

both the old and the new law with respect to property sold at a block price, and as a certain and determinate thing; in sales of this nature the quantity is not an essential element of the contract and the rules above stated do not apply.

Arts. 28, 29. Articles 28, 29 require no remark.

Sect. 3. Of warranty. General provisions. Arts. 30, 31. Articles 30, 31, containing the general provisions relating to this section, are in conformity with the ancient law. They differ from the Code Napoleon, articles 1625 and 1627, in the form of expression only.

§ 1. Of warranty against eviction. Besides the general provisions, this section is divided into two paragraphs.—The first,—Of warranty against eviction—consists of the articles numbered from 32 to 44.

Art. 32. Article 32 corresponds substantially with 1626, C. N.—There is however an addition of the words “and not apparent” which render it more complete as an expression of our law.

Arts. 33, 34, 35. Articles 33, 34, 35 correspond substantially with articles 1628, 1629, 1630, C. N., which are in conformity with the existing law.

Art. 35a. Article 35a embodies an exception to the general rule stated in article 35 as to the extent of liability in the case specified in it. It is not in the Code Napoleon.

Art. 36. Article 36 has been framed from articles 1631 and 1632, C. N., the only change is in the form of expression. The latter part of the article declares a rule which is the subject of difference of opinion among jurists. Pothier's authority sustains the rule, but not so Domat's; a discussion of it will be found in Pothier and Troplong as cited. The Commissioners have thought it advisable to adopt the article as it stands, in order to remove doubts and assimilate our rule unequivocally with that of the Code Napoleon.

Arts. 37, 38, 39, 40. Articles 37, 38, 39, 40 are adopted as expressing equally the rules of the ancient and of the present law of France. It may however be observed that, with respect to article 38, the opinion of Domat differs from that of Pothier and of the modern commentators upon the provision contained in it.

Art. 41. Article 41 declares the existing law, instead of following article 1637 which has departed from it and introduced an innovation which Troplong and other commentators regard as injudicious.—There is no doubt of the law as stated in the article and the Commissioners are of opinion that it ought not to be changed.

Art. 42. Article 42 corresponds with article 1638, C. N.—An addition, not necessary in that code, has been made for the purpose of introducing a rule, formerly not admitted in our law, by which the action of warranty may be brought at once upon the discovery of any cause of disturbance. This is a salutary change and coincides in principle with the right given by statute to purchasers of real property to withhold payment of the price under similar circumstances.

C. S. L. C. Ch. 36, sec. 31.

Art. 43. Article 43 is in conformity with the old and new law of France,—there is only a verbal difference between it and article 1640, C. N.

Art. 44. Article 44 is not in the Code Napoleon. It is found in Pothier and is a convenient rule tending to the avoidance of unnecessary litigation.

§ 2. Of warranty against latent defects. Arts. 45. This paragraph contains ten articles under the numbers, 45, 46, 47, 47a and thence to 53c.

Art. 45. Of article 45 it is only necessary to notice that it corresponds with article 1641, C. N., but the words “and its accessories” have been added, to put it in conformity with the whole rule as expressed by Pothier.

Arts. 46, 47, 50, 53. Articles 46, 47, 50 and 53 require no explanation; 47a is not in the Code Napoleon, but it declares a useful rule which

Art. 47a.