

Sec. 4, of the effect of contracts. Art. (37) to (42).  
1134-5-S-41-65.  
1583 C. N.  
P. C. 41 to 46.

The two articles 41, (37) and 44 (40) declare the effects of contracts; and raise the question whether we are to adhere to the existing law in relation to the necessity of tradition for passing the right of property *jus in re*, or adopt the rule of the French code by which the contract alone has that effect. The latter rule is certainly more simple and convenient, as it avoids a circuitry of actions and lessens litigation. It avoids also those subtle and perplexing questions upon fictitious and symbolic delivery, through which in the jurisprudence of all countries where the old rule has prevailed constant struggles have been made to evade its operation.

Troplong, vente, Nos. 39 to 47, note 3 to No. 40.  
Toullier as cited under Art. 40.  
4 Marcadé, Nos. 480 & seq. pp. 388 to 493.

It has been adopted not only in the French code but also in that of Louisiana and in those of several of the States of Europe. It would be out of place to dwell here upon the arguments which might be urged in favor of either rule. The whole subject is discussed by the authors cited in the margin and more particularly by Toullier in the 54th and following numbers of his fourth volume. He traces its origin to circumstances in a state of society radically different from that of the present day and says of it with justice: "*On tirait de ce principe erroné des conséquences d'une injustice frappante. Pour éluder ces conséquences on avait imaginé des traditions feintes et symboliques qui rendaient rare l'application d'un principe dont on reconnaissait l'injustice sans oser l'abandonner.*" The Commissioners have recommended the introduction of the new rule, but not in the language of the article 1138 of the French code. That article has called forth much criticism as well upon the loose manner in which it is expressed as upon the want of completeness in defining the class of things which pass by the effect alone of the contract. The article 44 (40) now submitted is drawn with a view to avoid these defects and is followed by another article 45 (41) not found in the French code, but clearly necessary for restraining the rule with respect to the class of things designated in it.

6 Revue de Législ. pp. 634 and seq.  
Delvincourt, cap. 4, sec. 1, Art. 1138.  
Gen. Stat. of Mass. cap. 89, pp. 464.

Art. (41.)  
P. C. 45.

The article 46 (42) limits the operation of the rule in certain cases in the interest of third parties and substantially corresponds with the provisions of the French code.

Art. (42.)  
P. C. 46.  
C. N. 1140, 1141.

Sec. V. Of their effect with regard to 3rd persons, Art. (32) to (35).  
P. C. 47 to 50.  
C. N. 1119 to 1122 and 1166.

No other than verbal changes have been made in these articles. The arrangement however is different and the subject of the article 1166 has been brought into this section where its connection ought to place it.

Sec. VI. Of avoidance of by Crs., Art. (66) to (65).  
P. C. 51 to 60.

The articles of section VI, numbered from 51 (56) to 60 (65) contain a series of rules for the protection of the rights of creditors. There is but one article, No. 1167 in the French code on this subject, giving to the creditor in general terms the revocatory action known as the *actio Pauliana* of the Roman law. The articles submitted have been carefully drawn from the sources of our law. They are founded, with two or three exceptions, upon precise texts of the Digest which have been recognized and developed by the jurisprudence, and in some instances by the positive legislation of France, and are assumed by the modern commentators to be the law under the French code notwithstanding its silence. These rules are of obvious necessity;—for imputed fraud against third persons is a fruitful source of litigation and there is no class of rights upon which well defined rules are more required. In the code of Louisiana the subject has not been overlooked. Some of the provisions upon it found there are judicious, but others are objectionable on the score of useless detail.

C. N. 1167.

ff. lib. 42, tit. 8, Quæ in fraudem creditorum, &c.

A reference to the authorities cited under the several articles and especially to Marcadé on the article 1167, and Toullier, on the effect of obligations, in sec. 6 of his 3rd chapter, will afford a full explanation of the principles upon which the