

FOURTH REPORT

*Of the Commissioners appointed to codify the Laws
of Lower Canada in civil matters.*

To His Excellency the Right Honorables CHARLES STANLEY, VISCOUNT MONCK, Baron Monck of Ballytrammon, in the County of Wexford, Governor General of British North America, and Captain General and Governor in Chief, in and over the Provinces of Canada, Nova Scotia, New Brunswick and the Island of Prince Edward, and Vice Admiral of the same, &c., &c., &c.

MAY IT PLEASE YOUR EXCELLENCY :

The Commissioners have the honor to transmit a Fourth Report of the progress of their work, containing the titles of Sale, Exchange and Lease.

As these titles are closely connected in their origin and fundamental principles with the title *Of Obligations*, they fall within the operation of many of the general observations contained in the report of that title—it is therefore deemed unnecessary, in presenting them, to do more than note the instances in which a departure has been made, in the articles submitted or in the arrangement of them,—either from the existing law or from the Code Napoleon, or from both.

TITLE OF SALE.

In the title *Of Sale* the order of arrangement found in the Code Napoleon has been followed with a few inconsiderable modifications. Three chapters, however, have been added to the eight of that code.—The three additional chapters are, the eighth, “Of Sales by Auction,”—the ninth, “Of Sales of Registered Ships,”—and the eleventh, “Of Forced Sales and Transfers resembling Sales.” The introduction into our code of the rules contained in these three chapters is made, in some instances, in consequence of the suggestions of the commentators on the Code Napoleon, and in others, from their obvious utility in the transactions of business to which they relate.

Chap. 1. General provisions.

Art. 1.

Article 1 contains a definition of the contract of sale under the existing law, but by the change already suggested in the title *Of Obligations* (articles 44 and 46) the contract is made to transfer the thing sold to the buyer, as owner, without any form of delivery being necessary for its completion—An article in amendment of our law is therefore submitted in order to harmonize the rule with those already adopted in the title *Of Obligations*, upon grounds explained in the report of that title.

The amended article is taken substantially from articles 1582 and 1583, C. N. It does not however follow the form of expression found in those articles, which is inaccurate, and, upon the suggestion of the commentators, a closer definition has been adopted. The clause in article 1582, C. N. which relates to the instruments of sale is also omitted in the article, as it is included in the general provision concerning proof contained in the title *Of Obligations*.