

Art. 2. Article 2 has been adopted instead of article 1584, C. N. ; the latter contains a specification of rules which are not peculiar to the contract of sale but apply equally to other contracts. It is therefore omitted as a useless repetition, and, in its place, a general reference is made by article 2 to the title *Of Obligations*.

Art. 3. Article 3 follows article 1585, C. N., except that it omits the words "in the sense that the things sold are at the risk of the seller."—This qualification of the rule declared in the article has occasioned much doubt and conflict of opinion among the commentators. On the one hand it has been contended that the declaration that the sale of things to be weighed, measured or counted is not perfect until this has been done was limited by the expression alluded to, simply to the effect of continuing the risk of the thing in the seller—but that the property passed nevertheless to the buyer. On the other hand this expression is held not to limit the general enunciation of the rule, but to be merely illustrative of it,—and accordingly that the sale passes no property and is in no sense perfect until the weighing, measuring or counting has taken place.—This is the opinion of Troplong, Marcadé and others, and seems to have been the intention of the authors of the article as reported by Fenet.—The Commissioners have adopted this view, which is indeed in harmony with Pothier's expression of the rule, and they have in consequence omitted the qualifying words cited, in order to avoid any ambiguity upon the subject.

An article prepared in conformity with article 1587, C. N. has been omitted, as containing a rule subject to much doubt and numerous exceptions. It has been deemed safer and more convenient to consider the trial by taste, treated in that article, as included in the general expression of our article 5, nearly corresponding with article 1588, C. N.

Art. 5. The only difference between article 5 and article 1588, C. N. is that the latter declares that the sale upon trial is always presumed to be made under a suspensive condition,—while the former, with more exactness, declares that it is so presumed when the intention of the parties to the contrary is not apparent.

Art. 6. Article 6 exposes the rule of our law with respect to the promise of sale ; article 1589, C. N. changes that rule by declaring the promise to be equivalent to sale—but there seems to be no sound reason for recommending a departure from our article as submitted.

Arts. 7, 7a, 8, 8a. Articles 7, 7a, 8 and 8a, need no observation.

Art. 8b. Article 8b, is founded upon article 128 of the Custom of Paris, declaring that tavern-keepers selling intoxicating liquors to be drunk upon the spot have no action for the recovery of the price. The Commissioners have adopted the article, for although the denial of the action may be regarded in the light of a forfeiture or penalty, founded upon considerations of police and public order, and was so considered in France, yet it is a salutary rule and has been constantly applied in our courts.

Chap. 2. Of the capacity to buy or sell. Article 9 is merely a general reference to the rules declared in the title *Of Obligations*.

Art. 9.
Art. 10. Article 10 announces the rule of our law—In the Code Napoleon, article 1595, certain exceptions are specified, relating to cessions of property between husband and wife in satisfaction of matrimonial rights, but they go further than the existing law justifies, and, although there may be cases in which transfers of property resembling sales are admissible, yet these are not of a nature to infringe the general rule as stated in the article.

Arts. 11, 11a. Articles 11 and 11a are found in the Code Napoleon, articles 1596 and 1597, from which, with some change of expression, they have been adopted, as being in accordance with our law.

Chap. 3. Of things which may be sold. Article 12 is general—It differs from 1598 in the wording only.

Art. 12.