

## Title XVI. Of Suretyship (Art. 3035 - 3070)

Louisiana

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**CC 1825, Art. 3003.**

(No reference in Projet)

Same as above; but semicolon (;) after "it"; comma (,) after "and."

En cas de mort du mandataire, son héritier doit en donner avis au mandant, et en attendant pourvoir à ce que les circonstances exigent pour les intérêts de celui-ci.

**CC 1808, p. 426, Art. 41.**

In case of the death of the attorney, his heir ought to inform the principal of it, and in the mean time said heir is bound to attend to said business, as circumstances may require, for the benefit of said principal.

**-p. 427, Art. 41.**

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

**CN 1804, Art. 2010.**

In case of the death of the attorney, his heirs ought to inform the principal of it, and, in the meantime, attend to what may be requisite for the interest of the principal.

En cas de mort du mandataire, ses héritiers doivent en donner avis au mandant, et pourvoir, en attendant, à ce que les circonstances exigent pour l'intérêt de celui-ci.

**Projet du Gouvernement (1800), Book III, Title XVII, Art. 43.**

Same as CC 1808, p. 426, Art. 41, above; RCC 1870 preferred.

En cas de mort du mandataire, son héritier doit en donner avis au mandant, et, en attendant, pourvoir à ce que les circonstances exigent pour l'intérêt de celui-ci.

**TITLE XVI—OF SURETYSHIP**

**Chapter I—OF THE NATURE AND EXTENT OF SURETYSHIP**

**ART. 3035.** *Suretyship* is an accessory promise by which a person binds himself for another already bound, and agrees with the creditor to satisfy the obligation, if the debtor does not.

RCC—1761, 1765, 1767, 1771, 1773, 1778, 1890, 2091, 2092, 2134, 2162, 2192, 2488, 2557, 2645, 3045, 3066, 3076, 3284, 3295 *et seq.*, 3553. Acts 1904, No. 64, §66.

**RCC 1870, Art. 3035.**

Same as above.

**CC 1825, Art. 3004.**

(Projet, p. 353. Substitution adopted; no comment)

Same as above; but "accessory" spelled "accessary."

Le cautionnement est une promesse accessoire par laquelle une personne s'engage pour une autre qui est déjà obligée, et se soumet envers le créancier à satisfaire à cette obligation, si le débiteur n'y satisfait pas lui-même.

**CC 1808, p. 428, Art. 1.**

The person who becomes surety on a debt, is bound to pay to the creditor said debt, either in whole or in part, in behalf of the debtor, if said debtor does not pay it himself.

**-p. 429, Art. 1.**

Celui qui se rend caution d'une obligation, s'oblige, envers le créancier, à lui payer, au défaut du débiteur, en tout ou partie, ce que celui-ci lui doit.

**CN 1804, Art. 2011.**

The person who becomes surety on a debt agrees with the creditor to satisfy the obligation, if the debtor does not.

Celui qui se rend caution d'une obligation, se soumet envers le créancier à satisfaire à cette obligation, si le débiteur n'y satisfait pas lui-même.

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

Same as CC 1808, p. 428, Art. 1, above. Same as CC 1808, p. 429, Art. 1, above.

**ART. 3036.** Suretyship can only be given for the performance of valid contracts. A man may, however, become surety for an obligation of which the principal debtor might get a discharge by an exception merely personal to him; such as that of being a minor, or a married woman.

RCC—1758, 1779, 1782 *et seq.*, 1792, 1797, 1891, 1892, 1893, 2098, 3060, 3076, 3139, 3285, 3299. Acts 1928, No. 283.

**RCC 1870, Art. 3036.**

Same as above.

**CC 1825, Art. 3005.** (No reference in *Projet*)

Same as above; but comma (,) after “him.” Le cautionnement ne peut exister que sur une obligation valable.

On peut néanmoins cautionner l’obligation, dont le débiteur principal pourrait se faire décharger par une exception purement personnelle, telle que celle du mineur ou de la femme mariée.

**CC 1808, p. 428, Art. 2.**

Same as above; but no punctuation after “man”, or after “however.”

**-p. 429, Art. 2.**

Same as above; but “cautionner” spelled “cantonner”; comma (,) after “on peut”, after “néanmoins”, and after “mineur”; no punctuation after “l’obligation”; semicolon (;) after “personnelle.”

**CN 1804, Art. 2012.**

Par. 1 same as sentence 1, above.

A man may however become surety for an obligation, although it could be annulled by an exception merely personal to the obligor; for example, in case of minority.

Par. 1 same as par. 1, above.

On peut néanmoins cautionner une obligation, encore qu’elle pût être annulée [annulée] par une exception purement personnelle à l’obligé; par exemple, dans le cas de minorité.

**Projet du Gouvernement (1800)**, Book III, Title V, Art. 2.

Same as CC 1808, p. 428, Art. 2, above. Same as CC 1808, p. 429, Art. 2, above; but “cantonner” spelled “cautionner”; no punctuation after “On peut”, after “néanmoins”, or after “mineur”; comma (,) after “personnelle.”

**ART. 3037.** The suretyship can not exceed what may be due by the debtor, nor be contracted under more onerous conditions.

It may be contracted for a part of the debt only, or under more favorable conditions.

The suretyship which exceeds the debt or which is contracted under more onerous conditions shall not be void, but shall be reduced to the conditions of the principal obligation.

RCC—1774, 2763, 3039, 3040, 3294.

**RCC 1870, Art. 3037.**

Same as above.

- CC 1825, Art. 3006.** (No reference in Projet)  
 Same as above; but comma (,) after "exceeds the debt."  
 Le cautionnement ne peut excéder ce qui est dû par le débiteur, ni être contracté sous des conditions plus dures.  
 Il peut être contracté pour une partie de la dette seulement, et sous des conditions moins dures.  
 Le cautionnement qui excède la dette, ou qui est contracté sous des conditions plus dures, n'est point nul, mais seulement réductible à la mesure de l'obligation principale.
- CC 1808, p. 428, Art. 3.**  
 Same as above; but comma (,) after "is contracted under more onerous conditions."  
**-p. 429, Art. 3.**  
 Pars. 1, 2 same as pars. 1, 2, above.  
 Le cautionnement qui excède la dette, ou qui est contracté sous des conditions plus dures, n'est point nul, mais seulement réductible à la mesure de l'action principale.
- CN 1804, Art. 2013.**  
 Same as above.  
 Le cautionnement ne peut excéder ce qui est dû par le débiteur, ni être contracté sous des conditions plus onéreuses.  
 Il peut être contracté pour une partie de la dette seulement, et sous des conditions moins onéreuses.  
 Le cautionnement qui excède la dette, ou qui est contracté sous des conditions plus onéreuses, n'est point nul: il est seulement réductible à la mesure de l'obligation principale.
- Projet du Gouvernement (1800), Book III, Title V, Art. 3.**  
 Same as above.  
 Same as CC 1808, p. 429, Art. 3, above.
- ART. 3038.** A man may be surety without the order or even the knowledge of the person for whom he becomes surety.  
 Surety may also be given, not only for the principal debtor, but also for the person who has become his surety.  
 RCC—1765, 1889, 1890, 2134, 2295, 3052, 3067.
- RCC 1870, Art. 3038.** (Same as Art. 3038 of Proposed Revision of 1869)  
 Same as above.
- CC 1825, Art. 3007.** (Projet, p. 353. Amendment † adopted; no comment)  
 Par. 1 same as par. 1, above.  
 On peut se rendre caution, sans ordre de celui pour lequel on s'oblige, et même à son insu.  
 On peut aussi se rendre caution, non seulement du débiteur principal, mais encore de celui qui l'a cautionné.
- CC 1808, p. 428, Art. 4.**  
 Suretyship may be given not only for the principal debtor, but also for the person who has been his security.  
**-p. 429, Art. 4.**  
 On peut se rendre caution, non-seulement du débiteur principal, mais encore de celui qui l'a cautionné.
- CN 1804, Art. 2014.**  
 Same as CC 1825, Art. 3007, above. Same as CC 1825, Art. 3007, above.

Projet du Gouvernement (1800), Book III, Title V, Art. 4.

Same as CC 1808, p. 428, Art. 4, above. Same as CC 1808, p. 429, Art. 4, above.

ART. 3039. Suretyship can not be presumed; it ought to be expressed, and is to be restrained within the limits intended by the contract.

RCC—1811, 2093, 2232, 2278(3), 2285, 2690, 3037, 3041, 3045, 3063.

RCC 1870, Art. 3039.

Same as above.

CC 1825, Art. 3008.

(No reference in Projet)

Same as above.

Le cautionnement ne se présume point; il doit être exprès, et doit être restreint dans les limites dans lesquelles il a été contracté.

CC 1808, p. 428, Art. 5.

Same as above; but comma (,) after “presumed”; no punctuation after “expressed.”

-p. 429, Art. 5.

Same as above; but colon (:) after “point.”

CN 1804, Art. 2015.

Suretyship cannot be presumed; it ought to be expressed, and cannot be extended beyond the limits intended by the contract.

Le cautionnement ne se présume point; il doit être exprès, et on ne peut pas l'étendre au-delà des limites dans lesquelles il a été contracté.

Projet du Gouvernement (1800), Book III, Title V, Art. 5.

Same as CC 1808, p. 428, Art. 5, above. Same as CC 1808, p. 429, Art. 5, above; but semicolon (;) after “point.”

ART. 3040. A general and indefinite suretyship extends to all the accessories of the principal debt, and even to the costs.

RCC—1886, 2461, 2490, 2645, 2690, 3037, 3039, 3052.

RCC 1870, Art. 3040.

Same as above.

CC 1825, Art. 3009.

(No reference in Projet)

Same as above.

Le cautionnement général et indéfini s'étend à tous les accessoires de la dette principale, même aux frais.

CC 1808, p. 428, Art. 6.

Same as above; but no punctuation after “debt.”

-p. 429, Art. 6.

Same as above; but comma (,) after “indéfini”; semicolon (;) after “principale.”

CN 1804, Art. 2016.

An indefinite suretyship of a principal obligation extends to all the accessories of the debt, even to the costs of the first demand and to all those subsequent to the notice given to the surety.

Le cautionnement indéfini d'une obligation principale s'étend à tous les accessoires de la dette, même aux frais de la première demande, et à tous ceux postérieurs à la dénonciation qui en est faite à la caution.

Projet du Gouvernement (1800), Book III, Title V, Art. 6.

Same as CC 1808, p. 428, Art. 6, above. Same as CC 1808, p. 429, Art. 6, above; but no punctuation after “indéfini”; comma (,) after “principale.”

**ART. 3041.** Suretyship does not operate a mortgage on the property of the surety, unless there has been an express agreement.

RCC—1901, 3039, 3278, 3290, 3295 *et seq.* CP—26.

**RCC 1870, Art. 3041.** (Same as Art. 3041 of Proposed Revision of 1869)  
Same as above.

**CC 1825, Art. 3010.** (Projet, p. 353. Addition adopted; no comment)  
Surety does not operate a mortgage on the property,\* unless there has been an express agreement. Le cautionnement n'entraîne point l'hypothèque des biens de la caution,\* à moins qu'il n'y ait stipulation expresse.

**CC 1808.** No corresponding article.

**CN 1804.** No corresponding article.

\*English translation of French text incomplete; should include "of the surety."

**ART. 3042.** The debtor obliged to furnish security must offer either a surety company authorized to do business in the State of Louisiana, or a person able to contract, who has property liable to seizure within the State of sufficient value to answer for the amount of the obligation, and who is domiciled in the parish where the security is to be given.

Whenever it shall be made to appear to the satisfaction of the judge having jurisdiction thereof that any person who has been appointed to discharge the duties of administrator, executor, tutor, curator, or any fiduciary trust whatever, is unable to give security in the parish, the judge shall have power to order that sureties residing in any other parish be received.

Where surety is tendered of persons residing out of the parish, the judge alone shall pass on the sufficiency thereof, and shall require such proof as he may deem necessary.

All actions on bonds against the sureties aforesaid may be instituted in the court having original jurisdiction of the subject matter; and the parties thereto, when legally cited, shall be subject to the jurisdiction of such court. (As amended by Acts 1908, No. 225)

RCC—25, 34, 38, 318, 558, 867, 927, 928, 931, 1011, 1012, 1041, 1044, 1048, 1126 *et seq.*, 1139, 1153, 1782 *et seq.*, 2398, 3064, 3093. CP—212, 219, 245, 259, 276, 287, 289, 304, 575, 750, 1098, 1103, 1111, 1118, 1127, 1131, 1132. Acts 1880, No. 11; 1894, No. 41; 1900, No. 76; 1921, E.S., No. 37; 1921, E.S., No. 58 (as am. by 1926, No. 340); 1928, No. 283; 1932, No. 11; 1934, No. 19; 1934, No. 189. RS—15, 1472, 2409.

**Art. 3042.**

The debtor obliged to furnish security must offer a person able to contract, having property liable to seizure within the State sufficient to answer for the amount of the obligation, and whose domicile is in the jurisdiction of the court where it is to be given.

Whenever it shall be made to appear to the satisfaction of the judge having jurisdiction thereof, that any person who has been appointed to discharge the duties of administrator, executor, tutor, curator, or of any fiduciary trust whatever, is unable to give security in the parish, the judge shall have power to order that sureties residing in any other parish be received.

Where surety is tendered of persons residing out of the parish, the judge shall pass on the sufficiency thereof, and shall require such proof as he may deem necessary.

Par. 4 same as par. 4, above. (As amended by Acts 1876, No. 67)

**RCC 1870, Art. 3042.**

(Same as Art. 3042 of Proposed Revision of 1869; pars. 2-4 same as Acts 1855, No. 300, §§1-3 [RS §§2351-2353, 3712-3714, 3720-3722, 3854-3856])

The debtor obliged to furnish security must offer a person able to contract, of property sufficient to answer for the amount of the obligation, and whose domicile is in the jurisdiction of the court where it is to be given.

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

Par. 3 same as RCC 1870, Art. 3042, as amended by Acts 1908, No. 225, par. 3, above.

Par. 4 same as par. 4, above.

**CC 1825, Art. 3011.**

(Projet, p. 353. Amendment adopted; no comment)

Same as par. 1, above.

Le débiteur, obligé à fournir une caution, doit en présenter une qui ait la capacité de contracter, qui ait des biens suffisans pour répondre de l'objet de l'obligation, et dont le domicile soit dans le ressort du tribunal où elle doit être donnée.

**CC 1808, p. 432, Art. 25.\***

Whenever a person is bound by law or by a judgment to give a surety, he is obliged to offer a person possessed of the right of contracting for himself and of sufficient property to secure the sums for which he is bound and who resides in this territory.

**-p. 433, Art. 25.**

Toutes les fois qu'une personne est obligée par la loi, ou par une condamnation, à fournir une caution, elle doit en présenter une qui ait la capacité de contracter, qui ait un bien suffisant pour répondre de l'objet de l'obligation, et dont le domicile soit dans le territoire.

**CN 1804, Art. 2018.**

The debtor obliged to furnish security must offer a person able to contract, who has property sufficient to answer for the amount of the obligation, and whose domicile is in the jurisdiction of the court of appeal where it is to be given.

Le débiteur obligé à fournir une caution doit en présenter une qui ait la capacité de contracter, qui ait un bien suffisant pour répondre de l'objet de l'obligation, et dont le domicile soit dans le ressort du tribunal d'appel où elle doit être donnée.

\*Official edition reads "Art. 35."

**ART. 3043.** When the surety received by the creditor, either voluntary or by the direction of law, becomes insolvent, his place should be supplied by another.

An exception to this rule takes place only, where by the agreement the creditor has required that a certain person shall be given as surety.

RCC—1901, 1985, 2055, 2056, 2193, 2797, 3050, 3556(11, 26).

**RCC 1870, Art. 3043.**

(Same as Art. 3043 of Proposed Revision of 1869)

Same as above.

**CC 1825, Art. 3012.**

(Projet, p. 353. Substitution † adopted; no comment)

When the security received by the creditor, either voluntarily or by the direction of law, becomes insolvent, his place should be supplied by another.

An exception to this rule takes place, only where by the agreement the creditor has required that a certain person shall be given as security.

Lorsque la caution reçue par le créancier volontairement ou en justice, est devenue insolvable, il doit en être donné une autre.

Cette règle reçoit exception dans le cas seulement où la caution n'a été donnée qu'en vertu d'une convention, par laquelle le créancier a exigé une telle personne pour caution.

**CC 1808, p. 434, Art. 27.**

When the surety who has been accepted, becomes insolvent afterwards, the person who offered said surety must give another.

An exception lies against this rule when the surety has merely been given in consequence of an agreement by which the debtor bound himself to give a particular person for security. (Suppressed on recommendation of redactors; Projet, p. 355)

**CN 1804, Art. 2020.**

When the surety received by the creditor, either voluntarily or by the direction of law, afterwards becomes insolvent, his place should be supplied by another.

Par. 2 same as CC 1825, Art. 3012, par. 2, above.

**Projet du Gouvernement (1800), Book III, Title V, Art. 27.**

Same as CC 1808, p. 434, Art. 27, above.

**-p. 435, Art. 27.**

Lorsque la caution, qui a été reçue, est devenue depuis, insolvable, celui qui l'a offerte est obligé d'en donner une autre.

Cette règle reçoit exception, lorsque la caution n'a été donnée qu'en vertu d'une convention, par laquelle le débiteur s'était obligé de donner une telle personne pour caution. (Suppressed on recommendation of redactors; Projet, p. 355)

Lorsque la caution reçue par le créancier, volontairement ou en justice, est ensuite devenue insolvable, il doit en être donné une autre.

Par. 2 same as CC 1825, Art. 3012, par. 2, above; but no punctuation after "convention."

**Projet du Gouvernement (1800), Book III, Title V, Art. 27.**

Same as CC 1808, p. 434, Art. 27, above.

Same as CC 1808, p. 435, Art. 27, above; but no punctuation after "Lorsque la caution", after "depuis", or after "convention."

**ART. 3044. The obligations of sureties descend to their heirs.**

RCC—1013, 1999, 2008.

**RCC 1870, Art. 3044.**

Same as above.

**CC 1825, Art. 3013.**

Same as above.

(Projet, p. 354. Addition adopted; no comment)

Les engagements des cautions passent à leurs héritiers.

**CC 1808.** No corresponding article.**CN 1804, Art. 2017.**

The obligations of sureties descend to their heirs, with the exception of imprisonment for debt, if the agreement was such that the surety was bound thereto.

Les engagements des cautions passent à leurs héritiers, à l'exception de la contrainte par corps, si l'engagement était tel que la caution y fût obligée.

**Chapter 2—OF THE EFFECTS OF SURETYSHIP****Section 1—OF THE EFFECTS OF SURETYSHIP BETWEEN THE CREDITOR AND THE SURETY**

**ART. 3045.** The obligation of the surety towards the creditor is to pay him in case the debtor should not himself satisfy the debt; and the property of such debtor is to be previously discussed or seized, unless the security should have renounced the plea of discussion, or should be bound *in solido* jointly with the debtor, in which case the effects of his engagement are to be regulated by the same principles which have been established for debtors *in solido*.

RCC—2091 *et seq.*, 2106, 2131, 2162, 2205, 2211, 2574, 3035, 3039, 3046 *et seq.*, 3063, 3066, 3067, 3076, 3403, 3404. CP—71. Acts 1918, No. 225.



**RCC 1870, Art. 3045.**

Same as above.

**CC 1825, Art. 3014.**

Same as above; but comma (,) after "creditor", and after "debt."

(No reference in Projet)

La caution n'est obligée envers le créancier qu'à le payer au défaut du débiteur, qui doit être préalablement discuté dans ses biens, à moins que la caution n'ait renoncé au bénéfice de discussion, ou qu'elle ne soit obligée solidairement avec le débiteur, auquel cas l'effet de son engagement se règle par les mêmes principes qui ont été ci-dessus établis pour les dettes solidaires.

**CC 1808, p. 428, Art. 7.**

The obligation of the surety towards the creditor, is to pay him in case the debtor should not himself satisfy the debt; and the property of said debtor is to be previously discussed or seized, unless said security should have renounced the plea of discussion, or should be bound *in solido* jointly with the debtor; in which case the effects of his engagement are to be regulated by the same principles which have been established for debtors *in solido*.

**-p. 429, Art. 7.**

Same as above; but "qu'à le payer" misspelled "qu'à la payer"; comma (,) after "obligée", after "créancier", and after "cas."

**CN 1804, Art. 2021.**

Same as above.

La caution n'est obligée envers le créancier à le payer qu'à défaut du débiteur, qui doit être préalablement discuté dans ses biens, à moins que la caution n'ait renoncé au bénéfice de discussion, ou à moins qu'elle ne se soit obligée solidairement avec le débiteur; auquel cas l'effet de son engagement se règle par les principes qui ont été établis pour les dettes solidaires.

**Projet du Gouvernement (1800), Book III, Title V, Art. 7.**

Same as above.

La caution n'est obligée envers le créancier, qu'à le payer, au défaut du débiteur, qui doit être préalablement discuté dans ses biens, à moins que la caution n'ait renoncé au bénéfice de discussion, ou qu'elle ne se soit obligée solidairement avec le débiteur; auquel cas, l'effet de son engagement se règle par les mêmes principes qui ont été ci-dessus établis pour les dettes solidaires.

**ART. 3046.** The creditor is not bound to discuss the principal debtor's property, unless he should be required to do so by the surety, on the institution of proceedings against the latter.

RCC—2574, 3045, 3047, 3051, 3066, 3067. CP—332.

**RCC 1870, Art. 3046.**

Same as above.

(Same as Art. 3046 of Proposed Revision of 1869)

**CC 1825, Art. 3015.**

The creditor is not bound to discuss the principal debtor's property, unless he should be required to do so by the security, on the institution of proceedings against the latter.

(Projet, p. 354. Amendment adopted; no comment)

Le créancier n'est obligé de discuter le débiteur principal, que lorsque la caution le requiert, sur les premières poursuites dirigées contre elle.

**CC 1808, p. 430, Art. 8.**

The creditor is not bound to discuss the principal debtor's property, unless he should be required so to do by the security.

**-p. 431, Art. 8.**

Le créancier n'est obligé de discuter le débiteur principal, que lorsque la caution le requiert.

**CN 1804, Art. 2022.**

Same as CC 1825, Art. 3015, above.

Same as CC 1825, Art. 3015, above; but no punctuation after "principal."

**Projet du Gouvernement (1800), Book III, Title V, Art. 8.**

Same as CC 1808, p. 430, Art. 8, above.

Same as CC 1808, p. 431, Art. 8, above.

**ART. 3047.** The surety who does require the discussion is bound to point out to the creditor the property of the principal debtor, and furnish a sufficient sum to have the discussion carried into effect.

He must not point out the property of the principal debtor situated out of the State, nor the property which is in litigation, nor that which is mortgaged for\* debt, and no longer in the possession of the debtor.

RCC—2653, 3046, 3048, 3051, 3403, 3404. CP—72.

**RCC 1870, Art. 3047.**

Same as above.

**CC 1825, Art. 3016.**

Same as above; but comma (,) after "surety", and after "require the discussion."

(Projet, p. 354. Amendment adopted; no comment)

La caution, qui requiert la discussion, doit indiquer au créancier les biens du débiteur principal, et avancer les deniers suffisans pour faire la discussion.

Elle ne doit indiquer, ni des biens du débiteur principal situés hors de l'Etat, ni des biens litigieux, ni ceux hypothéqués à la\* dette qui ne sont plus en la possession du débiteur.

**CC 1808, p. 430, Art. 9.**

The surety who does require the discussion is bound to point out to the creditor the property of the principal debtor and furnish a sufficient sum to have said discussion carried into effect.

**-p. 431, Art. 9.**

Same as par. 1, above.

**-p. 430, Art. 10.**

The creditor cannot be compelled to have the property of the principal debtor discussed, when said property lies out of the territory.—The same takes place with respect to any property in litigation or affected to a mortgage,\*\* which are [is] out of the debtor's possession. (Suppressed on recommendation of redactors; Projet, p. 354)

**-p. 431, Art. 10.**

Le créancier ne peut être obligé de discuter les biens du débiteur principal, situés hors du territoire.

Il en est de même, de ceux litigieux et de ceux hypothéqués à la dette,\*\* qui ne sont plus en la possession du débiteur. (Suppressed on recommendation of redactors; Projet, p. 354)

**CN 1804, Art. 2023.**

Par. 1 same as CC 1808, p. 430, Art. 9, above.

Par. 1 same as CC 1808, p. 431, Art. 9, above; but no punctuation after "caution."

He must not point out the property of the principal debtor situated out of the district of the court of appeal of the place where the payment should

Elle ne doit indiquer ni des biens du débiteur principal situés hors de l'arrondissement du tribunal d'appel du lieu où le paiement doit être fait, ni des biens

be made, nor the property which is in litigation, nor that which is mortgaged for the debt and no longer in the possession of the debtor.

litigieux, ni ceux hypothéqués à la dette qui ne sont plus en la possession du débiteur.

**Projet du Gouvernement (1800)**, Book III, Title V, Art. 9.

Same as par. 1, above.

Same as par. 1, above.

-Book III, Title V, Art. 10.

The creditor cannot be compelled to have the property of the principal debtor discussed, when said property lies out of French territory, or in the French colonies, or even out of the district of the court of appeal of the place where the payment should be made.

Le créancier ne peut être obligé de discuter les biens du débiteur principal situés hors du territoire français ni ceux situés dans les colonies françaises, ni même ceux situés hors de l'arrondissement du tribunal d'appel du lieu où le paiement doit être fait.

The same takes place with respect to the debtor's property which is in litigation,

Il en est de même des biens du débiteur qui sont litigieux,

And that which is mortgaged for the debt and no longer in the possession of the debtor.

Et de ceux hypothéqués à la dette qui ne sont plus en la possession du débiteur.

\*English translation of French text incomplete; should include "the."

\*\*Note error in English translation of French text; "affected to a mortgage" should be "mortgaged for the debt."

**ART. 3048.** When the surety has pointed out property in the manner directed in the foregoing article, and has furnished a sufficient sum to have the discussion effected, the creditor is, to the amount of property pointed out, responsible to the surety for the insolvency of the principal debtor, provided it has occurred through remissness in commencing proceedings.

RCC—3047, 3050.

**RCC 1870, Art. 3048.**

Same as above.

(Same as Art. 3048 of Proposed Revision of 1869)

**CC 1825, Art. 3017.**

When the security has pointed out property in the manner directed in the foregoing article, and has furnished a sufficient sum to have the discussion effected, the creditor is, to the amount of property pointed out, responsible to the security for the insolvency of the principal debtor, provided it has occurred through remissness in commencing proceedings.

(Projet, p. 354. Substitution † adopted; no comment)

Toutes les fois que la caution a fait l'indication de biens, autorisée par l'article précédent, et qu'elle a fourni les deniers suffisans pour la discussion, le créancier est, jusqu'à concurrence des biens indiqués, responsable, à l'égard de la caution, de l'insolvabilité du débiteur principal, survenu [survenue] par le défaut de poursuites.

**CC 1808, p. 430, Art. 11.**

The creditor who has neglected to discuss the property pointed out to him, has nevertheless the right to sue the surety, in whose power it was to prevent the insolvability of the debtor, as will be mentioned hereafter.

-p. 431, Art. 11.

Le créancier, qui a négligé de discuter les biens qui lui ont été indiqués, n'en a pas moins le droit de poursuivre la caution, qui pouvait prévenir l'insolvabilité du débiteur: ainsi qu'il sera dit ci-après.

**CN 1804, Art. 2024.**

Same as CC 1825, Art. 3017, above.

Same as CC 1825, Art. 3017, above; but no punctuation after "de biens", or after "principal"; "survenu" correctly spelled "survenue."

**Projet du Gouvernement (1800)**, Book III, Title V, Art. 11.

Same as CC 1808, p. 430, Art. 11, above.

Same as CC 1808, p. 431, Art. 11, above; but no punctuation after “créancier”; comma (,) after “débiteur.”

**ART. 3049.** When several persons have become sureties\* for the same debt, each of them is individually liable for the whole of the debt, in case of insolvency of any of them.

Any one of them may however demand that the creditor should\*\* divide his action by reducing his demand to the amount of the share and portion due by each surety, unless the sureties have renounced the benefit of division.

RCC—2091 *et seq.*, 2205, 3045, 3050, 3054, 3058.

**RCC 1870, Art. 3049.**

(Same as Art. 3049 of Proposed Revision of 1869)

Same as above.

**CC 1825, Art. 3018.**

(No reference in Projet)

Par. 1 same as par. 1, above; but no punctuation after “the debt.”

Lorsque plusieurs personnes se sont rendues cautions d'un même débiteur,\* pour une même dette, elles sont obligées chacune à toute la dette, en cas d'insolvabilité de l'une d'elles.

Any one of them may however demand that the creditor should\*\* divide his action by reducing his demand to the amount of the share and portion due by each surety, unless the sureties have renounced to the [renounced the] benefit of division.

Néanmoins, chacune d'elles peut exiger que le créancier divise préalablement\*\* son action, et la réduise à la part et portion de chaque caution, à moins qu'elle n'ait renoncé au bénéfice de division.

**CC 1808, p. 430, Art. 12.**

When several persons have become sureties for the same debtor and for the same debt, each of them is individually liable for the whole of said debt, in case of insolvency of any of them.

Any one of them may however demand that the creditor should\*\* divide his action by reducing his demand to the amount of the share and portion due by each surety, unless said sureties have renounced to the [renounced the] benefit of division.

-p. 431, Art. 12.

Same as above; but comma (,) after “obligées”, after “obligées chacune”, and after “exiger.”

**CN 1804, Art. 2025.**

When several persons have become sureties for the same debtor and for the same debt, each of them is individually liable for the whole of said debt.

**-Art. 2026, par. 1.**

However, unless he has renounced the benefit of division, any one of them may demand that the creditor should previously divide his action by reducing his demand to the amount of the share and portion due by each surety.

Lorsque plusieurs personnes se sont rendues cautions d'un même débiteur pour une même dette, elles sont obligées chacune à toute la dette.

Néanmoins chacune d'elles peut, à moins qu'elle n'ait renoncé au bénéfice de division, exiger que le créancier divise préalablement son action, et la réduise à la part et portion de chaque caution.

**Projet du Gouvernement (1800)**, Book III, Title V, Art. 12.

Par. 1 same as CC 1808, p. 430, Art. 12, par. 1, above.

Same as CC 1808, p. 431, Art. 12, above; but no punctuation after “dé-

Any one of them may however demand that the creditor should previously divide his action by reducing his demand to the amount of the share and portion due by each surety, unless said sureties have renounced the benefit of division.

biteur”, after “obligées”, after “obligées chacune”, after “Néanmoins”, or after “exiger.”

\*English translation of French text incomplete; should include “of the same debtor.”

\*\*English translation of French text incomplete; should include “previously.”

**ART. 3050.** A creditor can by no means claim the whole sum from the surety who applied for a division, when the other sureties have become insolvent since the time of that application. The same thing takes place if the creditor has himself voluntarily divided his action.

RCC—1985, 2094, 2100, 3043, 3048, 3049, 3556(11, 26).

**RCC 1870, Art. 3050.** (Same as Art. 3050 of Proposed Revision of 1869)  
Same as above.

**CC 1825, Art. 3019.** (No reference in Projet)

A creditor can by no means claim the whole sum from the surety who applied for a division, when the other sureties have become insolvent since the time of that application. The same thing takes place, if the creditor has himself voluntarily divided his actions.

Le créancier ne peut plus revenir pour le tout, contre celle des cautions qui a demandé la division, lorsque l'autre caution n'est devenue insolvable que depuis.

Il en est de même si le créancier a divisé lui-même et volontairement son action.

**CC 1808, p. 430, Art. 13.**

A creditor can by no means claim the whole sum from the surety who applied for the division, when the other sureties have become insolvent since the time of that application. The same thing takes place if the creditor has himself voluntarily divided his actions.

**-p. 431, Art. 13.**

Same as above; but comma (,) after “revenir”, and after “même.”

**CN 1804, Art. 2027.**

If the creditor has himself voluntarily divided his action, he cannot avoid this division, although there were insolvent sureties even prior to the time when he consented to it.

Si le créancier a divisé lui-même et volontairement son action, il ne peut revenir contre cette division, quoiqu'il y eût, même antérieurement au temps où il l'a ainsi consentie, des cautions insolvables.

**Projet du Gouvernement (1800), Book III, Title V, Art. 13.**

Same as CC 1808, p. 430, Art. 13, above.

Same as CC 1808, p. 431, Art. 13, above; but no punctuation after “revenir”, after “tout”, or after “même.”

**ART. 3051.** The creditor may include in the same suit, both the debtor and the surety. If he obtains judgment against both, the surety who is entitled to the benefit of discussion, may insist that the judgment shall be first executed against the principal debtor.

RCC—3046, 3047, 3056, 3066. RS—3724.

**RCC 1870, Art. 3051.** (Same as Art. 3051 of Proposed Revision of 1869)  
Same as above.

**CC 1825, Art. 3020.** (Projet, p. 354. Addition adopted; no comment)

The creditor may include in the same suit, both the debtor and the security. If he obtains judgment against both, the security, who is entitled to the benefit of discussion, may insist that the judgment shall be first executed against the principal debtor.

Le créancier peut poursuivre, par une seule et même action, le débiteur et la caution. S'il obtient jugement contre les deux, la caution, qui a droit au bénéfice de la discussion, peut exiger que le jugement soit d'abord exécuté contre le débiteur principal.

**CC 1808.** No corresponding article.

**CN 1804.** No corresponding article.

## Section 2—OF THE EFFECTS OF SURETYSHIP BETWEEN THE DEBTOR AND THE SURETY

**ART. 3052.** The surety who has paid the debt, has his remedy against the principal debtor, whether the security has been given with or without the knowledge of the debtor.

This remedy takes place both for the principal and interest, and for the costs which the surety may have been sentenced to pay; but with regard to the costs, the remedy of the surety begins only from the day he has given notice to the principal debtor, that a suit was commenced against him.

RCC—1941, 1944, 2106, 2134, 2161, 2162, 2299, 3038, 3040, 3052 *et seq.*  
Acts 1894, No. 41. RS—3723.

**RCC 1870, Art. 3052.** (Same as Art. 3052 of Proposed Revision of 1869)  
Same as above.

**CC 1825, Art. 3021.** (No reference in Projet)

The security, who has paid the debt, has his remedy against the principal debtor, whether the surety has been given with or without the knowledge of the debtor.

La caution, qui a payé, a son recours contre le débiteur principal, soit que le cautionnement ait été donné au su ou à l'insu du débiteur.

This remedy takes place both for the principal and interest, and for the costs which the surety may have been sentenced to pay; but with regard to the costs, the remedy of the security begins only from the day he has given notice to the principal debtor, that a suit was commenced against him.

Ce recours a lieu, tant pour le principal que pour les intérêts et frais auxquels la caution a été condamnée; mais, à l'égard de ces frais, le recours n'a lieu, en faveur de la caution, qu'à compter du jour qu'elle a dénoncé au débiteur principal les poursuites faites contre elle.

**CC 1808, p. 430, Art. 14.**

The surety who has paid the debt, has his remedy against the principal debtor, whether the surety has been given with or without the knowledge of the debtor.

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

**-p. 431, Art. 14.**

Par. 1 same as par. 1, above; but no punctuation after "caution."

Ce recours a lieu, tant pour le principal que pour les intérêts et les frais, auxquels la caution a été condamnée; mais, à l'égard de ces frais, le recours n'a lieu, en faveur de la caution, qu'à compter du jour qu'elle a dénoncé au débiteur principal, les poursuites faites contre elle.

**CN 1804, Art. 2028.**

Par. 1 same as par. 1, above.

This remedy takes place both for the principal and interest and for the costs; however, the surety has a remedy only for the costs incurred by him since he has given notice to the principal debtor that a suit was commenced against him.

He also has a remedy for damages if there are any.

Par. 1 same as par. 1, above.

Ce recours a lieu tant pour le principal que pour les intérêts et les frais; néanmoins la caution n'a de recours que pour les frais par elle faits depuis qu'elle a dénoncé au débiteur principal les poursuites dirigées contre elle.

Elle a aussi recours pour les dommages et intérêts, s'il y a lieu.

**Projet du Gouvernement (1800), Book III, Title V, Art. 14.**

Same as CC 1808, p. 430, Art. 14, above.

Same as CC 1808, p. 431, Art. 14, above; but "insu" misspelled "insçu"; no punctuation after "recours a lieu", after "les frais", or after "au débiteur principal."

**ART. 3053.** With regard to that remedy, the surety has the same right of action and the same privilege of subrogation, which the law grants to codebtors *in solido*.

RCC—2103, 2104, 2106, 2134, 2161, 2162, 3052, 3061. RS—3723.

**RCC 1870, Art. 3053.**

(Same as Art. 3053 of Proposed Revision of 1869)

Same as above.

**CC 1825, Art. 3022.**

(No reference in Projet)

With regard to that remedy, the security has the same right of action and the same privilege of subrogation, which the law grants to joint codebtors.\*

La caution a, pour ce recours, les mêmes actions et le même privilège de subrogation que la loi accorde au codebiteur solidaire.\*

**CC 1808, p. 430, Art. 15.**

With regard to said remedy, the security has the same right of action and the same privilege of subrogation which the law grants to joint codebtors.\*

**-p. 431, Art. 15.**

La caution a, pour le recours, les mêmes actions, et le même privilège de subrogation que la loi accorde au codebiteur solidaire.\*

**CN 1804, Art. 2029.**

The surety who has paid the debt is subrogated to all the rights which the creditor had against the debtor.

La caution qui a payé la dette, est subrogée à tous les droits qu'avait le créancier contre le débiteur.

**Projet du Gouvernement (1800), Book III, Title V, Art. 15.**

Same as RCC 1870, Art. 3053, above.

Same as CC 1808, p. 431, Art. 15, above; but no punctuation after "actions."

\*Note error in English translation of French text; "joint codebtors" should be "codebtors *in solido*."

**ART. 3054.** When there exist several principal debtors *in solido* for the same debt, he who became a surety to them all, has his remedy against each of them for the whole amount of what he may have paid.

RCC—2091, 2093, 2094, 2104, 2106, 3026, 3049, 3052, 3058.

**RCC 1870, Art. 3054.**

(Same as Art. 3054 of Proposed Revision of 1869)

Same as above.

**CC 1825, Art. 3023.**

(No reference in Projet)

When there exist several principal joint debtors\* for the same debt, he

Lorsqu'il y a plusieurs débiteurs principaux, solidaires\* d'une même dette, la

who became a security to them all, has his remedy against each of them for the whole amount of what he may have paid.

**CC 1808, p. 430, Art. 16.**

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

**CN 1804, Art. 2030.**

Same as RCC 1870, Art. 3054, above.

\*Note error in English translation of French text; "joint debtors" should be "debtors *in solido*."

**ART. 3055.** The surety has no remedy against the principal debtor, who has paid a second time for want of being warned by the surety of the payment made by him. But the surety may have his action against the creditor for his reimbursement.

RCC—1965, 2133, 2302, 2310, 3052, 3056.

**RCC 1870, Art. 3055.**

Same as above.

**CC 1825, Art. 3024.**

Same as above.

(No reference in Projet)

La caution n'a point de recours contre le débiteur principal qui a payé une seconde fois, faute par la caution de l'avoir averti du payement qu'elle avait fait, sauf son action en répétition contre le créancier.

**CC 1808, p. 430, Art. 17.**

The surety has no remedy against the principal debtor who has paid a second time, for want of being warned by said surety of the payment made by him. But the surety may have his action against the creditor for his reimbursement.

**-p. 431, Art. 17.**

Same as above; but comma (,) after "faute", and after "par la caution"; colon (:) after "fait."

**CN 1804, Art. 2031, par. 1.**

The surety who has paid once has no remedy against the principal debtor who has paid a second time, when the former has not warned the latter of the payment made by him; but the surety may have his action against the creditor for his reimbursement.

La caution qui a payé une première fois, n'a point de recours contre le débiteur principal qui a payé une seconde fois, lorsqu'elle ne l'a point averti du paiement par elle fait; sauf son action en répétition contre le créancier.

**Projet du Gouvernement (1800), Book III, Title V, Art. 17.**

Same as CC 1808, p. 430, Art. 17, above.

Same as CC 1808, p. 431, Art. 17, above; but no punctuation after "faute", or after "par la caution"; semicolon (;) after "fait."

**ART. 3056.** When the surety has paid without being sued and without informing the principal debtor, he shall have no recourse against the latter, provided that, at the time of payment, the debtor



was in possession of such means as would have enabled him to have the debt declared extinct; but in this case the surety has recourse to the creditor for restitution.

RCC—1965, 2133, 2302, 2310, 3051, 3055, 3058.

**RCC 1870, Art. 3956.** (Same as Art. 3056 of Proposed Revision of 1869)  
Same as above.

**CC 1825, Art. 3025.** (Projet, p. 355. Addition adopted; no comment)

When the security has paid without being sued, and without informing the principal debtor, he shall have no recourse against the latter, provided that, at the time of payment, the debtor was in possession of such means as would have enabled him to have the debt declared extinct; but in this case the security has recourse to the creditor for restitution.

Lorsque la caution aura payé, sans être poursuivie, et sans avoir averti le débiteur principal, elle n'aura point de recours contre lui dans le cas où, au moment du payement, ce débiteur aurait eu des moyens pour faire déclarer la dette éteinte, sauf son action en répétition contre le créancier.

**CC 1808.** No corresponding article.

**CN 1804, Art. 2031, par. 2.**  
Same as CC 1825, Art. 3025, above.

Same as CC 1825, Art. 3025, above; but no punctuation after "payé", or after "poursuivie"; semicolon (;) after "éteinte."

**ART. 3057.** A surety may, even before making any payment, bring suit against the debtor to be indemnified by him:

1. When there exists a lawsuit against him for payment.
2. When the debtor has become a bankrupt, or is in a state of insolvency.
3. When the debtor was bound to discharge him within a certain time.
4. When the debt has become due by the expiration of the term for which it was contracted.
5. At the expiration of ten years, when the principal obligation is of a nature to last a longer time; unless the principal obligation, such as that of guardianship, be of a nature not to be extinguished before a determinate time.

RCC—37, 362, 1985, 2052, 2054, 2799, 3063, 3069, 3544, 3556(11).

**RCC 1870, Art. 3057.** (Same as Art. 3057 of Proposed Revision of 1869)  
Same as above.

**CC 1825, Art. 3026.** (No reference in Projet)

A security may, even before making any payment, bring a suit against the debtor to be indemnified by him:

Subds. 1-3 same as subds. 1-3, above; but semicolon (;) after "payment", after "insolvency", and after "time."

La caution, même avant d'avoir payé, peut agir contre le débiteur, pour être par lui indemnisée:

1. Lorsqu'elle est poursuivie en justice pour le payement;
2. Lorsque le débiteur a fait faillite, ou est en déconfiture [déconfiture];
3. Lorsque le débiteur s'est obligé de lui rapporter sa décharge dans un certain temps;
4. Lorsque la dette est devenue\* exigible par l'échéance du terme sous lequel elle avait été contractée;

4. When the debt has been\* due by the expiration of the term for which it was contracted;

Subd. 5 same as subd. 5, above; but comma (,) after "longer time."

5. Au bout de dix années, lorsque l'obligation principale est de nature à durer plus long-temps; à moins que l'obligation principale, telle qu'une tutelle, ne soit pas de nature à pouvoir être éteinte avant un temps déterminé.

**CC 1808, p. 430, Art. 18.**

A security may, even before making any payment, bring a suit against the debtor to be indemnified by him, 1st, when there exists a lawsuit against him for the payment; 2d, when the debtor has become a bankrupt or is in a state of insolvency; 3d. When the debtor was bound to discharge him within a certain time; 4th, when the debt has been\* due by the expiration of the term for which said debt has been contracted; 5th, at the expiration of ten years, when the principal obligation is of a nature to last a longer time, unless the principal obligation, such as that of guardianship, be of a nature not to be extinguished before a determinate time.

**-p. 431, Art. 18.**

Same as above; but "décomfiture" spelled "déconfiture."

**CN 1804, Art. 2032.**

Par. 1 and subds. 1-4 same as RCC 1870, Art. 3057, par. 1 and subds. 1-4, above.

Par. 1 and subds. 1-4 same as par. 1 and subds. 1-4, above; but no punctuation after "contre le débiteur"; comma (,) after "indemnisée."

5. At the expiration of ten years, when the principal obligation has no fixed time of expiration, unless the principal obligation, such as that of guardianship, be of a nature not to be extinguished before a determinate time.

5. Au bout de dix années, lorsque l'obligation principale n'a point de terme fixe d'échéance, à moins que l'obligation principale, telle qu'une tutelle, ne soit pas de nature à pouvoir être éteinte avant un temps déterminé.

**Projet du Gouvernement (1800), Book III, Title V, Art. 18.**

Same as RCC 1870, Art. 3057, above.

Same as CC 1808, p. 431, Art. 18, above; but no punctuation after "contre le débiteur", or after "faillite"; comma (,) after "indemnisée", and after "long-temps."

\*Note error in English translation of French text; "been" should be "become."

**Section 3—OF THE EFFECTS OF SURETYSHIP BETWEEN THE SURETIES**

**ART. 3058.** When several persons have been sureties for the same debtor and for the same debt, the surety who has satisfied the debt, has his remedy against the other sureties in proportion to the share of each; but this remedy takes place only, when such person has paid in consequence of a lawsuit instituted against him.

RCC—2104, 2161, 2162, 3049, 3054, 3056.

**RCC 1870, Art. 3058.**

Same as above.

**CC 1825, Art. 3027.**

(No reference in Projet)

Same as above; but comma (,) after "surety", and after "other sureties."

Lorsque plusieurs personnes ont cautionné un même débiteur, pour une même dette, la caution qui a acquitté

la dette, a recours contre les autres cautions, chacune pour sa part et portion.

Mais ce recours n'a lieu que lorsque la caution a payé en conséquence de poursuites dirigées contre elle.

**CC 1808, p. 432, Art. 19.**

When several persons have been sureties for the same debtor and for the same debt, the surety who has satisfied the debt, has his remedy against each of the other sureties, in proportion to the share of every one, but this remedy takes place only when the said person has paid in consequence of a law suit being instituted against him.

**-p. 433, Art. 19.**

Same as above; but comma (,) after "lieu", and after "payé."

**CN 1804, Art. 2033.**

When several persons have been sureties for the same debtor and for the same debt, the surety who has satisfied the debt has his remedy against the other sureties in proportion to the share of each;

But this remedy takes place only when the surety has paid in one of the cases mentioned in the foregoing article.

Par. 1 same as par. 1, above; but no punctuation after "débiteur"; semicolon (;) after "portion."

Mais ce recours n'a lieu que lorsque la caution a payé dans l'un des cas énoncés en l'article précédent.

**Projet du Gouvernement (1800), Book III, Title V, Art. 19.**

Same as CC 1808, p. 432, Art. 19, above.

Same as CC 1808, p. 433, Art. 19, above; but no punctuation after "débiteur", after "la dette", after "lieu", or after "payé."

Chapter 3—OF THE EXTINCTION OF SURETYSHIP

**ART. 3059.** The obligation which results from a suretyship, is extinguished by all the different modes in which other obligations may be extinguished; but the confusion which results in case the principal debtor or his surety should become heirs one to the other does not extinguish the action of the creditor against the person who has become the surety of the surety.

RCC—2099, 2130, 2134, 2198, 2205, 2211, 2217, 2218, 2727, 3038, 3067, 3070, 3076, 3553.

**RCC 1870, Art. 3059.**

Same as above.

(Same as Art. 3059 of Proposed Revision of 1869)

**CC 1825, Art. 3028.**

(No reference in Projet)

The obligation, which results from a suretyship, is extinguished by all the different modes in which other obligations may be extinguished; but the confusion which results in case the principal debtor or his surety should become heirs one to the other, does not extinguish the action of the creditor against the person who has become the security of the security.

L'obligation, qui résulte du cautionnement, s'éteint de toutes les différentes manières dont s'éteignent les obligations.

Mais la confusion, qui s'opère dans la personne du débiteur principal ou de sa caution, lorsqu'ils deviennent héritiers l'un de l'autre, n'éteint point l'action du créancier contre celui qui s'est rendu caution de la caution.

**CC 1808, p. 432, Art. 20.**

Same as above; but no punctuation after "obligation", or after "suretyship."

**-p. 433, Art. 20.**

Same as above; but no punctuation after "L'obligation."

**CN 1804, Art. 2034.**

The obligation which results from suretyship is extinguished by the same causes as other obligations.

L'obligation qui résulte du cautionnement, s'éteint par les mêmes causes que les autres obligations.

**-Art. 2035.**

The confusion which results in case the principal debtor or his surety should become heirs one to the other does not extinguish the action of the creditor against the person who has become the surety of the surety.

La confusion qui s'opère dans la personne du débiteur principal et de sa caution, lorsqu'ils deviennent héritiers l'un de l'autre, n'éteint point l'action du créancier contre celui qui s'est rendu caution de la caution.

**Projet du Gouvernement (1800), Book III, Title V, Art. 20.**

Same as CC 1808, p. 432, Art. 20, above.

Same as CC 1808, p. 433, Art. 20, above; but no punctuation after "cautionnement", or after "confusion."

**ART. 3060.** The surety may oppose\* to the creditor all the exceptions belonging\*\* to the principal debtor, and which are inherent to the debt; but he can not oppose\* exceptions which are personal to the debtor.

RCC—2098, 2211, 3036, 3076, 3299, 3553.

**RCC 1870, Art. 3060.**

(Same as Art. 3060 of Proposed Revision of 1869)

Same as above.

**CC 1825, Art. 3029.**

(No reference in Projet)

The security may oppose\* to the creditor all the exceptions belonging\*\* to the principal debtor, and which are inherent to the debt; but he cannot oppose\* exceptions which are personal to the debtor.

La caution peut opposer\* au créancier toutes les exceptions qui sont personnelles\*\* au débiteur principal et qui sont inhérentes à la dette.

Mais elle ne peut opposer\* les exceptions qui sont personnelles au débiteur.

**CC 1808, p. 432, Art. 21.**

Same as RCC 1870, Art. 3060, above; but comma (,) after "creditor"; no punctuation after "principal debtor."

**-p. 433, Art. 21.**

La caution peut opposer\* au créancier toutes les exceptions qui appartiennent au débiteur principal, et qui sont inhérentes à la dette.

Par. 2 same as par. 2, above.

**CN 1804, Art. 2036.**

The surety may oppose\* to the creditor all the exceptions belonging to the principal debtor, and which are inherent to the debt;

But he cannot oppose\* exceptions which are purely personal to the debtor.

Par. 1 same as par. 1, above; but semicolon (;) after "dette."

Mais elle ne peut opposer\* les exceptions qui sont purement personnelles au débiteur.

**Projet du Gouvernement (1800), Book III, Title V, Art. 21.**

Same as CC 1808, p. 432, Art. 21, above.

Same as CC 1808, p. 433, Art. 21, above.

\*"Oppose" is used here in the sense of "set up" or "assert."

\*\*Note error in English translation of French text; "belonging" should be "which are personal."

**ART. 3061.** The surety is discharged when by the act of the creditor, the subrogation to his rights, mortgages and privileges can no longer be operated in favor of the surety.

RCC—2054, 2161, 2162, 2198, 2645, 3053, 3063.

**RCC 1870, Art. 3061.**

Same as above.

**CC 1825, Art. 3030.**

(No reference in Projet)

Same as above; but comma (.) after “when”, and after “privileges.”

La caution est déchargée, lorsque, par le fait du créancier, la subrogation à ses droits, hypothèques et privilèges, ne peut plus s’opérer en faveur de la caution.

**CC 1808, p. 432, Art. 22.**

Same as above; but no punctuation after “when”, or after “privileges.”

**-p. 433, Art. 22.**

Same as above.

**CN 1804, Art. 2037.**

The surety is discharged when the subrogation to the rights, mortgages and privileges of the creditor can no longer, by the act of such creditor, be operated in favor of the surety.

La caution est déchargée, lorsque la subrogation aux droits, hypothèques et privilèges du créancier, ne peut plus, par le fait de ce créancier, s’opérer en faveur de la caution.

**Projet du Gouvernement (1800), Book III, Title V, Art. 22.**

The surety is discharged when by the act of the creditor, subrogation by operation of law to his rights, mortgages and privileges can no longer be operated in favor of the surety.

La caution est déchargée, lorsque, par le fait du créancier, la subrogation de droit à ses droits, hypothèques et privilèges, ne peut plus s’opérer en faveur de la caution.

**ART. 3062.** The voluntary acceptance on the part of the creditor, of an immovable or any other property, in payment of the principal debt, is a full discharge of the surety, even in case the creditor should be afterwards evicted from the property so accepted.

RCC—2138, 2150, 2198, 2452, 2500, 2655, 3076.

**RCC 1870, Art. 3062.**

Same as above.

**CC 1825, Art. 3031.**

(No reference in Projet)

Same as above; but comma (,) after “acceptance.”

L’acceptation volontaire que le créancier a faite d’un immeuble ou d’un effet quelconque, en paiement de la dette principale, décharge la caution, encore que le créancier vienne ensuite à en être évincé.

**CC 1808, p. 432, Art. 23.**

Same as above; but no punctuation after “acceptance”, or after “other property.”

**-p. 433, Art. 23.**

Same as above, but comma (,) after “volontaire”; colon (:) after “caution.”

**CN 1804, Art. 2038.**

The voluntary acceptance on the part of the creditor of an immovable or any other property in payment of the principal debt, is a full discharge of the surety, even in case the creditor should be evicted from the property so accepted.

L’acceptation volontaire que le créancier a faite d’un immeuble ou d’un effet quelconque en paiement de la dette principale, décharge la caution, encore que le créancier vienne à en être évincé.

**Projet du Gouvernement (1800)**, Book III, Title V, Art. 23.

Same as CC 1808, p. 432, Art. 23, above.

Same as CC 1808, p. 433, Art. 23, above; but no punctuation after "volontaire", or after "quelconque"; comma (,) after "caution."

**ART. 3063.** The prolongation of the terms granted to the principal debtor without the consent of the surety, operates a discharge of the latter.

RCC—1797 *et seq.*, 2048, 2198, 2690, 3039, 3045, 3057, 3061.

**RCC 1870, Art. 3063.** (Same as Art. 3063 of Proposed Revision of 1869)  
Same as above.

**CC 1825, Art. 3032.** (Projet, p. 355. Substitution † adopted; comment by redactors)

The prolongation of the term granted to the principal debtor without the consent of the surety, operates a discharge of the latter.

La prorogation de terme, accordée au débiteur principal, sans le consentement de la caution, opère la décharge du cautionnement.

**CC 1808, p. 432, Art. 24.**

The simple prorogation of the term granted by the creditor to the principal debtor, does not exonerate the surety who may, in this case, sue the said debtor, to compel him to make payment.

-p. 433, Art. 24.

La simple prorogation de terme, accordée par le créancier au débiteur principal, ne décharge point la caution qui peut, en ce cas, poursuivre le débiteur pour le forcer au paiement

**CN 1804, Art. 2039.**

Same as CC 1808, p. 432, Art. 24, above.

Same as CC 1808, p. 433, Art. 24, above; but comma (,) after "caution."

#### Chapter 4—OF THE LEGAL AND JUDICIAL SURETIES

**ART. 3064.** Whenever a person is bound by law, or by a judgment, to give a surety, he must present one who has the qualifications required in article 3042.

RCC—62 *et seq.*, 101, 318, 558, 629, 927, 928, 931, 932, 1011, 1012, 1041, 1044, 1048, 1126, 1127, 1139, 1153, 1159, 3042. CP—212, 219, 245, 259, 276, 287, 289, 304, 750, 1098, 1103, 1111, 1118, 1127, 1131, 1132. Acts 1880, No. 11; 1902, No. 45, §2; 1934, No. 189.

**RCC 1870, Art. 3064.** (Same as Art. 3064 of Proposed Revision of 1869)  
Same as above.

**CC 1825, Art. 3033.** (Projet, p. 355. Substitution † adopted; no comment)

Whenever a person is bound by law, or by a judgment, to give a surety, he must present one who has the qualifications required in article 3011.

Toutes les fois qu'une personne est obligée par la loi, ou par une condamnation, à fournir une caution, elle doit en présenter une qui ait les qualités prescrites par l'article 3011.

**CC 1808, pp. 432, 433, Art. 25.**

Quoted under RCC 1870, Art. 3042, above.

**CN 1804, Art. 2040, par. 1.**

Whenever a person is bound, by law or by a judgment, to give a surety, the surety tendered must satisfy the conditions required in articles 2018 and 2019.

Toutes les fois qu'une personne est obligée, par la loi ou par une condamnation, à fournir une caution, la caution offerte doit remplir les conditions prescrites par les articles 2018 et 2019.

**ART. 3065.** The person who can not give a surety is admitted to give a pledge or other satisfaction sufficient to secure the debt, provided that the thing given in pledge may be kept without difficulty or risk.

He may also deposit in the hands of the public officer, whose duty it is to receive the surety, the sum for which he is required to furnish a surety.

RCC—1771, 2926, 3133, 3135, 3136, 3140, 3154.

**RCC 1870, Art. 3065.** (Same as Art. 3065 of Proposed Revision of 1869)  
Same as above.

**CC 1825, Art. 3034.** (Projet, p. 356. Amendment adopted; no comment)

The person, who can give no security, is admitted to give a pledge or other satisfaction sufficient to secure the debt, provided that the thing given in pledge may be kept without difficulty or risk.

He may also deposit in the hands of the public officer, whose duty it is to receive the surety, the sum in which he is required to give it.

Celui qui ne peut pas trouver une caution, est reçu à donner à la place un gage ou nantissement suffisant, pourvu que l'objet donné en gage puisse se garder sans embarras et sans risque.

Il peut aussi déposer entre les mains de l'officier public chargé de recevoir le cautionnement, la somme pour laquelle il est requis de fournir caution.

**CC 1808, p. 434, Art. 28.**

The person who can give no security, is admitted to give a pledge or other satisfaction sufficient to secure the debt.

-p. 435, Art. 28.

Celui qui ne peut pas trouver une caution, est reçu à donner à la place, un gage ou nantissement suffisant.

**CN 1804, Art. 2041.**

Same as above.

Celui qui ne peut pas trouver une caution, est reçu à donner à sa place un gage en nantissement suffisant.

**Projet du Gouvernement (1800), Book III, Title V, Art. 28.**

Same as above.

Same as CC 1808, p. 435, Art. 28, above; but no punctuation after "place."

**ART. 3066.** A judicial surety can not demand the discussion of the property of the principal debtor.

But no suit shall be instituted against any surety on any appeal bond, nor on the bond of any administrator, tutor, curator, executor, or syndic, until the necessary steps have been taken to enforce payment against the principal.

The mode of proceeding against sureties on official bonds, is prescribed by special laws.

RCC—2107, 3035, 3045 *et seq.*, 3067. CP—235, 259, 304, 596. Acts 1918, No. 225. RS—354, 2417, 3725, 3735, 3736.

**RCC 1870, Art. 3066.** (Same as Art. 3066 of Proposed Revision of 1869; Same as above. par. 2 same as Acts 1855, No. 300, §5, as amended by Acts 1866, No. 22 [RS §§19, 3715, 3724, 3857])

**CC 1825, Art. 3035.**

Same as par. 1, above.

(No reference in Projet)

La caution judiciaire ne peut pas demander la discussion du principal débiteur.

**CC 1808, p. 434, Art. 29.**

Same as above.

-p. 435, Art. 29.

Same as above.

**CN 1804, Art. 2042.**

Same as above.

La caution judiciaire ne peut point demander la discussion du débiteur principal.

**Projet du Gouvernement (1800), Book III, Title V, Art. 29.**

Same as above.

Same as CC 1808, p. 435, Art. 29, above.

**ART. 3067.** The person who has become the surety of the judicial surety, can not demand the discussion of the property of the principal debtor nor of the surety.

RCC—2107, 3038, 3045, 3046, 3059, 3066.

**RCC 1870, Art. 3067.**

Same as above.

**CC 1825, Art. 3036.**

(No reference in Projet)

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

Celui qui a simplement cautionné la caution judiciaire, ne peut demander la discussion du principal débiteur ni de la caution.

**CC 1808, p. 434, Art. 30.**

The person who has become the surety of the judicial surety, cannot demand the discussion of the property of the principal debtor and of the surety.

**-p. 435, Art. 30.**

Celui qui a simplement cautionné la caution judiciaire, ne peut demander la discussion du principal débiteur, et de la caution.

**CN 1804, Art. 2043.**

Same as above.

Celui qui a simplement cautionné la caution judiciaire, ne peut demander la discussion du débiteur principal et de la caution.

**Projet du Gouvernement (1800), Book III, Title V, Art. 30.**

Same as above.

Same as CC 1808, p. 434, Art. 30, above; but no punctuation after "débiteur."

**ART. 3068.** The effects of judicial suretyship are determined in the laws regulating judicial proceedings.

CP—225 *et seq.* RS—354, 3726-3729, 3735.

**RCC 1870, Art. 3068.**

(Same as Art. 3068 of Proposed Revision of 1869)

Same as above.

**CC 1825, Art. 3037.**

(Projet, p. 356. Addition adopted; no comment)

The effects of judicial surety are determined in the laws regulating judicial proceedings.

Les effets du cautionnement judiciaire sont réglés par les lois sur la procédure.

**CC 1808.** No corresponding article.

**CN 1804.** No corresponding article.

**ART. 3069.** Sureties on the bond of any administrator, executor, curator or tutor, shall have the right to be released from any further liability on such bond, by causing their principal to be cited into the court having jurisdiction over the appointment of such administrator, curator, executor or tutor, by petition, setting forth their



fears that such administrator, curator, executor or tutor is mismanaging the property under his charge, and that they are in danger of being injured seriously by his conduct, and praying that he shall be required to give new security.

RCC—3057, 3070. Acts 1880, No. 46.

**RCC 1870, Art. 3069.** (Same as Art. 3069 of Proposed Revision of 1869; similar to Acts 1859, No. 222, §1 [RS §§16, 1473, 3716, 3737, 3858])  
Same as above.

**CC 1825.** No corresponding article.

**CC 1808.** No corresponding article.

**CN 1804.** No corresponding article.

**ART. 3070.** On due proof being made of maladministration by any curator, administrator, executor or tutor cited, the court shall require him to give a new bond, with other sufficient security, for the faithful administration of the property; and upon failure to do so within three days after such order, he shall be forthwith removed from the administration thereof, and the judge shall proceed at once to the appointment of another curator, administrator, executor or tutor, who shall be required to give security in manner and form as now required by law; and this being done, the former sureties on the bond shall be released from all liability for any maladministration of such administrator, curator, executor or tutor, from and after execution of the new bond with security as aforesaid.

RCC—302 *et seq.*, 356, 357, 1158, 1159, 3059, 3069. Acts 1880, No. 46.

**RCC 1870, Art. 3070.** (Same as Art. 3070 of Proposed Revision of 1869; same as Acts 1859, No. 222, §2 [RS §§17, 1474, 3717, 3738, 3859])  
Same as above.

**CC 1825.** No corresponding article.

**CC 1808.** No corresponding article.

**CN 1804.** No corresponding article.

## TITLE XVII—OF TRANSACTION OR COMPROMISE\*

\*See general comment by redactors, *Projet*, p. 356.

**ART. 3071.** A *transaction* or *compromise* is an agreement between two or more persons, who, for preventing or putting an end to a lawsuit, adjust their differences by mutual consent, in the manner which they agree on, and which every one of them prefers to the hope of gaining, balanced by the danger of losing.

This contract must be reduced into writing.

RCC—1403, 1761, 1765, 1771, 1778, 1797, 1846, 2275, 2277, 2998, 3010, 3072 *et seq.*, 3084, 3099, 3100, 3102, 3132. Acts 1914, No. 20, §17 (as am. by Acts 1918, No. 38, §1).

**RCC 1870, Art. 3071.**

Same as above.