

- Art. 26. Article 26 declares the same rule as that expressed in article 1733, C. N., but not in the same form, the object of both articles being to establish, that in case of loss by fire the presumption is against the tenant, and hence his liability.—In order to prevent the possibility of the extension of this presumption, which is of a rigorous nature, beyond its legitimate application, article 26a has been prepared,—it has no corresponding article in the Code Napoleon.
- Art. 26a.
- Art. 27. Article 27 does not follow article 1734, C. N., which declares the liability of several tenants for loss by fire to be joint and several,—meaning, without doubt, the tenants of separate parts of a house. The Commissioners are of opinion that the rule of a joint and several liability in such cases is by no means certain under the existing law; article 27 has therefore been so framed as to limit the liability of each tenant according to the amount of his rent. They have adopted the article as settling the law upon a doubtful point.
- Art. 30. Article 30 corresponds with article 1724, C. N., except in the clause by which it is provided that if the repairs became necessary before the making of the lease, the lessee is entitled to a diminution of rent according to the time and circumstances. This is a reasonable modification and would probably be held to be within the intention of the article 1724, and is, without doubt, implied under the equitable principles of the ancient law.
- Sec. 4. Rules particular to the lease or hire of houses.
Art. 38. Article 38 rests upon the authority of Pothier, from which article 1758, C. N., seems also to have been taken. Both speak of furnished houses, but in our article the word furnished is omitted, in order to adapt it to the usage of this country in which houses are rarely let furnished. It is to be observed that this article deals only with cases of lease; article 7 of this title regulates cases of occupation without lease.
- Art. 39, 40. Articles 39, 40, are similar to corresponding articles in the Code Napoleon.
- Art. 41. An article numbered 41 is submitted in order to avoid all doubt as to the application of the rules relating to the lease of houses.—It is necessary, as the rules are intended to include what is known under the term “urban,” in contradistinction to “rural” estates.
- Sec. 5. Rules particular to the lease or hire of rural estates.
Arts. 42, 42, 44, 45, 46. Articles 42, 43, 44, 45, 46 declare equally the ancient and modern law. Article 1770, C. N., specifies one half of the harvest as the minimum of loss which entitles the tenant to a diminution of rent; this limitation is not preserved in article 46, under which the point is left to the doctrine or discretion of the courts.
- Art. 47. Article 47 expresses the existing law and coincides in principle with article 1769, C. N. The Commissioners have however submitted an article in amendment, by which the law is changed, and no diminution of rent is allowed in consequence of the failure of harvest when the lease is for a term of years. They have been induced to do so, from a consideration that the harvest depends in a great degree upon the mode of cultivation, and the skill and diligence of the farmer in the choice and management of his crops—and in this country where it is customary to cultivate a variety of crops upon every farm, the destruction of one of them is usually compensated by the abundance of another. It seems therefore reasonable to assume that the tenant is to take the return of the bad years with the good—and, as a simple rule avoiding uncertainty and litigation, it is thought advisable to leave the risk with him.
- Arts. 48, 49, 49a. Articles 48, 49 and 49a correspond with 1771, 1774 and 1778, C. N., but an addition of the words “terminating on the first day of October” has been made to 49 in order to harmonize it with the usage already mentioned—and in 49a the wording of the article 1778 has been changed in order to exclude from it the straw which the tenant may destine for other purposes than manure.