

An effort has also been made to express the articles concisely and with exactness of meaning, and to this object the minor excellencies of language have been sacrificed when necessary.

Division of subject of Obligations.

With respect to the arrangement and division of the subject of obligations, it may be safely assumed that the method observed by Pothier in his treatise is of all others the best. The French code professes to have followed his method, but in fact has departed from it so materially that its symmetry and logical connection are greatly impaired. Instead of comprehending the whole subject of obligations, as Pothier has done, under one general head, the framers of that code have subjected it to an inconvenient division into two titles—the one treating of the obligations which arise from contracts, and the other, of those which arise from other causes : but the first title contains all the rules in relation to the different descriptions of obligations and also all those in relation to their extinction. These rules therefore, according to the division, would seem to apply only to the obligations included within the first title, but in fact and of necessity they apply equally to those comprised in the second title also.

Then the rubric of the former of these titles “*Des contrats ou des obligations conventionnelles en général*,” implies that contracts and obligations are identical, an obvious confounding of the cause with the effect. Added to this is an indiscriminate use of different words in the same meaning and of the same words in different meanings ; of which an instance is seen in the four words *obligation*, *contrat*, *convention* and *engagement*, which constantly occur as signifying the same thing.

From all this result not unfrequently doubts of the intention of the laws and a confusion of ideas occasionally presented throughout the whole title.

1 Rev. delégisl. 1846, vol. 1, p. 288 & seq.

4 Marcadé, p. 328 & seq.

3 Zacharie, No. 523, note 1, p. 342, and vol. 4, p. 2, note 1.

4 Boileux, p. 338, note 1.

It would be unprofitable to enter at present into further detail upon this subject. The observations of distinguished writers, and particularly of those cited in the margin, expose at length the error committed in the deviation from Pothier's arrangement.

It is his method therefore which the Commissioners have preferred and in almost all respects closely followed.

An examination of the synopsis which accompanies this report, and a comparison of it with that of Title III of Book III of the French code will at once shew the difference between the two.

In addition to a departure from the general method adopted in the French code, other changes have been found necessary, consisting, 1st., in the transposition or uniting of articles so as to bring together all the rules connected by their subject ; 2nd., in the rejection of useless articles, and the avoidance of definitions and enumerations of examples, except in cases of obvious necessity ; 3rd., in the introduction of new articles relating to subjects on which the French code is silent ; and, finally, in the correction of loose and vague forms of expression, by a careful choice of words, for the conveyance of leading ideas, and a strict adherence to the same words and the same form of expression in the same sense.

The explanation of the changes so made, and of the reasons for making them, will be most conveniently given, upon a reference to the articles in their consecutive order.

First section as originally prepared omitted. Arts. 1 to 6, 1101 to 1106, C. N.

The first section of the first chapter of the title as originally prepared, consisted of definitions contained in articles numbered from 1 to 6, and corresponding substantially with the articles of the French code, numbered from 1101 to 1106.

Upon consideration the Commissioners omitted this section altogether, as containing only definitions of a merely scholastic character. The inexpediency of making definitions of this class part of a code is affirmed by the Roman law, and is