

is to be found in our books of authority and has been adopted in the code of Louisiana.

Art. 48.

Article 48 is substantially the same with article 1644, C. N. it differs from it, first, in not specifying particular articles to which it applies, as such specification, if necessary there, (which it does not seem to be) is no longer so under the change in the arrangement of the article which is submitted in this report,—secondly, in not specifying the manner in which estimation shall be made of the value of the thing returned, such estimations being left to the dispositions of general rules.

Art. 49.

Article 49 contains an addition to the expression of the rule of liability contained in article 1645, C. N., although perhaps not to its constructive application.—The article declares that the liability mentioned in it attaches in cases in which the seller is legally presumed to know the defect;—thus, for example, mechanics would be presumed to know the defective quality of materials used by them in their trade.

Art. 50.

Article 50 requires no comment.

Art. 51.

The first clause of article 51 expresses the rule of both the ancient and modern law, the second clause that of the ancient law only, which does not coincide with the Code Napoleon. The Commissioners are of opinion that the existing law as expressed in the article, making the seller liable for the thing tainted with *vice redhibitoire*, in case of loss of it by the fault of the buyer or by a fortuitous event, but deducting from his claim the value of the thing at the time of loss, ought not to be changed.

Art. 52.

38 Duvorgier, *Collection des lois*, pp. 329 et seq.—5 Rogron, p. 2133.—Pothier, *Vente*, nos. 586, 588, and his *tableau*, p. 14.—C. L. 2512—C. V. 1179.

Article 52 follows article 1648, C. N. It might be thought desirable to establish a more specific rule than is contained in it, and this has been done in France by a law adopted 20th May, 1838; but the usages under the ancient system varied much, and perhaps, as a matter of practical convenience, it is better that the period should be left to local usage and the discretion of the Courts.

Chap. 5. Of the obligations of the buyer.

This chapter contains the articles numbered from 54 to 61, also three others suggested in amendment.

Arts. 54, 55, 57.

Articles 54, 55, 57 require no remark.

Art. 56.

Article 56 differs from the existing law only in making the buyer liable for interest from the time of being put in default in the manner provided in the title *Of Obligations*, instead of from a judicial demand, to which such default is substituted. It also differs from the Code Napoleon by suspending the liability for interest, when there is a term for payment, until the expiration of the term, in accordance with the existing law, while that code makes it run from the time of possession, notwithstanding the term for payment.

Arts. 58, 58a, 59, 60.

Articles 58, 58a, 59, 60 relate to the seller's right to obtain a dissolution of the sale if the price be not paid. They declare the rules of the ancient law, from which those of the Code Napoleon do not materially differ. The Commissioners have given a good deal of consideration to the subject of this right, and have arrived at the conclusion that it ought to be restricted to the cases in which it has been specially stipulated. Such was the rule of the Roman law—*De lege commissariâ*—and the departure from it was introduced into France by the jurisprudence of the courts, according to which the right of dissolution was implied as a tacit condition in all contracts of sale. Without entering into any extended argument upon the inexpediency of this change, which is discussed at length by the commentators on the Code Napoleon, it is certain that the existence of the implied tacit condition is irreconcilable with any effectual protection of the rights of third parties by registration. Troplong speaks of it in this connection as "*un embarras contre lequel le Code Civil a vainement lutté.*"

ff. lib. 18, tit. 18.

2 Troplong, *Vente*, no. 632, p. 98.

On the other hand, by reducing the right to the form of a covenant and limiting its exercise to a certain period, it may without difficulty be subjected, like other contractual rights, to the necessity of registration.