

Title III. Of Absentees (Art. 47 - 85)

Louisiana

Recommended Citation

Louisiana, "Title III. Of Absentees (Art. 47 - 85)" (1940). *Book I*. 8.
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TITLE III—OF ABSENTEES

Chapter I—OF THE CURATORSHIP OF ABSENTEES

ART. 47. When a person possessed of either movable or immovable property within this State, shall be absent, or shall reside out of the State, without having appointed somebody to take care of his estate, or when the person thus appointed dies, or is either unable or unwilling to continue to administer that estate, then and in that case, the judge of the place where that estate is situated, shall appoint a curator to administer the same.

RCC—57, 58, 59, 3556(3). CP—116, 963, 964. RS—1, 1103, 3693.

RCC 1870, Art. 47.

Same as above.

CC 1825, Art. 50.*

Same as above.

(No reference in Projet)

Lorsqu'un individu, possédant des biens dans cet Etat, sera absent ou résidant hors de l'Etat, sans avoir laissé quelqu'un chargé de la conduite de ses biens, ou si celui qui en était chargé vient à décéder, ou ne peut, ou ne veut plus continuer à les administrer, le juge du lieu où sont situés ces biens, nommera un curateur pour les gérer.

CC 1808, p. 14, Art. 1.*

When a person possessed of either moveable or immoveable property within this territory, shall be absent, or shall reside out of the said territory, without having appointed some body to take care of his or her said estate, or when the person thus appointed, dies, or is either unable or unwilling to continue to administer the said estate, then and in that case, the judge of the parish where the estate is situated, shall appoint a curator to administer the same.

-p. 15, Art. 1.*

Lorsqu'un individu possédant des biens dans ce Territoire, sera absent ou résidant hors dudit Territoire, sans avoir laissé quelqu'un chargé de la conduite desdits biens, ou si celui qui en était chargé vient à décéder, ou ne peut, ou ne veut plus continuer à les administrer, le Juge de la paroisse où sont situés ces biens, nommera un curateur pour les gérer.

CN 1804, Art. 112.

If it is necessary to provide for the administration of the whole or part of the estate left by a person presumably absent, and who has no attorney in fact, upon the application of the interested parties, the matter shall be decided by the court of first instance.

S'il y a nécessité de pourvoir à l'administration de tout ou partie des biens laissés par une personne présumée absente, et qui n'a point de procureur fondé, il y sera statué par le tribunal de première instance, sur la demande des parties intéressées.

*Similar provisions repeated in CC 1825, Art. 414, and CC 1808, pp. 82, 83, Art. 31, quoted in appendix.

ART. 48. In the appointment of this curator, the judge shall prefer the wife of the absentee to his presumptive heirs, the presumptive heirs to the other relations, the relations to strangers, and creditors to those who are not otherwise interested, provided, however, that such persons be possessed of the necessary qualifications.

RCC—25, 880, 1121, 3354, 3556(3). CP—966 *et seq.*

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RCC 1870, Art. 48.

Same as above.

CC 1825, Art. 51.

(No reference in Projet)

Same as above; but no punctuation after "curator", after "provided", or after "however."

Dans le choix de ce curateur, le juge donnera la préférence à la femme de l'absent sur les héritiers présomptifs, aux héritiers présomptifs sur les parens, aux parens sur les étrangers, et aux créanciers sur ceux qui ne sont point autrement intéressés, pourvu que d'ailleurs ces personnes ayent les qualités requises.

CC 1808, p. 14, Art. 2.

In the appointment of this curator, the judge shall prefer the wife of the absentee to his presumptive heirs, the presumptive heirs to the other relations; the relations to strangers, and creditors to those who are not otherwise interested, *provided* however that the said persons be possessed of the necessary qualifications.

-p. 15, Art. 2.

Dans le choix de ce curateur, le Juge donnera la préférence à la femme de l'absent sur ses héritiers présomptifs, aux héritiers présomptifs sur les parens, aux parens sur les étrangers, et aux créanciers sur ceux qui ne sont point autrement intéressés, *pourvu que* d'ailleurs lesdites personnes ayent les qualités requises.

CN 1804, Art. 113.

The court, at the request of the most diligent party, shall commission a notary to represent the parties, presumably absent, in connection with the inventories, accounts, partitions, and liquidations in which they will have an interest.

Le tribunal, à la requête de la partie la plus diligente, commettra un notaire pour représenter les présumés absents, dans les inventaires, comptes, partages et liquidations dans lesquels ils seront intéressés.

ART. 49. The curator appointed to the absentee shall take an oath well and faithfully to fulfill the duties of this administration and to give an account of it to those who have a right to demand it.

It is further his duty to cause a good and faithful inventory, with an appraisal of the property intrusted to his keeping, to be made by the recorder or by any notary public duly authorized to that effect by the judge, and to give good and sufficient security to the amount of this inventory for his administration.

RCC—274, 313, 334, 1126, 3354, 3370.

RCC 1870, Art. 49.

(Same as Art. 49 of Proposed Revision of 1869)

Same as above.

CC 1825, Art. 52.

(No reference in Projet)

Par. 1 same as par. 1, above.

Le curateur nommé à l'absent est tenu de prêter serment de se bien et fidèlement comporter dans son administration, et d'en rendre compte à qui de droit.

It is further his duty to cause a good and faithful inventory, with an appraisal of the property entrusted to his keeping, to be made by the judge or by any notary public duly authorized to that effect by the judge, and to give a good and sufficient security to the amount of this inventory for his administration.

Il doit en outre faire faire bon et fidèle inventaire estimatif des biens commis à sa garde, par le juge ou par le premier notaire dûment autorisé à cet effet par le juge, et donner bonne et suffisante caution du montant de l'inventaire, pour sûreté de son administration.

CC 1808, p. 14, Art. 3.

The curator appointed to the absentee, shall take an oath well and faithfully to fulfil the duties of his administration and to give an account of it to whomsoever it may belong.

It is further his duty to cause a good and faithful inventory, with an appraisal of the property entrusted to his keeping, to be made by the parish judge or by any notary public duly authorised, to that effect, by the said judge, and to give a good and sufficient security of the amount of this inventory for his administration.

CN 1804, Art. 114.

The Public Prosecutor is specially charged with the duty to attend to the interest of persons presumably absent; and he shall be heard in all proceedings which concern them.

-p. 15, Art. 3.

Le curateur nommé à l'absent, est tenu de prêter serment "de se bien et fidèlement comporter dans son administration et d'en rendre compte à qui de droit."

Il doit en outre faire faire bon et fidèle inventaire estimatif des biens commis à sa garde, par le Juge de paroisse ou par le premier notaire dûment autorisé à cet effet par ledit juge et donner bonne et suffisante caution du montant dudit inventaire, pour sûreté de son administration.

Le ministère public est spécialement chargé de veiller aux intérêts des personnes présumées absentes; et il sera entendu sur toutes les demandes qui les concernent.

ART. 50. The curator of the absentee has no other power than that of administering the estate of the absentee, without having a right to alienate or mortgage the same, under any pretense whatsoever.

He is moreover bound, with respect to this administration, by the same obligations, responsibility and mortgage by which tutors are bound, and he has a right to the same annual compensation for his services.

RCC 1870, Art. 50.

Same as above.

CC 1825, Art. 53.

Same as above.

(No reference in Projet)

Quant aux pouvoirs du curateur de l'absent, ils se bornent uniquement aux actes de pure administration, sans qu'il puisse aliéner ou hypothéquer les biens confiés à sa garde, sous quelque prétexte que ce soit.

Il est d'ailleurs soumis, relativement à cette administration, aux mêmes engagements, responsabilité et hypothèque que le tuteur, et jouit de la même commission annuelle, pour indemnité de ses peines.

CC 1808, p. 14, Art. 4.

The curator of the absentee, has no other power than that of administering the estate of the absentee, without having a right to alienate or mortgage the estate entrusted to his care, under any pretence whatsoever.

He is moreover bound with respect to this administration by the same obligations, responsibility and mortgage by which tutors are bound, and he enjoys the same annual compensation as an indemnity for his services.

-p. 15, Art. 4.

Same as above; but no punctuation after "annuelle."

CN 1804. No corresponding article.

ART. 51. So long as this curatorship continues, all suits in which the absentee is interested, shall be prosecuted by or against the curator.

CP—108, 111, 120(4). Acts 1918, No. 179(14, 15).

RCC 1870, Art. 51.

Same as above.

CC 1825, Art. 54.

Same as above.

(No reference in Projet)

Tant que cette curatelle dure, tous les procès dans lesquels l'absent est intéressé, seront suivis par ou contre son curateur.

CC 1808, p. 14, Art. 5.

Same as above.

-p. 15, Art. 5.

Same as above.

CN 1804. No corresponding article.

ART. 52. The curatorship of the absentee ends:

1. When the absentee, or person residing out of the State, appoints an attorney in fact for the administration of his estate, whether it be the person who was appointed curator or any other person;

2. When after a certain time, without hearing of the absentee, his heirs cause themselves to be put provisionally in possession of his estate, in conformity with the law.

RCC—57, 58, 1192.

RCC 1870, Art. 52.

Same as above.

CC 1825, Art. 55.

Same as above.

(No reference in Projet)

La curatelle de l'absent se termine:

1. Lorsque la personne absente, ou résidant hors de l'Etat, envoie sa procuration pour l'administration de ses biens, soit à celui qui a été nommé son curateur, soit à toute autre personne;

2. Lorsqu'après un certain temps d'absence, sans nouvelles, les héritiers de l'absent se font envoyer en possession provisoire de ses biens, conformément à la loi.

CC 1808, p. 14, Art. 6.

The curatorship of the absentee is at an end:—

1st. When the absentee or person residing out of the territory, appoints an attorney in fact for the administration of his or her estate, whether it be the person who was appointed curator or any other person:

2d. When after a certain time, without hearing of the absentee, the heirs of the absentee, cause themselves to be put provisionally in possession of his or her estate, in conformity with the law.

-p. 15, Art. 6.

Same as above; but no punctuation after "absente"; "du Territoire" instead of "de l'Etat."

CN 1804. No corresponding article.

ART. 53. Whenever the curator or attorney in fact of an absentee shall apply to the court, by a petition made under oath to the best of his knowledge and belief, setting forth that the absentee has not been heard from for the space of ten years, and that he has no heirs known to him residing in the State; or when such facts relative to any absentee shall be known to the judge, or due and satisfactory proofs of the facts aforesaid shall be made to him by any other person than the curator or attorney in fact; it shall be his duty in all such cases to order the sale of the property of such absentee in the same manner, on the same conditions, and the funds to be paid into the State treasury in the same manner as in case of vacant successions.

RCC 1870, Art. 53. (Same as Art. 53 of Proposed Revision of 1869; Same as above. same as Acts 1855, No. 2, §1, par. 1 [RS §§1, 1103])

CC 1825. No corresponding article.

CC 1808. No corresponding article.

CN 1804. No corresponding article.

ART. 54. The curator of the absentee may file annual accounts of his administration, and cause them to be homologated in due course of law contradictorily with a curator *ad hoc* appointed to represent the absentee.

The judgment of homologation shall be *prima facie* evidence of the correctness of such accounts.

RCC—1191.

RCC 1870, Art. 54. (Same as Art. 54 of Proposed Revision of 1869; Same as above. in conformity with Acts 1855, No. 47 [RS §3851])

CC 1825. No corresponding article.

CC 1808. No corresponding article.

CN 1804. No corresponding article.

ART. 55. The curator of the absentee is bound to give an account of his administration, as soon as it ends, either by the appointment of an attorney in fact by the absentee, or the putting into provisional possession of his heirs or otherwise.

RCC—275, 357, 1194, 3314.

RCC 1870, Art. 55. (Same as Art. 55 of Proposed Revision of 1869) Same as above.

CC 1825, Art. 56. (No reference in Projet)

The curator of the absentee is bound to give an account of his administration, as soon as it ends either by the appointment of an attorney in fact by the absentee, or the putting into provisional possession of his heirs.

Le curateur de l'absent est tenu de rendre compte de son administration, aussitôt qu'elle se termine, soit par l'envoi d'une procuration de la part de l'absent, soit par la mise en possession provisoire de ses héritiers.

CC 1808, p. 14, Art. 7.

The curator of the absentee is bound to give an account of his administration as soon as it is at an end, either by the appointment of an attorney in fact

-p. 15, Art. 7.

Same as above; but comma (,) after "curateur de l'absent."

by the absentee, or the putting into provisional possession of the heirs of the absentee.

CN 1804. No corresponding article.

ART. 56. If a suit be instituted against an absentee who has no known agent in the State, or for the administration of whose property no curator has been appointed, the judge, before whom the suit is pending, shall appoint a curator *ad hoc* to defend the absentee in the suit.

RCC—75, 313, 1071, 3556(3). CP—116, 737, 924, 963, 964. Acts 1918, No. 179(14, 15); 1918, No. 219; 1920, No. 215.

RCC 1870, Art. 56.

Same as above.

CC 1825, Art. 57.

(Projet, p. 5. Amendment adopted; comment by redactors)

Same as above.

Si l'on a à former une action en justice contre un absent qui n'a point de fondé de procuration connu dans cet Etat, ou à qui il n'a point été donné de curateur pour administrer ses biens, on devra lui faire nommer par le juge devant qui sera portée la contestation, un curateur *ad hoc* pour le défendre dans la cause.

CC 1808, p. 14, Art. 8.

When an absentee not possessed of an estate within this territory susceptible of being administered by a curator, shall be either directly or indirectly interested in any suit, it shall be the duty of the judge before whom the suit shall be pending, to appoint a proper person to defend the rights of the absentee, if he be not otherwise represented within this territory, and if he has not himself appointed an attorney.

-p. 15, Art. 8.

Lorsque quelque absent qui ne possède point dans ce Territoire, des biens susceptibles d'administration, se trouvera intéressé directement ou indirectement dans quelque cause, il sera du devoir du Juge devant qui la contestation se trouvera pendante, de lui nommer un défenseur pour la conservation de ses droits, s'il n'est pas autrement représenté dans ce Territoire, et s'il n'y a pas de défenseur constitué.

CN 1804. No corresponding article.

Chapter 2—OF THE PUTTING INTO PROVISIONAL POSSESSION THE HEIRS OF AN ABSENTEE

ART. 57. When a person shall not have appeared at the place of his domicile or habitual residence, and when such person shall not have been heard of, for five years, his presumptive heirs may, by producing proof of the fact, cause themselves to be put by the competent judge into provisional possession of the estate which belonged to the absentee at the time of his departure, or at the time he was heard of last, on condition of their giving security for their administration.

RCC—38, 47, 52, 58, 59, 60, 61, *et seq.*, 70, 74, 76, 79, 880, 1315, 3556(3). CP—924.

RCC 1870, Art. 57.

Same as above.

CC 1825, Art. 58.

(Projet, p. 5. Amendment amended and adopted; comment by redactors)

Same as above; but no punctuation after "heard of."

Lorsqu'une personne aura cessé de paraître au lieu de son domicile ou de sa résidence ordinaire, et que depuis cinq ans on n'aura point eu de ses nouvelles, ses héritiers présomptifs pourront, sur la preuve de ces faits, se faire envoyer par justice en possession provisoire des biens qui appartenaient à l'absent au jour de son départ ou de ses dernières nouvelles, à la charge de donner caution pour sûreté de leur administration.

CC 1808, p. 16, Art. 9.

When a person shall not have appeared at the place of his or her domicile or habitual residence, and when such person shall not have been heard of for five years, his or her presumptive heirs at the time when such person was heard of for the last time, may, by administering the proof of the said fact, cause themselves to be put, by the competent judge, into provisional possession of the estate which belonged to the absentee at the time of his or her departure, or at the time he or she was heard of last, on condition of their giving security for their administration.

-p. 17, Art. 9.

Lorsqu'une personne aura cessé de paraître au lieu de son domicile ou de sa résidence ordinaire, et que depuis cinq ans, on n'aura point eu de ses nouvelles, ses héritiers présomptifs au jour de sa disparition ou de ses dernières nouvelles, pourront sur la preuve desdits faits, se faire envoyer par justice, en possession provisoire des biens qui appartenaient à l'absent au jour de son départ ou de ses dernières nouvelles, à la charge de donner caution pour sûreté de leur administration.

CN 1804, Art. 115.

When a person shall have ceased to appear at the place of his domicile, or residence, and shall not have been heard of for four years, the interested parties may appear before the court of first instance in order to have the person declared absent.

Lorsqu'une personne aura cessé de paraître au lieu de son domicile, ou de sa résidence, et que depuis quatre ans on n'en aura point eu de nouvelles, les parties intéressées pourront se pourvoir devant le tribunal de première instance, afin que l'absence soit déclarée.

-Art. 120.

In case the absentee should not have left a power of attorney for the administration of his property, his presumptive heirs, on the day of his disappearance, or on the day on which last news was heard of him, may, by virtue of the final judgment declaring him absent, cause themselves to be put into provisional possession of the property which belonged to the absentee on the day of his departure, or at the time he was heard of last, on condition of their giving security for their administration.

Dans les cas où l'absent n'aurait point laissé de procuration pour l'administration de ses biens, ses héritiers présomptifs au jour de sa disparition ou de ses dernières nouvelles, pourront, en vertu du jugement définitif qui aura déclaré l'absence, se faire envoyer en possession provisoire des biens qui appartenaient à l'absent au jour de son départ ou de ses dernières nouvelles, à la charge de donner caution pour sûreté de leur administration.

ART. 58. If the absentee has left a power of attorney, his presumptive heirs can not cause themselves to be put into provisional possession, until seven years shall have elapsed since the last intelligence of him has been received.

RCC—47, 52, 57, 59.

RCC 1870, Art. 58.

Same as above.

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CC 1825, Art. 59.

(Projet, p. 6. Addition amended and adopted; comment by redactors)

Same as above.

Si l'absent a laissé une procuration, ses héritiers présomptifs ne pourront se faire envoyer en possession provisoire qu'après sept années révolues depuis ses dernières nouvelles.

CC 1808. No corresponding article.

CN 1804, Art. 121.

If the absentee has left a power of attorney, his presumptive heirs can not begin an action to have him declared absent and cause themselves to be put into provisional possession, until ten years shall have elapsed since his disappearance or since the last intelligence of him has been received.

Si l'absent a laissé une procuration, ses héritiers présomptifs ne pourront poursuivre la déclaration d'absence et l'envoi en possession provisoire, qu'après dix années révolues depuis sa disparition ou depuis ses dernières nouvelles.

ART. 59. It is the same if the power of attorney shall have expired, and in this case the property of the absentee shall be administered as is ordained in the first chapter of the present title.

RCC—47 *et seq.*, 58.

RCC 1870, Art. 59.

Same as above.

CC 1825, Art. 60.

(Projet, p. 6. Addition adopted; comment by redactors)

Same as above.

Il en sera de même si la procuration vient à cesser; et dans ce cas il sera pourvu à l'administration des biens de l'absent, comme il est dit au chapitre premier du présent titre.

CC 1808. No corresponding article.

CN 1804, Art. 122.

Same as above.

Il en sera de même si la procuration vient à cesser; et, dans ce cas, il sera pourvu à l'administration des biens de l'absent, comme il est dit au chapitre I.^{er} du présent titre.

ART. 60. The putting into provisional possession can be ordered previous to the expiration of the terms before mentioned, when it shall be shown that there are strong presumptions that the person absent has perished.

RCC—57, 2284, 2285, 2288.

RCC 1870, Art. 60.

Same as above.

CC 1825, Art. 61.

(Projet, p. 6. Addition adopted; comment by redactors)

Same as above.

L'envoi en possession provisoire pourra être ordonné avant l'expiration des délais ci-dessus, quand il sera démontré qu'il y a de fortes présomptions que l'individu absent a péri.

CC 1808. No corresponding article.

CN 1804. No corresponding article.

ART. 61. The judge in pronouncing upon this demand shall take into consideration the motives of the absence and the reasons which may have prevented the absentee from being heard of.

RCC—2284, 2285, 2288.

RCC 1870, Art. 61.

Same as above.

CC 1825, Art. 62.

Same as above.

(No reference in Projet)

Le juge, en statuant sur cette demande, aura égard aux motifs de l'absence et aux causes qui ont pu empêcher d'avoir des nouvelles de l'absent.

CC 1808, p. 16, Art. 10.

Same as above; but comma (,) after "demand."

-p. 17, Art. 10.

Same as above; but comma (,) after "l'absence."

CN 1804, Art. 117.

The court, in pronouncing upon this demand, shall moreover take into consideration the motives of absence, and the reasons which may have prevented the individual presumed to be absent from being heard of.

Le tribunal, en statuant sur la demande, aura d'ailleurs égard aux motifs de l'absence, et aux causes qui ont pu empêcher d'avoir des nouvelles de l'individu présumé absent.

ART. 62. When the presumptive heirs shall have been put into provisional possession of the estate of the absentee, the will made by him, if there be any such will, may be presented or opened at the request of the person interested, and the testamentary heirs, the legatees, donees, as well as those who have any rights to or claims upon his property, which depend upon the death of the said absentee, may provisionally prosecute their claims and exercise their rights on the condition of their giving security.

RCC—57, 63, 70, 75, 934, 3064. Acts 1916, No. 112 (as am. by 1928, No. 284).

RCC 1870, Art. 62.

Same as above.

CC 1825, Art. 63.

Same as above.

(No reference in Projet)

Lorsque les héritiers présomptifs auront obtenu l'envoi en possession provisoire des biens de l'absent, le testament fait par l'absent, s'il en existe un, pourra être présenté ou ouvert à la requête des parties intéressées, et les héritiers institués, légataires et donataires, ainsi que tous ceux qui avaient sur les biens de l'absent des droits subordonnés à la condition de son décès, pourront les exercer provisoirement, à la charge de donner caution.

CC 1808, p. 16, Art. 11.

When the presumptive heirs shall have been put into provisional possession of the estate of the absentee, the will made by the absentee, if there be any such will, may be presented or opened at the request of the person interested, and the testamentary heirs, the legatees, donees, as well as those who had a claim on the property or

-p. 17, Art. 11.

Same as above; but semicolon (;) after "intéressées"; comma (,) after "légataires."

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rights of the absentee, which depend upon the death of the said absentee, may provisionally exercise such their rights, on the condition of their giving security.

CN 1804, Art. 123.

When the presumptive heirs shall have been put into provisional possession, the will, if there be any such will, shall be opened at the request of the persons interested or of the *commissaire du Gouvernement* of the court; and the legatees, donees, as well as those who had any rights against the property of the absentee, which depend upon the death of the said absentee, may provisionally exercise their rights, on the condition of giving security.

Lorsque les héritiers présomptifs auront obtenu l'envoi en possession provisoire, le testament, s'il en existe un, sera ouvert à la réquisition des parties intéressées, ou du commissaire du Gouvernement près le tribunal; et les légataires, les donataires, ainsi que tous ceux qui avaient sur les biens de l'absent, des droits subordonnés à la condition de son décès, pourront les exercer provisoirement, à la charge de donner caution.

ART. 63. If the testament contain an institution of an universal heir, he shall be preferred to the presumptive heirs, unless they are forced heirs, and shall be put into provisional possession of the estate of the absentee, but on giving security for his administration.

RCC—57, 3064. Acts 1916, No. 112 (as am. by 1928, No. 284).

RCC 1870, Art. 63.

Same as above.

CC 1825, Art. 64.

Same as above.

(No reference in Projet)

Si le testament contient une institution universelle, l'héritier ou les héritiers institués universellement seront préférés aux héritiers présomptifs, (autres cependant que les héritiers forcés) et ils seront envoyés en possession provisoire des biens de l'absent, à la charge également de donner caution pour sûreté de leur administration.

CC 1808, p. 16, Art. 12.

If any heirs be appointed universally by the will, the heir or heirs thus appointed, shall be preferred to the presumptive heirs, except nevertheless the forced heirs, and shall be put into a provisional possession of the estate of the absentee, likewise on their giving security for their administration.

-p. 17, Art. 12.

Same as above; but comma (,) after "universellement"; no punctuation after "présomptifs."

CN 1804. No corresponding article.

ART. 64. The husband or wife of the absentee, who is not separated in estate from him or her, and who wishes to continue to enjoy the benefit of the community or partnership of matrimonial gains, which existed between them, may prevent the provisional possession or exercise of all the rights which may depend upon the death of the absentee, and claim and preserve for himself or herself in preference to any other person, the administration of the estate of his or her absent husband or wife.

If on the contrary the husband or wife of the absentee chooses rather to have the community dissolved, he or she may exercise and

claim all his or her rights, both legal and conventional, on his or her giving security for such things as may be liable to be restored.

The wife who elects to have the community continued, has, notwithstanding, the right of renouncing it afterwards.

RCC—57, 70, 3064. Acts 1916, No. 112 (as am. by 1928, No. 284).

RCC 1870, Art. 64.

Same as above.

CC 1825, Art. 65.

Same as above.

(No reference in Projet)

L'époux non séparé de biens, qui voudra continuer à jouir des avantages de la communauté ou société de gains ou d'acquêts, qui existait entre lui et l'absent, pourra empêcher l'envoi provisoire, et l'exercice provisoire de tous les droits subordonnés à la condition du décès de l'absent, et prendre ou conserver par préférence l'administration de ses biens; si l'époux demande la dissolution provisoire de la communauté, il exercera ses reprises et tous ses droits légaux et conventionnels, à la charge de donner caution pour les choses susceptibles de restitution.

La femme, en optant pour la continuation de la communauté, conservera le droit d'y renoncer ensuite.

CC 1808, p. 16, Art. 13.

The husband or wife of the absentee who is not separated of property from him or her and who wishes to continue to enjoy the benefit of the community or partnership of acquits [acquets] or gains which existed between them, may prevent the provisional possession or exercise of all the rights which may depend upon the death of the absentee, and claim and preserve for himself or herself in preference to any body, the administration of the estate of his or her absent husband or wife.

If on the contrary the husband or wife of the absentee, chooses rather to have the community dissolved, he or she may exercise and claim all his or her rights both legal and conventional on his or her giving security for such things as may be liable to be restored.

The wife who will pray for having the community continued, shall nevertheless preserve the right of renouncing it afterwards.

CN 1804, Art. 124.

The husband or wife of the absentee, who was under the regime of community property with him or her, and who elects to continue the community, may prevent the provisional possession or exercise of all the rights which may depend upon the death of the absentee, and claim and preserve for himself or herself, in preference to any other

-p. 17, Art. 13.

Same as above; but no punctuation after "d'acquêts", or after "femme"; comma (,) after "préférence."

L'époux commun en biens, s'il opte pour la continuation de la communauté, pourra empêcher l'envoi provisoire, et l'exercice provisoire de tous les droits subordonnés à la condition du décès de l'absent, et prendre ou conserver par préférence l'administration des biens de l'absent. Si l'époux demande la dissolution provisoire de la communauté,

person, the administration of the estate of his or her absent husband or wife. If on the contrary the husband or wife of the absentee chooses rather to have the community dissolved, he or she may exercise and claim all his or her rights, both legal and conventional, on his or her giving security for such things as may be liable to be restored.

Par. 2 same as par. 3, above.

il exercera ses reprises et tous ses droits légaux et conventionnels, à la charge de donner caution pour les choses susceptibles de restitution.

Par. 2 same as par. 2, above; but comma (,) after "femme."

ART. 65. Provisional possession is but a deposit, which invests those who have obtained it, with the administration of the estate of the absentee, and for which they remain accountable to him, in case he reappears or is heard of again.

The security, therefore, to be given by those who are put into provisional possession, ought not to exceed the probable amount of the injury which their maladministration can cause.

RCC—66 et seq., 70, 72, 1295, 2926 et seq.

RCC 1870, Art. 65.

Same as above.

CC 1825, Art. 66.

(Projet, p. 6. Addition adopted; comment by redactors)

Same as above; but no punctuation after "security", or after "therefore."

La possession provisoire ne sera qu'un dépôt, qui donnera à ceux qui l'obtiendront, l'administration des biens de l'absent, et qui les rendra comptables envers lui, en cas qu'il reparaisse ou qu'on ait de ses nouvelles.

En conséquence, le cautionnement à donner par ceux qui sont envoyés en possession provisoire, ne doit pas excéder la valeur probable du tort que leur mauvaise administration pourrait occasionner.

CC 1808, p. 16, Art. 14.

Same as par. 1, above; but no punctuation after "deposit."

-p. 17, Art. 14.

Same as par. 1, above; but comma (,) after "reparaisse."

CN 1804, Art. 125.

Same as above.

Same as above; but no punctuation after "reparaisse."

ART. 66. It shall be the duty of such as shall have obtained provisional possession, or of the husband or wife who shall have been continued in the administration of the community, to cause an inventory of the movables, and credits of the absentee, to be made by the recorder or by any notary public duly authorized to that effect by the judge.

The judge shall order, if necessary, that the whole or part of the movables be sold, and in case of sale, both the amount of the sale and the profits which may have accrued, shall be either laid out in the purchase of immovable property, or placed at interest in a safe manner.

RCC—70, 79, 1105, 1106, 1162, 1163.

RCC 1870, Art. 66.

(Same as Art. 66 of Proposed Revision of 1869)

Same as above.

CC 1825, Art. 67.

(No reference in Projet)

It shall be the duty of such as shall have obtained provisional possession, or of the husband or wife who shall have been continued in the administration of the community, to cause an inventory of the moveables, slaves and credits of the absentee, to be made by the Judge or by any notary public duly authorized to that effect by the Judge.

The Judge shall order, if necessary, that the whole or part of the moveables be sold, and in case of sale, both the amount of the sale and the profits which may have accrued, shall be either laid out in the purchase of real property, or placed at interest in a safe manner.

CC 1808, p. 16, Art. 15.

It shall be the duty of such as shall have obtained provisional possession, or of the husband or wife who shall have been continued in the administration of the community, to cause an inventory of moveables, slaves and credits of the absentee to be made by the parish judge or by any notary public duly authorized to that effect by the said judge.

The judge shall order, if necessary, that the whole or part of the moveables be sold; and in case of sale, both the amount of the sale and the produce which may be due, shall be either laid out in the purchase of some real property or placed at interest in a solid manner.

CN 1804, Art. 126, pars. 1, 2.

It shall be the duty of such as shall have obtained provisional possession, or of the husband or wife who shall have been continued in the administration of the community, to cause an inventory of the movables and securities of the absentee, in the presence of the *commissaire du Gouvernement* of the court of first instance, or of a justice of the peace appointed by the said *commissaire*.

The court shall order, if necessary, that the whole or part of the movables be sold. In case of sale, both the amount of the sale and the profits which may have accrued, shall be invested.

Ceux qui auront obtenu l'envoi provisoire, ou l'époux qui aura opté pour l'administration de la communauté, devront faire procéder à l'inventaire du mobilier, des esclaves et des actifs de l'absent, par le juge ou par un notaire public autorisé à cet effet par le juge.

Le juge ordonnera, s'il y a lieu, de vendre tout ou partie du mobilier; dans le cas de la vente, il sera fait emploi du prix, ainsi que des fruits échus, soit en les plaçant à intérêt d'une manière solide, soit en acquisition d'immeubles.

-p. 17, Art. 15.

Ceux qui auront obtenu l'envoi provisoire, ou l'époux qui aura opté pour l'administration de la communauté, devront faire procéder à l'inventaire du mobilier, des esclaves et des actifs de l'absent par le juge de paroisse ou par un notaire public autorisé à cet effet par ledit Juge.

Par. 2 same as par. 2, above; but no punctuation after "prix."

Ceux qui auront obtenu l'envoi provisoire, ou l'époux qui aura opté pour la continuation de la communauté, devront faire procéder à l'inventaire du mobilier et des titres de l'absent, en présence du commissaire du Gouvernement près le tribunal de première instance, ou d'un juge de paix requis par ledit commissaire.

Le tribunal ordonnera, s'il y a lieu, de vendre tout ou partie du mobilier. Dans le cas de vente, il sera fait emploi du prix, ainsi que des fruits échus.

ART. 67. Those who shall have obtained either the provisional possession or legal administration, may petition for their own security for the appointment by the judge of two persons well acquainted with such affairs, and sworn by the judge, for the purpose of examining the immovables of the absentee, and reporting their condition; and

the report of such persons shall be afterwards approved by the judge, and the expense attending the same shall be paid out of the estate of the absentee.

RCC—1164.

RCC 1870, Art. 67. (Same as Art. 67 of Proposed Revision of 1869)

Same as above.

CC 1825, Art. 68. (No reference in Projet)

Those who shall have obtained either the provisional possession or legal administration, may petition for their own security for the appointment, by the judge, of two persons well acquainted with such affairs and sworn by the Judge, for the purpose of examining the immoveables of the absentee, and reporting their condition; and the report of such persons shall be afterwards approved by the Judge, and the expenses attending the same shall be paid out of the estate of the absentee.

Ceux qui auront obtenu l'envoi provisoire ou l'administration légale, pourront requérir, pour leur sûreté, qu'il soit procédé par deux experts nommés et assermentés par le juge, à la visite des immeubles, à l'effet d'en constater l'état; le rapport de ces experts sera homologué ensuite par le juge, et les frais en seront pris sur les biens de l'absent.

CC 1808, p. 18, Art. 16.

Those who shall have obtained either the provisional possession or legal administration, may petition for their own security, for the appointment by the judge, of two persons well acquainted with such affairs and sworn by the judge, for the purpose of viewing the immoveables of the absentee, and the report of such persons shall be afterwards approved by the judge, and the expenses arising thereon, shall be paid out of the estate of the absentee.

-p. 19, Art. 16.

Ceux qui auront obtenu l'envoi provisoire ou l'administration légale, pourront requérir pour leur sûreté, qu'il soit procédé par deux experts nommés et assermentés par le juge, à la visite des immeubles, à l'effet d'en constater l'état; le rapport desdits experts sera homologué ensuite par le Juge et les frais en seront pris sur les biens de l'absent.

CN 1804, Art. 126, par. 3.

Those who shall have obtained provisional possession, may petition for their own security, for the appointment, by the court, of a person well acquainted with such affairs, for the purpose of examining the immovables of the absentee and determining their condition. His report shall be homologated in the presence of the *commissaire du Gouvernement*, and the expenses shall be paid out of the estate of the absentee.

Ceux qui auront obtenu l'envoi provisoire, pourront requérir, pour leur sûreté, qu'il soit procédé par un expert nommé par le tribunal, à la visite des immeubles, à l'effet d'en constater l'état. Son rapport sera homologué en présence du commissaire du Gouvernement; les frais en seront pris sur les biens de l'absent.

ART. 68. If the absentee shall reappear after his heirs shall have been put in provisional possession, they shall be bound to return him the annual revenues of his property in the following proportions:

If he reappears within five years they shall return two-thirds;

If he reappear after five and within ten years, one-half;

If he reappear after ten years, one-third.

But after thirty years' absence, the whole of the revenue shall belong to those who shall have been put into provisional possession.

RCC—68, 70, 72 *et seq.*, 79.

RCC 1870, Art. 68. (Same as Art. 68 of Proposed Revision of 1869)

Same as above.

CC 1825, Art. 69.

(Projet, p. 6. Amendment adopted; no comment)

If the absentee shall re-appear after the putting into provisional possession of his heirs, they shall be bound to return him the annual revenues of his property in the following proportions:

Of the first five years, two thirds;

Of the five years ensuing, one half;

Of the next five years, one third.

After thirty years absence, the whole of the revenue shall belong to those who shall have been put into provisional possession.

CC 1808, p. 18, Art. 17.

Those who in consequence of the provisional possession, or of the legal administration, shall have enjoyed the estate of the absentee, shall not be bound to return to him, more than the fifth of the revenue, if such absentee reappears before fifteen years elapsed since the day when he disappeared; and the tenth only, if such absentee shall not reappear until after the said fifteen years.

After thirty years absence, the whole of the revenue shall belong to those who shall have been put in provisional possession or shall have been entrusted with the legal administration.

CN 1804, Art. 127.

Par. 1 same as par. 1, above.

After thirty years absence, the whole of the revenue shall belong to them.

ART. 69. Those persons who enjoy only in virtue of the provisional possession, can neither alienate nor mortgage the immovables of the absentee.

RCC—65, 73, 3301.

RCC 1870, Art. 69.

(Same as Art. 69 of Proposed Revision of 1869)

Same as above.

CC 1825, Art. 70.

(Projet, p. 7. Addition adopted; comment by redactors)

Those persons who enjoy only in virtue of the provisional possession, can neither alienate nor mortgage the immovables and slaves of the absentee.

But if it should be found necessary to sell any of the slaves, the sale of them may be ordered by the Judge, who must require that the proceeds be placed

Si l'absent reparait depuis l'envoi en possession provisoire de ses héritiers, ils seront tenus de lui rendre les revenus de ses biens dans la proportion suivante:

Des cinq premières années, les deux tiers;

Des cinq années suivantes, la moitié;

Des cinq années subséquentes, le tiers.

Après trente ans d'absence, la totalité des revenus appartiendra à ceux qui auront été envoyés en possession provisoire.

-p. 19, Art. 17.

Ceux qui par la suite de l'envoi provisoire ou de l'administration légale, auront joui des biens de l'absent, ne seront tenus de lui rendre que le cinquième des revenus, s'il reparait avant quinze ans révolus depuis le jour de sa disparition, et le dixième, s'il ne reparait qu'après les quinze ans;

Après trente ans d'absence, la totalité des revenus appartiendra à ceux qui auront été envoyés en possession provisoire ou qui auront joui de l'administration légale.

Ceux qui, par suite de l'envoi provisoire, ou de l'administration légale, auront joui des biens de l'absent, ne seront tenus de lui rendre que le cinquième des revenus, s'il reparait avant quinze ans révolus depuis le jour de sa disparition; et le dixième, s'il ne reparait qu'après les quinze ans.

Après trente ans d'absence, la totalité des revenus leur appartiendra.

Tous ceux qui ne jouiront qu'en vertu de l'envoi provisoire, ne pourront aliéner ni hypothéquer les immeubles ou les esclaves de l'absent.

Cependant, si parmi ces esclaves il y en avait qu'il fût nécessaire de vendre, la vente en pourra être ordonnée par le juge, en exigeant toutefois que le prix

Art. 70

COMPILED EDITION

at interest in a safe manner, or invested in moveables* and slaves.

en fût placé à intérêt, d'une manière solide, ou que remploi en fût fait en immeubles* ou esclaves.

CC 1808, p. 18, Art. 18.

Same as par. 1, above; but no punctuation after "possession."

-p. 19, Art. 18.

Same as par. 1, above.

CN 1804, Art. 128.

Same as RCC 1870, Art. 69, above.

Tous ceux qui ne jouiront qu'en vertu de l'envoi provisoire, ne pourront aliéner ni hypothéquer les immeubles de l'absent.

*Note error in English translation of French text; "moveables" should be "immovables."

ART. 70. If the absence has lasted thirty years since the provisional possession, or since the time when the husband or wife who held their estate in common shall have taken the administration of the estate of the absentee, or if one hundred years have elapsed since the birth of the absentee, then the sureties shall be discharged, and all such as may have rights, may petition for the partition of the estate of the absentee, and cause themselves to be put in absolute possession by the judge.

RCC—57, 58, 62, 64, 68, 73, 74, 934.

RCC 1870, Art. 70.

Same as above.

CC 1825, Art. 71.

Same as above.

(No reference in Projet)

Si l'absence a continué pendant trente ans depuis l'envoi provisoire, ou depuis l'époque à laquelle l'époux commun aura pris l'administration des biens de l'absent, ou s'il s'est écoulé cent ans révolus depuis la naissance de l'absent, les cautions seront déchargées; tous les ayant-droit pourront demander le partage des biens de l'absent, et faire prononcer l'envoi en possession définitif par le juge.

CC 1808, p. 18, Art. 19.

Same as above; but comma (,) after "common"; no punctuation after third "absentee."

-p. 19, Art. 19.

Same as above.

CN 1804, Art. 129.

If the absence has lasted thirty years since the provisional possession, or since the time when the husband or wife who held their estate in common shall have taken the administration of the estate of the absentee, or if one hundred years have elapsed since the birth of the absentee, then the sureties shall be discharged, and all such as may have rights, may petition for the partition of the estate of the absentee, and cause themselves to be put in absolute possession by the court of first instance.

Si l'absence a continué pendant trente ans depuis l'envoi provisoire, ou depuis l'époque à laquelle l'époux commun aura pris l'administration des biens de l'absent, ou s'il s'est écoulé cent ans révolus depuis la naissance de l'absent, les cautions seront déchargées; tous les ayant-droit pourront demander le partage des biens de l'absent, et faire prononcer l'envoi en possession définitif par le tribunal de première instance.

ART. 71. The succession of the absentee shall be opened from the day of his or her death duly ascertained, for the benefit of such

heirs as were capable of inheriting his estate at the time; and those who shall have enjoyed the estate of the absentee, shall be bound to restore the same, with the exception of the profits assigned them by the provisions of the above sixty-eighth article.

RCC—76, 79, 934 *et seq.*

RCC 1870, Art. 71. (Same as Art. 71 of Proposed Revision of 1869)
Same as above.

CC 1825, Art. 72. (No reference in Projet)

The succession of the absentee shall be opened from the day of his or her death duly ascertained, for the benefit of such heirs as were capable of inheriting his estate at the time; and those who shall have enjoyed the estate of the absentee, shall be bound to restore the same, with the exception of the profits assigned them by the provisions of the above sixty-ninth article.

La succession de l'absent sera ouverte du jour de son décès prouvé, au profit des héritiers habiles à succéder à cette époque, et ceux qui auront joui des biens de l'absent, seront tenus de les restituer, sous la réserve des fruits par eux acquis en vertu de l'article 69 ci-dessus.

CC 1808, p. 18, Art. 20.

The succession of the absentee, shall be opened from the day of his or her death duly ascertained, for the benefit of such heirs as were capable of inheriting his estate at the time; and those who shall have enjoyed the estate of the absentee, shall be bound to restore the same, with the exception of the profits assigned them by the provisions of the above 17th article.

-p. 19, Art. 20.

La succession de l'absent sera ouverte du jour de son décès prouvé, au profit des héritiers habiles à succéder à cette époque, et ceux qui auront joui des biens de l'absent, seront tenus de les restituer, sous la réserve des fruits par eux acquis en vertu de l'article 17 ci-dessus.

CN 1804, Art. 130.

The succession of the absentee shall be opened from the day of his or her death duly ascertained, for the benefit of his nearest heirs at such time; and those who shall have enjoyed the estate of the absentee, shall be bound to restore the same, with the exception of the profits assigned them by the provisions of the one hundred and twenty-seventh article.

La succession de l'absent sera ouverte du jour de son décès prouvé, au profit des héritiers les plus proches à cette époque; et ceux qui auraient joui des biens de l'absent, seront tenus de les restituer, sous la réserve des fruits par eux acquis en vertu de l'article 127.

ART. 72. If the absentee should reappear, or if his existence should be proved during the provisional possession, then the effect of the judgment which shall have ordered this provisional possession, shall cease, without, however, affecting the validity of any such conservatory measures prescribed in the first chapter of this title as may have been taken for the administration of the estate of the absentee.

RCC—65, 68, 73, 79.

RCC 1870, Art. 72.

Same as above.

CC 1825, Art. 73. (No reference in Projet)

Same as above; but "effect" spelled "effect"; comma (,) after "without", and after "however."

Si l'absent reparait, ou si son existence est prouvée pendant l'envoi provisoire, les effets du jugement qui aura ordonné cet envoi, cesseront, sans préjudice, s'il y a lieu, des mesures conservatoires prescrites au chapitre premier de ce titre, pour l'administration de ses biens.

CC 1808, p. 18, Art. 21.

If the absentee should reappear, or if his or her existence should be proved during the provisional possession, then the effect of the judgment which shall have ordered this provisional possession, shall cease, without however affecting, if such should be the case, the conservatory measures prescribed in the first chapter of this title, for the administration of the estate of the absentee.

-p. 19, Art. 21.

Same as above; but no punctuation after "reparaît."

CN 1804, Art. 131.

If the absentee should reappear, or if his or her existence should be proved during the provisional possession, then the effect of the judgment which shall have declared the absence shall cease, without, however, affecting, if such should be the case, the conservatory measures prescribed in the first chapter of the present title, for the administration of the estate of the absentee.

Si l'absent reparaît, ou si son existence est prouvée pendant l'envoi provisoire, les effets du jugement qui aura déclaré l'absence, cesseront; sans préjudice, s'il y a lieu, des mesures conservatoires prescrites au chap. I.^{er} du présent titre, pour l'administration de ses biens.

ART. 73. If the absentee should reappear, or if his existence should be proved, even after the putting into absolute possession, he shall recover his estate, such as it may happen to be, the price of such part of it as has been sold, or such property as has been bought with the proceeds of his estate which may have been sold.

RCC—68 *et seq.*, 72, 74, 76, 79, 1381.

RCC 1870, Art. 73.

Same as above.

CC 1825, Art. 74.

Same as above.

(No reference in Projet)

Si l'absent reparaît, ou si son existence est prouvée, même après l'envoi définitif, il recouvrera ses biens dans l'état où ils se trouveront, le prix de ceux qui auraient été aliénés, ou les biens provenant de l'emploi qui aurait été fait du prix de ses biens vendus.

CC 1808, p. 18, Art. 22.

If the absentee should reappear, or if his or her existence should be proved even after the putting into an absolute possession, he or she shall recover his or her estate, such as it may happen to be, the price of such as may have been sold, or such estate as may have been bought with the proceeds of his or her estate which may have been sold.

-p. 19, Art. 22.

Same as above; but no punctuation after "prouvée."

CN 1804, Art. 132.

Same as above.

Same as above; but comma (,) after "prouvée."

ART. 74. The children, or direct descending heirs of the absentee, may likewise, within thirty years to be computed from the day of the absolute possession, petition for the restitution of his estate, according to the preceding article.

RCC—57, 68, 70, 72, 73, 79.

RCC 1870, Art. 74.

Same as above.

CC 1825, Art. 75.

Same as above.

(No reference in Projet)

Les enfans et descendans directs de l'absent pourront également, dans les trente ans, à compter de l'envoi définitif, demander la restitution de ses biens, comme il est dit en l'article précédent.

CC 1808, p. 18, Art. 23.

The children or direct descending heirs of the absentee, may likewise within thirty years to be computed from the day of the absolute possession, petition for the restitution of his or her estate, as it is ordered in the preceding article.

-p. 19, Art. 23.

Same as above; but comma (,) after "l'absent"; no punctuation after "également."

CN 1804, Art. 133.

Same as above.

Same as above; but no punctuation after "l'absent"; comma (,) after "également."

ART. 75. After judgment ordering provisional possession or legal administration, no person who may have rights to exercise against the absentee, can prosecute such rights, except against those who have been put into provisional possession of the estate, or who shall have been legally appointed administrators of the same.

RCC—56, 57, 62, 68, 70.

RCC 1870, Art. 75.

Same as above.

(Same as Art. 75 of Proposed Revision of 1869)

CC 1825, Art. 76.

After judgment or during provisional possession or legal administration, no person who may have rights to exercise against the absentee, can prosecute such rights, except against those who have been put into provisional possession of the estate, or who shall have been legally appointed administrators of the same.

(No reference in Projet)

Après le jugement d'envoi provisoire ou d'administration légale, toute personne qui aurait des droits à exercer contre l'absent, ne pourra les poursuivre que contre ceux qui auront été envoyés en possession des biens, ou qui en auront eu l'administration légale.

CC 1808, p. 20, Art. 24.

After judgment ordering provisional possession or legal administration, no person who may have rights to exercise against the absentee, can prosecute such rights but against those who have been put into a provisional possession of the estate, or who shall have been legally appointed administrators of the same.

-p. 21, Art. 24.

Après le jugement d'envoi provisoire ou d'administration légale, toute personne qui aurait des droits à exercer contre l'absent, ne pourra les poursuivre que contre ceux qui auront été envoyés en possession des biens ou qui en auront l'administration légale.

CN 1804, Art. 134.

After judgment declaratory of absence, no person who may have rights to exercise against the absentee, can prosecute such rights, except against those who have been put into possession of the estate, or who shall have been legally appointed administrators of the same.

Après le jugement de déclaration d'absence, toute personne qui aurait des droits à exercer contre l'absent, ne pourra les poursuivre que contre ceux qui auront été envoyés en possession des biens, ou qui en auront l'administration légale.

Chapter 3—OF THE EFFECTS OF ABSENCE UPON THE EVENTUAL
RIGHTS WHICH MAY BELONG TO THE ABSENTEE

ART. 76. Whoever shall claim a right accruing to a person whose existence is not known, shall be bound to prove that such person existed at the time when the right in question accrued, and until this be proved, his demand shall not be admitted.

RCC—57, 71, 73, 77, 78, 899 *et seq.*

RCC 1870, Art. 76.

Same as above.

CC 1825, Art. 77.

Same as above.

(No reference in Projet)

Quiconque réclamera un droit échu à un individu dont l'existence ne sera pas reconnue, devra prouver que l'individu existait quand le droit a été ouvert; jusqu'à cette preuve, il sera déclaré non recevable dans sa demande.

CC 1808, p. 20, Art. 25.

Whoever shall claim a right accruing to a person whose existence shall not be acknowledged, shall be bound to prove that such person existed at the time when the right in question accrued, and until this be proved, his demand shall not be admitted.

-p. 21, Art. 25.

Same as above; but comma (,) after "existait."

CN 1804, Art. 135.

Same as above; RCC 1870 preferred.

Quiconque réclamera un droit échu à un individu dont l'existence ne sera pas reconnue, devra prouver que ledit individu existait quand le droit a été ouvert: jusqu'à cette preuve, il sera déclaré non recevable dans sa demande.

ART. 77. In case a succession shall be opened in favor of a person whose existence is not known, such inheritance shall devolve exclusively on those who would have had a concurrent right with him to the estate, or on those on whom the inheritance should have devolved if such person had not existed.*

RCC—76, 78, 899, 1022, 1381.

RCC 1870, Art. 77.

Same as above.

(Same as Art. 77 of Proposed Revision of 1869)

CC 1825, Art. 78.

In case a succession shall be opened in favor of a person whose existence is not known, such inheritance shall devolve exclusively on those who would have had a joint right with him to the estate, or on those on whom the inheritance should have devolved if such person had not existed.*

(No reference in Projet)

S'il ouvre une succession à laquelle soit appelé un individu dont l'existence n'est pas reconnue, elle sera dévolue exclusivement à ceux avec lesquels il aurait eu le droit de concourir, ou à ceux qui l'auraient recueillie à son défaut.*

CC 1808, p. 20, Art. 26.

In case a right to an inheritance, shall devolve on a person whose existence is not acknowledged, such inheri-

-p. 21, Art. 26.

Same as above.

tance shall devolve exclusively on those with whom such person should have had a right to divide, or on those on whom the inheritance should have devolved, if such person had not existed.*

CN 1804, Art. 136.

Same as above.*

Same as above.

*Note error in English translation of French text; "if such person had not existed" should be "upon his default."

ART. 78. The provisions of the two preceding articles shall not affect the right of claiming the inheritance and any other rights which the absentee or his representatives or assigns may have; these shall be extinguished only by the lapse of time which is established for prescription.

RCC—71 *et seq.*, 76, 77, 471, 1030, 1031, 3478, 3548.

RCC 1870, Art. 78.

(Same as Art. 78 of Proposed Revision of 1869)

Same as above.

CC 1825, Art. 79.

(No reference in Projet)

The provisions of the two preceding articles shall not affect the right of claiming the inheritance and any other rights which the absentee or his representatives or assigns may have, which shall be extinguished only by the lapse of time which is established for prescription.

Les dispositions des deux articles précédens auront lieu sans préjudice des actions en pétition d'hérédité et autres droits, lesquels compéteront à l'absent ou à ses représentans ou ayant-cause, et ne s'éteindront que par le laps de tems établi par la prescription.

CC 1808, p. 20, Art. 27.

The provisions of the two preceding articles shall not affect the right of claiming the inheritance and any other rights which shall belong to the absentee or his representatives or assigns, and shall be extinguished only by the lapse of time which is established for prescription.

-p. 21, Art. 27.

Same as above; but no punctuation after "cause."

CN 1804, Art. 137.

Same as above.

Les dispositions des deux articles précédens auront lieu sans préjudice des actions en pétition d'hérédité et d'autres droits, lesquels compéteront à l'absent ou à ses représentans ou ayant-cause, et ne s'éteindront que par le laps de temps établi pour la prescription.

ART. 79. As long as the absentee shall not appear, or a suit shall not be brought in his name, those who shall have been put in possession of the inheritance, shall have a right to the proceeds by them received *bona fide*.

RCC—57, 68, 72 *et seq.*, 77, 502, 2313, 2452, 2947, 3478.

RCC 1870, Art. 79.

Same as above.

CC 1825, Art. 80.

(No reference in Projet)

Same as above.

Tant que l'absent ne se présentera pas, ou que les actions ne seront point exercées de son chef, ceux qui auront recueilli la succession, gagneront les fruits perçus par eux de bonne foi.

CC 1808, p. 20, Art. 28.

As long as the absentee shall not appear, or the actions shall not be brought in his name, those who shall have been put in possession of the inheritance, shall have a right to the proceeds by them received *bona fide*.

CN 1804, Art. 138.

As long as the absentee shall not reappear, or a suit shall not be brought in his name, those who shall have obtained the succession shall have a right to the proceeds by them received *bona fide*.

-p. 21, Art. 28.

Tant que l'absent ne se présentera pas ou que les actions ne seront point exercées de son chef, ceux qui auront recueilli la succession, gagneront les fruits perçus par ceux de bonne foi.

Tant que l'absent ne se représentera pas, ou que les actions ne seront point exercées de son chef, ceux qui auront recueilli la succession, gagneront les fruits par eux perçus de bonne foi.

Chapter 4—OF THE EFFECTS OF ABSENCE RESPECTING MARRIAGE

ART. 80. Repealed by Acts 1938, No. 357.

Art. 80.

Ten years of absence, without any news of the absentee, is a sufficient cause for the husband or wife of such absentee to contract another marriage, after having been authorized to do so by the judge on due proof, that the marriage was contracted in this State, and that the applicant is now domiciled in this State, or that the applicant has resided for full ten years in this State, without having had in either case any news of the existence of the other spouse during the said ten years; provided that the petitioning husband or wife shall be a competent witness in such proceeding.

And if after the said marriage the husband or wife who was absent, happens to return, he or she shall be free of his or her first contract, and at liberty to contract another marriage, and the marriage entered into by the husband or wife during and on account of the said absence shall remain firm and valid. (As amended by Acts 1916, No. 211)

RCC 1870, Art. 80.

(Same as Art. 80 of Proposed Revision of 1869)

Ten years of absence, without any news of the absentee, is a sufficient cause for the husband or wife of such absentee to contract another marriage, after having been authorized to do so by the judge, on due proof that such absence without any news had continued the time required as aforesaid.

And if after the said marriage the husband or wife who was absent, happens to return, he or she shall be free of his or her first contract, and at liberty to contract another marriage, and the marriage entered into by the husband or wife during and on account of the absence shall remain firm and valid.

CC 1825, Art. 81.

(No reference in Projet)

Ten years of absence, without any news of the absentee, is a sufficient cause for the husband or wife of such absentee to contract another marriage, after having been authorized to do so by the judge, on due proof that such absence without any news continued the time required as aforesaid.

Par. 2 same as par. 2, above.

Dix années d'absence, sans aucunes nouvelles, donnent le droit au mari ou à la femme de l'absent de passer à de secondes noces, après en avoir obtenu la permission de justice, sur justification suffisante de la durée de l'absence, sans nouvelles, pendant le tems requis par la loi.

Et si l'époux ou la femme, qui était absent, reparait ensuite, il sera libre de ses premiers nœuds; et pourra en contracter de nouveaux; et le mariage contracté par l'autre conjoint, sur le motif de l'absence, demeurera ferme et valide.

CC 1808, p. 20, Art. 29.

Ten years of absence without any news of the absentee, is a sufficient cause for the husband or wife of such absentee, to contract another marriage, after having been authorised to do so by the judge, on due proof that such absence without any news, continued the time directed as aforesaid.

And if after the said marriage the husband or wife who was absent, happens to return, he or she shall be free of his or her first bond and at liberty to contract another marriage, and the marriage contracted by the husband or wife during and on account of the absence, shall remain firm and valid.

CN 1804, Art. 139.

The absent spouse, whose consort has contracted another marriage, shall alone be permitted, either personally or by his attorney in fact, holding proof that he is alive, to attack the marriage.

-p. 21, Art. 29.

Same as above; but no punctuation after "d'absence", after "ou la femme", or after "nœuds"; comma (,) after "l'absent", and after "nouveaux."

L'époux absent dont le conjoint a contracté une nouvelle union, sera seul recevable à attaquer ce mariage par lui-même, ou par son fondé de pouvoir, muni de la preuve de son existence.

Chapter 5—OF THE CARE OF MINOR CHILDREN WHERE THE FATHER HAS DISAPPEARED

ART. 81. If a father has disappeared, leaving minor children born during his marriage, the mother shall take care of them and shall exercise all the rights of her husband with respect to their education, and the administration of their estate.

RCC—217, 221 *et seq.*, 250.

RCC 1870, Art. 81.

Same as above.

CC 1825, Art. 82.

(No reference in Projet)

Same as above; but no punctuation after "education."

Si le père a disparu, laissant des enfants mineurs issus d'un commun mariage, la mère en aura la surveillance, et elle exercera tous les droits du mari quant à leur éducation et à l'administration de leurs biens.

CC 1808, p. 20, Art. 30.

Same as above; but no punctuation after "disappeared."

-p. 21, Art. 30.

Same as above; but no punctuation after "disparu", or after "surveillance"; comma (,) after "mari."

CN 1804, Art. 141.

Same as above.

Same as above; but comma (,) after "surveillance."

ART. 82.* But if the mother contracts a second marriage, she can not preserve this superintendence of her children, but with the consent of a family meeting composed of relations or friends of the father.

RCC—254. Acts 1921, E.S., No. 34.

Art. 83

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RCC 1870, Art. 82. (Same as Art. 82 of Proposed Revision of 1869)
Same as above.

CC 1825, Art. 83. (Projet p. 7. Addition adopted; comment by redactors)

But if the mother contracts a second marriage, she cannot preserve this superintendence of her children, but with the consent of a meeting of the family composed of relations or friends of the father.

Mais si la mère contracte un second mariage, elle ne pourra conserver cette surveillance que de l'avis d'une assemblée de famille composée des parens ou amis du père.

CC 1808. No corresponding article.

CN 1804. No corresponding article.

*In connection with this article see Acts 1921, E.S., No. 34.

ART. 83.* If this superintendence is refused to her, a provisional tutor shall be appointed for the children, in the manner prescribed in the title: *Of Minors, their Tutorship and Emancipation.*

RCC—85, 246 *et seq.* Acts 1921, E.S., No. 34.

RCC 1870, Art. 83. (Same as Art. 83 of Proposed Revision of 1869)
Same as above.

CC 1825, Art. 84. (Projet, p. 7. Addition adopted; comment by redactors)

If this superintendence is refused to her, a provisional tutor shall be appointed for the children, in the manner prescribed in the title of *minors, and of tutorship and curatorship.*

Si cette surveillance lui est refusée, il sera nommé aux enfans un tuteur provisoire, de la manière prescrite au titre *des mineurs et de leur tutelle et curatelle.*

CC 1808. No corresponding article.

CN 1804. No corresponding article.

*In connection with this article see Acts 1921, E.S., No. 34.

ART. 84. There shall be appointed for the children a provisional tutor in the manner herein directed, if at the time of the disappearance of the father, the mother should be dead, or if she should die before their attaining the age of majority.

RCC—85, 246 *et seq.*, 267.

RCC 1870, Art. 84.
Same as above.

CC 1825, Art. 85. (Projet, p. 7. Amendment adopted; no comment)
Same as above.

Il sera également nommé aux enfans un tuteur provisoire, de la manière cidessus énoncée, si, lors de la disparition [disparition] du père, la mère était décédée, ou si elle décède ensuite avant leur majorité.

CC 1808, p. 22, Art. 31.

If at the time of the disappearing of the father, the mother was dead, or if the mother should die before the provisional possession has been ordered, then a provisional guardian shall be appointed to the children in the manner prescribed under the title of *minors, tutors and curators.*

-p. 23, Art. 31.

Si lors de la disparition du père, la mère était décédée, ou si elle décède avant que la possession provisoire ne soit prononcée, la surveillance des enfans sera déferée à un tuteur provisoire nommé de la manière prescrite au titre *des mineurs et de leurs tuteurs et curateurs.*

CN 1804, Art. 142.

Six months after the disappearance of the father, if the mother was dead at the time of this disappearance, or if she happens to die before the absence of the father is declared, the care of the children shall be conferred, by the family meeting, on the nearest ascendants, and, in default of these, on a provisional tutor.

Six mois après la disparition du père, si la mère était décédée lors de cette disparition, ou si elle vient à décéder avant que l'absence du père ait été déclarée, la surveillance des enfans sera déferée, par le conseil de famille, aux ascendans les plus proches, et, à leur défaut, à un tuteur provisoire.

ART. 85. The same thing shall take place if the husband or wife who has disappeared, has left minor children born of a former marriage.

RCC—83, 84, 267, 270.

RCC 1870, Art. 85. (Same as Art. 85 of Proposed Revision of 1869)
Same as above.

CC 1825, Art. 86. (No reference in Projet)

The same thing shall take place if the husband or wife who have disappeared, have left minor children born of a former marriage.

Il en sera de même dans le cas où l'un des époux qui aura disparu, laissera des enfans mineurs issus d'un mariage précédent.

CC 1808, p. 22, Art. 32.

It will be the same thing in case the husband or wife who shall have disappeared, shall leave minor children born of a former marriage.

-p. 23, Art. 32.
Same as above.

CN 1804, Art. 143.

Same as above.

Same as above.

TITLE IV—OF HUSBAND AND WIFE

Chapter 1—ON MARRIAGE

ART. 86. The law considers marriage in no other view than as a civil contract.

RCC—87 *et seq.*, 90, 91, 1934(3).

RCC 1870, Art. 86.

Same as above.

CC 1825, Art. 87. (No reference in Projet)

Same as above.

La loi ne considère le mariage que comme un contrat civil.

CC 1808, p. 24, Art. 1.

Same as above. (Same as Acts 1807, Chap. 17, §1)

-p. 25, Art. 1.

Same as above. (Same as Acts 1807, Chap. 17, §1)

CN 1804. No corresponding article.

Projet du Gouvernement (1800), Book I, Title V, Art. 1.

The law considers marriage in its civil and political aspects only.

La loi ne considère le mariage que sous ses rapports civils et politiques.

ART. 87. The laws prescribe:

1. The manner of contracting and celebrating marriages;
2. The legal effects and consequences of marriage;
3. The manner in which marriages may be dissolved; [.]