

Art. 13.

Article 13 expresses the present law, which it is proposed to change by substituting the article suggested in amendment, taken from the Code Napoleon, article 1599—This change is the necessary consequence of article 44, title *Of Obligations*, and article 1 of this title.

Arts. 13a, 13b, 13c.

Articles 13a, 13b, 13c are exceptions to the general rule, founded on authority both in the ancient and modern law.

Chap. 4. Of the obligations of the seller. Sec. 1. General provisions. Art. 14. Sec. 2. Of Delivery. Art. 15.

Article 14 which corresponds with article 1603, C. N., requires no observation, nor does article 15—taken from 1604, C. N.

Art. 16.

Article 16 is the first requiring notice in this chapter ; it exposes the existing law, which requires change in order to harmonize the rule with that already adopted on the nature and effect of sale. Under the ancient law tradition or delivery was a necessary part of the conveyance, without which it was imperfect and inoperative ; the inconveniences of this rule and the reasons for changing it have been treated in the report of the title *Of Obligations* on article 44. Under that change the delivery has become of much less importance ; the sale is complete and the property passes without it, by the contract alone, and the buyer has his right of action to revendicate the thing as fully as the seller had.—But it may happen either that a third person or the seller himself may hold possession of the property after the sale, and it is to protect the buyer from such a contingency that the obligation of the seller to deliver is declared in the article suggested in amendment of the existing law. This article is in harmony with the rule of the Code Napoleon, article 1605, but differs from it in expression, and in the absence of specifications which in that article are incomplete and leave the dispositions of it imperfect. It has been framed upon the criticisms and judicious suggestions of the authors cited under it and is in accordance with other codes which have followed the Code Napoleon in its innovation with respect to the contract of sale. If this amended article be adopted the articles numbered 16 and 17, expressing the ancient law, must of course, be omitted.

Art. 17.

Arts. 18 to 24.

The articles numbered from 18 to 24 require no comment.—They are taken substantially from the Code Napoleon and express equally the ancient law.

Arts. 23, 26, 27.

Articles 25, 26, 27 declare the rules and remedies in cases in which the superficial contents of an immoveable are found to be less or more than the quantity specified in the contract. Three articles, A, B, C, are substituted in amendment. These do not so much change as extend our law and correspond in principle with the Code Napoleon.

By the ancient law, as formally declared by the authors, there are two classes of cases, to which different rules are applied. The first, a difference between the real and declared quantity, when the immoveable is sold at a certain rate by measurement,—in this case, if there be a deficiency, the seller must make a corresponding diminution in the price, and, if there be an excess, the buyer must pay for it or he may give back such excess. The second class is that in which the immoveable is sold as containing a certain superficial quantity, but at a block price,—the seller is then obliged to diminish the price according to any deficiency which may be found to exist, but he has no claim upon the buyer for any supplemental price if there be an excess. The articles suggested in amendment do not preserve this distinction, but apply one rule, making the liabilities of the parties the same toward each other in the two cases, and giving always to the seller, in cases of excess, a right corresponding to that which the buyer has in case of deficiency. The buyer, under the article B, has the right also of rejecting the contract if the deficiency be so considerable as to justify the presumption that he would not have bought had he known it. The article C is an expression of