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## CHAPTER 139 THE RIGHT OF ACCESSION

### ANALYSIS OF SUBCHAPTERS

- I. Generally.
- II. Right of Accession with Respect to What is Produced by Property.
- III. Right of Accession With Respect to Immovables.
- IV. Right of Accession With Respect to Movables.

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### SUBCHAPTER I GENERALLY

#### ANALYSIS OF SECTIONS

- 1131. Right of accession inherent in ownership.

#### **§ 1131. Right of accession inherent in ownership.**

<Spanish>

The ownership of property, whether movable or immovable, carries with it the right, by accession, to everything which is produced thereby, or which is united thereto or incorporated therewith, either naturally or artificially.

(Civil Code, 1930, § 287.)

#### HISTORY

**Source.** Civil Code, 1902, § 360; Spanish Civil Code, art. 353; Civil Code of Louisiana, art. 498.

#### ANNOTATIONS

**1. Generally** The increment or deterioration of the properties benefits or prejudices the respective owner, unless it is due to the effort or industry of one of the spouses or at the expense of the conjugal partnership. *Heirs of Santaella v. Secretary of Treasury*, 96 P.R.R. 431 (1968).

The decision about the existence or nonexistence of an oral contract, as well as the importance that has been attached to it, concerning a conflict about the right of accession of condemned property, rests on a question of fact which is not within the authority of the Department of Justice to establish. 1959 Op. Sec. Jus. No. 1

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### SUBCHAPTER II

## RIGHT OF ACCESSION WITH RESPECT TO WHAT IS PRODUCED BY PROPERTY

### ANALYSIS OF SECTIONS

- 1141. Products of property.
- 1142. Natural, cultivated, and civil fruits defined.
- 1143. Expense of production, etc.
- 1144. What considered natural or cultivated fruits.
- 1145. Fruits do not belong to simple possessor.
- 1146. Bona fide possessor defined.

### **§ 1141. Products of property.**

<Spanish>

To the owner belong:

1. The natural fruits.
2. The cultivated fruits.
3. The civil fruits.

(Civil Code, 1930, § 288.)

### **HISTORY**

**Source.** Civil Code, 1902, § 361; Spanish Civil code, art. 354.

### **§ 1142. Natural, cultivated, and civil fruits defined.**

<Spanish>

Natural fruits are the spontaneous productions of the soil, and the broods and other products of animals.

Cultivated fruits are those produced by lands of any kind through cultivation or labor.

Civil fruits are the rents of buildings, the price paid for the lease of lands, and the amount of perpetual, life or other similar incomes.

(Civil Code, 1930, § 289.)

### **HISTORY**

**Source.** Civil Code, 1902, § 362; Spanish Civil Code, art. 355.

## ANNOTATIONS

**1. Rents** Attachment of rents, see annotations under 32 L.P.R.A. § 1079.

**§ 1143. Expense of production, etc.**

<Spanish>

The receiver of fruits is obliged to pay the expenses incurred by a third person in their production, gathering and preservation.

(Civil Code, 1930, § 290.)

## HISTORY

**Source.** Civil Code, 1902, § 363; Spanish Civil Code, art. 356.

**Cross references.** Agricultural advances, see § 167 of Title 5.

**§ 1144. What considered natural or cultivated fruits.**

<Spanish>

Only such as are manifest or born are considered as natural or cultivated fruits. With respect to animals, it is sufficient if they are in the mother's womb, although unborn.

(Civil Code, 1930, § 291.)

## HISTORY

**Source.** Civil Code, 1902, § 364; Spanish Civil Code, art. 357.

**§ 1145. Fruits do not belong to simple possessor.**

<Spanish>

The fruits of a thing do not belong to the simple possessor and shall be returned together with the thing to the owner thereof who claims the same, unless the possessor held it bona fide.

(Civil Code, 1930, § 292.)

## HISTORY

**Source.** Civil Code, 1902, § 365; Civil Code of Louisiana, art. 502.

## ANNOTATIONS

**1. Generally** It is incumbent on the person claiming the fruits of the property he revendicates to introduce clear and convincing evidence on this point and to place the court in a position to duly determine his rights. *Heirs of Melendez v. Almodovar*, 70 P.R.R. 500 (1949).

Although the actions of revendication and to recover fruits may be joined, the fact that the first prospers does not mean that the second must prosper also in the absence of evidence to support the latter. *Heirs of Melendez v. Almodovar*, 70 P.R.R. 500 (1949).

The plaintiff in an action of revendication of property and against whom a claim for the civil fruits produced by the said property is made cannot be ordered to pay them, in the event that he is under a duty to do so, if the evidence in the case does not show that the fruits claimed were received. *Lopez v. Fernandez*, 61 P.R.R. 503 (1943).

Since the title of defendants to the property revendicated is valid, crops produced belong to them, and therefore no holding against them in regard to crops can be made. *Travieso v. McCormick*, 54 P.R.R. 312 (1939).

When in the complaint in revendication the cause of action claiming rents for the detention of the property does not allege that the defendant knew of defects invalidating his title, it does not state a cause of action. *Battle v. Torruella*, 39 P.R.R. 188 (1929).

#### **§ 1146. Bona fide possessor defined.**

<Spanish>

He is bona fide possessor who possesses as owner by virtue of a title sufficient in its terms and conditions to transfer the ownership, and the defects of which he is ignorant of. Bona fide possession ceases from the moment the possessor becomes acquainted with the defects of the title, or through a suit instituted by the owner of the thing to recover the same.  
(Civil Code, 1930, § 293.)

#### **HISTORY**

**Source.** Civil Code, 1902, § 366; Civil Code of Louisiana, art. 503.

#### **ANNOTATIONS**

**1. Generally** Under this section, a possessor need not have a perfect title in order to hold in good faith; and a title adequate in its terms and conditions to transfer the ownership is sufficient if its defects are not known to the possessor; and these defects must be such as to invalidate the title. *Martorell v. J. Ochoa & Brother*, 25 P.R.R. 707 (1917 731), reversed and remanded, *Martorell v. Ochoa*, 276 F. 99 (1921), certiorari granted, *Ochoa v. Martorell*, 258 U.S. 615 (1922), certiorari denied, 260 U.S. 759 (1923); *Martorell v. J. Ochoa & Brother*, 25 P.R.R. 731 (1917), cert. granted 258 U.S. 615 (1922), cert. dismissed 260 U.S. 759 (1923).

A possessor in good faith is one who believes that he acquired the thing from a person who was the owner thereof and could convey his title, or one who is ignorant of any defects invalidating his title or manner of acquisition; and good faith is compatible with a title invalidated by a defect, provided the possessor is ignorant thereof or believes that it does not exist. *Martorell v. J. Ochoa & Brother*, 25 P.R.R. 731 (1917), cert. granted 258 U.S. 615 (1922), cert. dismissed 260 U.S. 759 (1923).

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### SUBCHAPTER III

## RIGHT OF ACCESSION WITH RESPECT TO IMMOVABLES

#### ANALYSIS OF SECTIONS

- 1161. Buildings and plantings on another's land.
- 1162. Works and plantings presumed made by owner.
- 1163. Constructions with another's material.
- 1164. Rights of owner of land built upon in good faith.
- 1165. Bad faith of builder.
- 1166. --Demolition of work and restoration to former condition.
- 1167. Bad faith of both parties.
- 1168. Materials belonging to third person.
- 1169. Augmentation of river banks.
- 1170. Land adjacent to ponds and lakes.
- 1171. Transfer of land by current.
- 1172. Trees carried away by current.
- 1173. River leaving channel.
- 1174. New bed of navigable river.
- 1175. Islands formed through descending alluviums.
- 1176. Current of river dividing into branches.

#### **§ 1161. Buildings and plantings on another's land.**

<Spanish>

Whatever is built, planted or sown on another's land, and the improvements or repairs made thereon, belong to the owner thereof, subject to what is prescribed in the following sections.

(Civil Code, 1930, § 294.)

#### **HISTORY**

**Source.** Civil Code, 1902, § 367; Spanish Civil Code, art. 358.

#### **ANNOTATIONS**

**1. Generally** Concept of builder in good or bad faith carries the implication that the construction is carried out on the property of another. *Garcia Larrinua v. Lichtig*, 118 D.P.R. 120 (1986).

Second paragraph of this section consecrates so-called "reverse accession" or "anti-accession", which is an exception to general principle of accession established by this section. *Calvo Mangas v. Aragonés Jimenez*, 115 D.P.R. 219 (1984).

**§ 1162. Works and plantings presumed made by owner.**

<Spanish>

All works, sown lands and plantings are presumed to have been made by the owner, and at his expense, unless the contrary be proven.

(Civil Code, 1930, § 295.)

**HISTORY**

**Source.** Civil Code, 1902, § 368; Spanish Civil Code, art. 359.

**ANNOTATIONS**

**1. Generally** When a piece of land is sold directly or under an execution sale, the presumption-a rebuttable one-is that all property thereon goes with the land. *Schuck v. Verdejo*, 43 P.R.R. 915 (1932).

The building of a house on land belonging to another cannot prevent the owner from recovering possession of the premises by an unlawful detainer suit unless the defendant has some existing title; the presumption-a controvertible one-is that said house belongs to the owner of the land, and this presumption is not destroyed by statements in the record that the defendant built the house and is the owner thereof. *Schuck v. Verdejo*, 43 P.R.R. 915 (1932).

**§ 1163. Constructions with another's material.**

<Spanish>

The owner of the land who shall make thereon, by himself or through another person, plantings, constructions or works, with material belonging to another person, is bound to pay their value; and if he has acted in bad faith, he shall also be obliged to pay an indemnity for damages and injuries caused thereby. The owner of the materials shall have the right to remove them only in case he can do so without injury to the work constructed, or when by so doing the plantings, constructions or works are not destroyed.

(Civil Code, 1930, § 296.)

## HISTORY

**Source.** Civil Code, 1902, § 369; Spanish Civil Code, art. 360.

### § 1164. Rights of owner of land built upon in good faith.

<Spanish>

The owner of the land sown or planted upon in good faith shall have the right to appropriate as his own the sowing or planting, by previously paying the compensation specified in §§ 1468 and 1469 of this title, or to compel the person who planted to pay the price of the land, and the person who sowed, the corresponding rent.

The owner of the land which has been built upon in good faith shall have the right to appropriate as his own the work, by previously paying to the owner of the work the cost of the materials and labor, or the cost of reproducing the work at the time the owner of the land exercises his right, deducting depreciation, whichever is greater, or to compel the person who constructed to pay the value of the land.

(Civil Code, 1930, § 297; June 16, 1964, No. 56, p. 156, eff. June 16, 1964.)

## HISTORY

**Source.** Civil Code, 1902, § 370; Spanish Civil Code, art. 361.

**Amendments--1964** The 1964 amendment deleted reference to building from first paragraph and added second paragraph relating to building.

### Statement of motives.

See Laws of Puerto Rico of:

June 16, 1964, No. 56, eff. June 16, 1964, contained the following statement of motives:

"According to the law and the jurisprudence established by the Supreme Court of Puerto Rico, the owner of the land which has been built upon in good faith by another, has the right to appropriate as his own the work through the exercise of the action to enforce the right of accession, by previously paying the indemnity specified in §§ 382 and 383 of the Civil Code, which sections grant to the said owner of the land the alternative of (a) paying the necessary and useful expenses incurred by the possessor, that is, the cost of the materials and labor (without taking into consideration the factor of depreciation) as of the date the work was constructed, or (b) paying the increase in the value of the land in consequence of such expenses, that is, the difference between the value of the land before the construction and its subsequent value in consequence of said construction.

"This formula is unfair to the owner of the construction, for he may suddenly find



himself deprived of his property at a price much lower than its value. To correct this situation an amendment to the Civil Code is necessary."

## ANNOTATIONS

### Analysis

1. Alternate rights of owner.
2. Good faith.
3. Surrender of property.
4. Payment of indemnity.
5. Consent of owner, lessor and lessee.
6. Bona fide purchaser.
7. Legal redemption.
8. Conjugal property.
9. Evidence.
10. Lessee.

**1. Alternate rights of owner** The right of option granted to the owner of a land by §§ 1146 and 1164 of this title against the bona fide possessor of said land must be exercised by an action to establish accession. *U.R.H.C. v. Roman*, 100 P.R.R. 317 (1971).

The owner of a building erected, in good faith, on another's land does not have the right to exercise the cause of action referred to in this section to force the owner of said land to elect between appropriating as his own the building by previously paying the corresponding indemnity to the owner of the building or oblige the latter to pay the price of the land. *Commonwealth v. Superior Court*, 94 P.R.R. 149 (1967).

In the event the owner of the land exercises cause of action to appropriate as his own the work, the builder in good faith on another's land has the following rights: (a) the right to indemnity, and (b) the right to retain the thing until he is paid for it. *Commonwealth v. Superior Court*, 94 P.R.R. 149 (1967).

The right of election established by this section corresponds solely to the owner of the land, not to the one who built on said land in good faith. *Commonwealth v. Superior Court*, 94 P.R.R. 149 (1967).

Since 1913, our jurisprudence established the principle that the owner of the land is not, by reason of that fact alone, the lawful and exclusive owner of the building which has been constructed in good faith on his land. 1957 Op. Sec. Jus. No. 9

Builder in good faith is the one having the title on the building until the owner of the land makes use of the right of election, provided by § 297 of our Civil Code, between paying the owner of the building for the materials and labor, or compelling him to pay the value of the land. 1957 Op. Sec. Jus. No. 9

He who builds in good faith on another's land possesses title of ownership over the building

until the owner of the land exercises the option allowed him under this section, and either pays the owner of the building the materials and labor used in the building or compels him to buy the land. *Berrocal v. District Court*, 76 P.R.R. 35 (1954).

The owner of a lot on which a person has built in good faith upon exercising his right of accession in connection with whatever was built, may choose to pay to the possessor the necessary and useful expenditures incurred by the latter or the increase in value which the lot has acquired by reason of said expenditures; in the first case, the indemnity is determined by the situation of the expenses originally prevailing when the house was built, and in the second case, the situation prevailing when delivery is ordered by the court. *Viera v. Arizmendi*, 74 P.R.R. 36 (1952).

The owner of the land built upon, sown or planted in good faith has the alternative, under this section, of (1) appropriating as his own the work, sowing or planting by previously paying the compensation specified in § 1468 of this title or (2) of compelling the person who built or planted in his land to pay him the value of the land, or the person who sowed, to pay the corresponding rent. *Echegaray v. District Court*, 72 P.R.R. 416 (1951).

In the cases referred to in this section the owner of the land must elect between buying the building and selling the land; and in the former case he must pay to the possessor of the building the necessary expenses incurred, although the possessor may not have erected it and assuming that it was built by his predecessors, and until such election the possessor is not bound to act nor, therefore, to vacate the property; hence, in the absence of such election his possession is not in bad faith because an action of revendication may have been brought. *King v. Fernandez*, 33 P.R.R. 722 (1924), reversed on other grounds *Viera v. Arizmendi*, 1952, 74 P.R.R. 36.

The election that the owner of the land must make in the cases referred to in this section should be categorical and unconditional in order that it may bind the possessor of the building. *King v. Fernandez*, 33 P.R.R. 722 (1924), reversed on other grounds *Viera v. Arizmendi*, 1952, 74 P.R.R. 36.

**2. Good faith** Plaintiff who occupied government land in good faith cannot acquire title thereupon through prescription; however, Government must either buy constructions erected by plaintiffs thereon or sell them the land, because construction was done before plaintiffs knew about possible challenge to their title. *United States v. Hato Rey Building Company, Inc.*, 660 F. Supp. 1340 (1987).

Usufructuary of Government land assigned under social program developed pursuant to provisions of Title V of Puerto Rico Land Law is a "constructor in good faith" for purposes of this section. *Succrs. Ramos Munoz v. Apollo Hardware*, 110 D.P.R. 855 (1981).

The builder in good faith on another's land-the only one to which the right of accession applies-has a right to receive indemnity from the owner of the land. *Castro Anguita v. Figueroa*, 103 D.P.R. 847 (1975).

The defendant who limits himself to question whether the land on which his dwelling structure is located belongs to plaintiff, but does not affirm that he has any right whatsoever

thereto, is a constructor in bad faith-for the purpose of sustaining an action of unlawful detainer at sufferance-particularly when, as a matter of law, the court concludes that plaintiff is the owner of the land. *U.R.H.C. v. Roman*, 100 P.R.R. 317 (1971).

Even if the owner of a building erected in good faith upon another's land might bring an action to enforce his rights to indemnity and of retention when the owner of the land ignores or violates them, said builder cannot compel the owner of the land to exercise the option granted to him by this section. *Commonwealth v. Superior Court*, 94 P.R.R. 149 (1967).

The right of accession may be asserted when a person in good faith constructs a building on a lot leased to him, upon expiration, for any cause, of the lease in question. *Cesani Vargas v. Superior Court*, 92 P.R.R. 230 (1965).

Concerning the rights of squatters in good faith, the landowner is the owner of the structure, subject only to the right of the squatter to be paid the cost of the labor and materials at the time of erection of the structure, for which reason the acquisition of the land must be required prior to the making of any payment to such squatter. 1957 Op. Sec. Jus. No. 9

It was established by our own jurisprudence that in the construction of a building upon another's land by authority of or by virtue of a contract with the owner of the land, the builder in good faith retains ownership of the construction against the owner of the lot and he can record his building in the register of property. 1957 Op. Sec. Jus. No. 9

Possession in good faith does not exist when it is not based on legal title or act which appears to be a legitimate acquisition or possessor is aware of vices which invalidate or render said acquisition void. *Cedo v. Laboy*, 79 P.R.R. 740 (1956).

Right of accession may be asserted when builder in good faith constructs on another's land under lease, when for any reason such lease has terminated. *Toro v. Mojica*, 79 P.R.R. 593 (1956).

Person who builds on a leased lot with consent of owner is a builder in good faith. *Toro v. Mojica*, 79 P.R.R. 593 (1956).

The lessee, who with the consent of the owner builds on a leased lot, is a builder in good faith and is entitled to indemnity for materials and labor as established by the statute, but he has no such right when he builds without the owner's consent because then he is not a builder in good faith. *Berrocal v. District Court*, 76 P.R.R. 35 (1954).

In an action to establish accession under this section the complaint does not need to allege expressly the good faith with which a building was constructed on the land of another; since good faith is always presumed, it does not have to be alleged. *Maldonado v. Rodriguez*, 58 P.R.R. 778 (1941).

Although it is ordinarily the law that good faith is presumed, this presumption is destroyed when a house is erected on the property of another, and it is then incumbent on the person who erected the house to show that he did so in good faith. *Lippitt v. Llanos*, 47 P.R.R. 254 (1934).

It being proved that the house standing on the lot twice sold was built by a person who in good faith believed he was the owner of the land upon which he built the house, the case should be governed by this section. *King v. Fernandez*, 30 P.R.R. 550 (1922).

It having been shown that one of the defendants built a house in good faith on land which he believed to be his own but which afterwards proved to belong to another person, the ownership of said house should be governed by the provisions of this section. *Suc. of Collado v. Perez*, 19 P.R.R. 881 (1913).

The circumstances of the case show that the building was erected by the defendant municipality in good faith on the lot in litigation; therefore the provisions of this section are applicable. *The People v. Municipality of San Juan*, 19 P.R.R. 625 (1913).

The provisions of §§ 1164, 2992 and 5091 of this title are not applicable to those cases in which the owner of improvements makes them as the owner of the realty and not as the mere possessor thereof, and therefore a quasi-contract cannot be deemed to exist between him and a third party subsequently acquiring the property. *Huyke v. Arrese*, 12 P.R.R. 370 (1907).

**3. Surrender of property** An action of accession having a dual purpose, first to acquire ownership title over the house, and second, to acquire possession thereof by means of defendant's eviction, cannot prosper as to the second of said purposes when it does not allege any of the exceptions established in § 193 of Title 17 which authorizes plaintiffs to refuse the compulsory extension of a lease contract and empowers them to commence unlawful detainer proceedings. *Cesani Vargas v. Superior Court*, 92 P.R.R. 230 (1965).

Where property rights of a farm are adjudicated in a trial in favor of plaintiff, and an order of execution is entered to put plaintiff in possession of the farm and evict the defendants, the latter have no right that it be modified in the sense that they should not be evicted from a house located on said farm and which was built after the death of the predecessor of the plaintiff and after the litigation over title of the property had commenced. *Velez Roman v. Superior Court*, 91 P.R.R. 645 (1965).

Complaint to enforce accession serves a dual purpose: to obtain dominion title of property and to acquire possession thereof by evicting the former owner. *Toro v. Mojica*, 79 P.R.R. 593 (1956).

Where the action to enforce the right of accession has a dual purpose-that the plaintiff obtain title to the construction and that the defendant be ordered to vacate said construction-the court may, upon granting the complaint, order the defendant to vacate the premises or be evicted therefrom. *Ugarte v. Alvelo*, 72 P.R.R. 415 (1951).

In an action to enforce the right of accession having a dual purpose-that the plaintiff obtain title to the construction and that the defendant be ordered to vacate said construction-the term fixed by the trial court to vacate the premises, and in default thereof for the eviction, starts to run only from the time that the indemnity mentioned in this section has been paid. *Ugarte v. Alvelo*, 72 P.R.R. 415 (1951).

The fact that in an action to enforce the right of accession brought only against the person who built in good faith on land belonging to another, the person to whom the latter leased the house built was a witness in said suit and that he had knowledge thereof, does not vest the court with jurisdiction to evict him within the action, without giving him an opportunity to be heard and to defend himself. *Rodriguez v. District Court*, 68 P.R.R. 904 (1948).

Since the complaint to enforce the right of accession has a dual purpose-that the person who built in good faith on land belonging to another be adjudged to convey in favor of the owner of said land the ownership title of the house built, and his eviction from the property thus built-the mere fact that it is sustained as to the first particular does not necessarily mean that the immediate eviction of the person who holds possession of the property involved in the action lies. *Rodriguez v. District Court*, 68 P.R.R. 904 (1948).

An action to enforce the right of accession with respect to constructions on another's property has a dual purpose: that the plaintiff obtain the title of ownership of the structures and that defendant be ordered to vacate the structures he built. *Figueroa v. Rodriguez*, 68 P.R.R. 248 (1948), reversed on other grounds *Echegaray v. District Court*, 1951, 72 P.R.R. 416.

**4. Payment of indemnity** Inasmuch as what was set up on another's land was a gasoline tank, the appellee did not sustain any substantial injury when the right to accession was held by the lower court, since said tank does not constitute a precious or an irreplaceable thing and there is no evidence as to its sentimental value but, on the contrary, it may be replaced easily; therefore, the payment to the appellee of the amount agreed upon by the parties, is an adequate indemnity and, furthermore, it is not advisable to authorize its removal with evident risk to the property and to the business of the appellants and their tenant. *Heirs of Echegaray v. Esso Standard Oil Co.*, 87 P.R.R. 786 (1963).

Owner of leased lot on which lessee has built with owner's consent, on exercising his right of accession as to the construction so built, may choose to pay necessary and useful expenditures incurred by lessee-cost of materials and labor used in construction of building (without depreciation) according to prevailing situation when structure was built-or increase in value which lot has acquired by reason of such expenditures. *Toro v. Mojica*, 79 P.R.R. 593 (1956).

In an action of accession in connection with a building made in good faith on another's land, in which the owner chooses to deliver the land and the building but not an increase in the value of the land by reason of said building, the depreciation and the advantage derived by defendant from said building are elements that should not be considered in fixing the indemnity to be paid, but only the cost of the materials and workmanship. *Viera v. Arizmendi*, 74 P.R.R. 36 (1952).

In order that the complaint in an action to enforce the right of accession should state a cause of action, it need not allege that the plaintiff made any deposit or paid the value of the thing object of the complaint prior to its filing. *Echegaray v. District Court*, 72 P.R.R. 416 (1951).

In a suit seeking that the defendants be ordered to return certain properties and if this is not possible, to pay the reasonable value thereof, the fact that in the prayer of the complaint it is not specified that the return shall be subject to the previous indemnity corresponding to certain

improvements made and buildings erected thereon in good faith, does not mean that the plaintiff is not bound to make payment for such improvements and buildings and the judgment ordering payment thereof is according to law. *Garcia v. Garcia*, 70 P.R.R. 905 (1950), reversed on other grounds *Echegaray v. District Court*, 1951, 72 P.R.R. 416.

When a complaint in an action to establish accession, filed under this section, is assailed as insufficient because the defendant was not offered payment of the proper indemnity for what he constructed in good faith on another's land, the issue lacks merit if it appears from the complaint that the plaintiffs ask to be ordered to pay the legal indemnity and bind themselves to deposit a certain sum or any other which the experts appointed by the court may determine. *Maldonado v. Rodriguez*, 58 P.R.R. 778 (1941).

A person who builds a house on another's land in good faith and with the consent of the owner of the land, whether it be under a lease contract or by mere tolerance, has a right to be compensated only for the value of the house based on the cost of the materials and the labor less depreciation, and the appraisal herein made is correct. *People v. Carrasquillo*, 58 P.R.R. 178 (1941).

Houses built in good faith on another's land pass by accession to the owner of the land; but such conveyance is not consummated until the owner of the land complies with the statutory requirement to pay to the builders the value of the materials and the work. *Carrasquillo v. Ripoll y Maldonado*, 56 P.R.R. 375 (1940); *Rivera v. Santiago*, 56 P.R.R. 361 (1940).

He who sows in good faith on another's land, the subject matter of unlawful detainer proceedings, is entitled to be compensated for the value of his crops; therefore, any pronouncement in a judgment ordering the plaintiff in unlawful detainer proceeding to compensate the intervener for the value of his crops complies with the statute. *Carrasquillo v. Maldonado*, 56 P.R.R. 375 (1940).

**5. Consent of owner; lessor and lessee** Supreme Court holds that §§ 1164-1167 of Title 31, relative to the right of accession, are not applicable to the case of lessee who builds on his lessor's land, and that the rights of these parties should be determined under the general principles which govern lease contracts. 1957 Op. Sec. Jus. No. 9

The relationship between the owner of a vacant lot and the person to whom he conveys it, authorizing him to construct permanent buildings thereon through the payment of a certain periodical rental, is the relationship of lessor and lessee. *Figueroa v. Rodriguez*, 68 P.R.R. 248 (1948), reversed on other grounds *Echegaray v. District Court*, 1951, 72 P.R.R. 416.

Once a vacant lot is conveyed by its owner to another person authorizing the latter to construct permanent buildings thereon, unlawful detainer does not lie as between them. *Figueroa v. Rodriguez*, 68 P.R.R. 248 (1948), reversed on other grounds *Echegaray v. District Court*, 1951, 72 P.R.R. 416.

The right of accession arises both in favor of the owner of a land on which a construction is effected in good faith, the builder acting on the belief that he is such owner, as well as when he builds with the express consent of the lessor. *Figueroa v. Rodriguez*, 68 P.R.R. 248 (1948),

reversed on other grounds *Echegaray v. District Court*, 1951, 72 P.R.R. 416.

Where it is alleged in the complaint to enforce the right of accession that on the lot covered by the lease contract, defendant built with plaintiff's consent a frame house and, without such consent two small concrete houses, the right of accession lies in favor of the plaintiff in respect to all those constructions at the expiration of the contract; the fact that the provisions of the Regulations issued under the Federal Rent Act of 1942 and Act No. 464 of 1946, 17 L.P.R.A. §§ 181-214, are applicable to the lands or lots on which buildings are located, does not preclude the holding, in case the eviction of defendant might not be proper, that said complaint states a cause of action as to the plaintiff's acquisition of the title to the buildings. *Figueroa v. Rodriguez*, 68 P.R.R. 248 (1948), reversed on other grounds *Echegaray v. District Court*, 1951, 72 P.R.R. 416.

Within an unlawful detainer proceeding the value of certain houses belonging to the defendant and erected in good faith cannot be fixed, where the plaintiff failed to allege an ownership right over said houses as against the defendant admitting instead the right of the latter and offering to pay the amount thereof. *Villamil v. Camacho*, 64 P.R.R. 782 (1945).

An action of unlawful detainer at sufferance does not lie against persons who have erected constructions in good faith on another's land-which constructions only pass by the right of accession to the owners of the land upon payment by the latter of the cost of the materials and labor invested therein-unless there is an agreement between the parties regulating their respective rights; but in order that said constructions may be acquired by right of accession by the owner of the land so as to support an action of unlawful detainer by him, it is necessary that said owner should first pay the proper compensation to the builder and not merely make an offer of payment to him. *Villamil v. Camacho*, 64 P.R.R. 782 (1945).

The purchaser of a lot segregated from a property subject to an unrecorded lease contract who has served the lessee with notice of the termination of the lease on the ground of such purchase, is entitled to revendicate said lot together with any building erected thereon by the lessee, with the knowledge and consent of the former owner, upon payment of the value of the material and labor invested in the building, said lessee being entitled to retain possession of the building until such compensation is received by him, and if in an action of revendication brought by the purchaser the latter chooses not to pay said compensation and on the contrary seeks to dispossess the lessee of his property, said action lies to recover only the lot, not the building. *Colon v. Rotary Club*, 64 P.R.R. 552 (1945).

Where a person builds anything on another's land with the consent of the owner of the soil, such construction having been done in good faith, the rights of said person and of the owner of the land in respect to the thing so built are governed by §§ 1164 and 1468 of this title. *Colon v. Rotary Club*, 64 P.R.R. 552 (1945).

The owner of a land on which another person builds in good faith, with the former's consent, is entitled to appropriate the building upon payment of the proper compensation, or to compel said person to pay to him the value of the land occupied by the building. *Couverthie v. Santiago*, 62 P.R.R. 753 (1944).

Where from the evidence in this case it appears that the plaintiff bought the house and lot object of this unlawful detainer proceedings, it being known to him as well as to the seller that the lot was part of a parcel of land which the defendant had leased for a fixed term to said seller, and that the lease, although not recorded, had not expired at the time of the sale and of the trial of the case; and it further appearing that the house which was a structure of a permanent nature belonged to, and was constructed by, the defendant on the land which it leased, and on which there existed no building whatsoever, with the consent of said seller who was then lessor and owner of the leased land, the plaintiff is not entitled to evict the defendant in the absence of an agreement in regard to their rights as to the building. *Colon v. Rotary Club*, 60 P.R.R. 734 (1942).

A dwelling house, a permanent structure, does not constitute a useful improvement or one for pleasure under § 1527 of this title. *Aybar v. Jimenez*, 60 P.R.R. 729 (1942).

Unlawful detainer does not lie against a person who has constructed a permanent structure, in good faith, with the knowledge of the owner of the land who leased it for said purpose, when there is no agreement whatsoever between the parties as to their rights in regard to the structure, since as the doctrine itself suggests, it is only applicable to cases wherein the thing built is of a permanent character, but such is not the case where the thing built is not of that character. *Aybar v. Jimenez*, 60 P.R.R. 729 (1942).

It is not in the action for unlawful detainer, but in an ordinary suit, wherein a determination can and must be had of the amount which a defendant may be entitled to claim for structures of a permanent nature which he has erected with the consent of the owner of the land, unless there is an agreement between the parties as to their rights in regard to said structure. *Aybar v. Jimenez*, 60 P.R.R. 729 (1942).

Houses built on another's land in good faith, go by the right of accretion to the owner of the land if he pays the builders the cost of the materials and the labor; and this is so, in regard to those who build on land held at sufferance as well as to those who build, under an agreement to pay a monthly rental for the use of the land on which their buildings are situated, or their successors in interest. *Palermo v. District Court*, 58 P.R.R. 191 (1941).

The building of a house on another's lot in good faith and with the consent of the owner of the lot, whether it be under a lease contract or by mere tolerance, not being a useful improvement or one for pleasure, is regulated by this section and not by § 1527 of this title. *People v. Carrasquillo*, 58 P.R.R. 178 (1941).

He who builds on land not his own with the consent of the owner thereof, although he cannot be called the possessor of the land built upon, is a bona fide builder. *Rivera v. Santiago*, 56 P.R.R. 361 (1940).

When it is agreed in a lease contract that buildings erected on the land by the lessee should be recorded in the registry of property an omission to mention in the contract who would be the owner thereof at the termination of the lease is not a curable defect. *Molina v. Registrar*, 37 P.R.R. 603 (1928).



**6. Bona fide purchaser** The purchaser of a lot recorded in the registry of property, without it appearing therefrom that there is a building on said lot or that the vendor is the owner of said building, is a third person under the Civil Code who only acquires from the vendor what the latter may legally convey to him; and in the instant case, since it appeared that the vendor was the owner of the lot but not of the building thereon, and that he had acknowledged such fact, even though he attempted to sell the building by a deed when conveying the lot, he had no title over the building which he could legally convey to the purchaser, especially in view of the conditions under which the construction herein took place. *Colon v. Rotary Club*, 64 P.R.R. 552 (1945).

**7. Legal redemption** The builder in good faith on another's land-the only one to which the right of accession applies-has a right to receive indemnity from the owner of the land. *Castro Anguita v. Figueroa*, 103 D.P.R. 847 (1975).

There is no incompatibility between the provisions contained in this section regarding accession and the provisions governing legal redemption; the right of an owner of a property sought to be redeemed by an adjacent owner-who was previously its lessee, and as such erected a building thereon-to make hers anything built in good faith, upon the corresponding payment, is a right which devolves upon the redeeming owner of adjacent land on being subrogated in the rights of the owner upon execution of a deed of legal redemption, after paying the useful and necessary expenses incurred in the property by said owner as former lessee thereof. *Quinones v. Alcaide*, 72 P.R.R. 670 (1951).

**8. Conjugal property** In an action to establish accession filed under this section with respect to a building constructed by a conjugal partnership on land belonging to the plaintiffs, the judgment can only acknowledge their right to acquire the cotenancy that belongs to the sole spouse sued, without prejudice to the filing of the proper action against the other co-owner. *Maldonado v. Rodriguez*, 58 P.R.R. 778 (1941).

**9. Evidence** In an action to establish accession wherein the evidence as to the value of the construction on another's land is contradictory, the conclusion of the lower court as to the same will not be disturbed in absence of bias, prejudice or partiality, or manifest error in the appraisal thereof. *Maldonado v. Rodriguez*, 58 P.R.R. 778 (1941).

**10. Lessee** Sections 1164, 1165, 1166 and 1167 of this title, dealing with right of accession, are not applicable where person who builds is lessee of lot built upon and where building is erected partly on his own lot and partly on leased lot. *Marchand v. Montes*, 78 P.R.R. 123 (1955).

### **§ 1165. Bad faith of builder.**

<Spanish>

He who builds, plants, or sows in bad faith on another's land, loses what he has built, planted or sown, without having any right to indemnity.

(Civil Code, 1930, § 298.)

## HISTORY

**Source.** Civil Code, 1902, § 371; Spanish Civil Code, art. 362.

## ANNOTATIONS

**1. Generally** He who builds in bad faith on another's land loses what he has built without having any right to indemnity. *L.A.P.R. v. Padin Santiago*, 104 D.P.R. 426 (1975).

Person who knowingly builds house on lot which is part of property recorded in name of another person, without having obtained express or implied consent of latter to build, and without there existing between them any contract for use and enjoyment of lot in question, is not builder in good faith nor is he who in turn derives title of house from one who so built. *Cedo v. Laboy*, 79 P.R.R. 740 (1956).

Where the defendant in an action of unlawful detainer has occupied, with his crops and plantation, a portion of the property in which he had no right to be, and his possession and the work performed therein were against the will of the owner, said defendant is not a sower in good faith and has no right to recover the expenses incurred in the planting and cultivating of the crops, nor do the latter constitute an obstacle to his eviction from said property; the most that he could claim would be the compensation provided by § 18 of the Unlawful Detainer Act, 32 L.P.R.A. § 2838. *Martinez v. Torres*, 64 P.R.R. 42 (1944).

Whoever builds a house without permission on the land of another, is not acting in good faith, and the owner of the land is entitled to evict him as though he were also the owner of the house so built, without any conflict of titles arising for decision. *Lippitt v. Llanos*, 47 P.R.R. 254 (1934).

Where a lease of land is for a fixed term and the lessee, without any agreement for renewal of the lease or entitling him to growing crops at the end of the term, sows a crop to be harvested after the termination of the lease, he thereby assumes the status of one who plants or sows in bad faith on another's land according to this section, and loses that which he has planted or sown, without any right to compensation. *Juncos Central v. Del Toro*, 41 P.R.R. 182 (1930).

### § 1166. --Demolition of work and restoration to former condition.

<Spanish>

The owner of the land on which any one has built, planted or sown in bad faith, may exact the demolition of the work or the removal of the planting or sowing and the replacing of everything in its former condition, at the expense of the person who built, planted or sowed.

(Civil Code, 1930, § 299.)

## HISTORY

**Source.** Civil Code, 1902, § 372; Spanish Civil Code, art. 363.

## ANNOTATIONS

**1. Generally** Even though good faith is presumed as long as it is not controverted, the latter cease from the moment the possessor himself becomes acquainted with the defects of the title of his property, the owner of the land on which any structure has been built being able to exact the demolition of the structure, replacing everything in its former condition, at the expense of the person who built. *U.R.H.C. v. Roman*, 100 P.R.R. 317 (1971).

A person who, in violation of an agreement entered into, erects a fence on a lot belonging to his neighbor, not being a builder in good faith, is not entitled to the indemnity referred to in § 1164 of this title, and is bound to demolish the construction pursuant to this section. *Balzac v. Torres*, 68 P.R.R. 908 (1948).

A person who, as soon as he becomes aware that his neighbor is performing a construction in violation of the express terms of an agreement existing between them, objects to said violation and to the continuation of the construction, is not thereafter estopped from obtaining an order for the demolition thereof after its completion. *Balzac v. Torres*, 68 P.R.R. 908 (1948).

### § 1167. Bad faith of both parties.

<Spanish>

When there has existed bad faith, not only on the part of the person who built, sowed or planted on another's land, but also on the part of the owner of such land, the rights of both shall be the same as though both had acted in good faith.

Bad faith on the part of the owner is understood to exist whenever the act has been executed in his presence and with his knowledge and forbearance, and without opposition on his part.  
(Civil Code, 1930, § 300.)

## HISTORY

**Source.** Civil Code, 1902, § 374; Spanish Civil Code, art. 365.

## ANNOTATIONS

**1. Generally** In the absence of proof and allegations on the part of the defendant in a case of unlawful detainer at sufferance to the effect that he built a structure on land belonging to another person, in plaintiff's presence, and with his knowledge and forbearance and without opposition on the part of the latter, the provisions of this section regarding the bad faith of both parties are

not applicable. *U.R.H.C. v. Roman*, 100 P.R.R. 317 (1971).

The acquirers of a property by virtue of a conveyance, void for lack of consideration, who with the knowledge and without opposition on the part of the person who simulated the sale of the property to them, make improvements and erect buildings thereon, upon being ordered to return said property are entitled to retain the possession and usufruct of such improvements and buildings until they are reimbursed for the value of the materials and labor; the last paragraph of this section is applicable to the case. *Garcia v. Garcia*, 70 P.R.R. 905 (1950), reversed on other grounds *Echegaray v. District Court*, 1951, 72 P.R.R. 416.

#### **§ 1168. Materials belonging to third person.**

<Spanish>

If the materials, plants, or seed belong to a third person who has not acted in bad faith, the owner of the land shall be liable, subsidiarily, for their value, and only in the event that the person who made use of them has no property with which to pay.

This provision shall not be applied if the owner make use of the right granted him by § 1166 of this title.

(Civil Code, 1930, § 301.)

#### **HISTORY**

**Source.** Civil Code, 1902, § 374; Spanish Civil Code, art. 365.

#### **§ 1169. Augmentation of river banks.**

<Spanish>

The augmentation which the banks of a river gradually receive from the effects of the current of waters belongs to the owners of the tenements adjacent to such banks.

(Civil Code, 1930, § 302.)

#### **HISTORY**

**Source.** Civil Code, 1902, § 375; Spanish Civil Code, art. 366.

#### **ANNOTATIONS**

##### **Analysis**

1. Generally.
2. Manner of accession.

**1. Generally** The fact that the exact area which has come to form part of the other property may be determined because the courses and distances of the portion of land in controversy herein may be established is of no significance; what is important and controlling is that the process of increment be gradual, caused by the action of the course of the waters, and that the deposits or land abandoned by the waters which constitute the alluvion be attached to the banks or shore and form an integral part of the riparian property. *Vachier v. McCormick, Alcaide & Co.*, 86 P.R.R. 677 cert. den. 373 U.S. 903 (1962 1963).

In order that a landowner may claim the increases to the area of his property caused by the change of course of a river which is the common boundary with another property-claiming an alluvion on a tenement bordering a stream-it is required that (a) the tenement should have as its boundary the same river or stream channel; (b) that the deposit or land abandoned by the waters which constitutes the alluvion be attached to the bank or shore and form an integral part of the riparian tenement, and (c) that this deposit be formed slowly or imperceptibly, by the action of nature and not by the action of man. *Vachier v. McCormick, Alcaide & Co.*, 86 P.R.R. 677 cert. den. 373 U.S. 903 (1962 1963).

In a suit for the revendication of riparian tenements made by alluvion attached to defendant's property, the fact that the increment by alluvion may be identifiable by plaintiff lacks importance, that is, said suit does not lie even if the increment is identifiable by plaintiff. *Vachier v. McCormick, Alcaide & Co.*, 86 P.R.R. 677 cert. den. 373 U.S. 903 (1962 1963).

The relations between persons who possess lands bordering bodies of water are regulated by this section. *Vachier v. McCormick, Alcaide & Co.*, 86 P.R.R. 677 cert. den. 373 U.S. 903 (1962 1963).

The word "alluvion"-which means the imperceptible and successive increase of land on the property adjacent to the banks of rivers-in its broadest sense means the increment attached to the land on one side of the river when the latter upon changing or abandoning its course, little by little, so that it cannot be perceived, leaves behind a dry part of its channel. *Vachier v. McCormick, Alcaide & Co.*, 86 P.R.R. 677 cert. den. 373 U.S. 903 (1962 1963).

The formula for determining what is gradually and imperceptibly-for the purpose of the definition of alluvion as the "addition to riparian land, gradually and imperceptibly made by the water to which the land is contiguous"-is that, though the witnesses may see from time to time that progress has been made, they could not perceive it while the process was going on. *Vachier v. McCormick, Alcaide & Co.*, 86 P.R.R. 677 cert. den. 373 U.S. 903 (1962 1963).

The riparian right to increase by alluvion-whose foundation is the maxim "*qui sentit onus debet sentire commodum*"-is an inherent and essential attribute of the original property; it is a natural, not a civil right. *Vachier v. McCormick, Alcaide & Co.*, 86 P.R.R. 677 cert. den. 373 U.S. 903 (1962 1963).

**2. Manner of accession** The phenomenon of accession of soil to properties of persons who possess lands bordering bodies of water may take place in four different ways, to wit: (a) by alluvion; (b) by avulsion; (c) by change of channel or course of a river; and (d) by formation of

islands. *Vachier v. McCormick, Alcaide & Co.*, 86 P.R.R. 677 cert. den. 373 U.S. 903 (1962 1963).

**§ 1170. Land adjacent to ponds and lakes.**

<Spanish>

The owners of tenements adjacent to ponds or lakes do not acquire the land left dry by the natural decrease of the waters nor lose that inundated thereby in unusual floods.

(Civil Code, 1930, § 303.)

**HISTORY**

**Source.** Civil Code, 1902, § 376; Spanish Civil Code, art. 367.

**§ 1171. Transfer of land by current.**

<Spanish>

When the current of a river, rivulet or torrent cuts off from a tenement on its bank a known portion of land and transfers it to another tenement, the owner of the tenement to which the portion cut off belongs retains the ownership of such portion.

(Civil Code, 1930, § 304.)

**HISTORY**

**Source.** Civil Code, 1902, § 377; Spanish Civil Code, art. 368.

**§ 1172. Trees carried away by current.**

<Spanish>

Trees uprooted and carried away by the current of waters belong to the owner of the land upon which they are carried, if the former owners do not claim them within a month. If such owners claim them, they shall pay the expenses caused by the collecting and securing of the same in a safe place.

(Civil Code, 1930, § 305.)

**HISTORY**

**Source.** Civil Code, 1902, § 378; Spanish Civil Code, art. 369.

**§ 1173. River leaving channel.**

<Spanish>

If a river or stream, whether navigable or not, opens itself a new bed by leaving its former channel, the owners of the soil newly occupied shall take, by way of indemnification, the former bed of the river, everyone in proportion to the quantity of land he has lost.

The said owners shall have the right to their former property if the river or stream returns to its former channel.

(Civil Code, 1930, § 306.)

## **HISTORY**

**Source.** Civil Code, 1902, § 379; Civil Code of Louisiana, art. 518.

### **§ 1174. New bed of navigable river.**

<Spanish>

When a new bed is opened through a private tenement by a navigable river, which changes its course through natural causes, the said bed shall become part of the public domain. The owner of the tenement shall recover the same, in the event of the waters leaving it again dry, whether by natural means or through labor lawfully authorized for this purpose.

(Civil Code, 1930, § 307.)

## **HISTORY**

**Source.** Civil Code, 1902, § 380; Spanish Civil Code, art. 372.

### **§ 1175. Islands formed through descending alluviums.**

<Spanish>

Islands which, through successive accumulations of descending alluviums, are slowly formed in rivers, belong to the owners of the banks or shores nearest to each of them, or to those of both shores if the island is in the middle of the river, and they shall then be divided longitudinally in halves. If a single island thus formed be more distant from one bank than from the other, then the owner of the nearest bank shall be the sole owner thereof.

(Civil Code, 1930, § 308.)

## **HISTORY**

**Source.** Civil Code, 1902, § 381; Spanish Civil Code, art. 373.

### **§ 1176. Current of river dividing into branches.**

<Spanish>

When the current of a river divides itself into branches, leaving a tenement or a part thereof isolated, the owner of such tenement retains his ownership. He also retains it, if a piece of land becomes separated by the current.

(Civil Code, 1930, § 309.)

## HISTORY

**Source.** Civil Code, 1902, § 382; Spanish Civil Code, art. 374.

## ANNOTATIONS

**1. Generally** The second part of this section governs the formation of islands in a river, that is, when a portion of land is abruptly separated from the property affected adversely by the current, the detached portion remaining isolated in the bed of the river. *Vachier v. McCormick, Alcaide & Co.*, 86 P.R.R. 677 cert. den. 373 U.S. 903 (1962 1963).

When the property affected by the water already exists and has a known owner, the owner retains his property. The Code does not authorize the dispossession by fortuitous action of the waters. On the contrary, when the waters, by sedimentation, create property which did not exist, the problem arises as to who is the owner of this new property, and it is to solve that problem that the Code provide certain rules, since the land to be adjudicated by right of accession cannot be, at any previous time, the property of another. (Mr. Justice Rigau's dissenting opinion with which Mr. Justice Ramirez Bages concurs.) *Vachier v. McCormick, Alcaide & Co.*, 86 P.R.R. 677 cert. den. 373 U.S. 903 (1962 1963).

The second part of this section is not a separate provision, but should be interpreted in relation to the provision contained in the preceding statement. *Vachier v. McCormick, Alcaide & Co.*, 86 P.R.R. 677 cert. den. 373 U.S. 903 (1962 1963).

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## SUBCHAPTER IV

### RIGHT OF ACCESSION WITH RESPECT TO MOVABLES

#### ANALYSIS OF SECTIONS

- 1191. Union of movable things belonging to different owners.
- 1192. Principal thing defined.
- 1193. Determination by value or volume; paintings, etc.
- 1194. Separation of united things.
- 1195. Union in bad faith.
- 1196. Form of indemnity.
- 1197. Mixture of things by will of owners or by chance.
- 1198. Mixture in good faith; in bad faith.



1199. Employment of another's materials.

**§ 1191. Union of movable things belonging to different owners.**

<Spanish>

When two movable things, belonging to different owners, are united in such a way that they come to form a unit, without bad faith on the part of either owner, the owner of the principal thing acquires the accessory thing by indemnifying the former owner thereof for its value.

(Civil Code, 1930, § 310.)

**HISTORY**

**Source.** Civil Code, 1902, § 383; Spanish Civil Code, art. 375.

**§ 1192. Principal thing defined.**

<Spanish>

The principal thing of two united things shall be considered to be the one to which another has been united for ornament, or for the use or completion thereof.

(Civil Code, 1930, § 311.)

**HISTORY**

**Source.** Civil Code, 1902, § 384; Spanish Civil Code, art. 376.

**§ 1193. Determination by value or volume; paintings, etc.**

<Spanish>

When it is not possible, according to the rule given in the preceding section, to determine which of the two united things is the principal one, the thing of the greater value shall be considered as such, and between two things of equal value, that having the greater volume.

In paintings and sculptures, in writings, printed matter, engravings and lithographs, the board, metal, stone, canvas, paper or parchment, shall be considered as accessory things.

(Civil Code, 1930, § 312.)

**HISTORY**

**Source.** Civil Code, 1902, § 385; Spanish Civil Code, art. 377.

**§ 1194. Separation of united things.**

<Spanish>

When things united can be separated without injury, their respective owners may demand their separation.

Nevertheless, when a thing united for the use, embellishment or completion of another is much more precious than the principal thing, the owner of the first may demand their separation, though the thing in which it is united may suffer some damage.

(Civil Code, 1930, § 313.)

## HISTORY

**Source.** Civil Code, 1902, § 386; Spanish Civil Code, art. 378.

### § 1195. Union in bad faith.

<Spanish>

When the owner of the accessory thing has made the union in bad faith, he shall lose the thing united and shall be obliged to indemnify the owner of the principal thing for the damages he may have sustained.

When the person acting in bad faith is the owner of the principal thing, the owner of the accessory thing shall have the right to choose between being paid by the first for the value of the thing, or to have the thing belonging to him separated, though it may be necessary for such purpose to destroy the principal thing, and, in both cases, an indemnity for damages and injury may be recovered.

If either of the owners had made the union in the presence and with the knowledge and forbearance of the other, and without opposition from him, their respective rights shall be determined in the manner provided for cases in which they acted in good faith.

(Civil Code, 1930, § 314.)

## HISTORY

**Source.** Civil Code, 1902, § 387; Spanish Civil Code, art. 379.

### § 1196. Form of indemnity.

<Spanish>

Whenever the owner of any material employed without his consent has a right to an indemnity, he may exact that such indemnity consist in the delivery of a thing equal in kind and value and in all respects to the one employed, or else in the value of such thing, according to expert appraisement.

(Civil Code, 1930, § 315.)

## **HISTORY**

**Source.** Civil Code, 1902, § 388; Spanish Civil Code, art. 380.

### **§ 1197. Mixture of things by will of owners or by chance.**

<Spanish>

When, by the will of their owners, two things of the same or different kinds are mixed, or when the mixture is made by chance, and, in this last case, are not separable without injury, each owner shall acquire a right proportional to the part belonging to him with respect to the value of the things mixed or confounded.

(Civil Code, 1930, § 316.)

## **HISTORY**

**Source.** Civil Code, 1902, § 389; Spanish Civil Code, art. 381.

### **§ 1198. Mixture in good faith; in bad faith.**

<Spanish>

When, by the will of only one of the owners, but in good faith, two things of equal or different kinds are mixed or confounded, the rights of the owners shall be determined by the provisions of the preceding section.

When the person making the mixture or confusion acted in bad faith, he shall lose the thing thus mixed or confounded belonging to him, besides being obliged to indemnify the owner of the thing with which he made the mixture for the damage caused thereby.

(Civil Code, 1930, § 317.)

## **HISTORY**

**Source.** Civil Code, 1902, § 390; Spanish Civil Code, art. 382.

### **§ 1199. Employment of another's materials.**

<Spanish>

He who has employed, in good faith, material belonging in whole or in part to another person for making a thing of a new kind, shall become the owner thereof, indemnifying the owner of the material for the value of the same.

When the said material is more precious than the work on which it was used or superior in

value, the owner thereof may, at his option, become owner of the new thing by paying the price of the said work or claim an indemnity for the said material.

When, in the making of the new thing, there has existed bad faith, the owner of the materials has the right, either to keep the work without paying anything to the person making it; or claim from him an indemnity for the value of the material and the damages he may have suffered.

(Civil Code, 1930, § 318.)

## **HISTORY**

**Source.** Civil Code, 1902, § 391; Spanish Civil Code, art. 383.

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