troops, he found the arms of the insolent warrior in bad order, he censured him publicly and killed him with his own hand, bidding the soldier to remember the vase of Soissons.

The kingdom was hereditary, as pretended by some; while others hold that it was elective. The king or chief commanded the army, made peace or declared war, levied taxes, and filled up the principal offices of the state; sometimes he administered justice in person, but generally every one was judged by his own peers, that is to say, by people of his own class and profession, and by the laws of the nation.

The laws were made not by the king but by the nation, united in the assemblies of the *Champ de Mars*. At first all the Franks took a share in them, but when the nation became more numerous, the chiefs, and subsequently the bishops, superadded only, were admitted.

At these assemblies were regulated the *compositions*, namely: the fines the Franks were obliged to pay for every crime or misdemeanor—others established the law of succession: the most remarkable was that which excluded females from the succession to conquered lands, doubtless because they could be defended only by the force of arms—the crown being a conquest, females were excluded. This law became a fundamental law in France, and is named the Salique-law from the Salique Franks, with whom it was particularly enforced and brought to France by Pharamond.

The Franks composed but a small part of the population; the Gauls, the ancient possessors of the soil, were much more numerous, and had customs very different. The conquest of their country by the Romans had introduced the language, the laws, the customs, and the civilization of Rome, particularly in the south and in the neighbourhood of Italy. The people of the north and in particular of Brittany, had retained more of their ancient customs, and resembled a little nearer the Franks, with whom they mixed without difficulty. Latin became the language of southern Gaul; the old Celtic language continued to be that of the Bretons.

The conquest of Gaul by the barbarians rendered that difference still more striking; the two nations became distinct, the conquerors and the vanquished; but the latter in losing their riches and a portion of their lands, preserved their laws and their ancient customs, together with a spark of their civilization, which formerly emitted so brilliant a light; and while their conquerors gave themselves up exclusively to the use of arms, the Gauls remained tillers of the soil and tradesmen; they carried on the little trade which it was then possible to do. They performed ecclesiastical functions—and balanced by the, influence of religion, the superiority which arms gave to their conquerors; the priests and bishops, almost all of Gallic religion, became the protectors, or at least the consolers, of their oppressed brethren. They settled their disputes, made regulations of police, presided over civil transactions. They thus saved the nation by interposing their power between the weakness of the disarmed Gauls and the ferocity of the conquerors of whom religion alone could soften the manners and restrain the excesses. Hence the origin of the power of the clergy—a more respectable cause cannot be imagined.

The people of the south had less to suffer than those of the north, because the Franks, after having driven away the Visigoths, found themselves too few in number to occupy their territory; they were but, as it were, spectators of the bloody contests which desolated the rest of the country. Rather tributaries than subjects, they soon endeavoured to regain their independence; and from the beginning of the seventh century they obeyed dukes of their nation, who took advantage of the civil commotions to strengthen their power, and even allied themselves with the Moors of Spain against the kings of France.

It may be easily imagined that literature and the arts perished in the midst of the general confusion, and that the laws did not improve. Ignorance became so

great that a council was obliged to prohibit the entering into the holy orders to those who were unable to read. However, a remarkable change took place in favor of a class of men who until then were very much degraded; and this change was one of the great benefits of christianity.

Slavery which was so cruel with the Romans, was by degrees abolished, except as to prisoners of war. Instead of slaves there were cerfs obliged to till the ground, and who were so attached to the soil that they could not quit without the permission of their masters and lords; but these masters had no more the arbitrary right over them of life and death, and they were no longer sold as cattle of burthen.

SECTION II.—KINGS OF FRANCE DURING THE SECOND RACE, CALLED CARLOVINGIANS.

I. Pepin LeBref, 750. *II. Charlemagne*, 768. *III. Louis LeDebonaire*, 814. *IV. Charles LeChauve*, 840. *V. Louis LeBeguc*, 877. *VI. Louis III. and Carloman*, 879. *VII. Charles LeGros*, 884. *VIII. Eudes*, 888. *IX. Charles LeSimple*, 898. *X. Raoul*, 928. *XI. Louis d'Outremer*, 936. *XII. Lothaire*, 954. *XIII. Louis V.*, 986.

MANNERS, CUSTOMS AND LAWS OF THE FRENCH DURING THE SECOND RACE.

Under the kings of the second race are found most of the laws usages and which existed under the kings of the first.

Pepin introduced into the army the use of cavalry, which soon became its principal force. All the nobles, covered with heavy armour, mounted on war horses, fought amidst their vassals on foot. This gave rise to chivalry. Under Charles LeChauve the feudal system was systematically arranged—all offices became hereditary. The great lords, such as the dukes of France, of Burgundy, of Aquitaine, of Normandy, the Counts of Flanders, of Champaign, of Auvergne, and of Toulouse, became the great vassals of the crown, and took the oath of fealty and homage, binding themselves to support the king in all his foreign wars. They in their turn, had vassals bound under the same obligations towards themselves; these had others—and this chain descended downwards to the private gentleman, possessor of a land called *fief*.

Each lord had the right of administering justice throughout his fief, saving the right of appeal to his immediate liege lord. The result was, that an incredible number of customs and laws were formed; for they were different not only in every province, but in every fief.

Charlemagne granted to the bishops a privilege which greatly increased their power, and put some restraints to the tyranny of the great; and prevented the people from falling into a state of complete slavery—this was the right of evoking every cause to their tribunal. He, therefore, who thought himself oppressed by his seignior or lord, had the right of immediately appealing to his bishop, who took him under his protection: the bishop had a powerful arm to cause his decisions to be respected; that was the power of excommunication.

As with the Germans or Saxons, when a cause seemed to be obscure, they had recourse to the ordeal—an appeal to the judgment of God; this judgment consisted on ordering a single combat between the accuser and the accused—the party who failed was considered guilty. It was believed that God would make a miracle rather than permit innocence to be wronged. This custom was abolished in France only in the thirteenth century.

To the assemblies of the Champ de Mars which existed under the first race, Charlemagne substituted those of the Champ de Mai. The nobility and the clergy alone were admitted, to deliberate on the interests of the state, and on different points of legislation. But this useful institution perished soon, in the midst of the prevailing anarchy, and at a later period a particular sort of jurisdiction was established to replace these assemblies—it was called *Cours Plenières*—in which the prince and the great men of the state displayed much magnificence, but which had more show than real utility. In spite of the efforts of Charlemagne, ignorance became more and more profound; it came at last to be considered a merit, and many deeds of those days are to be found, terminating in this singular manner—"The said lord or seignior declared he can not write, inasmuch as he is a gentleman."

Under Pepin, Astolphe, king of the Lombards, in possession of the north of Italy, undertook to extend his dominion in the provinces of the east. The people of thesse provinces applied to Pepin to resist the Lombards; Pepin crossed the Alps twice—defeated Astolphe—took Ravenna, and ceded to Pope Stephen, Rome and its territory. From this period, A.D. 756, is dated the temporal authority of the popes.

Charlemagne, superior to his age, by his genius, his courage, his constancy, and his learning, deserved the appellation of the great—given to him by his contemporaries. He defeated the king of the Lombards, and annihilated their kingdom; he gave wholesome laws to France—established schools: he published his "Capitularies," an admirable code of laws for that age, and which at a later date became the public law in Europe.

The family of Charlemagne had the same fate as that of Merovee and Clovis—it begun to reign with glory and ended shamefully.

Memorable events under the Carlovingian race.

Beginning of the temporal power of the popes, A. D. 756.
Of the kingdom of the Lombards, 774.
Submission of the Saxons, 785.
Beginning of the Empire of the West—first inroad of the Normans, 800.
Dismemberment of the empire of Charlemagne, 844.
Beginning of the Feudal System, 844.
Many of the provinces have independent chiefs—royal power is destroyed, 845.
Paris is besieged by the Normans, 385.
The empire lost to the house of Charlemagne, 912.
The domaine of the crown is reduced to the loan of £4000—death of Hugh, the Great, 956.

SECTION III.—DIRECT BRANCH OF THE CAPETS, 340 YEARS.

I. Hugues Capet, A. D. 987. *II. Robert,* 996. *III. Henry I.* 1031. *IV. Philippe I.* 1060. *V. Louis Le Gros,* 1108. *VI. Louis VII.* 1137. *VIII. Philippe Auguste,* 1180. *IX. Louis VIII. Cœur de Lion,* 1223. *X. Louis IX. or St. Louis.*

MANNERS OF THE FRENCH UNDER THE FIRST BRANCH OF THE HOUSE OF CAPET.

To the system of pillage which the nobles had exercised towards the end of the second race, succeeded, by degrees, chivalry, with its principles of honor and loyalty. To fight for his sovereign liege lord—to sacrifice for him his fortune and his life—to devote himself to the defence of the weak, the widow and the orphan;—such were the duties of the true knight. The title could not be acquired but by a long trial, and the knight who was wanting in the duties of his noble profession was disowned. This institution contributed powerfully to soften the ferocious manners of the age, and to maintain public order. Another institution which assisted in maintaining the peace of the nation was, the *Truce of God,* for which it was indebted to religion. As the continual war which the lords or seigniors were waging, ruined the country and often destroyed the harvests, several councils ordered, under pain of excommunication, to suspend these wars at first from the Thursday morning to the Sunday evening of each week; then during Lent, and at the time of Advent, until the kings became at length more powerful, and caused them entirely to cease. The country then began to find breathing time, and was cultivated in security. The highways became less dangerous; traders were able to frequent them and carry from one province to another the produce of their industry. As the crusades gave an impulse to this commercial movement, important manufactures were established; at first in Flanders, and later in the southern provinces.

It was in the latter that civilization began, which made so much progress. At this time a great number of poets or troubadours appeared, who went from castle to castle, singing their odes, and gathering on all hands a rich tribute of admiration. The rich seigniors themselves soon disdained not to cultivate poetry: and if it were not still disgraceful to be without education, at least it was no longer so to know how to read and write.

While poetry flourished in the south, architecture made astonishing progress in the north; on all sides arose those admirable gothic churches, whose elevated spires, fretted vaults, and stained glass inspire even now a religious respect.

Important discoveries have been made. A monk of Aurillac found the pendulum clock; and facilitated the study of mathematical sciences by introducing the the use of the Arabic numerals. At length the mariner's compass was discovered, which, at a later period, was to have so wide an influence on navigation.

The establishment of the *Communes,* which took place under Louis LeGros, was another great benefit of this epoch; it gave the death blow to the feudal system,

1108; until then none in France were free, except the nobility and the clergy, all the rest were in bondage. Louis declared himself the protector of the inhabitants of towns who would purchase their liberty. They were allowed to write and name the municipal officers, to maintain the police within the precincts of their walls, and to defend their liberty even by the force of arms; but while the king took them under his own special care, he required their assistance both in arms and money. Public revenue increased, and the kings of France were enabled to have a standing army; these troops, it is true, were not regulars, but they sufficed to give to the crown an incontestable superiority over the vassals; they used it to strengthen public order, to abolish the ordeal, to establish parliaments or courts, and to render more equal justice. It is to this epoch that is traced the establishment of the principal dignitaries, or officers of the crown, such as marshal, admiral, constable, &c.

Thus everything was calculated to establish society on a regular basis. It can even be said that civilization had made greater strides under the first branch of the Capets than it made afterwards under the house of Valois.

Memorable events under the first branch of the Capetian race.

Beginning of the Truce of God, 1041.

Conquest of England by a vassal of the crown of France, the Duke of Normandy, 1006.

First crusade, 1099.

Communes regulated, 1120.

Freedom of the Rural Communes proclaimed, 1125.

Second crusades, 1147.

Third crusades, 1188.

Normandy is united to the crown—ibid of the Touraine—sixth crusade—Saint Louis made prisoner, 1250.

Last crusade, 1270.

Languedoc united to the crown, 1271.

Sicilian vespers, 1282.

Union of Champain, 1284.

Conquest of Flanders,

Memorable events under the Valois.

Gunpowder invented about 1328.

Battle of Cressy—cannon used for the first time,

The English received in Paris, 1419.

Joan d'Arc causes the seige of Orleans to be abandoned, 1429. She is put to death by the English, 1431.

The English are drawn out of Paris, 1436.

The art of printing is discovered, 1440.

The English are drawn out of all France, 1443.

America is discovered, 1492.

Beginning of the wars pretended to be for religion, 1562.

Massacre of St. Bartholomew, 1572.

Abjuration of Henry the Fourth, 1593. He enters Paris, 1594.

Edict of Nantes, 1598.

Foundation of the French academy, 1635.

SECTION IV—STATE OF FRANCE UNDER THE HOUSE OF VALOIS, TO THE REIGN OF LOUIS XI.

The reign of Louis XI. may be considered as an epoch of transition. The feudal system expires and the reign of absolute monarchy begins.

In the midst of her long misfortunes, France had undergone remarkable changes in her manners and in her constitution. The regal power, which, under Philippe le Bel and his children, appeared founded on a solid basis, was much shaken by the imprudence and the misfortunes of Philippe de Valois. The nobility became restless, and revived its ancient pretensions: the vassals aspired once more to their independence. The people on their side recently admitted under the name of *Third Estate*, to take part in the deliberations of the estates general, dreamed of liberty. From the reign of John, their deputies declared that no tax should be levied without their consent. They enquired even into the use made of the revenue, and wished to have the receipt of it in their own hands. Taking advantage of the captivity of this prince and of the inexperience of the regent, they went so far as to choose for him his ministers, and to form a confederacy to resist the royal power. But the experiment for liberty, made at a wrong time and carried too far, only increased the evils of the state. It was not with a power clogged with restraints that the king could stop the enemy, and on the one hand restrain the fury of the revolted peasantry, and on the other the no less cruel exactions of the nobles.

The genius of Charles the Fifth triumphed over so many obstacles, and established some order in the administration. It was only after thirty years of anarchy that Charles the Seventh, having vanquished all his foreign enemies, could at length give to his government the power which it needed. The people exhausted, thought no more of liberty; all they wanted was quiet. It was, therefore, easy for him to render his power, despotic.

Louis XI. found his course traced out, and had nothing to do but to pursue it.

In the meantime a revolution little favorable to the feudal nobility was taking place in the army. The discovery of gunpowder changed the whole system of war; a knight encircled in armour was only a man in the presence of cannon. Personal courage lost its importance, and it was necessary to change it for an entire new line of tactics. Hence the tremendous defeats of Crecy, of Poictiers, of Agincourt, &c. in which the flower of the French knighthood was destroyed by English archers.

Hence the destruction of the army of Charles the Imprudent, at Morat, by peasants on foot. For from the moment a peasant by one blow could destroy the bravest knight, the greatest number prevailed; and the kings of France, supported by a regular army always ready to march, and paid by the *Communes*, as was the practice adopted by Charles VII., could no longer meet with any obstacles.

This epoch was also marked by the discovery of playing at cards, and of theatrical exhibitions, as if mankind was bent on finding out new amusements in the same ratio as the increase of misfortunes.

These exhibitions were representations of the principal mysteries of religion, in bungling scenes, adapted only for the eyes and minds of an ignorant populace. More

important discoveries were made later, and particularly the art of printing, which caused a complete revolution through the whole world.

The establishment of post offices, due to Louis XI., was of great utility. The different parts of the kingdom were no longer strangers to each other. They were enabled to commune together, and these communications facilitated commercial transactions.

SECTION V.—STATE OF FRANCE IN THE 16TH CENTURY.

The sixteenth century is the most remarkable one of history. The mind of man was prodigiously developed, and the principal cause of this phenomenon was the discovery of printing. The old works, which during so many ages had slept in the dust of libraries, being reproduced with facility by means of the new invention, mankind felt a thirst for knowledge which it had not hitherto felt. Italy which was undergoing the advantage of civilization, while the rest of Europe was agitated with scenes of bloodshed, placed itself at the head of nations, and Pope Léon X., by encouraging all the arts, had the glory of giving his name to the age. While he was erecting the magnificent cupola of St. Peter, and was adorning the Vatican with the admirable paintings of Raphael, other artists covered with their immortal works other cities of Italy, which has always since been looked upon as the classic land of arts. Poets, historians, and *savans* of all descriptions, acquired at the same time a just share of celebrity.

The disastrous wars of the French in Italy, had, notwithstanding, a good effect. The spectacle of a civilization so far advanced, was not lost upon them. To the Gothic castles, surmounted with towers, surrounded by ditches, succeeded vast and commodious palaces. Francis I., by his liberality, attracted many artists to France. Its cities were embellished—luxury became less gross and more general—the language became polished, mild and harmonious. Amiot translated the lives of the great men of Plutarch with a grace which has not yet been surpassed; and Marot gave to poetry an elegance before unknown; at the same time the discovery of America and of the East Indies caused a political and commercial revolution. The navy underwent a great development. Portugal became the richest country of Europe; and Spain, mistress of immense regions where gold grew, enjoyed for some time an ascendancy so great that Charles V. dreamed of universal monarchy; and Philip II. thought he might one day sit on the throne of France, from which a faction had driven away the legitimate sovereign.

But to counterbalance these ameliorations rose up a frightful evil, the fruit of this same civilization. In the ardor men felt to become learned, they thought they had the right of examining all, even the mysteries of religion, and became thereby more easily the dupe of new doctrines. Luther, a proud monk, inveighed against the power of the popes and the riches of the clergy, drew to his standard the princes of Germany by the bait of ecclesiastical property which they got into their grasp, and the people, by easing them of the burden of confession. This sect increased with rapidity; whole kingdoms separated from the church of Rome; and bloody wars followed.

SECTION VI.—STATE OF FRANCE UNDER FRANCIS I., 1515 to 1547.

The regal power all the while was absolute. It was no longer thought necessary to consult the nation by calling the states general, unless it was indeed to impose upon the people new sacrifices, or to signify to them the will of the sovereign.

The Catholic religion was still the religion of the state, but the doctrines of independence preached by the protestants in Germany soon made their way into France. Symptoms of an approaching storm manifested themselves, although all was still peace; but the new sect had already divided the church of France, particularly in the southern provinces, which had been so much agitated three centuries before, by another sect called the Albigenses, whose theme was the same, the power of the pope, the riches of the clergy. Luther, aided by Jean Chauvin or Calvin, another apostate from the Roman Catholic faith, caused Germany and France to be covered with blood in wars and massacres, in which religion was made the ostensible cause—but the hatred noble families bore to each other, was the real reason these wars raged from the year 1560 to 1574, when Henry IV. returned to the Roman Catholic faith; and, with the view of avoiding the recurrence of the bloody conflicts which had so long existed between the protestants and the catholics, published the edict of Nantz, which ensured to all, liberty of conscience, and the peaceful exercise of religion. That edict restored peace to France. But Louis XIV., (1) before whom everything seemed to give way, thought that the declaration of his will was sufficient to cause the protestants of his kingdom to return to the catholic faith; he revoked the edict of Nantz, 1685, which Henry IV. had given eighty-seven years before; but experience proved that power alone is not sufficient to rule consiences. Fifty thousand families left France, and carried with them to foreign countries their wealth and their industry.

At the death of Louis XIV., the Duke of Orleans, a man of the most corrupt morals, and impiety, became the regent of the kingdom, the court followed the example of the regent; the city copied the court; the disorder became almost general, and rapidly prepared the way for the alarming change which was effected in the minds of the people, and which, at a later period, brought on the tremendous catastrophe of the French revolution; it was impossible that such a corrupt and contemptible government should not bring on misfortunes, and it did. England, aware of the state of affairs in France, provoked a war by court intrigues, and made it an European war. The army, notwithstanding its superiority in numbers, was attacked and defeated at Rosback, by Frederick II. king of Prussia; the navy was annihilated; all the colonies in the East Indies were taken by England. The Marquis de Montcalm nobly defended Canada and Quebec, but fell before its gates in 1759; with him fell the French possessions in America, which became the conquest of Great Britain on the 10th of February, 1763. On the 8th September, same year, Montreal, Detroit, Michillimakinac, and all the places within the government of Canada, were surrendered to His Britannic Majesty.

By the fourth article of the definitive treaty of peace, concluded on the 10th day of February, 1763, France renounced and guaranteed to Great Britain in full right, Canada and all its dependencies, as well as the Island of Cape Breton, and all other islands in the gulf and river of St. Lawrence; by the same article it was stipulated that the French in Canada should freely possess the Roman Catholic religion as far as the laws of Great Britain permitted.

The government of the British Saxon chiefs of tribes has scarcely been noticed in history.

The history of England, begins with that of the Saxons in the year 450 after Christ. Upon the establishment of the Saxons and Angles in South Britain, after the year 450, the whole of that part of the island was divided into the seven following kingdoms: 1st. Kent, founded by Hengist in 455: it terminated in 823. 2d. Sussex, or South Saxons, founded by Ella in 491, ended about 609. 3d. East Angles, founded by Uffa in 751, ended 792. 4th. Wessex, or West Saxons, founded by Cedric in 519, ended about 1012. 5th. Northumberland, established by Ida in 547, and ended 827. 6th. Essex, or East Saxons, founded by Ereenwin in 527, and ended 810. 7th. Mercia founded by Cridda in 584, and ended in 324. This was often united with Deira.

Saxon Kings.	Anno Domini
Egbert,	800
Ethelwolf,	836
Ethelbald,	857
Ethelbert,	860
Ethelred I.	867
Alfred the Great,	872
Edward the Elder,	901
Athelstan,	925
Edmund,	941
Edred,	946
Edwy,	955
Edgar,	959
Edward the Martyr,	975
Ethelred II.	978
Edmund Ironside,	1016
Danish Kings	
Canute,	1017
Harold Harefoot,	1036
Hardicanute,	1039
Edward, Confess. Saxon,	1041
Harold II.,	1065
Norman Kings.	
William I.,	1066
William II,	1087
Henry I.	1100
Stephen,	1136
Plantagenets.	
Henry II.,	1154
Richard I., Cœur de Lion,	1189
John (Lackland,)	1199
Henry III.,	1216
Edward I.,	1272
Edward II.,	1307
Edward III.,	1327
Richard II.,	1377
House of Lancaster	
Henry IV.,	1393
Henry V.,	1419
Henry VI.,	1422
House of York.	
Edward IV.,	1461
Edward V.,	1483
Richard III.,	...
House of Tudor.	
Henry VII.,	1485
Henry VIII.,	1509
Edward VI.,	1547
Mary,	1553
Elizabeth,	1558

Stuarts.	Anno Domini
James I.,	1603
Charles I.,	1625
(Cromwell,	1653)
Charles II.,	1660
James II.,	1685
William (III.) and Mary,	1689
Anne,	1702
House of Hanover.	
George I.,	1714
George II.	1727
George III.,	1760
George IV.,	1820
William IV.,	1830
Victoria,	1837

Chiefs of the Francs.

Pharamond,	420
Clodion,	428
Mérovée,	448
Childéric,	456

Kings of the Francs.

Clovis,	481
Childebert I.,	...
Clodomir,	...
Thierry,	511
Clotaire I.,	...
Caribert,	...
Gontran,	...
Sigebert,	562
Chilperic I.,	...
Clotaire II.,	584
Dagobert I.,	628
Clovis II.,	638
Childeric II.,	656
Thierry III.,	673
Clovis III.,	692
Childebert III.,	696
Dagobert III.,	711
Chilperic II.,	716
Thierry IV.,	721
Interregnum, 5 years.	
Childeric III.,	742

Kings of the Carlovengian race.

Pepin, le Bref	750
Charlemagne,	768
Louis I., le Debonnaire,	814
Charles le Chauve,	840
Louis II., le Bègue,	877
Louis III., (Carloman)...	879

	Anno Domini
Charles II., le Gros,	884
Eudes,	888
Charles III., le Simple,	898
Raoul,	923
Louis IV., (d'Outremer)	936
Lothaire,	954
Louis V.,	986
Hugues Capet,	987
Robert, le Pieux,	996
Henry I.,	1031
Philippe I.,	1060
Louis VI., le Gros,	1108
Louis VII., le Jeune,	1137
Philippe II., (Auguste)..	1180
Louis VIII.,	1223
Louis IX., Saint,	1226
Philippe III., le Hardi,	1270
Philippe IV., le Bel,	1285
Louis X., le Hutin,	1314
Philippe V., le Long,	1316
Charles IV., le Bel,	1322
Valois Branch.	
Philippe VI.,	1328
Jean, le Bon	1350
Charles V., le Sage,	1364
Charles VI.,	1380
Charles VII.,	1422
Louis XI., le Sage,	1461
Charles VIII.,	1483
Valois Orleans Branch.	
Louis XII.,	1498
Francis I.,	1515
Henri II.,	1547
Francis II.,	1559
Charles IX.,	1560
Henri III.,	1574
Bourbon Branch.	
Henri IV., le Grand,	1589
Louis XIII.,	1610
Louis XIV.,	1643
Louis XV.	1715
Louis XVI.,	1774
Republic,	1792
Napoleon { Consul,	1799
{ Empereur,	1804
Restoration.	
Louis XVII.,	1814
Charles X.,	1824
Younger Bourbon Line.	
Louis Philippe I.,	1830

COUTUME DE PARIS.

TRANSLATION

OF THE

TEXT OF THE "COUTUME DE PARIS:"

AS FOLLOWED

IN THAT PART OF THE PROVINCE OF CANADA FORMERLY CALLED

LOWER CANADA.

It may be proper to observe, that about the year 1772 : Sir Guy Carlton, then Governor Chief of the province of Quebec, selected a Committee of Canadian gentlemen, to make an abstract of those parts of the Custom of Paris which were received and practised in the said Province, during the time the French Government ruled the colony, which abstract was printed in London in 1772. By this we learn that the following articles were never introduced in the province to wit : Article 6, except at the end of the article. Articles 46, 48, 85, 86, 91, 95, 111, 112, 122, 163, 173, 174, 193, 219, 238 and 290. All the articles relative to the Garde Noble and Bourgeoise, including articles 265, 266, 267, 268, 269, 270, 271, and articles 347, 350, 351, 352, and part of 353. By the imperial statute 14 Geo. III, chapter 83, English laws and English tenure are preserved in that part of the country that was conceded and to be conceded by the king of England and his successors. By the imperial statute 14 Geo. IV., chap. 119, proprietors of *fiefs* are allowed to alter the tenure of their seigniories to that of free soccage.

By an ordinance of the Special Council, 3d Victoria, chapter 30, 8th June, 1840. the Ecclesiastics of the Seminary of Montreal, proprietors and seigniors of the seigniories in the island of Montreal, St. Sulpice, and Lake of Two Mountains, not only are allowed to commute with their *Censitaires* for their seigniorial dues, but must consent to the commutation, under certain conditions.

Thus the feudal tenure is falling on all sides ; and, in consequence, the first title of the Custom, treating of Fiefs, will be omitted in this work.

TEXTE

DE LA

COUTUME DE PARIS.

Il est bon d'observer au préalable que vers l'année 1772, Sir Guy Carlton, alors Gouverneur en Chef de la Province de Québec, nomma un comité des messieurs Canadiens qu'il chargea de faire un extrait de telles parties de la Coutume de Paris qui étaiennt reçues et suivie dans la dite Province sous le Gouvernement Français. Cet extrait fut imprimé à Londres en 1772, par lequel il est établi que les Articles suivants n'y furent jamais suivis, savoir: l'article 6, excepté à la fin de l'article; les articles 46, 48, 85, 86, 91, 95, 111, 112, 122, 162, 172, 174, 193, 219, 238, et 290; non plus que tous les articles relatifs à la garde noble et bourgeoise; les articles 265, 266, 267, 268, 269, 270, 271; les articles 347, 350, 351, 352, et partie de l'article 353.

Il est encore bon d'observer que par le Statut Impérial de la 14e année de Geo. III., chapitre 83, les lois d'Angleterre, et la tenure des terres concédées par le Roi d'Angleterre et par ses successeurs seraient suivis dans la Province.

Que par le Statut Geo. IV., ch. 119, il serait permis aux propriétaires de fiefs, d'en changer la tenure, et substituer la tenure en franc et commun soccage.

Par une ordonnance du Conseil Spécial, 3 Victoria, ch. 30, 8 Juin 1840, il fut non seulement permis aux Ecclésiastiques du Séminaire de Montréal, de commuer la tenure de leur seigneurie en celle de soccage pour leurs droits seigneuriaux, mais ils y furent tenus sous certaines conditions; ainsi la tenure féodale tombe de toutes parts;—en conséquence on omettra dans cet ouvrage le titre premier.

TITLE II.—SUMMARY.

Art. 73, *Exhibition of Titles.* 74, *Not followed.* 75, *Not followed.* 76, *Dues on sales.* 77, *Of sales concealed.* 78, *Dues on sales at a redeemable rent.* 79, *Rights on a Sheriff's sale.* 80, *On public sale of property belonging to Co-heirs for dues and fines.* 82, *Fines.* 83, *The superior Lord's dues on a Sheriff's sale, &c.* 84, *Dues on a common sale followed by a Sheriff's sale.* 85 *and* 86, *Are not followed*; *dues on an irredeemable ground rent.*

SEIGNIORIAL DUES AND RIGHTS.

ART. 73.—It is lawful for a Seignior to sue the purchaser or holder of any estate within his seigniory, in order to make him produce and exhibit the titles of his acquisition, if any he has, so as to be paid the alienation fines and dues.

ART. 76.—The rights of the Seignior on a sale, is one *denier* on every twelve, which is sixteen *deniers parises* for each *livre*. (See Art. 78.)

ART. 77.—For sales concealed and not notified to the Seignior within 20 days of the purchase, a fine of half a crown and one quarter of a crown is due. (See Art. 81.)

ART. 78.—If any person buys for money or takes at a redeemable rent an estate being in the manor of a Seignior, *Cencier* or *Foncier*, the purchaser of such an estate or lessee of the rent is held to pay to the Seignior the rights or dues of sales of their purchase or principal of the rent, although the same be not redeemed. (See Art. 83, in the middle, and 87.)

ART. 79.—If the purchaser of an estate is obliged to give it up, and to leave it for the debts of his vendor, and in so doing it is sold and adjudged by *décret* at the suit of the creditors, the said purchaser succeeds to the right of the Seignior to have and take to his profit the dues on the said *décret* such as the Seignior would have taken, or it is in the choice of the said Seignior to take them on restoring those which he has received from the first purchaser. (See Art. 84.)

ART. 80.—If the estate cannot be divided between co-heirs and is sold without fraud, no dues are due for the adjudication made to one of them; but if it is adjudged to a stranger, the purchaser owes dues on the sale. (See Art. 154, 155 and 157.)

ART. 81.—The *ventes* and fines are prosecuted by action simply. (See 73, 76, 78 Art. at the end.)

ART. 82.—No one is bound to take possession or seizin that does not choose, but if one takes possession, he must pay twelve *deniers Paris* for the possession. (See Art. 110, 135.)

TITRE II.—SOMMAIRE.

ART. 73, *Exhibition de Titre.* *Art.* 74, *cet article n'est pas suivi.* 75, *ditto.* 76, *Droits de Vente.* 77, *Ventes recelées.* 78, *Vente à Rente Rachetable.* 79, *En cas de Décret.* 80, *Licitation.* 81, *Action pour Rentes.* 82, *Saisine.* 83, *Un seul quint sur décret et sur un Acte de Vente—et* 84, *ditto.* 85 *et* 86 *ne sont pas suivis.* 87, *Rentes non Rachetables.*

CENSIVE ET DROITS SEIGNEURIAUX.

ATR. 73.—Il est loisible à un Seignenr foncier ou censier, de poursuivre l'acquéreur nouvel détenteur d'aucun héritage étant en sa Censive ou Seigneurie fonciere, afin d'aporter et exhiber les lettres d'acquisition d'icelui héritage, si aucunes y en a, pour être payé des drois de vente, saisines et amendes. (Voyez les articles 76, 78, 80, en la fin ; 81, 83, vers le milieu ; 87.)

ART. 74.—(Non suivi.)

ART. 75.—(Non suivi.)

ART. 76.—Les droits de vente dûs aux Seigneur censier, sont de douze deniers un denier, qui est pour chacun franc seize deniers parisis. (Voyez l'article suivant, et les 74, 78.)

ART. 77.—Pour ventes recelées et non notifiées au Seigneur censier dedans vingt jours de l'acquisition, est du un écu et un quart d'écu d'amende au Seigneur censier. (Voyez l'article 81.)

ART. 78.—Si aucun achete à prix d'argent ou prend à rente rachetable héritage étant en la censive d'un Seigneur censier ou foncier, tel acheteur du dit héritage, ou preneur à rente, est tenu payer au Seigneur censier ou foncier les ventes du dit achat ou sort principal de la rente, encore qu'elle ne soit rachetée. (Voyez les articles 83 au milieu ; et 87.)

ART. 79.--Si l'acheteur d'un héritage est contraint déguerpir et délaisser l'héritage pour les dettes de son vendeur, et en ce faisant il se vend et adjuge par décret à la poursuite des créanciers, le dit acquéreur succède au droit du Seigneur, pour avoir et prendre à son profit les ventes du dit décret, telles qu'eût pris le dit Seigneur. Ou est au choix du dit Seigneur de les prendre, en rendant celles qu'il a reçues de l'acquisition premiere. (Voyez l'article 84, sur la fin.)

ART. 80.—Si l'héritage ne se peut partir entre cohéritiers, et se licite par justice sans fraude, ne sont dues aucunes ventes pour l'adjudication faite à l'un d'eux : Mais s'il est adjugé à un étranger, l'acquéreur doit ventes. (Voyez l'article 154, 155, au milieu ; et 157.)

ART. 81. Les ventes et amendes se poursuivent par action seulement. (Voyez les articles 72, 76, 78, vers la fin.)

ART. 82.—No one is bound to take possession or seizin that does not choose, but if one take possession he must pay twelve *deniers parisis* for the possession. (See Art. 130, 135).

ART. 83.—For estates sold or adjudged by *décret*, charged with a redeemable rent, whether the said estate is held *en Fief* or *Roture*, there is due to the Seigneur of the Fief, the *quint denier* of the price, and to the Seigneur Censier the right of *ventes* as well for the price mentioned and contained in the contract or *décret* as for the principal sum of the said rents, although the said rent be not then redeemed. (See Art. 23, 78 and 87.

ART. 84.—If one purchase an estate on condition that it shall be sold by *décret*, or if the purchaser in order to destroy the mortgages has it sold by *décret*, and such purchaser becomes the highest bidder, but one right of *quint* or *ventes* is due, as well for the contract of acquisition as for the *décret*, it is always at the option of the Seignior to take the quint or ventes according to the price of the said contract or *décret*. (See Art. 79.)

ART. 85.—(Not followed.)

ART. 86.—(Not in force in Canada.)

ART. 87.—For all ground rents not redeemable, sold to others or given up by redemption since the first lease, *ventes* are due, having regard to the price of the sale or redemption of the said rents, the same as if the estate or part of it had been sold. (See Art. 78, 83, 349.)

TITLE III.—SUMMARY.

Art. 88, *Distinction of moveable and immoveable property.* 89, *Obligations.* 90, *Mill furniture.* 91, *Not followed.* 92, *Timber, corn and hay.* 93, *Nature of property by destination.* 94, *Rents constituted for money.* 95, *Not followed.*

DIVISION OF PROPERTY.

ART. 88.—In the Prevostship and Viscounty of Paris, there are two sorts or species of property only, namely, *moveable* and *immoveable*. (See Art. 94 and 95.)

ART. 89.—Notes and obligations made for sums of money, goods or other moveable property, are accounted and reputed to be moveable. (See Art. 93, 94 and 95.)

ART. 90.—Household utensils, which can be removed without being broken or injured, are also reputed moveable; but if they are fastened by iron or nails, or are set in with plaster, and are fixtures and cannot be removed without being broken or injured, they are accounted and reputed immoveables, as also a wind mill and water mill or press built in a house, are reputed immoveables, when they cannot be taken out without being broken or taken asunder, otherwise they are reputed moveable. (See the following Articles.)

ART. 91.—(Not followed.)

ART. 82.—Ne prend saisine qui ne veut, mais si on prend saisine, sera payé douze deniers parisis pour la saisine. (Voyez les articles 130, 135.)

ART. 83.—Pour héritages vendus ou adjugés par décret à la charge de rent. rachetable, soit que le dit héritage soit Fief ou roture, est du au Seigneur de Fie le quint denier du prix : Et au censier le droit de ventes, tant pour le prix contenu ès contrat ou décret, que pour le sort principal des dites rentes, encore que les dites rentes ne soient lors rachetées. (Voyez les articles 23, 78, 87.)

ART. 84.—Si aucun achete un héritage à la charge qu'il sera adjugé par décret, ou bien si l'acheteur pour purger les hypothèques le fait décréter, et tel acheteur est adjudicataire, n'est du qu'un seul droit de quint ou vente, tant pour le contrat d'acquisition que le décret : Est toutefois au choix du Seigneur de prendre les dits quints ou ventes selon lé prix du dit contrat ou décret. (Voyez l'article 79.)

ART. 85.—(Non suivi.)

ART. 86.—(Non suivi.)

ART. 87.—De toutes rentes foncieres non rachetables vendues à autres, ou délaissées par rachat depuis le premier bail, sont dues ventes, eu égard au prix de la vente ou rachat d'icelle rente, tout ainsi que si l'héritage ou partie d'icelui était vendu. (Voyez les articles 78, 83, 349.)

TITRE III.—SOMMAIRE.

Art. 88, *Deux espèces de biens.* 89, *Obligation.* 90, *Ustenciles d'Hôtel, &c.* 91, *Non suivi.* 92, *Bois, foin et grains.* 93, *Destination de père et mère.* 94, *Rentes constituées.* 95, *Non suivi.*

DES MEUBLES ET IMMEUBLES.

ART. 88.—En la Prevôté et Vicomté de Paris, il y a deux sortes et espèces de biens seulement : c'est à sçavoir, meubles et immeubles. (Voyez les art. 94, 95.)

ART. 89.—Cédules et obligations faites pour sommes de deniers, marchandises ou autres choses mobiliaires, sont censées et reputées meubles. (Voyez les articles 93, 94, 95.)

ART. 90.—Ustenciles d'Hôtel qui se peuvent transporter sans fraction et détérioration, sont aussi réputés meubles : mais s'ils tiennent à fer et à cloux, ou sont scellés en plâtre, et sont mis pour perpétuelle demeure, et ne peuvent être transportés sans fraction et détérioration, sont censés et reputés immeubles, comme un moulin à vent et à eau, pressoir édifié en une maison, sont réputés immeubles quand ne peuvent être ôtés sans dépecer ou desassembler, autrement sont réputés meubles. (Voyez les deux articles suivans.)

ART. 91.—(Non suivi.)

ART. 92.—Wood, wheat, hay or grain, cut down, being in the field and not taken away, are reputed moveable, but when it is still growing and not cut down, it is reputed immoveable. (See Art. 74 and 231.)

ART. 93.—Sums of money given by father, mother, grandfather or grandmother, or other ancestor to their children in contemplation of marriage to be employed in the purchase of estates, although they should not be so employed, are reputed immoveable on account of such appointment. (See Art. 216, 232, 246, 259.)

ART. 94.—Rents constituted or created for money, are reputed immoveable until they be re-purchased, but in case those belonging to minors should be re-purchased during their minority, the purchase money or the employment of it in other rents or estates are accounted of the same nature and quality of immoveables as the rents were, which are so purchased, to return to the relatives of the side and line from whom the said rents proceeded. (See Art. 240, 242, 259 and 329.)

ART. 95.—(Not followed.)

TITLE IV.—SUMMARY.

Art. 96, *Action of complaint in re-entry.* 97, *Universality of moveables.* 98, *Simple seizin.*

COMPLAINT.

ART. 96.—When the possessor of any estate or real right reputed immoveable is troubled and hindered in his possession and enjoyment, he can, and the law permits him, to complain and bring an action *en cas de saisine et de nouvelleté* within a year and a day of the trouble made and given him, as to the estate or real right against him who has troubled him. (See Art. 98, 125, and the end of 130.)

ART. 97.—No person can institute an action in complaint for a particular moveable, but may for a universality of moveables as for a succession of moveables. (See Art. precedent and 144.)

ART. 98.—When any one has enjoyed or possessed a *rente* (annuity), and has taken and received the same on an estate before and during ten years and for the greater part of that time, if he is troubled and disturbed in the possession and enjoyment of it, he may institute and prosecute the action of *simple seizin* personally against him or them who have so troubled him, and demand to be replaced in the possession in which he was before the said disturbance. (See Art. 96.)

ART. 92.—Bois coupé, bled, foin, ou grain soyé ou fauché, supposé qu'il soit encore sur le champ, et non transporté, est réputé meuble : Mais quand il est sur pied et pendant par la racine, est réputé immeuble. (Voyez l'article précédent, et les 74, 231.

ART. 93.—Somme de deniers donnée par père, mère, ayeul ou ayeule, ou autres ascendans, à leurs enfans en contemplation de marriage, pour être employée en achapt d'héritages, encore qu'elle n'ait été employée, est réputée immeuble à cause de la destination. (Voyez les articles 216, 232, 246, 259.)

ART. 94.—Rentes constituées à prix d'argent, sont reputées immeubles jusqu'à ce qu'elles soient rachetées : toutefois au cas que celles qui appartiennent à mineurs, soient rachetées pendant leur minorité, les deniers du rachat ou le remploi d'iceux en autres rentes ou héritages, sont censés de même nature et qualité d'immeubles, qu'étaient les rentes ainsi rachetées, pour retourner aux parens du côté et ligne dont les dites rentes étaient procédées. (Voyez les articles 230, au milieu ; 232, 259, 329.)

ART. 95.—(Non suivi.)

TITRE IV.—SOMMAIRE.

Art. 96, *De la complainte.* 97, *Chose mobiliaire.* 98, *Forme de la simple saisine.*

COMPLAINTE.

ART. 96.—Quand le posseseur d'aucun héritage, ou droit réel réputé immeuble, est troublé et empêché en sa possession et juissance, il peut et lui loit soi complaindre et intenter poursuite en cas de saisine et de nouvelleté, dedans l'an et jour du trouble à lui fait et donné au dit héritage ou droit réel contre celui qui l'a troublé. (Voyez les articles 98, 125, et sur la fin du 130.)

ART. 97.—Aucun n'est recevable de soi complaindre et intenter le cas de nouvelleté, pour une chose mobiliaire particuliere : mais bien pour universalité de meubles, comme en succession mobiliaire. (Voyez l'article précédent et le 144.)

ART. 98.—Quand aucun a joui et possédé aucune rente, et icelle prise et perçue sur aucun héritage paravant et depuis dix ans ; et par plus grande partie d'icelui tems, s'il est troublé et empêché en la possession et jouissance d'icelle, il peut intenter et poursuivre le cas de simple saisine personnelle contre celui ou ceux qui ainsi l'ont troublé ; et requérir être remis en la possession en laquelle il était paravant la dite cessation. (Voyez l'article 96.)

TITLE V.—SUMMARY.

Art. 99, *Personal actions and mortgages.* 100, *Explanation and modification.* 101, *Ditto.* 102, *Third possessor.* 103, *Contestation in the cause.* 104, *Explanation.* 105, *Compensation.* 106, *Reconvention.* 107, *Cédule or private writing.* 108, *Transfer.* 109, *Lessee, how quit of a rent charge,* 100, *Purchaser of the first lessee.* 111, *Not followed.* 112, *Not followed.*

PERSONAL ACTIONS AND REAL ACTIONS.

ART. 99.—The possessors and proprietors of estates owing *cens* or other real and annual charges, are bound personally to pay and acquit those charges to him or them to whom they are due, and the arrears which become due during their time for as much and as long as they remain possessors and proprietors of the said estates or a part or portion of the same. (See Art. 101 and 221, 332 and 333.)

ART. 100.—It is understood by charges and dues when the estates are specially obliged, or that there is a general obligation without specialty, or that there is a clause that the special does not derogate from the general, nor the general from the special, in which case the possessor is holden personally to pay the said arrears. (By the ordinance of the Special Council, 4 Vict., chap. 30, 1841; the mortgage must be special.) (See the preceding Art.)

ART. 101.—The possessors and proprietors of any estate bound or mortgaged for the payment of any rents or other real or annual charges, are held *hypothecairement* to pay the same with the arrears that are due, or at least are held to leave the said estate, to be seized and adjudged by *décret* to the highest and last bidder in default of payment of the arrears which are due thereon, without discussion, and if the rent is *foncière*, (irredeemable,) the estate ought to be adjudged at the charge of the rent. (See Art. 99, 100, 333)

ART. 102.—When a third person, possessor of an estate, is prosecuted for the payment of a rent with which the said estate is charged, which was sold to him without the charge of the rent, and of which he had no knowledge before the prosecution, after he has summoned his *garant*, (he who sold and promised to guaranty the said estate which he has not done), the said third possessor so prosecuted before contesting the demand, can renounce to the said estate, and in so doing is not held to pay the rents and arrears, even if the said rents and arrears became due during his enjoyment and before the said renunciation. (See Art. 101, and the two following.)

ART. 103.—And after contestation, such possessor can renounce to the estate on paying arrears. (See the preceding Art. and the following about the middle.)

ART. 104.—Contestation in the cause is when there is a rule or order made on the demands and defence of the parties or when the defendant is in default and his defence dismissed. (See the preceding Art. and the Art. 102 and 140.)

TITRE V.—SOMMAIRE.

Art. 99, *Comment s'acquittent les charges personnelles.* 100, *Explication.* 101, *Ditto.* 102, *Déguerpissement du Tiers Détenteur.* 103, *Contestation en cause.* 104, *Explication de ces termes.* 105, *Compensation.* 106, *Réconvention.* 107, *Cédule ordonnance de* 1539. 108, *Transport.* 109, *Preneur à cens.* 110, *Acquéreur du preneur.* 111, *Non suivi.* 112, *Ditto.*

DES ACTIONS PERSONNELLES ET HYPOTHEQUES.

ART. 99.—Les détenteurs et propriétaires d'héritages chargés et redevables de cens, rentes ou autres charges réelles et annuelles, sont tenus personnellement de payer et acquitter icelles charges à celui ou à ceux à qui dues sont, et les arrérages échus de leur tems, tant et si longuement que les dits héritages, ou de partie et portion d'iceux, ils seront détenteurs et propriétaires. (Voyez l'article 101, et le 221, au commencement ; 332, 333.)

ART. 100.—Et s'entendent chargés et redevables, quand les dits héritages sont spécialement obligés, ou qu'il y a générale obligation sans spécialité, ou qu'il y a clause que la spéciale ne déroge à la générale, ni la générale à la spéciale. Es quels cas le détenteur est tenu personnellement des dits arrérages. (Voyez l'article procédent.) (Par l'ordonnance du Conseil Spécial, 4 Vic. ch. 30, 1841, toutes hypothèques doivent être spéciales).

ART. 101.—Les détenteurs et propriétaires d'aucuns héritages obligés ou hypothéqués à aucunes rentes ou autres charges réelles ou annuelles, sont tenus hypothécairement icelles payer avec les arrérages qui en sont dues, à tout le moins sont tenus iceux héritages délaissés pour être saisis et adjugés par décret au plus offrant et dernier enchérisseur, à faute de payement des arrérages qui en sont dûs, sans qu'il soit besoin de discussion : et si la rente est fonciere doit être l'héritage adjugé à la charge de la rente. (Voyez les articles 99, 109, au commencement 333.)

ART. 102.—Quant un tiers détenteur d'héritage est poursuivi pour raison d'une rente dont est chargé le dit héritage qui lui à été vendu sans la charge de la dite rente, et dont il n'avait eu connaissance paravant la dite poursuite, après qu'il a sommé, son garant, ou celui qui lui a vendu et promis garantir le dit héritage, lequel défaut de garantie, le dit tiers détenteur ainsi poursuivi paravant contestation en cause peut renoncer au dit héritage ; et en ce faisant, il est tenu de la dite rente et arrérages dicelle, supposé même que les arrérages fussent et soient échus de son tems et paravant la dite renonciation. (Voyez l'article précédent et les deux suivans avec le 153.)

ART. 103.—Et après contestation, tel détenteur peut renoncer à l'héritage, en payant les arrérages de son tems, jusqu'à la concurrence des fruits par lui perçus, si mieux il n'aime rendre les dits fruits. (Voyez l'article précédent, et le suivant vers le milieu.)

ART. 105.—Compensation takes place between a debt clear and liquidated with another equally clear and liquidated, and not otherwise.

ART. 106.—Reconvention in the Lay Court does not take place if it does not depend on the action, and that the demand in reconvention be the defence against the action first instituted, and in that case the defendant by means of his defence can constitute himself plaintiff. (See Art. 273.)

ART. 107.—A private note which contains a promise to pay, gives mortgage from the day of the concession or acknowledgement of it made in Judgment or before a notary, or from that on which by the Judgment it is taken for confessed or from the day of the denial in case that afterwards it be verified—ordinance of 1539 (See Art. 284.)

ART. 108.—A simple transfer does not give a title, and it is necessary to give the debtor notice of the transfer and a copy of the transfer before the execution. (See Art. 20, 178, 203, 284.)

ART. 109.—If any one has taken an estate charged with *cens* or *rentes* at a certain price per annum, he can renounce in judgment, the other party being present or cited, on paying all the past arrears and the next ensuing term—although by acknowledgement in writing, he had promised to pay the said rents—and obliged all his property by such promise as long as he is proprietor—if he had not promised on taking the land to make some improvement, which he has not done or that he has promised to guarantee and cause the said rent to be paid and has obligated all his property, on leaving the estate in as good state and order as it was when he took possession of it. (See the following Art. and Art. 101.)

ART. 110.—He who is not the lessee but purchaser of the lessee, at the charge of the rent alone, without mention of any other charges, such as to make ameliorations, to furnish and pay the rent, and leave the estate in good order, can renounce, provided he has not expressly promised to acquit and guarantee his vendor or lessor. (See Art. 109.)

ARTS. 111 and 112.—(Not followed.)

TITLE SIXTH.

ART. 113.—If any person has enjoyed and possessed an estate or rent by a just title, and in good faith, as well by himself as by his predecessors, in whose rights he stands fairly and without disquietude for ten years the proprietor being present, and twenty years if absent—the proprietor being of full age and not privileged, he acquires prescription of the said estate or rent. (See the following Art., and Arts. 116 and 118.)

ART. 114.—When any one has possessed and enjoyed by himself and his predecessors in whose rights he stands, an estate or rent by a just title and in good faith for ten years, the proprietor being present, and twenty years if absent—persons of full age and not privileged, freely—and peaceably without any disquietude of any

ART. 105.—Compensation a lieu d'une dette claire et liquide à une autre pareillement claire et liquide, et non autrement. (Voyez l'article 317, sur la fin.)

ART. 106.—Reconvention, en cour laye n'a lieu, si elle ne dépend de l'action, et que la demande en reconvention soit la défense contre l'action premièrement intentée: Et en ce cas le défendeur par le moyen de ses défenses, peut se constituer demandeur. (Voyez l'article 273.)

ART. 107.—Cédule privée qui porte promesse de payer, emporte hypothèque du jour de la confession ou reconnaissance d'icelle faite en jugement, ou par devant Notaires, ou que par jugement elle soit tenue pour confessée, ou du jour de la dénégation, en cas que par après elle soit verifiée. (Voyez l'article 284.)

ART. 108.—Un simple transport ne saisit point il faut signifier le transport à la partie, ou en bailler copie auparavant que d'exécuter. (Voyez l'article 20, à la fin; 178, 203; 284, au commencement.)

ART. 109.—Si aucun a pris un héritage à cens ou rente à certain prix par chacun an, il y peut renoncer en jugement, partie présente ou appellée, en payant tous les arrérages du passé et le terme ensuivant: Jaçoit que par Lettres il eut promis payer la dite rente, et obligé tous ses biens: Et s'entend telle promesse tant qu'il est propriétaire: si non que par les Lettres d'accensement, il eut promis mettre aucun amendement, ce qu'il n'eut fait: ou qu'il eut promis fournir et faire valoir la dite rente, et à ce obligé tous ses biens, en laissant toutefois l'héritage en aussi bon état et valeur qu'il était au tems de la prise. (Voyez l'article suivant, et les 101, au milieu; 101, vers la fin.)

ART. 110.—Celui qui n'est preneur, mais est acquéreur du preneur, à la charge de la rente seulement, sans faire mention d'autres charges, comme de mettre amendement, fournir, et faire valoir et laisser l'héritage en bon état, il peut renoncer, pourvu qu'il n'ait promis expressément acquitter et garantir son vendeur et bailleur. (Voyez l'article précédent.)

ART. 111 et 112.—(Non suivi.)

TITRE VI.—SOMMAIRE.

Art. 113, *Prescription de dix et vingt ans.* 114, *Ditto contre les rentes et hypothèques.* 115, *Règle.* 116, *Présent.* 117, *Prescription contre le douaire.* 118, *De trente ans.* 119, *Rentes constituées à prix d'argent.* 120, *Faculté de remeré.* 121, *Exception et limitation.* 122, *Non suivi.* 123, *Cens.* 124, *Arrérages de Cens.* 125, *Prescription annale contre les médecins, &c.* 126, *Contre les boulangers, &c.* 127, *Prescription d'un an.* 128, *Contre les Taverniers.*

PRESCRIPTION.

ART. 113.—Si aucun a joui et possédé héritage ou rente à juste titre et de bonne foi, tant par lui que par ses prédécesseurs, dont il a le droit et cause, franchement et sans inquiétation par dix ans entre présens et vingt ans entre absens, âgés et non privilégiés, il acquiert prescription du dit héritage ou rente. (Voyez l'article suivant; et les 116, 118.)

ART. 114.—When any one has possessed and enjoyed by himself and his predecessors in whose rights he stands, an estate or rent by a just title and in good faith for ten years, the proprietor being present, and twenty years if absent—persons of full age and not privileged, freely—and peaceably without any disquietude of any rent or mortgage: the possessor of such estate or rent has acquired prescription against all rents or mortgages claimed to be on the said estate or rent. (See Art. 113.)

ART. 115.—And the said prescription takes place even if the said rent be paid by him who has constituted it or another in default of the possessor. If the creditor of the rent had just cause to be ignorant of the alienation, because the debtor of the said rent has always remained in the possession of the estate, either by means of a lease or retaining the *usufruct*, precarious constitution or others of a like nature, during such time the prescription does not run. (See the end of Arts. 274, 275.)

ART. 116.—Those are reputed present who are living in the town, prevostship and vicounty of Paris. (See the two following Art. and Art. 113 and 114.)

ART. 117.—In matters of dower, prescription begins to run from the day of the decease of the husband only, against persons of full age and not privileged. (See Arts. 249, 255, and 256.)

ART. 118.—If any person has enjoyed, used and possessed an estate or rent, or any other thing prescriptible, for the space of thirty years continually, as well by himself as by his predecessors, freely and publicly, and without any disquietude: supposing that he exhibits no title, he acquires prescription against persons of full age and not privileged. (See the Art. 12, near the end; 120, 123, and at the end of Arts. 124 and 186.)

ART. 119.—Power to re-purchase a *rente constituée* for money, cannot be prescribed by any length of time whatever; but such rents are always redeemable even if a hundred years have elapsed. (See the beginning of Arts. 12, 124, 186.)

ART. 120.—The power given by contract to re-purchase an estate at any time, is prescribed in thirty years against persons of full age and not privileged. (See Arts. 113, 123, 124, and 186.)

ART. 121.—What is before mentioned has not place for rents of leases of estates on houses situated in the city and suburbs of Paris, which rents are always redeemable, if they are not the first after the *cens* and ground rent. (See the preceding Art. and 73, 74, 78, and 87.)

ART. 122.—(Not followed.)

ART. 123.—*Cens* being the mark of direct Seigniory is prescriptible by *seigneur* against *seigneur*, and can be prescribed by thirty years against persons of full age and not privileged; and by forty years against the church, if there is no title or recognisance of the said *cens*, or that the possessor has acquired the estate at the charge of the said *cens*. (See Art. 12 and 113.)

ART. 114.—Quand aucun a possédé et joui par lui et ses prédécesseurs, desquels il a le droit et cause, d'héritage ou rente à juste titre et de bonne foi par dix ans entre présens, et vingt ans entre absens, âgés et non privilégiés, franchement et paisiblement, sans inquiétation d'aucune rente ou hypothèque: tel possesseur du dit héritage ou rente a acquis prescription contre toutes rentes ou hypothèques prétendues sur le dit héritage ou rente. (Voyez l'article précédent.)

ART. 115.—Et a lieu la dite prescription, supposé que la dite rente soit payée par celui qui l'a constituée, ou autre au déçu du tiers détempteur: toutefois si le créancier de la rente a eu juste cause d'ignorer l'aliénation, parceque le débiteur de la dite rente serait toujours demeuré en possession de l'héritage par le moyen de location, retention d'usufruit, constitution de précaire, ou autres semblables, pendant le dit tems la prescription n'a cours. (Voyez vers la fin des articles 274 et 275.)

ART. 116.—Sont réputés présens ceux qui sont demeurans en la ville, prévôté et vicomté de Paris. (Voyez les deux articles suivans, et les 113, 114.)

ART. 117.—En matière de douaire la prescription commence à courir du jour du décès du mari seulement, entre âgés et non privilégiés. (Voyez les articles 249, 255, et 256.)

ART. 118.—Si aucun a joui, usé, et possédé d'un héritage ou rente, ou autre chose prescriptible par l'espace de trente ans continuellement, tant par lui que par ses prédécesseurs franchement, publiquement, et sans aucune inquiétation: supposé qu'il ne fasse apparoir de titre, il a acquis prescription, entre âgés et non privilégiés. (Voyez les articles 12, sur la fin; 120, 123, et sur la fin les 124, 186.)

ART. 119.—Faculté de racheter rentes constituées à prix d'argent, ne se peut prescrire par quelque laps de tems que ce soit: ainsi sont telles rentes rachetables à toujours, encore qu'il ait cent ans. (Voyez au commencement des articles 12, 124, 186.)

ART. 120.—La faculté donnée par contrat de racheter héritage ou rente d'héritage à toujours, se prescrit par trente ans entre âgés et non privilégiés. (Voyez l'article 118, le 123, au commencement; et les 124 et 186, en la fin.)

ART. 121.—Ce que dessus n'a lieu ès rentes de bail d'héritages sur maison assises en la ville et fauxbourgs de Paris, lesquelles rentes sont à toujours rachetables, si elles ne sont les premières après le cens et fonds de terre. (Voyez l'article précédent, le suivant, et les 73, 74, 78, 87.)

ART. 122.—(Non suivi.)

ART. 123.—Cens portant directe Seigneurie est prescriptible par seigneur contre seigneur, et se peut prescrire par trente ans contre âgés et non privilégiés, et par quarante ans contre l'église, s'il n'y a titre ou reconnaissance du dit cens, ou que le détenteur ait acquis à la charge du dit cens. (Voyez les articles 12 et 112.)

ART. 124.—The right of *cens* cannot be prescribed by the purchaser of an estate against the *seigneur censier*, even if a hundred years are elapsed when there is an old title or acknowledgment made of the said *cens;* but the proportion of the *cens* and arrears can be prescribed by twenty years against persons of full age and not privileged. (See Arts. 12, 119, 355, and 358.)

ART. 125.—Physicians, surgeons, and apothecaries, must institute their actions within a year, and after the said year they are not receivable. (See Art. 96, at the end; and 127.)

ART. 126.—Merchants, tradesmen, and other vendors of merchandize, and retailing dealers, such as bakers, pastry cooks, mantua-makers, saddlers, butchers, harness makers, lacemen, blacksmiths, keepers of cook-shops, cooks, and others of the like description cannot bring an action after six months from the day of the delivery of their merchandizes and provisions without settlement of account, notification or citation legally made, note or obligation. (See the former and following Art.)

ART. 127.—Drapers, haberdashers, grocers, watchmakers, and other wholesale merchants, masons, carpenters, tilers, barbers, servants, labourers, and mercenaries, cannot bring an action or demand for their merchandizes, salary or services after the expiration of one year, to be reckoned from the day of the delivery of the merchandizes, or discharge, if there is not a note, obligation, settlement of account in writing, or judicial notification. (See the two preceding Art.)

ART. 128.—Tavern-keepers and publicans have no action for wine or other liquors by them sold in retail *par assiette* in their houses. (See Art. 119 and 175.)

TITLE VII.—SUMMARY.

Art. 129, *Who can redeem, &c.* 130, *Time in which redemption can be claimed.* 131, *Is the same as well for minors as for majors.* 132, *Beginning of the year commences.* 133, *First purchaser.* 134, *Fruits.* 135, *Infeoffment.* 136, *Re-imbursement.* 137, *Redeemable rent.* 138, *Arrears of rent.* 139, *Rule as to descent.* 140, *Offers to be made.* 141, *Preference.* 142, *Heirs of the vendor.* 143, *Estate taken in exchange.* 144, *None of moveables.* 145, *Money given to-boot in an exchange.* 146, *Repairs made during the year.* 147, *Sale of an usufruit.* 148, *Purchase from the king.* 149, *Leases.* 150, *Sheriff's sales.* 151, *Vacant estates.* 152, *Acquest.* 153, *Estate adjudged to a curator.* 154, *Licitation.* 155, *Estate redeemed during a matrimonial community.* 156, *Children of the line; the father not.* 157, *Retrait mi denier.* 148, *Who cannot inherit cannot redeem of the feudal and lineal redemption in competition.*

LINEAL REDEMPTION.

ART. 129.—When any person has sold and transferred his own estate or *rente fonciere* to a stranger of the side and line which his said estate or *rente fonciere*

ART. 124.—Le droit de cens ne se prescrit par le détenteur de l'héritage contre le seigneur censier, encore qu'il y ait cent ans, quand il y a titre ancien ou reconnaissance fait du dit cens. Mais se peut la quotité du cens et arrérages prescrire par trente ans entre majeurs âgés et non privilégiés. (Voyez les articles 12, 119; 355, au commencement; et 358.)

ART. 125.—Les médecins, Chirurgiens, et apothicaires doivent intenter leurs actions dedans un an, et après le dit an ne sont recevables. (Voyez les articles 96, vers la fin; 127.)

ART. 126.—Marchands, gens de métier, et autres vendeurs de marchandise et denrée en détail, comme boulangers, pâtissiers, couturiers, selliers, bouchers, bourreliers, passementiers, maréchaux, rôtisseurs, cuisiniers, et autres semblables, ne peuvent faire actions après les six mois passés du jour de la première délivrance de leur dite marchandise ou denrée, sinon qu'il y eût arrêt de compte, sommation, ou interpellation judiciairement faite, cédule ou obligation. (Voyez l'article précédent, et le suivant.)

ART. 127.—Drapiers, merciers, épiciers, orfèvres, et autres marchands grossiers, maçons, charpentiers, couvreurs, barbiers, serviteurs, laboureurs, et autres mercenaires, ne peuvent faire action ni demande de leur marchandise, salaires et services, après un an passé, à compter du jour de la délivrance de leur marchandise ou vacation, s'il n'y a cédule, obligation, arrêt de compte par écrit ou interpellation judiciaire. (Voyez les deux articles précédens.)

ART. 128.—N'ont les taverniers et cabaretiers aucune action pour vin ou autres choses par eux vendues en détail par assiette en leurs maisons. (Voyez les articles 119, 175.)

TITRE VII.—SOMMAIRE.

Art. 129, *Qui peut retraire.* 130, *Quant.* 131, *Mineurs.* 132, *Franc-aleu.* 133, *Premier vendeur.* 134, *Fruits.* 135, *Ensaisinement ou inféodation du seigneur.* 136, *Tenu du remboursement.* 137, *Vente rachetable.* 138, *Arrérages de la rente.* 139, *A quel héritier appertient l'héritage retiré.* 140, *Offre.* 141, *Lignager, comment préféré aux autres.* 142, *Héritiers du Vendeur.* 143, *Echange d'un propre.* 144, *N'a lieu sur les meubles.* 145, *S'il a lieu en échange.* 146, *Entretient de l'héritage.* 147, *Usufruit.* 148, *Loges achetées du Roi.* 149, *Baux.* 150, *Décret de propre.* 151, *Adjugé sur curateur.* 152, *Non l'acquet.* 153, *Chose abandonnée.* 154, *Licitation.* 155, *Mi-denier.* 156, *Exception.* 157, *En partage.* 158, *Inhabile à succéder.* 159, *Retrait lignager sur le féodal.*

DU RETRAIT LIGNAGER.

ART. 129.—Quand aucun a vendu et transporté son propre héritage, ou rente foncière, à personne étrange de son lignage du côté et ligne dont le dit propre héri-

proceeded from in succession, it is lawful for a relative of the said vendor of the side and line from which the said estate or *rente fonciere* has come and was left to him, to demand and have by *retrait lignager* that estate or rent within the year and day that the purchaser received the possession, if it is held *en censive;* or that he was received in fealty and homage, if it is held *en fief;* on re-imbursing the said purchaser the principal sum and legal expences. (See Arts. 10, 96, 133, 136, 137, 142, 143, 145, 148, 149, 150, 151, 154, 155, 157, 159, 329; also the notes of 144.)

ART. 130.—The time of the *retrait lignager* does not begin until after the infeoffment or seizin made or taken by the purchaser; and the adjournment ought to be made, and the assignation served within the said year and day from the said infeoffment and seizin. (See Arts. 82, 132 and 135.)

ART. 131.—The year of *retrait* runs as well against majors as against minors, without hope of restitution. (See Arts. 354 and 356.)

ART. 132.—The year of *retrait* of an estate *propre* held *en Franc aleu,* commences the day the purchase has been published and registered at the nearest court of justice. (See Arts. 68, 130 and 131.)

ART. 133.—If any person purchases an estate *propre* from his relative of the side and line of which he is allied, and sells the said estate; such estate comes within *retrait;* in which case the first vendor can also redeem, as having not before put it out of the line. (See Arts. 129 and 242.)

ART. 134.—In cases of *retrait lignager* the *fruits* are due from the day of adjournment, and the offers of the price and costs due and to accrue. (See Arts. 138 and 285.)

ART. 135.—The seignior who acquires an estate, holding of him *en fief* or *censive,* is reputed to be infeoffed or invested from the day of his purchase, published in judgment at the nearest court of Justice Royal. (See Arts. 130 and 132.)

ART. 136.—The *retrayant* to whom the estate is adjudged by *retrait,* is held to pay and reimburse the purchaser of the money he has paid to the vendor for the purchase of the estate, or deposit the money on refusal of the said purchaser, he being duly called to see the said deposit made within four-and-twenty hours after the said *retrait* is adjudged by sentence; and that the purchaser has filed exhibits, the other party being called or present, or has affirmed the price of it is requested; and if he does not do it before the time expires, the *retrayant* loses his said *retrait.* (See Arts. 21 and 129.)

ART. 137.—The estate leased at a redeemable rent is subject to *retrait* within the year and day of the investiture or infeoffment, reimbursing him to whom the rent is due, or depositing the same on his refusal within twenty-four hours, the principal sum of the rent and arrears due since the day of the adjournment after the purchaser has filed his letters and affirmed the price as above stated; and in default of so doing, the *retrayant* loses his *retrait.* (See Arts. 36, 78, 83, and 129.)

ART. 138.—And with respect to arrears due within the year preceeding the

tage ou rente foncière, lui est venu et échu par succession, il est loisible au parent et lignager du dit vendeur du côté et ligne dont est venu et échu le dit héritage et rente foncière de demander et avoir par retrait lignager icelui héritage, ou rente dedans l'an et jour que l'acheteur en a été ensaisiné, s'il est tenu en censive ; ou qu'il a été reçu en foi et hommage, s'il est tenu en fief ; en remboursant le dit acheteur de son fort le dit acheteur principal et loyaux-coûts. (Voyez les articles 20, 96, vers la fin ; 133, 136, 137, 142, 143, 145, 148, 149, 150, 151, 154, 155, 157, 159, 329 ; voyez aussi les renvois de l'article 144.)

ART. 130.—Le tems de retrait lignager ne court sinon depuis l'inféodation ou saisine faits ou pris par l'acheteur, et doit l'ajournement être fait, et l'assignation écheoir dedans le dit an et jour de la dite inféodation ou saisine. (Voyez les articles 82, 132, 135.)

ART. 131.—L'an du retrait court tant contre le majeur que mineur, sans espérance de restitution. (Voyez vers le milieu des articles 354, 356.)

ART. 132.—L'an de retrait de propre héritage tenu en franc-aleu, ne court que du jour que l'acquisition a été publiée et infinuée en jugement au plus prochain siége Royal. (Voyez les articles 68, 130, 131.)

ART. 133.—Si aucune personne acquiert un héritage propre de son parent du côté et ligne dont il est parent, et il vend le dit héritage : tel héritage chet en retrait : Auquel cas peut aussi retraire le premier vendeur, comme ne l'ayant au précédent mis hors la ligne. (Voyez les articles 129, 242.)

ART. 134.—En matière de retrait lignager sont dus les fruits du jour de l'adjournement et offre de bourse, deniers, loyaux-coûts, et à parfaire. (Voyez les articles 48, au milieu ; 138, 285.)

ART. 135.—Le seigneur qui acquiert l'héritage tenu de lui en fief ou censive, est réputé être inféodé ou ensaisiné du jour de son acquisition publiée en jugement au plus prochain Siége Royal. (Voyez les articles 130, 132.)

ART. 136.—Le retrayant auquel l'héritage est adjugé par retrait, est tenu de payer et rebourser l'acheteur des deniers qu'il a payés au vendeur, pour l'achat du dit héritage, ou consigner les deniers au refus du dit acheteur, icelui duement appellé à voir faire la dite consignation, et ce dedans vingt-quatre heures après le dit retrait adjugé par sentence, et que l'acheteur aura mis ses lettres au greffe, partie présente ou appellée, et outre qu'il aura éffirmé le prix s'il en est requis : Et s'il ne le fait, le tems passé, tel retrayant est déchu du dit retrait. (Voyez l'article suivant, et les 21, 129.)

ART. 137.—L'héritage baillé à rente rachetable, est sujet à retrait dedans l'an et jour de la saisine ou inféodation, en remboursant celui à qui la rente est due, ou consignant en son refus dedans les vingt-quatre heures, le fort principal de la rente et arrérages échus depuis le jour de l'ajournement, après que l'acquéreur aura mis ses lettres au greffe, et à faute de ce faire, le retrayant est déchu du retrait. (Voyez l'article précédent, et les 78, 83, 129.)

ART. 138.—Et quant aux arrérages échus dedans l'an précédent l'ajournement,

adjournment, the purchaser can put them in the costs on giving up the *fruits* which he has gathered within the said year. (See Art. 129 and 134.)

ART. 139.—The estate withdrawn by *retrait lignager* does so belong to the family, if the one who redeemed it dies, leaving an heir of the acquest, and an heir of the *propres*, such estate ought to belong to the heir of the *propres* of the line of which the said estate has come, and not to the heir of the said acquests, on giving up within the year and day of the decease of the heirs of the said acquests the price of the said estate. (See Art. 94, 155, 244, and 326.)

ART. 140.—When the *lignager* of a vendor of an estate has notified the purchaser of such estate to have it by *retrait*, he who wishes to have the estate by *retrait* must offer the purchase price and legal expences, due and to become due as well on the day of adjournment as on each day of the cause, until the contestation in the cause inclusively, and also appeal inclusively. And if he does not do it, he should be dismissed from his action of *retrait*. (See Art. 104, 129, and 136.)

ART. 141.—The relative of the line who is the first to institute the *retrait*, is to be preferred to all others, if he is the nearest relation of the vendor, although the redeemer does not descend of him from whom the estate comes. (See Art. 178, 314, 329.)

ART. 142.—The heirs of the vendor after his death can withdraw the estate, being a *propre*, sold by him, provided these be of the side and line. (See the preceding Art.; also, Arts. 129, 133, 230, and the middle of 329.)

ART. 143.—When any one has exchanged his *propre* estate for another, the estate received in exchange is *propre* or lineal property, of him that got it in exchange, and if he sells it, it is redeemable. (See Art. 53, 94, 139, and 145.)

ART. 144.—Things moveable are not subject to the right of redemption. (See Arts. 97, 129, 147, 152, 153, 150, and 158.)

ART. 145.—In exchange, if there is a sum of money given, exceeding the value of the half, the estate is subject to the rights of redemption in proportion to the sum given; but if the sum given is less than the half, the right of redemption does not take place. (See Art. 143.)

ART. 146.—During the year and a day of the redemption the purchaser can make no buildings or reparations, if they are not necessary; neither can he injure the estate; if he does, he is bound to repair the same. (See Art. 203.)

ART. 147.—If any one sells the *usufruct* of his lineal property to a stranger, the said *usufruct* is not redeemable. (See Art. 129, and 140.)

ART. 148.—Lodges, work-shops, halls, and public places, purchased of the king, and coming by succession, are subject to the right of redemption. (See the following Art. and Art. 129.)

ART. 149.—Leases for ninety-nine years or other long leases are subject to be redeemed. (See Art. 129, and 147.)

l'acheteur les peut mettre en loyaux-couts, en rendant par lui les fruits qu'il aurait perçus dedans le dit an. (Voyez les articles 129, 134.)

ART. 139.—L'héritage retiré par retrait lignager, est tellement affecté à la famille, que si le retrayant meurt délaissant un héritier des acquêts et un héritier des propres, tel héritage doit appartenir à l'héritier des propres de la lignée dont est venu et issu le dit héritage, et non à l'héritier des acquêts, en rendant toutefois dedans l'an et jour du décès aux héritiers des dits acquêts, le prix du dit héritage. (Voyez les articles 94, 155, 244, 326.)

ART. 140.—Quand le lignager d'un vendeur d'héritage a fait ajourner l'acheteur d'icelui héritage, pour l'avoir par retrait, il convient que tel qui veut avoir le dit héritage par retrait, offre bourse, deniers, loyaux-couts, et à parfaire, que à chacune journée de la cause principale, jusqu'à contestation en cause inclusivement. Et s'il ne le fait, il doit être débouté du dit retrait. (Voyez les articles 104, au commencement; 129, 136, à la fin.

ART. 141.—Le parent et lignager qui premier fait ajourner en retrait, doit être préféré à tous autres, posé qu'ils soient plus prochains parens du vendeur, encore que le retrayant ne soit descendu de celui duquel vient le dit héritage. (Voyez les articles 178, 314, en la fin; 329.)

ART. 142.—Les héritiers du vendeur après son trépas, peuvent retraire l'héritage propre par lui vendu, pourvu qu'ils soient du côté et ligne. (Voyez l'article précédent, et les 129, 133, 230, au milieu; 329.

ART. 143.—Quand aucun a échangé son propre héritage à l'encontre d'un autre héritage, le dit héritage est propre de celui qui l'a eu par échange, et s'il le vend, il chet en retrait. (Voyez les articles 53, 64, vers la fin; 139, 145.

ART. 144.—Choses mobiliaires ne chéent en retrait. (Voyez l'article 97, au milieu; le 129, les renvois au-dessous d'icelui, et les 147, 152, 153, 156, et 158.

ART. 145.—En échange s'il y a soulte excédante la valeur de la moitié, l'héritage est sujet à retrait pour portion de la soulte: Mais si la soulte est moindre que la dite moitié, n'y a lieu au retrait. (Voyez l'article 143.)

ART. 146.—Durant l'an et jour du retrait, l'acheteur ne peut faire aucuns bâtimens ne réparations s'ils ne sont nécessaires, pareillement ne peut empirer l'héritage. Et s'il le fait, est tenu de le rétablir. (Voyez l'article 203.)

ART. 147.—Si aucun vend l'usufruit de son propre héritage à personne étrange, le dit usufruit ne chet en retrait. (Voyez les articles 129 et 149.

ART. 148.—Loges, boutiques, étaux, places publiques achetées du Roi, et venant à succession, sont sujettes à retrait. (Voyez l'article suivant, et le 129.

ART. 149.—Baux à quatre-ving dix-neuf ans, ou longues années, sont sujets à retrait. (Voyez l'article précédent, et les 129, 147.)

ART. 150.—A *propre* estate sold by *décret* on a judgment, falls in *retrait*.

ART. 151.—An estate *propre* adjudged by *décret* on a curator to a vacant succession or on the heir with the benefit of an inventory, is subject to *retrait*.

ART. 152.—*Retrait* has not place in the case of this article, but the estate *acquet* of a deceased person adjudged upon the curator to the property of the said deceased is not subject to *retrait*.

ART. 153.—The estate adjudged on a curator to a thing abandoned is not subject to *retrait*.

ART. 154.—Portion of an estate sold by licitation that cannot be leased by division is subject to *retrait*.

ART. 155.—When any estate *propre* is acquired during the marriage of the two conjuncts, one of whom is the relation of the line of the vendor of the side that the said estate belonged to the said vendor, such estate so sold does not fall within *retrait* during the said marriage; but after the decease of one of the said conjuncts the half of the said estate falls into *retrait* against him who is not of the line, or his heir; if they are not of the line of the vendor, of the side and line of which the said estate belongs to, the said vendor, within the year and day from the death of the first of the said conjuncts who died, supposing that there was *saisine* or infeoffment taken during the said marriage, on the *retrayant* returning and paying the half of the principal sum, expenses, and legal costs.

ART. 156.—When he who is not in the line has children who are in the line, there is not *retrait*.

ART. 157.—And if by division the estate is put out of the line, it is subject to *retrait* for the half, provided always that the *retrayant* has brought his action and made protest within the year of the decease of the one of the conjuncts who is related to him.

ART. 158.—He who is not qualified to succeed, as a bastard, cannot have the benefit of the lineal redemption.

ART. 159.—The *fief* coming of a *propre*, sold by the vassal and retained by the power of the *fief* by the *seigneur féodal*, can be redeemed by one of the relations of the line of the vendor, of the stock and line of which it proceeded, within the year and day that the said *fief* had been retained by the power of the *fief*, the said retention published in judgment at the nearest Court of Justice. (See Arts. 20, 22, 130, 132 and 135.)

ART. 150.—Propre héritage vendu par décret en jugement par criées et subhastations, chet en retrait. (Voyez l'article 83, au commencement ; 152.

ART. 151.—Un héritage propre adjugé par décret sur un curateur aux biens vacans ou sur l'héritier par bénéfice d'inventaire, est sujet à retrait. (Voyez l'article précédent et les subéq. avec les commencemens des 34, 344.

ART. 152.—Mais l'héritage d'acquêt d'un défunt adjugé sur le curateur aux biens du dit défunt, n'est sujet à retrait. (Voyez l'article précédent, et les 129, 150.

ART. 153.—L'héritage adjugé sur un curateur à la chose abandonnée, n'est sujet à retrait. (Voyez les deux articles précédens ; le 79, vers le commencement ; les 101 et 102, au milieu ; 109, au commencemeut ; 110, vers la fin.

ART. 154.—Portion d'héritage vendue par licitation qui ne se peut bailler par divis est sujette à retrait. (Voyez les articles 80, 157, au commencement.)

ART. 155.—Quand aucun héritage propre est acquis durant et constant le mariage de deux conjoints, dont l'un d'iceux est parent lignager du dit vendeur, du côté dont le dit héritage appartenait au dit vendeur, tel héritage ainsi vendu ne git en retrait durant et constant le dit mariage : mais après le trépas de l'un des dits conjoints, la moitié du dit héritage git en retrait à l'encontre de celui qui n'est lignager ou ses hoirs, s'ils ne sont lignagers du dit vendeur, du côté et ligne dont le dit héritage appartenait à icelui vendeur, dedans l'an et jour du trépas du premier mourant des dits conjoints : supposé qu'il y eut saisine ou inféodation prise durant icelui mariage, en rendant et payant par le retrayant la moitié du sort principal, frais et loyaux-couts. (Voyez les articles 139, au milieu ; 232, 244.)

ART. 156.—Quand celui qui n'est en ligne a des enfans qui sont en ligne, retrait n'a lieu. (Voyez l'article précédent.)

ART. 157.—Et si par partage l'héritage sort hors la ligne, il est sujet à retrait pour moitié : pourvu toutefois que le retrayant ait intenté son action, et sur icelle protesté dedans l'an du décès de celui des deux conjoints qui lui est parent. (Voyez les articles 80, 154, 155.)

ART. 158.—Qui n'est habile à succéder, comme un bâtard, ne peut venir à retrait lignager. (Voyez l'article 337.)

ART. 159.—Le Fief venant de propre vendu par le Vassal, et retenu par puissance de Fief par le Seigneur Féodal, peut être retrait par l'un des parens et lignagers du vendeur de l'estoc et ligne dont il est procédé, dans l'an et jour que le dit Fief a été retenu par puissance de Fief, la dite retenue publiée en jugement au plus prochain siége Royal. (Voyez les articles 20, 22, 130, 132, 135.)

TITLE VIII.—SUMMARY.

Art. 160, *Causes of seizures and attachments.* 161, *For house rent.* 162, *Under tenants.* 163, *Not followed.* 164 *and* 165, *Not followed.* 166, *Of a litigious debt.* 167, *Not followed.* 168, *On the property of widows and heirs.* 169, *On the property of the deceased.* 170, *Moveables cannot be mortgaged.* 171, *But may be followed in certain cases.* 172, *Time of sale.* 173 *and* 174, *Not followed.* 175, *Privilege of Inn-keepers.* 176, *Preference of the vendor of a moveable sold without term.* 177, *Sold with term.* 178, *First seizures.* 179, *Insolvency.* 180, *What is insolvency.* 181, *Pledge.* 182, *Deposit.* 183, *Confiscation.*

ARRESTS, EXECUTIONS AND GAGERIES.

ART. 160.—We cannot proceed by attachment, execution or other proceedings on the property of others, nor by imprisonment without obligation, condemnation, *délit* or *quasi délit*, things privileged or what amounts to the same. (See Arts. 166, 167, 171, 173, 175 and 176.)

ART. 161.—It is lawful for a proprietor of any house by him leased for rent, to proceed by *gagerie* in the said house for the terms due by him for the house rent on the property being therein. (See Arts. 86, 163 and 171.)

ART. 162.—If there are under-tenants their property can be taken for the rent and charges of lease; but nevertheless, they shall be restored to them on paying the rent for the time of their occupation. (See Arts. 54 and 55.)

ARTS. 163, 164 and 165.—(Not followed.)

ART. 166.—It is not lawful to proceed by attachment, seizure, execution or imprisonment, in virtue of an obligation or sentence. If the thing or sum for which we wish to make the prosecution is not certain and liquidated in sums or species—and, notwithstanding if the species be subject to a valuation—we can execute and summon in order to set a value on the same. (See Arts. 160 and 169.)

ART. 167.—(Not followed.)

ART. 168.—Obligation passed by a husband, or sentence against him given after decease of the said husband, cannot be put in execution on the property of the widow nor the heirs of the said deceased before they declare themselves such, and to do this they must be called upon. (See the following Articles and 160.)

ART. 169.—Nevertheless, for the preservation of the rights of the creditors, the property of the deceased and of the *communauté* may be seized and attached, notice having been previously given to the widow and the heirs. (See the preceding Article, and Arts. 221 and 322.)

TITRE VIII.—SOMMAIRE.

Art. 160, *Causes des exécutions et arrêts.* 161, *Pour le loyer de maison.* 162, *Sous-locataires.* 163, 164, 165, *Non suivis.* 166, *Dette litigieuse.* 167, *Non suivi.* 168, *Propriétés de la veuve et ses héritiers.* 169, *Propriétés du défunt.* 170, *Meubles ne peuvent être hypothéqués.* 171, *Mais peuvent être suivis dans certains cas.* 172, *Temps de la vente.* 173 *et* 174, *Non suivis.* 175, *Privilège des hôtelliers.* 176, *Préférence du vendeur d'un meuble vendu sans terme.* 177, *Vendu avec terme.* 178, *Premières saisies.* 179, *Insolvabilité.* 180, *Ce que c'est.* 181, *Gage.* 182, *Dépôt.* 183, *Confiscation.*

ARRETS, EXECUTIONS ET GAGERIES.

ART. 160.—On ne peut procéder par voie d'arrêts, exécutions ou autre exploits, sur les biens d'autrui, ne par emprisonnement, sans obligation, condamnation, délit ou quasi délit, chose privilégiée, ou qui le vaille. (Voyez les articles 166, 167, 171, 173, 175, 176.)

ART. 161.—Il est loisible à un propriétaire d'aucune maison par lui baillée à titre de loyer, faire procéder par voie de gagerie en la dite maison, pour les termes à lui dus pour le louage, sur les biens étant en icelle. (Voyez les articles 86, au milieu ; 163, sur la fin ; et 171.)

ART. 162.—S'il y a des sous-locatifs, peuvent être pris leurs biens pour le dit loyer et charges de bail, et néanmoins leur seront rendus en payant le loyer pour leur occupation. (Voyez les articles 54, 55.)

ARTS. 163, 164, 165.—(Non suivis.)

ART. 166.—On n'est recevable à procéder par voie d'arrêt, saisie, exécution ou emprisonnement en vertu d'obligation ou sentence, si la chose ou somme pour laquelle on veut faire le dit exploit, n'est certaine et liquide en somme ou espèce. Et néanmoins si l'espèce est sujette à appréciation, on peut exécuter et ajourner afin d'apprécier. (Voyez les articles 160, 169.)

ART. 167.—(Non suivi.)

ART. 168.—Obligation passée par le mari, ou sentence contre lui donnée, après le trépas du dit mari, ne sont exécutoires sur les biens de la veuve, ni des héritiers du dit défunt, avant que tels soient déclarés. Et pour ce faire les faut appeler. (Voyez l'article suivant, et le 160.)

ART. 169.—Néanmoins pour la conservation du dû des créanciers, peuvent être les biens du défunt et de la communauté saisis et arrêtés, commandement préalablement fait à la veuve et héritiers. (Voyez l'article précédent et les 221,332.)

ART. 170.—Moveables cannot be mortgaged when they are out of the possession of the debtor. (See Arts. 176, 177, 178, 181 and 182.)

ART. 171.—At all times the proprietors of houses situate in the town and suburbs and farms of the fields, may follow up the property of their tenant or farmers, although they be carried away, to be first paid their rents, and stop them until they are sold and delivered, by authority of justice. (See the following Article, and Arts. 161 and 176.)

ART. 172.—The persons suing out execution are held to sell the property within two months after oppositions are finished. (See Art. 160.)

ART. 173 and 174.—(Not followed.)

ART. 175.—Expenses of sums delivered by landlords to travellers, or to their horses, are privileged, and are to be preferred before any other on the property and horses, and the inn-keepers can retain them until payment; and if any other creditor would wish to take them away, the inn-keeper has just cause to oppose it. (See Arts. 128, 161 and 171.)

ART. 176.—He who sells anything moveable without day of payment being specified, and without term expecting to be paid immediately, the thing can be followed up into whatever place it is taken, to be paid the price for which he sold it. (See the following Articles, and Arts. 170 and 171.)

ART. 177.—And notwithstanding, if he has given term, if the thing is seized on the debtor for another creditor, he can stop the sale, and has a preference upon the thing to all other creditors. (See the preceding and following Articles.)

ART. 178.—The creditor who makes the first attachment and seizes validly or takes by execution any moveables belonging to his debtor, is to be first paid. (See the following Article, and Arts. 108, 141 and 170.)

ART. 179.—But in case of insolvency each creditor takes his dividend in the pound on the moveable property of the debtor, and there is no preference or privilege for any cause whatever, although one of the creditors had made the first seizure. (See the preceding and following Articles, and Arts. 95, 181 and 182.)

ART. 180.—The case of insolvency is when the property of a debtor, as well moveable as immoveable, is not sufficient for the apparent creditors; and if to prevent the distribution there arises a contest between creditors appearing on the sufficiency or insufficiency of the said property, the first in diligence who takes the monies arising from the moveables by them seized, is to give security to return the same to be put in distribution in case the said property is not sufficient.

ART. 181.—And the distribution does not take place when the creditor is found possessed of the moveables which had been delivered him as security. (See Art. 179.)

ART. 182.—And likewise the distribution does not take place in case of deposit, if the deposit be in the same state. (See the three preceding Articles.)

ART. 183.—He who forfeits his life confiscates his property.

ART. 170.—Meubles n'ont point de suite par hypothèque, quand ils sont hors de la possession du detteur. (Voyez l'article suivant ; et les 176, 177, 178, 181, 182.)

ART. 171.—Toutefois les propriétaires des maisons sises ès Villes et Faubourgs et fermes des champs, peuvent suivre les biens de leurs locatifs ou fermiers exécutés, encore qu'ils soient transportés, pour être premiers payés de leurs loyers ou maison, iceux arrêter, jusqu'à ce qu'ils soient vendus et délivrés par autorité de justice. (Voyez l'article 161 et 176.)

ART. 172.—Les exécutans sont tenus de faire vendre les biens dedans deux mois après les oppositions jugées ou cessées. (Voyez l'article 160.)

ART. 173 et 174.—(Non suivi.)

ART. 175.—Dépens d'hôtelage, livrés par hôtes à pélerins, ou à leurs chevaux, sont privilégiés, et viennent à préférer devant toute autre, sur les biens et chevaux hôtelés, et les peut l'hôtelier retenir jusqu'à paiement : et si aucun autre créancier les voulait enlever, l'hôtelier a juste cause de soi opposer. (Voyez les articles 128, 161, 171.)

ART. 176.—Qui vend aucune chose mobiliaire sans jour et sans terme, espérant être payé promptement, il peut sa chose poursuivre en quelque lieu qu'elle soit transportée, pour être payé du prix qu'il l'a vendue. (Voyez l'article suivant ; et les 170, 171.)

ART. 177.—Et néanmoins encore qu'il eut donné terme, si la chose se trouve saisie sur le detteur par autre créancier, il peut empêcher la vente ; et est préféré sur la chose aux autres créanciers. (Voyez les articles précédent et suivant.)

ART. 178.—Le créancier qui fait premier arrêter et saisir valablement, ou prendre par exécution aucuns meubles appartenans à son detteur, doit être le premier payé. (Voyez l'article suivant ; et les 108, 141, 170.)

ART. 179.—Toutefois en cas de déconfiture, chacun créancier vient à contribution au sol la livre, sur les biens meubles du débiteur. Et n'y a point de préférence ou prérogative pour quelque cause que ce soit : encore qu'aucun des créanciers eut fait premier saisir. (Voyez l'article précédent ; et le suivant avec les 95, en la fin ; 181 et 182.)

ART. 180.—Le cas de la déconfiture est, quand les biens du detteur, tant meubles qu'immeubles, ne suffisent aux créanciers apparens : et si pour empêcher la contribution se meut différend entre les créanciers apparens sur la suffisance ou insuffisance des dits biens, les premiers en diligence qui prennent les deniers des meubles par eux arrêtés, doivent bailler caution de les rapporter, pour être mis en contribution, au cas que les dits biens ne suffisent. (Voyez l'article précédent et les deux suivans ; et le 95, en la fin.

ART. 181.—Et n'a lieu la contribution quand le créancier se trouve saisi du meuble qui lui a été baillé en gage. (Voyez l'article 179.)

ART. 182.—Aussi n'a lieu la contribution en matière de dépôt, si le dépôt se trouve en nature. (Voyez les trois articles précédens.)

ART. 183.—Qui confisque les biens, il confisque le corps.

TITLE IX.—SUMMARY.

SERVITUDES AND REPORTS OF JURORS.

ART. 184.—In all cases subject to visitation the parties ought to agree upon *jurés* or experts, and persons who have a knowledge thereof, who are sworn before the judge; and the report ought to pay such regard to it as is reasonable, without demanding amendment. The judge can, nevertheless, order another and more ample visitation to be made if it is necessary; and where the parties do not agree upon any body, the judge may name one. (See the following Article.)

ART. 185.—And the said *jurés* and experts, skilful persons, are held to make and take down in writing, and sign the minute report at the place before leaving it, and put the said minute, at the time, into the hands of the clerk who assists them, who must, within twenty-four hours afterwards, deliver the report to the parties who requested it. (See the preceding Article.)

ART. 186.—Right of service is not acquired by any long enjoyment whatever without a title, even of an hundred years; but the liberty against a title of service can be acquired by thirty years, between persons of full age and not privileged. (See Arts. 12, 71, 124, 215 and 216.)

ART. 187.—Whoever has the ground called the story, even with the ground of any estate, he can and ought to have all that is above and below his ground—and can build above and below, and make wells, pits, and other things lawful if there is no title to the contrary.

TITRE IX.—SOMMAIRE.

184, *Des servitudes et rapports de Jurés.* 185, *Rapport.* 186, *Comment servitudes sont acquises.* 187, *Conséquence de la propriété du sol.* 188, *Contre-mur pour étable.* 189, *Pour une cheminée ou âtre.* 190, *Pour forges.* 191, *Pour aisance de privés.* 192, *Pour terre labourée.* 293, (*non suivi.*) 194, *Bâtissant contre un mur non mitoyen.* 195, *Si on peut hausser un mur mitoyen.* 196, *Bâtissant un mur de clôture.* 197, *Charges à payer au voisin.* 198, *Bâtissant sur un mur mitoyen.* 199, *Ouvertures dans un mur mitoyen.* 200, *Dans un mur non mitoyen.* 201, *Ce qu'on entend par fer maillé.* 202, *Vues droites et de côté.* 203, *Devoirs des maçons démolissant un mur.* 204, *Mur à percer et démolir.* 205, *Contribution pour rebâtir un mur mitoyen.* 206, *Poutres et solives.* 207, *Pour asseoir poutres ou mur mitoyen.* 208, *Comment poutres doivent être placées.* 209, *Contribution à murs de clôture.* 201, *Hors de la ville et des faubourgs.* 211, *Murs de clôture.* 212, *Comment on peut obtenir droit à un mur.* 213, *Des anciens fossés communs.* 214, *Marques du mur mitoyen.* 215, *Constitution de servitudes.* 216, *Destination de père de famille.* 217, *A quelle distance du mur doivent être faits fossés.* 218 *et* 219, (*non suivis.*)

DES SERVITUTES ET RAPPORT DE JURES.

ART. 184.—En toutes matières sujettes à visitation, les parties doivent convenir en jugement de Jurés ou Experts, et gens à ce connaissans, qui font le serment pardevant le Juge. Et doit être le rapport apporté en justice, pour en plaidant ou en jugeant le procès, y avoir tel égard que de raison, sans qu'on puisse demander amendement. Peut néanmoins le Juge ordonner autre ou plus ample visitation être faite, s'il y échet. Et où les parties ne conviennent de personnes, le Juge en nomme d'office. (Voyez l'article suivant.)

ART. 185.—Et sont tenus les dits Juges ou Experts, et gens connaissans, faire et rédiger par écrit, et signer la minute du rapport sur le lieu, et paravant qu'en partir, et mettre à l'instant la dite minute ès mains du Clerc qui les assiste: lequel est tenu dedans les vingt-quatre heures après, délivrer le dit rapport aux parties, qui l'en requierent. (Voyez l'article précédent.)

ART. 186.—Droit de servitude ne s'acquiert par longue jouissance quelle qu'elle soit, sans titre; encore que l'on en ait joui par cent ans: mais la liberté se peut réacquérir contre le titre de servitude par 30 ans, entre âgés, et non privilégiés. (Voyez les articles 12, 71, 124, 215, 216.)

ART. 187.—Quiconque a le sol, appellé l'étage du rez-de-chaussée d'aucun héritage, il peut et doit avoir le dessus et le dessous de son sol, et peut édifier par dessus et par dessous, et y faire puits, aisemens et autres choses licites, s'il n'y a titre au contraire.

ART. 188.—He who builds a stable against a partition *mitoyen* wall ought to make a *contremur* eight inches thick and as high as the manger.—(See the four following Articles.)

ART. 189.—He who wishes to make chimnies and hearths against the partition wall, ought to make partitions of pieces of tiles or other things sufficient of half a foot in thickness. (See the following Article.)

ART. 190.—He who wishes to make a forge, oven or furnace against a partition wall, ought to leave an empty space of half a foot between the two walls of the oven or forge, and the said wall ought to be a foot thick. (See the preceding Article.)

ART. 191.—Whoever wishes to make privies or wells against a partition wall ought to make a *contremur* one foot thick. And when there is one at each side, wells on one side and privies on the other, four feet of wall is sufficient between the two, including the thickness of the walls of one part, and the other, but between two wells three feet at least is sufficient. (See Art. 227.)

ART. 192.—He who has an open place, garden or other vacant spot which joins directly with another wall or partition wall, and he wishes to cultivate and clear it, he is bound to make the partition wall of half a foot thick, and if there is land heaped up,—he is bound to make the *contremur* one foot. (See Arts. 188, and 211.)

ART. 193.—(Not followed.)

ART. 194.—If any person wishes to build against a wall which is not a partition wall he may do it on paying the half as well of the said wall as the foundation of it, to the height he wishes to build, which he is bound to pay before he pulls down or builds anything, in the estimation of which wall is comprised the value of the land on which the said wall is founded and situate in case he who made the wall, has built it all upon his own estate. (See the following Arts. also Arts. 198, 203, 204, 205, 209, and 211.)

ART. 195.—A neighbour has a right to heighten at his expense the partition wall between him and his neighbour as high as he thinks proper without the consent of his neighbour, if there is no title to the contrary, on paying the charges, provided that the wall is sufficiently strong to support the raising; and if it is not so, he who wishes to raise the same must strenghten it, and ought to take the thickness from his side. (See the preceding Art. and the three following.)

ART. 196.—If the wall of an enclosure is good and durable, he who wishes to build thereon and demolish the old wall, the same not being sufficient to support his building, is bound to pay all the expenses, and in so doing does not pay any charges; but if he makes use of the old wall, he must pay the charges. (See the two following Arts. and Arts. 204, 209, 211.)

ART. 197.—The charges to be paid and reimbursed by him who makes use of and builds upon or against the partition wall, are one fathom for every six that is built above ten feet. (See the two preceding Arts. also Arts. 204, 209, 211.)

ART. 188.—Qui fait étable contre un mur mitoyen, il doit faire contre-mur de huit pouces d'épaisseur de hauteur jusqu'au rez de la mangeoire. (Voyez les quatre articles suivans.)

ART. 189.—Qui veut faire cheminées et âtres contre le mur mitoyen, doit faire contre-mur de thuilots, ou autre chose suffisante de demi-pied d'épaisseur. (Voyez l'article suivant.)

ART. 190.—Qui veut faire forge, four et fourneau contre le mur mitoyen, doit laisser demi pied de vuide et intervalle entre deux du mur du four ou forge : et doit faire le dit mur d'un pied d'épaisseur. (Voyez l'article précédent.)

ART. 191.—Qui veut aisance de privés, ou puits contre un mur mitoyen, il doit faire contre-mur d'un pied d'épaisseur. Et où il y a de chacun côté puits, ou bien puits d'un côté et aisance de l'autre, suffit qu'il y ait quatre pieds de maçonnerie d'épaisseur entre deux, comprenant les épaisseurs des murs d'une part et d'autre. Mais entre deux puits suffisent trois pieds pour le moins. (Voyez l'article 217.)

ART. 192.—Celui qui a place, jardin, ou autre lieu vuide qui joint immédiatement au mur d'autrui, où à mur mitoyen, et il veut faire labourer et fumer, il est tenu de faire contre-mur de demi-pied d'épaisseur, et s'il a terres jectisses, il est tenu faire contre-mur d'un pied d'épaisseur. (Voyez l'article 188 et 211.)

ART. 193.—(Nul.)

ART. 194.—Si aucun veut bâtir contre un mur non mitoyen, faire le peut en payant moitié tant du dit mur que fondation d'icelui, jusqu'à son héberge. Ce qu'il est tenu payer paravant que rien démolir ni bâtir. En l'estimation duquel mur est comprise la valeur de la terre sur laquelle est le dit mur fondé et assis, au cas que celui qui a fait le mur, l'ait tout pris sur son héritage. (Voyez les articles suivans ; et les 198, 203, 204, 205, 209, 211.)

ART. 195.—Il est loisible à un voisin hausser à ses dépens le mur mitoyen d'entre lui et son voisin, si haut que bon lui semble, sans le consentement de son dit voisin, s'il n'y a titre au contraire, en payant les charges : pourvu toutefois, que le mur soit suffisant pour porter le rehaussement, et s'il n'est suffisant, faut que celui qui veut rehausser, le fasse fortifier, et se doit prendre l'épaisseur de son côté. (Voyez l'article précédent, et les trois suivans.)

ART. 196.—Si le mur est bon pour clôture et de durée, celui qui veut bâtir dessus, et démolir le dit mur ancien, pour n'être suffisant pour porter son bâtiment, est tenu de payer entièrement tous les frais, et en ce faisant ne payera aucunes charges : mais s'il s'aide du mur ancien, payera les charges. (Voyez l'article suivant ; et les 204, 209, 211.)

ART. 197.—Les charges sont de payer et rembourser par celui qui se loge et héberge sur et contre le mur mitoyen, de six toises l'une de ce qui sera bâti au-dessus de dix pieds. (Voyez les deux articles précédens ; et les 209, 211.)

ART. 198.—It is lawful for a neighbour to make use of and build upon a common and partition wall between him and his neighbour as high as he thinks proper on paying half of the said wall, if there is no title to the contrary. (See Arts. 194, 195, 196, and 204.)

ART. 199.—In the partition wall one of the neighbours cannot, without the consent and agreement of the other, cause to be made any windows or holes for light whatever, either dormant windows or any other kind. (See the two following Arts. and 211.)

ART. 200.—If any person has a wall belonging to himself solely, adjoining the estate of another, he can have windows and lights in the said wall according to the Custom of Paris, that is to say of nine feet high above the surface of the earth in the first story, and with regard to the other stories of seven feet above the surface, the whole, a *fer maillé* and dormant glass. (See the two preceding and the two following Arts.)

ART. 201.—*Fer maillé* is a grated window wherein the holes cannot be larger than four inches and dormant glass is that which is fastened in plaster and cannot be opened. (See the two preceding Arts.)

ART. 202.—No person can make front lights upon his neighbours nor upon property belonging to him, if there is not a space of six feet between the said lights; and cannot have side lights if there is not a space of two feet. (See Arts. 199 and 200.)

ART. 203.—Masons cannot touch or cause to be touched a partition wall, to demolish, pierce it or rebuild it, without calling on the neighbours who are interested, by simple notice solely, and that at the risk of all costs, damages, interests and the rebuilding of the said wall. (See the preceding Arts. and Arts. 108, 145, 195, 198 and 205.)

ART. 204.—It is lawful for a neighbour to pierce or cause to be pierced and demolished a common and partition wall between him and his neighbour, to make use of and build thereon, on rebuilding it at his own expense, if there is no title to the contrary, previously notifying his neighbour, and he is held to do so immediately and without discontinuing the said building. (See the preceding Art. and 208.)

ART. 205.—It is likewise lawful for a neighbour to compel or cause to be constrained by justice, his neighbour to make or cause to be made the wall and common building when injured between him and his said neighbour, on paying his part, each one according to his share in the wall, and for such part and portion that the said parties have and may have, in the said wall, and partition building. (See Arts. 195, 196, and 206.)

ART. 206.—It is not lawful for a neighbour to make or cause to be put and placed the beams and rafters of his house in the wall between him and his neighbour, if it is not a partition wall. (See the two preceding Arts.)

ART. 198.—Il est loisible à un voisin se loger ou édifier au mur commun et mitoyen d'entre lui et son voisin, si haut que bon lui semble, en payant la moitié du dit mur mitoyen, s'il n'y a titre au contraire. (Voyez les articles 194, 195, 196, 204.)

ART. 199.—En mur mitoyen ne peut l'un des voisins, sans l'accord et consentement de l'autre, faire faire fenêtres ou trous pour vue, en quelque manière que ce soit, à verre dormant ni autrement. (Voyez les deux articles suivans; et le 211.

ART. 200.—Toutefois si aucun a mur à lui seul appartenant, joignant sans moyen à l'héritage d'autrui, il peut en icelui mur avoir fenêtres, lumières ou vues aux us et coutumes de Paris: c'est à savoir de neuf pieds de haut au-dessus du rez de chaussée et de terre, quant au premier étage: et quant aux autres étages, de sept pieds au-dessus du rez-de-chaussée: Le tout à fer maillé et verre dormant. (Voyez l'article précédent, et les deux suivans.)

ART. 201.—Fer maillé est treillis dont les trous ne peuvent être que de quatre pouces en tout sens; et verre dormant, est verre attaché, scellé en plâtre qu'on ne peut ouvrir. (Voyez les deux articles précédens.)

ART. 202.—Aucun ne peut faire vues droites sur son voisin, ni sur places à lui appartenantes, s'il n'y a six pieds de distance entre la dite vue et l'héritage du voisin: et ne peut avoir bées de côté, s'il n'y a deux pieds de distance. (Voyez l'article 199 et 200.)

ART. 203.—Les Maçons ne peuvent toucher à un mur mitoyen pour le démolir, percer et réédifier, sans y appeler les voisins qui y ont intérêt, par une simple signification seulement. Et ce à peine de tous dépens, dommages et intérêts, et rétablissement du dit mur. (Voyez l'article suivant; et les 108, au milieu, 146, 195, 198, 205.)

ART. 204.—Il est loisible à un voisin, percer ou faire percer et démolir le mur commun et mitoyen d'entre lui et son voisin pour se loger et édifier, en le rétablissant duement à ses dépens, s'il n'y a titre au contraire: en le dénonçant toutefois au préalable à son voisin. Et est tenu faire incontinent et sans discontinuation le dit établissement. (Voyez l'article précédent et le 208.)

ART. 205.—Il est aussi loisible à un voisin contraindre ou faire contraindre par justice son autre voisin, à faire ou à faire refaire le mur et édifice commun pendant et corrompu entre lui et son dit voisin, et d'en payer sa part chacun selon son héberge, et pour telle part et portion que les dites parties ont et peuvent avoir au dit mur et édifice mitoyen. (Voyez les articles 195, 196, 206.)

ART. 206.—N'est loisible à un voisin de mettre ou faire mettre et loger les poutres et solives de sa maison, dans le mur d'entre lui et son dit voisin, si le dit mur n'est mitoyen. (Voyez les deux articles suivans.)

ART. 207.—It is not lawful for a neigbour to put or cause to be put or set the beams of his house in the partition wall between him and his neighbour, without having made and placed piers, props or chains and corbils sufficient of cut stone to support the said beams in rebuilding the said wall. But for walls for fields, it will do to put something sufficient. (See the preceding and the following Art.)

ART. 208.—Nobody can pierce the partition wall between him and his neighbour, in order to put and place the beams of his house therein farther than half the thickness of the said wall, and farther than the middle, on rebuilding the said wall, and by placing or causing to be placed piers, chains and corbils, as above mentioned. (See the two preceding Arts.)

ART. 209.—Every person can oblige his neighbour living in the town and suburbs of the prevostship and viscounty of Paris to contribute to make an inclosure forming a separation of their houses, yards and gardens, situate in the said town and suburbs, as high as ten feet from the ground including the coping. (See the following Arts. and 196, 205, and 211.)

ART. 210.—Without the said town and suburbs a neighbour cannot oblige his neighbour to make a new wall separating the yards and gardens but can oblige him to keep in repair the old wall according to the ancient height of the said walls or give up the right to the wall and the land on which it is situate. (See the preceding and the two following Arts.)

ART. 211.—All walls separating yards and gardens are reputed partition walls, if there is no title to the contrary, and he who wishes to build a new wall or repair the old one can call his neighbour to contribute to the building or repairing of it, unless the latter should prefer to give title to the whole of the said wall. (See Arts. 194, 195, 198, 203, 204, 209, 264.

ART. 212.—And notwithstanding in the case of the two preceding articles, the said neighbour is entitled, whenever it pleases him, to demand half of the said erected wall and its foundation to re-enter into his first right, on reimbursing half the said expense of the said wall and its foundation. (See the two preceding Arts.)

ART. 213.—The like is observed with respect to the repairing, cleaning and maintenance of old common and separate ditches. (See the preceding Art. and 210.)

ART. 214.—Ledges ought to be made with stone in order to know whether it is a partition wall or belongs to one alone. (See Art. 211.)

ART. 215.—When the father of a family gives up the possession of his house, he ought specially to declare what services he retains on the estate which he gives up, or what he constitutes on his own, and ought specially to name them, as well the situation, extent, height, measure, as kind of service, otherwise all general constitutions of services without being specified as above are not valid. (See the following Art. and 186.

ART. 207.—Il n'est aussi loisible à un voisin de mettre ou faire mettre, et asseoir les poutres de sa maison dedans le mur mitoyen d'entre lui et son voisin, sans y faire faire et mettre jambes, parpaignes ou chaînes et corbeaux suffisans de pierre de taille, pour porter les dites poutres, en rétablissant le dit mur: Toutefois pour les murs des champs, suffit y mettre matière suffisante. (Voyez l'article précédent et le suivant.)

ART. 208.—Aucun ne peut percer le mur mitoyen d'entre lui et son voisin, pour y mettre et loger les poutres de sa maison, que jusqu'à l'épaisseur de la moitié du dit mur, et au point du milieu en rétablissant le dit mur, et en mettant ou faisant mettre jambes, chaînes, et corbeaux, comme dessus. (Voyez les deux articles précédens.)

ART. 209.—Chacun peut contraindre son voisin ès Villes et Faubourgs de la Prévôté et Vicomté de Paris, à contribuer pour faire faire clôture faisant séparations de leurs maisons, cour, et jardins assis esdites Villes et Fauxbourgs, jusqu'à la hauteur de dix pieds de haut du rez de chaussée compris le chaperon. (Voyez l'article suivant, et les 196, 205, 211.

ART. 210.—Hors les dites Villes, et Faubourgs, on ne peut contraindre son voisin à faire mur de nouvel séparant les cours et jardins : mais bien le peut-on contraindre à l'entretennement et réfection nécessaire des murs anciens selon l'ancienne hauteur des dits murs, si mieux le voisin n'aime quitter le droit de mur et la terre sur laquelle il est assis. (Voyez l'article précédent et les deux articles suivans.

ART. 211.—Tous murs séparant cours et jardins, sont réputés mitoyens, s'il n'y a titre au contraire. Et celui qui veut faire bâtir nouvel mur ou refaire l'ancien corrompu, peut faire appeller son voisin pour contribuer au bâtiment ou réfection du dit mur, ou bien lui accorder lettres que le dit mur soit tout sien. (Voyez les articles 194, 195, 198, 203, 204, 205, 209, 214.

ART. 212.—Et néanmoins ès cas des deux précédens articles, est le dit voisin reçu, quand bon lui semble, à demander moitié du dit mur bâti et fonds d'icelui. ou à rentrer en son premier droit en remboursant moitié du dit mur et fonds d'icelui. (Voyez les deux articles précédens.)

ART. 213.—Le semblable est gardé pour la réfection, vuidanges et entretennemens des anciens fossés communs et mitoyens. (Voyez l'article précédent et le 210.)

ART. 214.—Filets doivent être faits accompagnés de pierres, pour connaître que le mur est mitoyen, ou à un seul. (Voyez l'article 211.)

ART. 215.—Quand un père de famille met hors ses mains partie de sa maison, il doit spécialement déclarer quelles servitudes il retient sur l'héritage qu'il met hors ses mains, ou quelles il constitue sur le sien : et les faut nommément et spécialement déclarer, tant pour l'endroit, grandeur, hauteur, mesure, qu'espèce de servitude. Autrement toutes constitutions générales de servitudes sans les déclarer comme dessus, ne valent. (Voyez l'article suivant, et le 186.)

ART. 216.—Destination of the father of a family is equivalent to a title, when it is or has been written, and not otherwise. (See the preceding Art. and 93 and 186.)

ART. 217.—Nobody can have ditches of water or sinks, if there is not six feet full distance in every direction from the walls belonging to the neighbour's or partition wall. (See Arts. 191, 213.)

ART. 218 and 219.—(Not followed.)

TITLE X.—SUMMARY.

Art. 220, *Matrimonial community.* 221, *Moveable debts of the community.* 222, *How conjuncts are liberated from them.* 223, *Married women cannot sell.* 224, *Cannot plead.* 225, *Power of the husband.* 226, *Restrictions.* 227, *Leases.* 228, *How far she can be bound.* 229, *Division af thecommunity.* 230, *Usufruct the property of the heirs of the deceased.* 231, *Fruits of the lineal property.* 232, *Alienation of the lineal property.* 233, *Moveable and possessory actions of the wife.* 234, *If a married woman can bind herself.* 235, *How a wife is reputed a public merchant.* 236, *Public merchant.* 237, *How a widow can renounce the community.* 238, *Not followed.* 239, *Married Minors.* 240, *Continuation of community for want of making an Inventory.* 241, *Must be closed within three months.* 242, *By what proportions the community is continued.* 243, *If any of the children die during the continuation.* 244, *Rents paid during the community.* 245, *Consequence.* 246, *In case of gift to one of the conjuncts.*

COMMUNITY OF PROPERTY.

ART. 220.—Men and women joined by marriage have an equal share in the moveable property and conquests immoveable acquired during the said marriage and the community commences from the day of the espousal and nuptial blessing. (See Arts. 229, 237, 239, 244, 246, 232.)

ART. 221.—On account of which community the husband is personally bound for the moveable debts due by his wife, and can be legally prosecuted for the same during their marriage and likewise the wife is bound after the decease of her husband, to pay the half of the moveable debts made and contracted by the said husband as well during the marriage as before it; and that, to the amount of the community as will be hereafter mentioned. (See Arts. 228, 237, 244, and 245.)

ART. 222.—Although it should be agreed between two conjuncts that they will separately pay their debts contracted before their marriage, yet, notwithstanding, they are bound if there is no inventory made before, in which case they are liberated on representing the inventory or the estimation of it. (See Arts. 228, 239, and 241.)

ART. 216.—Destination de père de famille vaut titre quand elle est, ou a été par écrit, et non autrement. (Voyez l'article précédent, et les 93, 186.)

ART. 217.—Nul ne peut faire fossés à eaux ou cloaques, s'il n'y a six pieds de distance en tous sens des murs appartenant au voisin, ou mitoyens. (Voyez les articles 191, 213.)

ARTS. 218, 219.—(Nuls.)

TITRE X.—SOMMAIRE.

Art. 220, *Communauté par mariage.* 221, *Dettes mobiliaires de la communauté.* 222, *Comment les conjoints en sont libérés.* 223, *Femme mariée ne peut vendre.* 224, *Ne peut ester en justice.* 225, *Pouvoir du mari.* 226, *Restrictions.* 227, *Baux.* 228, *Jusqu'à quel point il peut être tenu.* 229, *Division de la communauté.* 230, *Usufruit, la propriété des héritiers du défunt.* 231, *Fruits de la propriété de ligne.* 232, *Aliénation de la propriété de ligne.* 233, *Actions mobilières et possessoires de la femme.* 234, *Si une femme mariée peut obliger.* 235, *Comment une femme est réputée marchande publique.* 236, *Marchande publique.* 237, *Comment une veuve peut renoncer à la communauté.* 238, (*Nul.*) 239, *Mineurs mariés.* 240, *Continuation de la communauté par défaut d'inventaire.* 241, *Doit être clos dans les trois mois.* 242, *En quelles proportions la communauté est continuée.* 243, *Si aucun des enfans meure durant la continuation.* 244, *Rentes payées durant la communauté.* 245, *Conséquence.* 146, *Au cas de donation à l'un des conjoints.*

COMMUNAUTÉ DE BIENS.

ART. 220.—Homme et femme conjoints ensemble par mariage, sont communs en biens meubles et conquêts immeubles, faits durant et constant le dit mariage. Et commence la communauté au jour des épousailles et bénédiction nuptiale. (Voyez les articles 229, 237, 239, 244, 246, 282.)

ART. 221.—A cause de laquelle communauté, le mari est tenu personnellement payer les dettes mobiliaires dues à cause de sa femme, et en peut être valablement poursuivi durant leur mariage. Et aussi la femme est tenue, après le trépas de son mari, payer la moitié des dettes mobiliaires faites et accrues par le dit mari, tant durant le dit mariage qu'auparavant icelui. Et ce jusqu'à la concurrence de la communauté, comme il sera dit ci-après. (Voyez l'article suivant, et les 228, 237, 244, 245.)

ART. 222.—Combien qu'il soit convenu entre deux conjoints, qu'ils payeront séparément leurs dettes auparavant leur mariage : ce néanmoins ils en sont tenus, s'il n'y a inventaire préalablement fait : auquel cas ils demeurent quittes, représentant l'inventaire ou l'estimation d'icelui. (Voyez les articles 228, vers la fin ; 237, 241.)

ART. 223.—A married woman cannot sell, alienate nor mortgage her estates without the authority and express consent of the husband; and if she makes any contract without the authority and consent of her husband, such contract is null as well with regard to herself as her husband; and she cannot be sued nor her heirs, after the decease of the husband. (See the following Arts. and Arts. 234, 235, and 236.)

ART. 224.—The wife cannot act in court without the consent of her husband, if she is not authorised or legally separated and the said separation have taken place. (See the preceding Art. and Arts. 234, and 236.)

ART. 225.—The husband is Seignior of the moveable and conquests immoveable acquired by him during the marriage of him and his wife in such manner that he can sell, alienate or mortgage them and make use of and dispose of them by donation or other disposition *entre vifs* at his pleasure and will them without the consent of his said wife to a person capable of receiving and witnout fraud. (See Arts. 233, 283, and 296.)

ART. 226.—The husband cannot sell, exchange, divide or sell by auction, charge, oblige nor mortgage the proper estate of his wife without being authorised by her for that purpose. (See the preceding Art. and 233.)

ART. 227.—But the husband may lease or rent for six years, estates situate at Paris, and for nine years estates situate in the country and for a less period of time without fraud. (See the preceding Art.)

ART. 228.—The husband cannot, by contract and obligation made before or during the marriage, oblige his wife without her consent for more than the amount that she or her heirs receive from the community; provided always, that after the decease of one of the conjuncts legal inventory be made, and that there has been no fault nor fraud on the part of the wife or her heirs. (See Arts. 221, 222, 233, and 237.)

ART. 229.—After the decease of one of the conjuncts the property of the community is divided in such manner that half belongs to the survivor and the other half to the heirs of the deceased. (See the two following Arts. 220, 227, and 240.)

ART. 230.—The said half of conquests coming to the heirs of the deceased is the *propre* estate of the said heirs, so much so, that if the said heirs die without heirs of their body the said half returns to the nearest heir of the line and side from which the said half came, which property the father and mother, grand father and grand mother succeeding to their children, shall have and enjoy by usufruct during their lives in case there are no descendants of the Purchaser. (See Arts. 314, and 326.)

ART. 231.—The fruits of estates propres growing at the time of the decease of one of the conjuncts, belong to him to whom the said estate comes, on the charge of paying half of the tilling and sowing. (See Arts. 59, 92 and 94.)

ART. 223.—La femme mariée ne peut vendre, aliéner, ni hypothéquer ses héritages, sans l'autorité et consentement exprès de son mari. Et si elle fait aucun contrat sans l'autorité et consentement de son dit mari, tel contrat est nul, tant pour le regard d'elle, que de son dit mari, et n'en peut être poursuivie, ni ses héritiers, après le décès de son dit mari. (Voyez les deux articles suivans, et les 234, 235, 236.)

ART. 224.—Femme ne peut ester en jugement sans le consentement de son mari, si elle n'est autorisée ou séparée par justice, et la dite séparation exécutée. (Voyez l'article précédent, et les dits 234, 236.)

ART. 225.—Le mari est seigneur des meubles et conquêts immeubles par lui faits durant et constant le mariage de lui et sa femme. En telle manière qu'il les peut vendre, ou hypothéquer, et en faire et disposer par donation ou autre disposition faite entre vifs à son plaisir et volonté, sans le consentement de sa dite femme, à personne capable, et sans fraude. (Voyez les articles 233, 283, 296.)

ART. 226.—Le mari ne peut vendre, échanger, faire partage ou licitations charger, obliger, ni hypothéquer le propre héritage de sa femme, sans le consentement de sa dite femme, et icelle de par lui autorisée à cette fin. (Voyez l'article suivant, et le 233.)

ART. 227.—Peut toutefois le mari faire baux à loyer, de maison à six ans pour héritages assis à Paris, et à neuf ans pour héritages assis aux champs, et audessous, sans fraude. (Voyez l'article précédent.)

ART. 228.—Le mari ne peut par contrat et obligation, faite devant ou durant le mariage, obliger sa femme sans son consentement, plus avant que jusqu'à la concurrence de ce qu'elle, ou ses héritiers, amendent de la communauté, pourvu toutefois qu'après le décès de l'un des conjoints, soit fait loyal inventaire, et qu'il n'y ait faute ou fraude de la part de la femme ou de ses héritiers. (Voyez en la fin des articles 221, 222, 233, et 237.)

ART. 229.—Après le trépas de l'un des dits conjoints, les biens de la dite communauté se divisent en telle manière, que la moitié en appartient au survivant, et l'autre moitié aux héritiers du trépassé. (Voyez les deux articles suivans, et les 220, 227, 240.)

ART. 230.—Laquelle moitié des conquêts avenue aux héritiers du trépassé, est le propre héritage des dits héritiers. Tellement que si les dits héritiers vont de vie à trépas sans hoirs de leurs corps, icelle moitié retourne à leur plus prochain héritier du côté et ligne de celui des dits mariés, par le trépas duquel leur est advenue la moitié: desquels biens toutefois les père ou mère, aïeul ou aïeule succédant à leurs enfans, jouiront par usufruit leur vie durant : au cas qu'il n'y ait aucun descendant de l'acquereur. (Voyez les articles 314, 326, au commencement.)

ART. 231.—Les fruits des héritages propres, pendants par les racines au tems du trépas de l'un des conjoints par mariage, appartiennent à celui auquel advient le dit héritage, à la charge de payer la moitié des labours et semences. (Voyez les articles 59, vers la fin; 92, 94.)

ART. 232.—If during the marriage any estate or rent propre is sold belonging to one of the conjuncts—or if the said rent be recovered, the price of the sale or recovery is retaken upon the property of the community to the profit of him to whom the said estate or rent belongs although no agreement is mentioned in the sale for the employment of the monies or recompense and no declaration made respecting it. (See Arts. 244, and 282.)

ART. 233.—The husband is master of the moveables and possessory actions even if they proceed from the part of the wife. And the said husband can act alone and prosecute the said rights and actions without the wife. (See Arts. 225, 226, and 228.)

ART. 234.—A married woman cannot bind herself without the consent of her husband if she is not separated or a merchant, in which case, being a merchant, she binds both herself and her husband to the acts of her commerce as a merchant. (See Arts. 223, and 224.)

ART. 235.—The wife is not reputed a Public merchant for the sale of merchandise in which the husband is concerned, but is reputed Public merchant when she trades separate and a part from her husband. (See the preceding and the Art. 236 following ditto.)

ART. 236.—A married woman, being a Public merchant, can bind herself without her husband respecting the acts and expenses of her trade. (See the two preceding Arts.)

ART. 237.—It is lawful for a woman to renounce if she think proper, after the death of her husband to the community of the property between her and her said husband the same being entire, and in so doing the widow is liberated from the moveable debts due by her husband on the day of his death, on making a good and legal Inventory. (See Arts. 228, 240, and 341.)

ART. 238.—(Not followed.)

ART. 239.—Men and women conjuncts by marriage, are reputed to enjoy their rights to have the administration of their property but not sell, engage or alienate their immoveables during their minority. (See Arts. 32, 258, 272, and 293.)

ART. 240.—When one of the two conjuncts by marriage dies and leaves any minor children of the said marriage, if the survivor of the two conjuncts does not make an inventory in due form of the property which was in common during the said marriage, and at the time of the decease, whether moveables or conquests immoveable, the child or children surviving can, if they think proper, demand community of all the property, moveables and conquests immoveable of the survivor, if he remarries. (See Arts. 242, 243, and 297.)

ART. 241.—And for the dissolution of the community, it is requisite that the said inventory be made and perfected at the charges of the survivors closing the said inventory, within three months after it has been made, otherwise and in default of the survivors so doing, the community is continued at the option of the children. (See Art. 237.)

ART. 232.—Si durant le mariage est vendu aucun héritage ou rente propre, appartenant à l'un ou à l'autre des conjoints par mariage, ou si la dite rente est rachetée, le prix de la vente ou rachat est repris sur les biens de la communauté, au profit de celui auquel appartenait l'héritage ou rente: encore qu'en vendant n'eut été convenu de remploi ou récompense: et qu'il n'y ait aucune déclaration sur ce faire. (Voyez les articles 244, 282.)

ART. 233.—Le mari est Seigneur des actions mobiliaires et possessoires, posé qu'elles procèdent du côté de sa femme: et peut le mari agir seul, et déduire les dits droits et actions en jugement sans sa dite femme. (Voyez les articles 225, 226, 228.)

ART. 234.—Une femme mariée ne se peut obliger sans le consentement de son mari, si elle n'est séparée par effet ou marchande publique, auquel cas étant marchande publique, elle s'oblige et son mari touchant le fait et dépendance de la dite marchandise publique. (Voyez les deux articles suivans, et les 223, 224.)

ART. 235.—La femme n'est réputée marchande publique pour débiter la marchandise dont son mari se mêle: mais est réputée marchande publique quand elle fait marchandise séparée, et autre que celle de son mari. (Voyez l'article précédent, et le suivant.)

ART. 236.—La femme marchande publique se peut s'obliger sans son mari, touchant le fait et dépendance de la dite marchandise. (Voyez les deux articles précédens.)

ART. 237.—Il est loisible à toute femme noble ou non noble de renoncer (si bon lui semble) après le trépas de son mari, à la communauté des biens d'entr'elle et son dit mari, la chose étant entière: et en ce faisant demeurer quitte des dettes mobiliaires dues par son dit mari au jour de son trépas, en faisant faire bon et loyal inventaire. (Voyez les articles 228, sur la fin; 240, 241.)

ART. 238.—(Nul.)

ART. 239.—Homme et femme conjoints par mariage, sont réputés usans de leurs droits, pour avoir l'administration de leurs biens, et non pour vendre, engager, ou aliéner leurs immeubles, pendant leur minorité. (Voyez les articles 32, 258, 272, en la fin; 293.)

ART. 240.—Quand l'un des deux conjoints par mariage va de vie à trépas, et délaisse aucuns enfans mineurs du dit mariage, si le survivant des deux conjoints ne fait faire inventaire, avec personne capable et légitime contradicteur des biens qui étaient communs durant le dit mariage, et au tems du trépas, soit meubles ou conquêts immeubles, l'enfant, ou enfans survivans, peuvent si bon leur semble, demander communauté en tous les biens, meubles, conquêts et immeubles du survivant. Posé qu'icelui survivant se remarie. (Voyez les articles 242, 243, 297, en la fin.)

ART. 241.—Et pour la dissolution de la communauté, faut que le dit inventaire soit fait et parfait, et à la charge de faire clore le dit inventaire par le survivant, trois mois après qu'il aura été fait: Autrement et à faute de ce faire par le survivant, est la communauté continuée si bon semble aux enfans. (Voyez l'article précédent et le suivant; avec le 237, en la fin.)

ART. 242.—If the survivor remarries again the said community is continued between them for one third, so that the children have a third, the husband and the wife each another third and if each of them have children of a former marriage, the said community is continued by fourths and the said community multiplied if there are children of each marriage, and is divided equally; so that the children of each marriage have but one share in the community in case they have not made an inventory as above said. (Arts. 240, and 253.)

ART. 243.—If any of the children who have continued the community die, or all but one, the survivors or the surviving of them continues the said community and takes as much as if all the children were living. (See the preceding Art. and 254.)

ART. 244.—When any rent due by one of the conjuncts by marriage or upon his estates before their marriage, is purchased by the said two conjuncts, or one of them during their marriage, such purchase is reputed conquest. (See the following Arts. and 155 and 222.)

ART. 245.—And the heir or possessor of the estate subject to the rent, is bound to continue the half of the said rent and pay the arrears from the day after the decease until the entire purchase. (See the preceding Art. and 232.)

ART. 246.—Immoveable property given to one of the conjuncts during their marriage with stipulation that it shall be *propre* to the *donee*, does not fall in the community, but if it is given simply and without any stipulation to one of the conjuncts, it is common, save and except the donations made in the direct line which do not fall in the community.

TITLE XI.—SUMMARY.

Art. 247, *Customary Dower.* 248, *Of what consists.* 249, *It is the property of the children.* 250, *Renouncing.* 251, *None can have the dower and inheritance together.* 252, *Must return whatever he received of the inheritance.* 253, *In case there are many children.* 254, *Is not encreased by the death of the children of a first marriage.* 255, *It is the proper inheritance of the children.* 256, *It seizes.* 257, *Prefix dower of a sum of money.* 258, *Counter letters are null.* 259, *How reputed moveable.* 260, *From what share taken.* 261, *Prefix dower excludes the Customary.* 262, *Repairs due by the dowager.* 263, *It is the property of the heirs of the husband.* 264, *Of the security for the dower.*

OF DOWER.

ART. 247.—A married woman is endowed with a customary dower, even if it has not been expressed or created in the marriage contract nor any dower mentioned. (See the following Art. and Arts. 220, 253, 256, 261, 262, and 263.)

ART. 242.—Si le survivant se remarie, la communauté est continuée entr'eux pour un tiers. Tellement que les enfans ont un tiers, le mari et la femme chacun un autre tiers : et si chacun d'eux a enfant d'autre précédent mariage, la dite communauté se continue par quart, et est la dite communauté multipliée, s'il y avait d'autres lits, et se partit également. En sorte que les enfans de chacun mariage ne font qu'un chef en la dite communauté. Le tout au cas qu'ils n'eussent fait inventaire comme dessus est dit. (Voyez les articles 240, et 253.)

ART. 243.—Si aucun des enfans qui ont continué la communauté meurt, ou tous, hors un, les survivans, ou survivant d'iceux enfans, continuent la dite communauté : et prennent autant que si tous les dits enfans étaient vivans. (Voyez l'article précédens, et le 254.)

ART. 244.—Quand aucune rente due par l'un des conjoints par mariage, ou sur ses héritages, paravant leur mariage, est rachetée par les dits deux conjoints, ou l'un des deux constant le dit mariage, tel rachat est réputé conquêt. (Voyez l'article suivant et les 155, vers le commencement, 232.)

ART. 245.—Et est tenu l'héritier ou détenteur de l'héritage sujet à la rente, continuer la moitié de la dite rente, et payer les arrérages du jour du décès, jusqu'à l'entier rachat. (Voyez l'article précédent, et le dit 232.)

ART. 246.—Chose immeuble donnée à l'un des conjoints pendant leur mariage, à la charge qu'elle sera propre au donataire, ne tombe en communauté. Mais si elle est donnée simplement à l'un des conjoints, elle est commune, hors et excepté les donations faites en ligne directe, lesquelles ne tombent en communauté. (Voyez les articles 53, 93, 220, et 278.)

TITRE XI.—SOMMAIRE.

Art. 247, *Douaire coutumier.* 248, *En quoi consiste.* 249, *Est la propriété des enfants.* 250, *Renonçant.* 251, *Nul ne peut être héritier et douairier tout ensemble.* 252, *Doivent faire rapport de ce qu'ils peuvent avoir reçu d'héritage.* 253, *Au cas qu'il y ait plusieurs enfants.* 254, *N'est pas augmenté par la mort d'un des enfants d'un premier mariage.* 255, *Est le propre héritage des enfants.* 256, *Il saisit.* 257, *Douaire préfix d'une somme d'argent.* 258, *Contre-lettres lettres nulles.* 259, *Comment réputé mobilier.* 260, *Sur quelle part se prend.* 261, *Douaire préfix exclut douaire coutumier.* 262, *Réparations dues par le douairier.* 263, *Est la porpriété des héritiers du mari.* 264, *De la sureté du douaire.*

DES DOUAIRES.

ART. 247.—Femme mariée est douée de douaire coutumier ; Posé que par exprès, au traité de son mariage ne lui eût été constitué, ni octroyé aucun douaire. (Voyez l'article suivant ; et les 220, 253, 256, 261, 262, et 263.)

ART. 248.—Customary dower is the half of the estates which the husband holds and possesses on the wedding day and nuptial blessing and half the estates which after the consummation of the said marriage and during it, accrue and come in direct line to the said husband. (See the preceding Art. and 253.)

ART. 249.—The customary dower of the wife is the *propre* estate of the children of the said marriage in such manner that the father and mother of the said children from the time of their marriage, cannot sell, engage, nor mortgage it to the prejudice of their children. (See Arts. 77, 177, 255, 256, and 263.)

ART. 250.—If the children coming from the said marriage do not claim as heirs of their father and abstain from taking the succession, in that case the dower belongs to the said children purely and simply, without paying any of the debts proceeding from their father, created since the said marriage. The dower is divided, either prefix or customary, between them without right of seniority or prerogative. (See Arts. 13, 29, and 310.)

ART. 251.—No body can take as heir to his father and receive the dower with respect to the customary and prefixed dower. (See Arts. 261 and 300.)

ART. 252.—He who wishes to have the dower ought to return and restore what he has had and received in marriage, and other advantage received from his father or deduct it from the dower. (See Arts. 276, and 304.

ART. 253.—When the father has been married several times, the customary dower of the children of the first marriage is the half of the immoveables which he had when he first married and which have come to him during the said marriage in direct line and the customary dower of the children of the second marriage is the fourth part of the said immoveables together with half as well of the portion of the conquests belonging to the husband acquired during the said first marriage as the *acquets* made by him since the dissolution of the first marriage until the day of the consummation of the second and the half of the immoveables coming to him in the direct line during the said second marriage and so consequently of other marriages. (See Arts. 242, and 248.)

ART. 254.—If the children of the first marriage die before their father during the second marriage, the widow and the other children of the said second marriage surviving them, have only the dower which they would have had if the children of the first marriage were living, so that by the death of the children of the said first marriage, the dower of the wife and children of the second marriage is not increased and so consequently of the other marriages. (See the preceding Art. and 243.)

ART. 255.—The dower constituted by the husband, his relations or others for him, is the *propre* estate of the children issue of the said marriage, to enjoy the same after the death of their father and mother as soon as the dower takes place. (See the following Arts. also 117, and 249.)

ART. 248.—Douaire coutumier est de la moitié des héritages que le mari tient et possède au jour des épousailles, et bénédiction nuptiale; et de la moitié des héritages qui depuis la consommation du dit mariage, et pendant icelui, échéent et adviennent en ligne directe au dit mari. (Voyez l'article précédent, et le 253.)

ART. 249.—Le Douaire coutumier de la femme, est le propre héritage des enfans venans du dit mariage: en telle manière, que les pères et mères des dits enfans, dès l'instant de leur mariage, ne le peuvent vendre, engager, ni hypothéquer au préjudice de leurs enfans. (Voyez les articles 17, au milieu; 117, 255, 256, 263.)

ART. 250.—Si les enfans venans du dit mariage, ne se portent héritiers de leur père, et s'abstiennent de prendre la succession, en ce cas le dit douaire appartient aux dits enfans, purement et simplement, sans payer aucunes dettes, procédant du fait de leur père, créées depuis leur mariage. Et se partit le douaire, soit préfix ou coutumier, entr'eux, sans droit d'aînesse ou prérogative. (Voyez les articles suivans; et les 13, 27, 319.)

ART. 251.—Nul ne peut être héritier et douairier ensemble, pour le regard de douaire coutumier ou prèfix. (Voyez l'article précédent avec le suivant; et les 261 et 300.)

ART. 252.—Celui qui veut avoir le douaire doit rendre et restituer ce qu'il a eu et reçu en mariage, et autres avantages de son père, ou moins prendre sur le douaire. (Voyez les articles 278, 304.)

ART. 253.—Quand le père a été marié plusieurs fois, le douaire coutumier des enfans du premier lit, est la moitié des immenbles qu'il avait lors du dit premier mariage, et qui lui sont avenus pendant icelui mariage, en ligne directe. Et le douaire coutumier des enfans du second lit, du quart des dits immeubles; ensemble moitié tant de la portion des conquêts appartenans au mari, faits pendant le dit premier mariage, que des acquêts par lui faits depuis la dissolution du dit premier mariage, jusqu'au jour de la consommation du second, et la moitié des immeubles qui lui échéent en ligne directe pendant le dit second mariage; et ainsi conséquemment des autres mariages. (Voyez l'article 242 et 248.)

ART. 254.—Si les enfans du premier mariage meurent avant leur père, pendant le second mariage, la veuve et autres enfans du dit second mariage les survivans, n'ont que tel douaire qu'ils eussent eu, si les enfans du dit premier mariage, étaient vivans: tellement que par la mort des enfants du dit premier mariage, le douaire de la femme et enfans du dit second mariage, n'est augmenté; et ainsi conséquemment des autres mariages. (Voyez l'article précédent, et le 243.)

ART. 255.—Le douaire constitué par le mari, ses parens ou autres de par lui, est le propre héritage aux enfans issus du dit mariage; pour d'icelui jouir apres le trépas de père et mére incontinent que douaire a lieu. (Voyez les articles suivans; et les 117, 249.)

ART. 256.—Dower whether customary or prefix is transmitted without any necessity of prosecuting for the same and the fruits and arrears accrue from the day of the decease of the husband. (See the preceding Art. also 285 and 318.)

ART. 257.—The wife endowed with a prefix dower of a sum of money or a rent, if during the marriage a mutual gift is made, she enjoys after the decease of her husband, by usufruct, the part of the moveables and conquests of her husband; and on the surplus of the property of the said husband, takes her said dower without any deduction or confusion. (See Arts. 40, 248, 260, 280.)

ART. 258.—All counter letters made separately and not in the presence of the relations who assisted at the marriage contract are null. (See Art. 182.)

ART. 259.—Dower of a sum of money paid to the children is reputed moveable and loses the nature of dower and the nearest heirs of the moveable property succeed to it. (See Arts. 94, 311, and 325.)

ART. 260.—Prefix dower whether of rent or money is taken from the part of the husband without any confusion of the community and separate. (See Arts. 40, and 257.)

ART. 261.—The wife endowed with the prefix dower cannot demand the customary dower, if it is not given to her by the contract of marriage. (See Arts. 251, and 257.)

ART. 262.—The wife who takes the customary dower is bound to preserve the estates by repairing them during her life; which repairs are those that are necessary to preserve the same, not including the four large walls, beams and coverings and vaults. (See Arts. 267 and 287.)

ART. 263.—The Dower whether in kind, rent or money, promised to a woman is hers during her life time only, if there are are no children born and procreated during the said marriage. And such dower ought after the death of the woman to return to the heirs of the husband, if there is no contract to the contrary. (See Arts. 249 and 314.)

ART. 264.—And in case the wife does not marry again, the said dower ought to be delivered to her on her giving her own personal security but if she marries she will be oblige to give good and sufficient security. (See Arts. 39, 268, 276 and 285.)

TITLE XII.

OF THE NOBLE GUARDIANSHIP AND BOURGEOISE.

This title is composed of Articles 265, 266, 267, 268, 269, 270, and 271.—(Are not followed.)

ART. 256.—Douaire soit coutumier ou préfix, saisit sans qu'il soit besoin de le demander en jugement. Et courent les fruits et arrérages du jour du décès du mari. (Voyez l'article précédent, et les 285, 318.)

ART. 257.—La femme douée de douaire préfix d'une somme de deniers pour une fois, ou d'une rente, si durant le mariage est fait don mutuel, jouit après le trépas de son mari par usufruit de la part des meubles et conquêts de son dit mari ; et sur le surplus des biens du dit mari, prend son dit douaire, sans aucune diminution, ni confusion. (Voyez les articles 40, 248, 260, 280.)

ART. 258.—Toutes contre-lettres faites à part, et hors la présence des parens qui ont assisté aux contrat de mariage, sont nulles. (Voyez l'article 182.)

ART. 259.—Douaire d'une somme de deniers pour une fois payer venue aux enfans, est réputé mobilier, et perd la nature de douaire, et y succédent les plus proches héritiers mobiliers. (Voyez les articles 94, 311 et 325, au milieu.)

ART. 260.—Douaire préfix, soit en rente ou deniers, se prend sur la part du mari, sans aucune confusion de la communauté, et hors part. (Voyez les articles 40 et 257, en la fin.)

ART. 261.—Femme douée de douaire préfix, ne peut demander douaire coutumier, s'il ne lui est permis par son traité de mariage. (Voyez les articles 251, 257.)

ART. 262.—La femme qui prend douaire coutumier, est tenue entretenir les héritages de réparations viagères, qui sont toutes réparations d'entretenemens, hors les quatre gros murs, poutres, et entières couvertures et voûtes. (Voyez l'article 267, vers la fin ; 287.)

ART. 263.—Le douaire, soit en espèce, rente, ou deniers, n'est qu'à la vie de la femme tant seulement, s'il n'y a enfans nés et procréés du mariage. Et doit tel douaire après le trépas de la femme revenir aux héritiers du mari, s'il n'y a contrat au contraire. (Voyez les articles 249, et le 314, en la fin.)

ART. 264.—Et au cas que la dite femme ne se remarie, aura délivrance de son dit douaire à sa caution juratoire. Mais si elle convole en autre mariage, sera tenue bailler bonne et suffisante caution. (Voyez les articles 39, 268, vers la fin ; 276, en la fin, et 285.)

TITRE XII.

DE GARDE NOBLE, ET BOURGEOISE.

Ce titre est composé des Articles 265, 266, 267, 268, 269, 270 et 271.—(N'est pas suivi.)

TITLE XIII.—SUMMARY.

Art. 272, *Who can give inter vivos.* 273, *Give and retain.* 274, *Interpretation.* 275, *What if the usufruct is retained.* 276, *If minors.* 277, *Inter vivos.* 278, *Of things reputed given in advance of inheritance.* 279, *Woman who re-marries having children.* 280, *Of the mutual gift between married persons.* 281, *Lawful condition to be made.* 282, *Mutual gift.* 283, *Prohibition.* 284, *Explanation.* 285, *Conditions.* 286, *Advance.* 287, *Repairs.* 288, *New apprisal of moveables.*

OF DONATIONS AND MUTUAL GIFT.

ART. 272.—It is lawful for all persons of twenty-five(1) years of age and of sound mind to give and dispose by donation and disposition *entre vifs* of all his moveables and estates, *propres*, *acquets* and *conquêts*, to a person capable of receiving, and notwithstanding, he who marries and who has obtained the benefit of age can, having the age of twenty, dispose of his moveables. (See Arts. 239, 276, 277, 283, 293 and 294.)

ART. 273.—To give and retain is not a valid act.

ART. 274.—It is to give and retain when the donor reserves to himself the right to dispose freely of the thing which he gives, or that he retains it in his possession until the day of his decease. (See the following Art. and 215.)

ART. 275.—It is not to give and retain when one gives the property of any estate reserving to one self the usufruct for life or for a time, or when there is a clause of *constitut* or *précaire*, such donation is valid. (See the end of the preceding Art. and 115.)

ART. 276.—Minors and other persons being under the power of others cannot give, bequeath directly or indirectly, to the advantage of their tutors, curators, pedagogues or other administrators, during the time of their administration and until they have rendered an account, but they may dispose to the benefit of their father and mother, grandfather and grandmother, or other ascendants; although, they should be in the above capacity, provided that at the time of the will and death of the said testator, the said father and mother or other ascendants are not re-married. (See the end of Art. 268, and Arts. 272, 293, and 294.)

ART. 277.—All donations, although made *inter vivos*, by persons being in bed sick, of which sickness they die, are reputed made on account of death and testamentary and not *entre vifs*. (See Arts. 272, 280, and 292.)

ART. 278.—Moveables or immoveables given by father or mother to their children are reputed given in advance of their inheritance. (See Arts. 246, 304, and 308.)

(1) Now twenty-one years.

TITRE XIII.—SOMMAIRE.

Art. 272, *Qui peut donner entre vifs.* 273, *Donner et retenir ne vaut.* 274, *Comment s'entend donner et retenir.* 275, *Quant il y a retention d'usufruit.* 276, *Des mineurs.* 277, *Inter vivos.* 278, *Donation comment reputée testamentaire.* 278, *Quelle chose reputée donnée en avancement d'hoirie.* 279, *Femme qui se remarie ayant enfants.* 280, *Donation mutuelle entre mariés.* 281, *Convention licite entre elles.* 282, *Don mutuel.* 283, *Prohibition.* 284, *Explication.* 285, *Conditions.* 286, *Que doit avancer le donataire mutuel.* 287, *Réparations dont il est tenu.* 288, *Nouvelle prisée.*

DES DONATIONS ET DON MUTUEL.

ART. 272.—Il est loisible à toute personne âgée de vingt-cinq (1) ans accomplis, et saine d'entendement, donner et disposer par donation et disposition faite entre vifs, de tous ses meubles et héritages propres acquêts et conquêts, à personne capable. Et néanmoins celui qui se marie, ou qui a obtenu bénifice d'âge enthériné en justice, peut ayant l'âge de vingt ans accomplis, disposer de ses meubles. (Voyez les articles 239, 276, 277, 283, 293, 294.)

ART. 273.—Donner et retenir ne vaut. (Voyez l'article suivant, et le 106, au commencement.)

ART. 274.—C'est donner et retenir, quand le donateur s'est réservé la jouissance de disposer librement de la chose par lui donnée, ou qu'il demeure en possession, jusqu'au jour de son décès. (Voyez l'article suivant, et le 115, vers la fin.)

ART. 275.—Ce n'est donner et retenir, quand l'on donne la propriété d'aucun héritage, retenu à soi l'usufruit à vie ou à tems, ou quand il y a clause de constitut ou précaire: Et vaut telle donation. (Voyez l'article précédent, et le 115, en la fin.)

ART. 276.—Les mineurs et autres personnes étant en puissance d'autrui, ne peuvent donner ou tester directement ou indirectement, au profit de leurs tuteurs, curateurs, pédagogues, ou autres administrateurs, ou aux enfans des dits administrateurs, pendant le tems de leur administration, et jusqu'à ce qu'ils aient rendu compte. Peuvent toutefois disposer au profit de leur père, mère, aïeul, ou aïeule, ou autres ascendans, encore qu'ils soient de la qualité susdite, pourvu que lors du testament et décès du testateur, les dits père, mère, ou autres ascendans, ne soient remariés. (Voyez les articles 268, en la fin; 272, 293, 294.)

ART. 277.—Toutes donations, encore qu'elles soient conçues entre vifs, faites par personnes gissant au lit malades de la maladie dont ils décèdent, sont réputées faites à cause de mort, et testamentaires, et non entre vifs. (Voyez l'article 272, 280, 292.)

ART. 278.—Meubles ou immeubles donnés par père ou mère à leurs enfans sont réputés donnés en avancement d'hoirie. (Voyez l'article 246, en la fin; et les 304 et 308.)

(1) Actuellement vingt-un ans.

ART. 279.—A woman marrying a second time or oftener, having children, cannot enrich her second husband with her *propres* and *acquets* more than one of her children, and with regard to *conquêts* made with her former husband, cannot dispose of anything whatever to the prejudice of the portions which the children of the first marriage can claim from their mother, and notwitstanding the children of the subsequent marriages, succeed to the said *conquêts* with the children of the preceding marriages, equally coming to the succession of their mother; so, likewise the children of the preceding marriage succeed for their parts and portions to the *conquêts* made during the subsequent marriage; but if the said marriage be dissolved or that the children of the preceding marriage die, she can dispose of it as her own. (See the following Art.)

ART. 280.—Man and woman, joined by marriage, being in health may, and it is lawful to make mutual donation to one another equally, of all their property, moveables and *conquêts* immoveables, acquired during their marriage and which belong to them and are in common between them at the decease of one of them, for the survivor of the conjoints to enjoy the same only during his life on giving sufficient security to restore the said property after his decease, provided there are no children, either of the two conjoints or of one of them, at the decease of the first. (See Arts. 220, 238, 257, 283, and 284.)

ART. 281.—Fathers and mothers, marrying their children, can agree that their said children will allow the survivor of the said father and mother to enjoy the moveables and *conquêts* immoveables of the predeceased during the life of the survivor, provided that they do not marry again, and such agreement is not reputed an advantage to the said conjoints. (See Arts. 268, and 276.)

ART. 282.—Men and women, joined by marriage, during the marriage, cannot benefit one another by donation *entre vifs*, nor otherwise directly or indirectly, in any way whatever, except by mutual gift, as above mentioned. (See the two precedent Arts.; also 232, 258, 280, and 298.)

ART. 283.—Conjoints cannot give to the children of one another of a former marriage, in case they or one of them have children. (See the two following Arts.; also 279, 280, and 306.)

ART. 284.—A mutual gift of itself does not seize but is subject to deliverance; and to be valid, it ought to be registered within four months from the making of the contract, and the registry made by one of them is valid for both. After which registration, the said mutual gift is not revocable without the consent of the two conjoints. (See the following Art.; also 256, 280, and 318.)

ART. 285.—The mutual donee does not gain the fruits but from the day he has given sufficient security, and the fruits belong to the heirs until the said security is offered, which said security can be legally offered at the first notice. (See Arts. 61, 134, 256, and 318.)

ART. 286.—The mutual donee is held to advance and pay the obsequies and the funeral expenses of the first deceased, together with the part and half of the common debts due by the said first deceased, which obsequies and funeral ex-

ART. 279.—Femme convolant en secondes ou autres nôces, ayant enfans ne peut avantager son second mari, ou autre subséquent mari, de ses propres et acquêts plus que l'un de ses enfans. Et quant aux conquêts faits avec ses précédens maris, n'en peut disposer aucunement au préjudice des portions, dont les enfans des dits premiers mariages, pourraient amender de leur mère. Et néanmoins succèdent les enfans des subséquens mariages aux dits conquêts, avec les enfans des mariages précédens, également venans à la succession de leur mère. Comme aussi les enfans des précédents lits succèdent pour leurs parts et portions aux conquêts fait, pendant et constant les subséquens mariages. Toutefois si le dit mariage est dissolu, ou que les enfans du précédent mariage décèdent, elle en peut disposer comme de sa chose. (Voyez l'article suivant.)

ART. 280.—Homme et femme conjoints par mariage, étant en santé, peuvent et leur loit, faire donation mutuelle l'un à l'autre également de tous leurs biens, meubles et conquêts immeubles faits durant et constant leur mariage, et qui sont trouvés à eux appartenir, et être communs entr'eux à l'heure du trépas du premier mourant des dits conjoints : pour en jouir par le survivant d'iceux conjoints sa vie durant seulement, en baillant par lui caution suffisante de restituer les dits biens après son trépas : pourvu qu'il n'y ait enfans, soit des deux conjoints, ou de l'un d'eux lors du décès du premier mourant. (Voyez l'article 220, le 238 sur la fin, 257 au milieu, 283 en la fin, 284 au commencement, 285.)

ART. 281.—Père et mère mariant leurs enfans, peuvent convenir, que leurs dits enfans laisseront jouir le survivant de leurs dits père et mère, des meubles et conquêt du prédécédé, la vie durant du service, pourvu qu'ils ne se remarient. Et n'est réputé tel accord avantage entre les dits conjoints. (Voyez les deux articles suivans et sur la fin des 268, 276.)

ART. 282.—Homme et femme conjoints par mariage, constant icelui, ne peuvent avantager l'un l'autre par donation faite entre vifs, ni autrement, directement ni indirectement, en quelque manièreque ce soit, sinon par don mutuel, tel que dessus. (Voyez les deux articles précédens, et le suivant, avec les 232, 258, 280, 196.)

ART. 283.—Ne peuvent les dits conjoints donner aux enfans l'un de l'autre d'un premier mariage, au cas qu'ils, ou l'un d'eux, aient enfans. (Voyez les articles 279, 280, en la fin, et 306, au commencement.)

ART. 284.—Un don mutuel de soi ne saisit, ainsi est sujet à délivrance. Et pour être valable, doit être insinué dans les quatre mois du jour du contrat, et l'insinuation faite par l'un d'eux, vaut pour tous deux. Après laquelle insinuation, le dit don mutuel n'est révocable, sinon du consentement des deux conjoints. (Voyez l'article suivant, et les 256, 280, 318.)

ART. 285.—Le Donataire mutuel ne gagne les fruits, que du jour qu'il a présenté caution suffisante, et demeurent les fruits à l'héritier, jusqu'à la dite caution présentée : laquelle caution il peut présenter en jugement dès la première assignation. (Voyez l'article précédent, et les 61, 134, 256, 318.)

ART. 286.—Le Donataire mutuel est tenu avancer et payer les obsèques et funérailles du premier décédé ; ensemble la part et moitié des dettes communes dues par le dit premier décédé. Lesquelles obsèques et funérailles, et moitié des

pences and half of the debts, must be deducted from the half and portion of the first deceased. But he is not bound to pay the legacies and other testamentary dispositions. (See Arts. 267, 295, and 296.

ART. 287.—And also he who would enjoy the mutual gift is bound to make all necessary repairs to be made on the estates, subject to the said mutual gift, and pay the *cens* and annual charges, and the arrears as well of rents *foncières*, as other rents constituted during the community, due since the enjoyment of the said mutual gift, without hopes of recovery. (See Arts. 262, and 267.)

ART. 288.—The heir can demand of the donee that a new price be set upon the moveables by persons whom they agree upon, and to have the said moveables prized at a just estimation, different from that of the inventory, and in so doing, the said mutual donee will have the enjoyment of the said moveables, without being obliged to sell them. (See Arts. 58, 222, and 305.)

TITLE XIV.—SUMMARY.

Art. 289, *Of the form and division of wills.* 290, *Not followed.* 291, *Of the registers.* 292, *In whose favor and what property.* 293, *Of the age required.* 294, *Exception.* 295, *Propres.* 296, *The husband can only devise the half of the conquêts.* 297, *Of testamentary executors.* 298, *Of the legitime of children.*

WILLS AND EXECUTION OF WILLS.

ART. 289.—In order to make a solemn will, it is necessary that it be written and signed by the testator, or that it be passed before two Notaries, or before the Curate of the Parish of the testator or his Vicar General, and one Notary or by the said Curate or Vicar and three witnesses, or one Notary and two witnesses, being males, aged twenty years, and not legatees, and that it has been dictated and named by the testator to the said Notaries, Curate or Vicar General, it must afterwards be read to him in the presence of the said Notaries, Curate or Vicar General and witnesses, and that it be mentioned in the said will that it has been dictated and read, and that it be signed by the said testator and by the witnesses, or that mention be made why they could not sign. (See Arts. 63, and 293.)

ART. 290.—(Not followed.)

ART. 291.—And also the said Curates and Vicars General are bound to carry and cause to be carried every three months to the Register's office, as before mentioned, the registers of baptisms, marriages, wills and burials, on pain of all costs, damages and interests, and for this they do not pay anything at the Register's office. (1)

(1) Notified by 35 Geo. III., chapt. 4: and by Prov. Stat. 9 and 10 Geo. IV., Ministers of all denomination of Christians and Jews are allowed to keep registers. A duplicate of the said Registers is to be fyled once a year in the Court of Queen's Bench.

dettes, lui doivent être déduites sur la part et portion du dit premier décédé. Toutefois n'est tenu payer les legs et autres dispositions testamentaires. (Voyez l'article 267, vers le milieu, et plus bas, 295, en la fin; 296.)

ART. 287.—Aussi est tenu celui qui veut jouir du don mutuel, faire faire les réparations viagères étant à faire sur les héritages sujets au dit don mutuel: et payer les cens et charges annuelles, les arrérages tant des rentes foncières, que des autres rentes constituées pendant la communauté, échus depuis la jouissance du dit don mutuel, sans espérance de les recouvrer. (Voyez les articles 262, 267, vers le milieu ; et plus bas.)

ART. 288.—L'héritier peut demander à l'encontre du dit donataire, que nouvelle prisée soit faite des meubles par gens dont ils conviendront: pour être les dits meubles prisés à la juste estimation, autre que celle faite par l'inventaire. Et en ce faisant, le dit donataire aura la jouissance des dits meubles, sans qu'il soit tenu les faire vendre. (Voyez en la fin des articles 58, 222, 305.)

TITRE XIV.—SOMMAIRE.

Art. 289, *De la forme et division des testamens.* 290, *Non suivi.* 291, *Des régistres.* 292, *En faveur de qui et de quels biens.* 293, *De l'âge requis.* 294, *Exception.* 295, *Des propres.* 296, *Le mari ne peut léguer que la moitié des conquêts.* 297, *Des exécuteurs testamentaires.* 298, *De la légitime des enfants.*

DES TESTAMENS ET EXECUTION D'ICEUX.

ART. 289.—Pour réputer un testament solemnel, est requis qu'il soit écrit et signé du testateur, ou qu'il soit passé pardevant deux Notaires, ou pardevant le Curé de la paroisse du testateur, ou son Vicaire Général, et un Notaire: ou du dit Curé ou Vicaire, et trois témoins: ou d'un Notaire et deux témoins; iceux témoins idoines, suffisans, mâles, et âgés de vingt ans accomplis, et non légataires: et qu'il ait été dicté et nommé par le testateur aux dits Notaires, Curé ou Vicaire Général, et depuis à lui relu en la présence d'iceux Notaires, Curé, ou Vicaire Général, et témoins: et qu'il soit fait mention au dit testament, qu'il a été dicté, nommé et relu. Et qu'il soit signé par le dit testateur, et par les témoins: ou que mention soit faite de la cause pour laquelle ils n'ont pu signer. (Voyez les articles 63, 293.)

ART. 290.—(Non suivi.)

ART. 291.—Sont aussi tenus les dits Curés et Vicaires Généraux, de porter et faire mettre de trois mois en trois mois, ès Greffes comme dessus, les régistres des baptêmes, mariages, testamens, et sépultures, sur peine de tous dépens, dommages et intérêts. Et pour ce, ne doivent rien payer au Greffe. (Voyez l'article précédent.)(1)

(1) Modifié par un Acte de la 35ème Geo. III chap. 4 et par le Statut Prov. 9 et 10, Geo. IV, par lesquels il est permis aux ministres de toutes dénominations de chrétiens et même des juifs de tenir des régistres. Un duplicata desquels doit être filé au greffe de la Cour du Banc du Roi une fois l'année.

ART. 292.—All persons of sound mind, of age, and enjoying their rights, can dispose by testament and ordinance of last will to the advantage of persons capable of receiving, of all their goods moveables *acquêts* and *conquêts* immoveable and of the fifth part of all their *propres* estates and not more even if it was for a charitable use. (See the following Art. and Arts. 272, 294 (1)

ART. 293.—To bequeath moveables, *acquêts* and *conquêts* immoveables, twenty years of age is requisite, and to devise the fifth of the *propres* twenty-five years completed (*now twenty one.*)

ART. 294.—But if the Testator has neither moveables, *acquêts* or *conquêts* immoveable can in that case devise the fifth of his *propres*, after twenty years completed. (See the preceding and following Articles.)

ART. 295.—If the heir is content with taking the four-fifths of the *propres*, and leaves the moveables *acquêts* and *conquêts* immoveables with a fifth of the said *propres* to all the legatees, he can do so and in so doing he will remain possessed of the said four-fifths, and the legatees will take the surplus, the debts being always first paid, on all the property of the inheritance. (See Art. 298.)

ART. 296.—The husband by his will or ordinance of last will, cannot dispose of moveable property and *conquêts* immoveable common between him and his wife, to the prejudice of his said wife, nor the half of what may belong to her in the same by the death of her husband. (See Arts. 225, 282 and 286.)

ART. 297.—The testamentary executors are seized during the year and day from the death of the deceased, of the moveable property belonging to the deceased for the accomplishment of his will, if the Testator has not ordered that his executors shall be seized of certain sums only, and the said executor is bound to make an inventory in diligence as soon as the will has come into his hands, the apparent heir present or duly called. (See Arts. 228, 237, 240, 269, and 318.)

ART. 298.—The legitime is the half of such part and portion that each child would have had in the succession of his father and mother, grand father or grand mother, or other ancestors, if the said father and mother or other ancestors had not disposed thereof, by donation *entre vifs* or last will, deducting the debts and funeral expenses. (See Arts. 17, 295 and 307.)

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(1) By the Act Geo. III. cap. 83, every proprietor of immoveable property who has the right to dispose of the same during his life, may at his death dispose by will of the same, either *in toto* or in part, in favour of whom he pleases.

ART. 292.—Toutes personnes saines d'entendement, âgées et usantes de leurs droits, peuvent disposer par testament et ordonnance de dernière volonté, au profit de personne capable, de tous leurs biens, meubles, acquêts et conquêts immeubles, et de la cinquième partie de tous leurs propres héritages, et non plus avant : encore que ce fut pour cause pitoyable. (Voyez l'article suivant ; et les 272, 294.) (1)

ART. 293.—Pour tester des meubles, acquêts et conquêts immeubles, faut avoir accompli l'âge de vingt ans. Et pour tester du quint des propres, faut avoir accompli l'âge de vingt-cinq ans, *maintenant vingt-un ans.* (Voyez l'article précédent et le suivant; et les 272, 289.)

ART. 294.—Toutefois si le testateur n'a meubles, acquêts, ni conquêts immeubles, peut au dit cas tester du quint du ses propres, après vingt ans accomplis. (Voyez les deux articles précédens, et le suivant.)

ART. 295.—Si l'héritier se veut contenter de prendre les quatre quints des propres, et abandonner les meubles, acquêts et conquêts immeubles, avec le quint des dits propres, à tous les légataires, faire le peut: en quoi faisant il demeurera saisi des dits quatre quints, et les dits légataires prendront le surplus, les dettes toutefois préalablement payées sur tous les biens de l'hérédité. (Voyez l'article 298, en la fin.)

ART. 296.—Le mari par son testament ou ordonnance de dernière volonté, ne peut disposer des biens meubles et conquêts immeubles communs entre lui et sa femme, ni de la moitié qui lui peut appartenir en iceux par le trépas de son dit mari. (Voyez les articles 225, 282, 286, en la fin.)

ART. 297.—Les exécuteurs testamentaires sont saisis durant l'an et jour du trépas du défunt, des biens meubles demeurés à son décès pour l'accomplissement de son testament, si le testateur n'avait ordonné, que ses exécuteurs fussent saisis de sommes certaines seulement. Et est tenu le dit exécuteur de faire faire inventaire en diligence, sitôt que le testament est venu à sa connaissance, l'héritier présomptif présent, ou duement appelé. (Voyez l'article 228, vers la fin ; 237, en la fin ; 240, vers le milieu ; 269, au milieu ; et le 318.)

ART. 298.—La légitime est la moitié de telle part et portion que chacun enfant eut eu en la succession des dits père et mère, aïeul ou aïeule, ou autres ascendans, si les dits père et mère ou autres ascendans n'eussent disposé par donations entre vifs, ou dernière volonté. Sur le tout déduit les dettes et frais funéraux. (Voyez l'article 17, vers le milieu ; et à la fin des 295, et 307.)

(1) Par l'Acte Geo. III cap. 83, il est loisible à tout propriétaire d'immeubles qui a le droit d'aliéner pendant sa vie d'en disposer à sa mort par testament, en tout ou partie à qui bon lui semble.

TITLE XV.—SUMMARY.

Art. 299, *Institution of heirs.* 300, *None can be heir and legatee together.* 301, *But may be donee and heir.* 302, *Mode of inheriting.* 303, *No preference.* 304, *Of the Rapport.* 305, *Its form.* 306, 307, *do.* 308, *Succession of ancestors.* 309, *Fruits.* 310, *Of the share of the one who renounces.* 311, *Ascendants.* 312, *Proper estates do not ascend.* 313, *Ascendants succeed to the gifts by them made.* 314, *Reversion.* 315, *Ancestors, how succeed.* 316, *Acceptation of succession is free.* 317, *Act of heirship.* 318, *Seizin.* 319, *representation in the direct line.* 320, *Do. in the collateral. Idem to the* 327, *and* 328, 329 *how reputed of the line.* 330, *Failing one line the other comes in.* 331, *No right of birthright in the collateral line.* 323, *Succeed and pay debts equally.* 333, *Holders of mortgaged property pay the whole; how?* 334, *Exceptions.* 335 *and* 336, *Succession of ecclesiastics.* 337, *Of Ditto, Regulars.* 338, *Uncle, nephew and cousin germain.* 339, *Uncle and nephews.* 340, *Brothers and sisters of one side.* 341, *Other collaterals of one side.* 342, *The heir simple excludes the beneficiary heir.* 343, *If the minor can exclude him.* 344, *Of the Curator to vacant property.*

SUCCESSIONS.

ART. 299.—Institution of the heir does not take place, that is to say, that it is not requisite and necessary for the validity of the will, but the disposition is valid to the amount of the property which the testator can lawfully dispose of by the custom. (See Arts. 292 and 294.)

ART. 300.—No person can be both heir and legatee. (See Art. 301.)

ART. 301.—But can always be donee and heir in the collateral line. (See the preceding Art. and Art. 257.)

ART. 302.—The children being heirs of a deceased, come equally to the succession of the said deceased, save and except the estates held in fief or nobly, according to the limitation mentioned in the title of fiefs. (See Arts. 13, 15, 16, 17, 18 and 68.)

ART. 303.—Father and mother cannot by donation made *entre vifs* by will or ordinance of last will, or otherwise in any manner whatever, give their children coming to the succession, the one more than the other. (See Art. 307.) (1)

ART. 304.—The children coming to the succession of the father or mother, ought to return what has been given to them to be put with the other property of the said succession, to be divided between them, or take less. (See Arts. 246, 278 and 306.)

ART. 305.—If the donee at the time of the division has the estates given to him in his possession, he is bound to restore them, or take less in other estates of the same succession of equal value and goodness; and in making the said restoration in kind, he ought to be reimbursed by the coheirs for the useful and necessary expenses, and if the coheirs will not reimburse the said expense, in that case the

(1) See note preceding page.

TITRE XV.—SOMMAIRE.

Art. 299, *Institution d'héritier.* 300, *Ne peut être héritier et légataire ensemble.* 301, *Mais donataire et héritier.* 302, *Manière d'hériter.* 303, *Point de préférence.* 304, *Rapport.* 305, *Forme du rapport.* 306, *Idem.* 307, *Idem.* 308, *Succession des ayeux.* 309, *Fruits.* 310, *Portion de celui qui renonce.* 311, *Ascendans.* 312, *Propres ne remontent.* 313, *Ascendans succèdent à leurs dons.* 314, *Reversion.* 315, *Comment succèdent en propriété.* 316, *Addition d'hérédité.* 317, *Acte d'héritier.* 318, *La mort saisit le vif.* 319, *En ligne directe la représentation à l'infinie.* 320, *Comment en collatérale.* 321, *Succèdent par tête,* 322, *Distinction. Depuis* 223 *à* 226, *Fief et roture.* 327, 328, *Enfans des frères font une tête, leur oncle une autre.* 329, *Comment réputés du côté et ligne.* 330, *Manquant ceux d'un côté succèdent ceux de l'autre.* 331, *En fief point de droit d'aînesse en collatérale.* 332, *Succèdent et payent les dettes également.* 333, *Détenteurs d'héritages obligés payent le tout; comment?* 334, *Exception.* 335 *et* 336, *Succession des Ecclésiastiques.* 337, *Do. réguliers.* 338, *Oncle, neveu et cousin germain.* 339, *Oncle et neveux.* 340, *Frères et sœurs d'un côté.* 341, *Autres collatéraux d'un côté.* 342, *Héritier simple exclut le bénéficiaire.* 343, *Si le mineur le peut exclure.* 344, *Do. curateur aux biens vacans.*

SUCCESSIONS.

ART. 299.—Institution d'héritier n'a lieu, c'est-à-dire, qu'elle n'est requise et nécessaire pour la validité d'un testament: mais ne laisse de valoir la disposition jusqu'à la quantité des biens, dont le testateur peut valablement disposer par la Coutume. (Voyez les articles 292, 294.)

ART. 300.—Aucun ne peut être héritier et légataire d'un défunt ensemble. (Voyez l'article suivant, et les 351, 261.)

ART. 301.—Peut toutefois entre vifs, être donataire et héritier en ligne collatérale. (Voyez l'article précédent, et le 257.)

ART. 302.—Les enfans héritiers d'un défunt, viennent également à la succession d'icelui défunt, hors et excepté des héritages tenus en fief, ou franc aleu noble, selon la limitation mentionnée au titre des dits fiefs. (Voyez les articles 13, 15, 16, 17, 18 et 68.)

ART. 303.—Père et mère ne peuvent par donation faite entre vifs, par testament et ordonnance de dernière volonté, ou autrement en manière quelconque, avantager leurs enfans venant à leurs successions, l'un plus que l'autre. (Voyez l'article suivant, et le 307.) (1)

ART. 304.—Les enfans venant à la succession de père ou mère, doivent rapporter ce qui leur a été donné, pour avec les autres biens de la dite succession, être mis en partage entr'eux, ou moins prendre. (Voyez l'article 246, en la fin, 278, 306.)

ART. 305.—Si le donataire, lors du partage, a les héritages à lui donnés en sa possession, il est tenu les rapporter en essence et espèce, ou moins prendre en autres héritages de la succession de pareille valeur et bonté. Et faisant le dit rapport en espèce, doit être remboursé par ses co-héritiers des impenses utiles et nécessaires. Et si les dits co-héritiers ne veulent rembourser les dites impenses,

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(1) Voyez note au bas de la page précédente.

donee is bound to restore only the estimation of the said estates, having regard to the time that the division and partition is made between them, the expenses being deducted. (Art. 306.)

ART. 306.—Also what has been given to the children of those who are heirs, and succeed to their father and mother or other ascendants, is subject to be returned, or take less as above stated.

ART. 307.—Notwithstanding where he to whom one has given, would wish to keep his gift, he can do it on his giving up the inheritance, the legitime reserved to the others. (Arts 298 and 316.)

ART. 308.—The child having survived his father and mother, and coming to the succession of his grandfather and grandmother, even if he renounces to the succession of his said father and mother, is nevertheless bound to make restitution to his said grandfather and grandmother, of all which has been given to his said father or mother by the said grandfather or grandmother, or take less. (See Art. 306.)

ART. 309.—The fruits of the thing given by father and mother, grandfather and grandmother, either estates or rents are not to be returned only from the day the succession occurred. And if there is money given the profits are to be restored for the said time at the rate of 5 per cent. (See Art. 305.)

ART. 310.—The right and portion of the child who abstains and renounces to the succession of his father or mother, accrues to the other children, being heirs without any prerogative of seniority for the portion which accrues to them. (See Arts. 27 and 50.)

ART. 311.—Father and mother succeed to their children, born in lawful marriage, if they die without heirs of their body, to the moveables, *acquêts et conquêts* immoveables. And in default of them the grandfather and grandmother, and other ascendants. (See Arts. 313, 214 and 315.)

ART. 312.—In succession in the direct line the estate *propre* does not ascend; and the father and mother, grandfather or grandmother, do not succeed. (See the three following Articles.

ART. 313.—But they succeed to things given by them to their children, dying without children descending from them. (See Arts. 230 and 315.)

ART. 314.—The father and mother enjoy by usufruct the property left by their children, which had been acquired by the said father and mother, and by the decease of one of them having come to one of their children, even if it was made *propre* to the said children, provided always that the said children die without any children or descendants; and after the decease of the said father and mother, who have enjoyed the said property by usufruct, the said property returns to the nearest relations of the said children from whom the said property proceeds. (See Arts. 230 and 263.)

ART. 315.—If the son purchases estates or other immoveable property, and dies leaving to his child the said estates—and that the said child dies afterwards without children or descendants from him, and without brothers and sisters—the grandfather and grandmother succeed to the said estates in full enjoyment, and exclude all others in the collateral line. (See Arts. 230 and 211.)

en ce cas le donataire est tenu rapporter seulement l'estimation d'iceux héritages; eu égard au tems que division et partage est fait entr'eux : déduction faite des dites impenses. (Voyez l'article 48, en la fin, et le 309.)

ART. 306.—Pareillement ce qui a été donné aux enfans de ceux qui sont héritiers, et viennent à la succession de leur père, mère, ou autres ascendans, est sujet à rapport, ou moins prendre, comme dessus. (Voyez les articles 304, 308.)

ART. 307.—Néanmoins, où celui auquel on aurait donné, se voudrait tenir à son don, faire le peut: en s'abstenant de l'hérédité, la légitime réservée aux autres enfans. (Voyez l'article 298, 316.)

ART. 308.—L'enfant ayant survécu ses père et mère, et venant à la succession de ses aïeul ou aïeule, survivant les dits père et mère, encore qu'il renonce à la succession de ses dits père et mère, est néanmoins tenu rapporter à la succession de ses dits aïeul ou aïeule, tout ce qui a été donné à ses dits père et mère par ses dits aïeul ou aïeule, ou moins prendre. (Voyez l'article 306.)

ART. 309.—Les fruits de la chose donnée par père ou mère, aïeul ou aïeule, soit héritages ou rentes, ne se rapportent, sinon du jour de la succession échue. Et s'il y a deniers baillés, les profits se rapporteront depuis le dit tems, à raison du denier vingt. (Voyez l'article 305.)

ART. 310.—Le droit et part de l'enfant qui s'abstient et renonce à la succession de ses père ou mère, accroît aux autres enfans héritiers, sans aucune prérogative d'aînesse de la portion qui accroît. (Voyez les articles 27 et 250, en la fin.)

ART 311.—Père et mère succèdent à leurs enfans, nés en loyal mariage, s'ils vont de vie à trépas sans hoirs de leurs corps, aux meubles, acquêts, et conquêts immeubles. Et en défaut d'eux, l'aïeul ou l'aïeule, et autres ascendans. (Voyez les articles 313, 314, 315.)

ART. 312.—En succession en ligne directe, propre héritage ne remonte: et n'y succèdent les père, mère, aïeul ou aïeule. (Voyez les trois articles suivans.)

ART. 313.—Toutefois succèdent ès choses par eux données à leurs enfans, décédans sans enfans, et descendans d'eux. (Voyez l'article 230, en la fin, et le 315.)

ART. 314.—Les père et mère jouissent par usufruit, des biens délaissés par leurs enfans, qui ont été acquis par les dits père et mère, et par le décès de l'un d'eux advenus à l'un de leurs dits enfans; encore qu'ils soient, et aient été faits propres aux dits enfans, au cas toutefois que les dits enfans décèdent sans enfans et descendans d'eux. Et après le décès des dits père et mère, qui ont joui des dits biens par usufruit, les dits biens retournent aux plus proches parens des dits enfans, desquels procèdent les dits biens. (Voyez l'article précédent et le suivant, le 230, en la fin, et le 263 vers la fin.)

ART. 315.—Si le fils fait acquisition d'héritage, ou autres biens immeubles, et il décède, délaissant à son enfant les dits héritages; et le dit enfant décède après sans enfans et descendans de lui, et sans frères et sœurs, l'aïeul ou l'aïeule succèdent aux dits héritages en pleine propriété, et excluent tous autres collatéraux. (Voyez l'article 230 en la fin, et le 311.)

ART. 316.—Nobody can be heir who does not choose. (See the following Art. and 307.)

ART. 317.—And if any person takes the property of a deceased person, or any part of it whatever, without having any other quality or right to take the said property or any part of it, he makes an act of heirship, and by so doing he obliges himself to pay the debts of the deceased. And supposing there is anything due him by the deceased he ought to ask for it, and prosecute for the recovery of the same; otherwise if he takes it of his own authority, he makes an act of heirship. (See Arts. 6 and 105.)

ART. 318.—At the moment of the death the nearest heir who is capable of succeeding, is in possession. (See Arts. 109, 256 and 258.)

ART. 319.—In the direct line representation takes place *ad infinitum* in every degree whatsoever. (See Arts. 308, 311, 315 and 324.)

ART. 320.—In the collateral line representation takes place when the nephews or nieces come to the succession of their uncle or aunts, with the brothers and sisters of the deceased; and in case of such representation the representatives succeed by roots *per stirpes*, and not share and share alike *per capita*. (See Arts. 323, 326 and 328.)

ART. 321.—But if the nephews in like degree take in their own right and not by representation, they succeed *per capita* and not *per stirpes*, so that the one does not take more than the other. (See Arts. 322, 327, 228, 332 and 339.)

ART. 322.—But the males coming from a daughter and succeeding as aforesaid by representation do not take any thing in the fiefs left by the uncle and aunt at their decease, more than the mother would have done, coming to the succession with her brothers. (See the preceding Art. and Arts. 25 and 326.)

ART. 323.—And if in the said collateral succession there are *fiefs*, the children of the brothers do not exclude their aunts, sisters of the deceased, but the aunts succeed in their own right as being the nearest with the children of the brothers, and if there are many children of the brothers, they succeed only as one head with their aunts. (See Art. 25, and 320 and 335.)

ART. 324.—The children of the eldest son, males or females, surviving their father, and coming to the succession of their grandfather or grandmother, represent their father in right of seniority, and if there are only daughters, they represent their father altogether under one head in the right of seniority, and without right of seniority between themselves. (See Arts. 31, 13 and 19.)

ART. 325.—In the collateral line, the nearest relation of the child deceased without heirs succeed him with respect to the moveables and *acquêts* immoveable, without excluding the brothers and sisters coming by representation as aforesaid. (See the following Art. and Arts. 320 and 338.)

ART. 326.—And with respect to *propres* estates, the relations who are the nearest of the side and line from whom the said estates have come to the deceased succeed to him, although they are not the nearest relations of the said deceased, except in fiefs, wherein the males exclude the females in equal degree without

ART. 316.—Il ne se porte héritier qui ne veut. (Voyez l'article suivant, et e 307.)

ART. 317.—Et néanmoins, si aucun prend et appréhende les biens d'un défunt, ou partie d'iceux, quelle qu'elle soit, sans avoir autre qualité ou droit de prendre les dits biens ou partie, il fait acte d'héritier, et s'oblige en ce faisant à payer les dettes du défunt. Et supposé qu'il lui fût dû aucune chose par le défunt, il le doit demander, et se pourvoir par justice : autrement s'il prend de son autorité, il fait acte d'héritier. (Voyez l'article 6, en la fin, et le 105.)

ART. 318.—Le mort saisit le vif: son hoir plus proche et habile à lui succéder. (Voyez l'article 169, en la fin, et les 256, 258.)

ART. 319.—En ligne directe représentation a lieu infiniment, et en quelque degré que ce soit. (Voyez les articles 308, 311, en la fin ; 315, 324.)

ART. 320.—En ligne collatérale représentation a lieu quand les neveux ou nièces viennent à la succession de leur oncle ou tante, avec les frères et sœurs du décédé. Et au dit cas de représentation, les représentans succèdent par souches, et non par têtes. (Voyez l'article 323, et en la fin des 326, 328.)

ART. 321.—Mais si les neveux en semblable degré viennent de leur chef, et non par représentation, succèdent par têtes et non par souches, tellement que l'un ne prend non plus que l'autre. (Voyez les articles 327, 328, 332, 339.)

ART. 322.—Toutefois les mâles venant d'une fille, et succédant, comme dit est, par représentation, ne prennent aucune chose ès Fiefs délaissés par le trépas de leur oncle et tante, non plus que leur mère eût fait, venant à succession avec ses frères. (Voyez l'article précédent, le 25 et le 336, au milieu.)

ART. 323.—Et si en la dite succession collatérale il y a Fiefs, les enfans des frères n'excluent leurs tantes, sœurs du défunt, ainsi y succèdent les dites tantes de leur chef, comme étant les plus proches avec les enfans des frères. Et s'ils sont plusieurs enfans de frère, succèdent seulement pour une tête avec leur tante. (Voyez l'article précédent, et les 25 et 320, 335.)

ART. 324.—Les enfans du fils aîné, soit mâles ou femelles, survivans leur père, venans à la succession de leur ayeul ou ayeule, représentent leur dit père au droit d'aînesse. Et s'il n'y a que filles, elles représentent leur père toutes ensemble pour une tête, au dit droit d'aînesse, et sans droit d'aînesse entr'elles. (Voyez l'article 4, 13, 19.)

ART. 325.—En ligne collatérale, les plus proches parens d'un enfant décédé sans hoirs, lui succèdent quant aux meubles et acquêts immeubles: sans exclure toutefois les enfans des frères et sœurs, venans par représentation, comme il est dit ci-dessus. (Voyez l'article suivant et les 320, 338.)

ART. 326.—Et quant aux propres héritages, lui succèdent les parens qui sont les plus proches du côté et ligne dont sont avenus et échus au défunt les dits héritages, encore qu'ils ne soient plus proches parens du défunt. Hors et excepté, qu'en fiefs le mâle exclut les femelles en pareil degré : sans aussi exclure les

excluding the children of the brothers and sisters coming by representation as above mentioned. (See Arts. 25, 94, 141, 230, 320, 329 and 331.)

ART. 327.—The heirs of a deceased in the collateral line separate and divide equally between them by heads and not *per stirpes*, the property and succession of the said deceased, as well moveables as estates not holden in fief.

ART. 328.—Except the children of a brother and sister who divide and make together one head in the place of the father and mother, if they succeed with their uncle and between them, they divide equally. (See Arts. 320 and 321.)

ART. 329.—And they are reputed of the side and line even if they are not descended of him who has acquired the estate. (See Arts. 141, 230 and 314.)

ART. 330.—And if there are no heirs of the side and line from whom the said estate comes, it belongs to the nearest relation fit to succeed, of the other side and line in any degree whatever. (See the preceding Art. and Arts. 167 and 326.)

ART. 331.—In the collateral line the estates holden in fief are separated and divided among co-heirs without right or prerogative of birth. (See Arts. 19, 326 and 327.)

ART. 332.—The heirs of the deceased in the same degree as well the heirs to the moveables as immoveables are holden personally to pay and discharge the debts of the succession, each person paying a part and portion as he is heir to the deceased whom they succeed equally. (See Arts. 321 and 334.)

ART. 333.—If there are possessors of estates which have belonged to the deceased, the same being under obligations and mortgaged for debt by the said deceased, each of the heirs is bound to pay the whole, reserving his recourse against his co-heirs. (See Arts. 99 and 101.)

ART. 334.—And when one succeeds to the moveables, *acquêts et conquêts*, the others to the *propres*, or if they are donees or universal legatees, they are bound to contribute among themselves towards the payment of the debts, each one for such part and portion as he has received, among whom the first-born in the direct line are now comprised, and they are not held for the personal debts for a greater proportion than the said co-heirs in respect to their right of seniority. (See the following Art. and Arts. 13, 14 and 179.)

ART. 335.—In the collateral succession when there are males and females succeeding to fiefs and *roture*, each one pays in proportion to the profit he receives. (See the preceding Art. and Art. 323.)

ART. 336.—The relations of bishops and other secular persons succeed to them. (See Art. 318.)

ART. 337.—Monks or nuns professed *profès* do not succeed to their relations, nor the monastery for them. (See Art. 158.)

ART. 338.—The uncle succeeds to the nephew before the cousin german. (See 318 and 224.)

enfans des frères et sœurs venans par représentation, comme dessus. (Voyez l'article 25, les 94 et 141 en la fin, 230 au milieu ; 320, 329 et 331.)

ART. 327.—Les héritiers d'un défunt en ligne collatérale, partissent et divisent également entr'eux par têtes, et non par souches, les biens et succession du dit défunt, tant meubles qu'héritages, non tenus et mouvans en fief. (Voyez l'article 25, en la fin, 320, 321, 323 et 331.)

ART. 328.—Excepté les enfans des frères et sœurs, qui partissent, et font tous ensemble une tête au lieu de leur père et mère, s'ils succèdent avec leur oncle, et entr'eux ils partissent également. (Voyez les dits articles 320 et 321.)

ART. 329.—Et sont réputés parens du côté et ligne, supposé qu'ils ne soient descendus de celui qui a acquis l'héritage. (Voyez les articles 141 en la fin, 230 au milieu, et 314 aussi en la fin.)

ART. 330.—Et s'il n'y a aucuns héritiers du côté et ligne, dont sont venus les héritages, ils appartiennent au plus prochain à succéder de l'autre côté et ligne, en quelque degré que ce soit. (Voyez l'article précédent, les 167, 326 au milieu.)

ART. 331.—En ligne collatérale, les héritages tenus et mouvans en fief, se partissent et divisent entre co-héritiers, sans droit ou prérogative d'aînesse. (Voyez les articles 19, 326 et 327.)

ART. 332.—Les héritiers d'un défunt en pareil degré, tant en meubles qu'immeubles, sont tenus personnellement de payer et acquitter les dettes de la succession, chacun pour telle part et portion qu'ils sont héritiers d'icelui défunt, quand ils succèdent également. (Voyez les articles 321 et 334.)

ART. 333.—Toutefois s'ils sont détenteurs d'héritages qui ayent appartenu au défunt, lesquels ayent été obligés et hypothéqués à la dette par le dit défunt, chacun des héritiers est tenu payer le tout, sauf son recours contre ses co-héritiers. (Voyez les articles 99 et 101.)

ART. 334.—Et quand ils succèdent les uns aux meubles, acquêts et conquêts, les autres aux propres, ou qu'ils sont donataires, ou légataires universels, ils sont tenus entr'eux contribuer au payement des dettes, chacun pour telle part et portion qu'ils en amendent. En quoi ne sont compris les aînés en ligne directe, lesquels ne sont tenus des dettes personnelles en plus que les autres co-héritiers, pour le regard de leur dite aînesse. (Voyez l'article suivant, et les 13, 14 et 179 au commencement.

ART. 335.—En succession collatérale, quand il y a mâles et femelles succédans en fief et rôture, chacun paye pour portion de l'émolument. (Voyez l'article précédent et le 323.)

ART. 336.—Les parens et lignagers des Evêques et autres gens d'Eglise, séculiers, leur succèdent. (Voyez l'article 318.)

ART. 337.—Religieux et Religieuses profès, ne succèdent à leurs parens, ni le Monastère pour eux. (Voyez l'article 158.)

ART. 338.—L'oncle succède au neveu avant le cousin germain. (Voyez les articles 318 et 225.)

ART. 339.—The uncle and the nephew of a deceased person who has left neither brothers nor sisters succeed equally, as being in the same degree, in which case there is no representation. (See Arts. 321 and 332.)

ART. 340.—Brothers and sisters, if they are only of the same father or mother, succeed equally with other brothers and sisters of the father and mother to their brothers and sisters, for the moveables, *acquêts et conquêts* immoveable. (See the following Art. and Arts. 325 and 326.)

ART. 341.—What is above mentioned takes place with regard to uncles and other relations of the collateral line who are related only to one side. (See the preceding Art.)

ART. 342.—The heir in the direct line who becomes heir with the benefit of an inventory, is not excluded by another relation who is only heir simple. (See the following Art. and Art. 302.)

ART. 343.—The minor who is only simple heir cannot exclude the heir with the benefit of inventory who is in a nearer degree. (See the preceding Art.)

ART. 344.—The heir with the benefit of inventory or a curator to the vacant property of a deceased, cannot sell the moveable property of the succession or curatorship without publishing the sale before the principal doors of the parish church where the said deceased lived after divine service, and by leaving an advertisement on the door of the house of the deceased. (See Arts. 34, 151 and 167.)

ART. 339.—L'oncle et le neveu d'un défunt qui n'a délaissé ni frère ni sœur, succèdent également, comme étant en même degré ; et sans qu'au dit cas il y ait représentation. (Voyez l'article 321 et le 332.)

ART. 340,—Frères sœurs, supposé qu'ils ne soient que de père ou de mère, succèdent également avec les autres frères et sœurs de père et de mère, à leur frère et sœur, aux meubles, acquêts et conquêts immeubles. (Voyez l'article suivant et les 325 et 326.)

ART. 341.—Ce que dessus a lieu aux oncles et aux parens collatéraux qui ne sont joints que d'un côté. (Voyez l'article précédent.)

ART. 342.—L'héritier en ligne directe, qui se porte héritier par bénéfice d'inventaire, n'est exclu par autre parent qui se porte héritier simple. (Voyez l'article suivant et le 302.)

ART. 343.—Le mineur qui se porte héritier simple, ne peut exclure l'héritier par bénéfice d'inventaire, qui est en plus proche degré. (Voyez l'article précédent.)

ART. 344.—L'héritier par bénéfice d'inventaire, ou Curateur aux biens vacans d'un défunt, ne peut vendre les biens meubles de la succession ou Curatelle, sinon en faisant publier la vente devant la principale porte de l'Eglise de la Paroisse où le défunt demeurait, à l'issue de la Messe Paroissiale : et délaissant une affiche contre la porte de la maison du défunt. (Voyez les articles 34, 151 et 167.)

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ADDENDA.

Page 116, after Art. 292, see note at the foot of page 280, "Text of the *Coutume de Paris.*"

ERRATA.

Introduction to Laws in France, *for* page 215 *read* 217.