

convenient, but they have also presented it in their article 74a as a declaration of the law on a doubtful point, and not as absolutely an amendment of it.

Art. 75. Article 75 requires no comment as it coincides with both systems of law.

Art. 76. Article 76 is the same with 1792, C. N., except that the words "constructed at a fixed price" have been omitted, as creating an improper limitation, and the words "superintending the work" have been added, in order to distinguish the liability in such cases, from that of an architect merely furnishing the plan, as declared by the article 76a, for which there is no corresponding article in the Code Napoleon.

Art. 77. Article 77, which is taken from article 1793, C. N., is suggested for the establishment of a rule, the want of which has been much felt in this country.---The necessity imposed upon the contractor to obtain written authority to enable him to recover for extra work, has been wisely adopted in France, and is spoken of with commendation by all the commentators on the Code Napoleon.---The writing is essential, and its absence cannot be supplied by the oath of the proprietor.

Art. 79. Of the remaining articles of the section it is necessary to notice specially only 79, 81 and 84.---Article 79 retains the rule of the ancient law as preferable to the new rule introduced by

Art. 81. the Code Napoleon, article 1795.---Article 81 is not in the Code Napoleon, it is taken from Pothier, and ought to be made a

Art. 84. part of our code. Article 84 follows the rule of the ancient law, which has been confirmed by judicial decision and is, without doubt, preferable to the rule adopted in article 1798, C. N. ;

Arts. 78 to 84. with these exceptions, the articles numbered from 78 to 84, while they express the existing law, coincide substantially with the articles of the Code Napoleon cited under them.

Chap. 4. Of the lease of cattle on shares. Three articles are submitted upon the subject of this chapter, all of a general character and requiring in detail no special comment.

Art. 84a. Article 84a defines the description of lease.

Art. 85. Article 85 declares what animals may be the object of it.

Art. 86. Article 86 subjects the rights of the parties to local usages in the absence of special agreement.

As however the *Bail à Cheptel* occupies an important place in the Code Napoleon, consisting of 32 articles, it may be thought necessary to offer an explanation of the brevity with which it is disposed of in this report. In certain portions of France the letting and taking of cattle and sheep upon shares was a chief form of industry and source of profit in the rural parts. Its extent however was only local. In the provinces of Bourbonnais, Berry, Brittany and Nivernois, it was of every day use, and the provisions upon it were abundant and minute.---The articles of the Code Napoleon are derived from the Customs of those provinces, and are useful chiefly in their application to the pastoral districts. The Roman law has little upon the subject ; the contract is treated there rather as a contract of partnership than of lease.---In the Custom of Paris nothing is said of it.---In this country the contract is of little comparative frequency or importance. Although cattle and sheep are sometimes let out on a small scale on shares, yet where it is done the rights of the parties are almost always the subject of special agreement, and, if in any case this be omitted, they are settled by the local usage, which varies in different parts of the province.---The introduction into our law of the numerous and complicated rules intended for a condition of things and class of wants entirely different from those existing among us, has been thought by the Commissioners to be certainly useless and possibly embarrassing and hurtful in its results. They have therefore confined their treatment of the subject to the general provisions above stated.

The whole, nevertheless, is respectfully submitted.

Quebec, 20th February, 1863.

ED. CARON,
C. D. DAY,
A. N. MORIN.

Pothier,
Cheptels, nos. 4
to 19.—Merlin.
Rép. vo Cheptels, § 1, no. 5.—
13 Pand. Fran.
p. 295.