

TITLE FIFTH.

OF SALE.

CHAPTER FIRST.

GENERAL PROVISIONS.

1. Sale is a contract by which one party obliges himself to give to the other the free and undisturbed enjoyment of a thing, as owner thereof, for a price in money which the latter obliges himself to pay for it.

ff. L. 30, §. 1, De act. empti et renditi—Pothier, *Vente*, no. 1.—C. N. 1582, 1583.

(Suggested amendment.)

* Sale is a contract by which one party gives a thing to the other for a price in money which the latter obliges himself to pay for it.

It is perfected by the consent alone of the parties, although the thing sold be not then delivered; subject nevertheless to the provisions contained in article 46 of the title *Of Obligations*.

Domat, *liv. 1, tit. 2, sec. 1, nos. 1, 2*.—Troplong, *Vente*, nos. 4, 37 *et seq.*—6 Marcadé, p. 142 *et seq.*—*Arts. 41, 44, 45, 46, Title "Of Obligations"*.—C. N. 1582, 1583.

2. The contract of sale is subject to the general rules relating to contracts and to the effects and extinction of obligations declared in the title *Of Obligations* unless it be otherwise specially provided in this code.

C. N. 1584.

3. When things moveable are sold by weight, number or measure, and not in the lump, the sale is not perfect until they have been weighed, counted or measured; but the buyer may demand the delivery of them or damages according to circumstances.

ff. L. 8, De periculo et comm. rei venditæ.—L. 35, § 5, *De contr. empt.*—Pothier, *Vente*, no. 308.—6 Marcadé, p. 149.—Troplong, *Vente*, nos. 86, 87.—14 Fenet, pp. 4, 21, 85, 153, 182, 183.—C. N. 1585.

5. The sale of a thing upon trial is presumed to be made under a suspensive condition, when the intention of the parties to the contrary is not apparent.

ff. L. 3; L. 34, § 5, De contr. empt.—L. 31, § 32, *De adilitio edicto*.—Domat, *liv. 1, tit. 2, Du contrat de vente, Sec. 4, no. 8*.—Pothier, *Vente*, nos. 264-5-6, & strictures by Marcadé, vol. 6, p. 156.—Troplong, *Vente*, nos. 106, 107.—C. N. 1588.

6. A simple promise of sale is not equivalent to a sale, but the creditor may demand that the debtor shall execute a deed of sale in his favor according to the terms of the promise, and, in default of so doing, that the judgment shall be equivalent to such deed and have all its legal effects; or he may recover damages according to the rules contained in the title *Of Obligations*.

Pothier, *Vente*, 479.—Bardet, *Arrêt 2 mars*, 1627.—Journal des Aud. *Arrêt 28 mai*, 1658.—Perrault *vs. Arcand*, 4 L. C. Rep. p. 449.—C. N. 1589.

7. If a promise of sale be accompanied by the giving of earnest, each of the contracting parties may recede from it; he who has given the earnest, by forfeiting it, and he who received it, by returning double the amount.

Pothier, *Vente*, 500 *et seq.*—C. L. 2438.—C. Cant. Vaud, 1122.—C. N. 1590.