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Natural Obligations

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proved or alleged, in all cases actually the plaintiffs were totally and permanently disabled. Nor did the fact that the mistaken surgeon in the *Stephenson* case was of the plaintiff's choosing, rather than of the defendant's as in the *Morgan* case,²⁵ alter the fact that an injured employee had suffered a latent or unknown injury which from a practical point of view had not "manifested" itself to the point where he could successfully prosecute a lawsuit. Evaluated as of the time of mistaken diagnosis, it is apparent that the practicing attorney would have had to advise the plaintiffs in the above cases that they had no cause of action for compensation.

Since in no event may suit for disability resulting from latent or unknown injuries be sustained more than two years from the date of the accident,²⁶ and since when suit is brought more than one year after the injury or the last compensation payment, the plaintiff will have the burden of proving the injury was not "manifest" within the normal year;²⁷ it is felt that the defendant will not be unduly prejudiced if the test of the *Mottet* case, "When did the plaintiff's right and cause of action accrue,"²⁸ should be interpreted to mean that the action had accrued when as a practical matter the injury was made "manifest" by at least one medical diagnosis that it was disabling and caused by the accident.

Natural Obligations

POLICY UNDERLYING ARTICLES ON NATURAL OBLIGATIONS

If the reason for enacting a law is known, it is usually of some assistance in determining the meaning of the written pro-

25. In the great majority of cases, the impecunious injured workman is forced to rely on specialists furnished by defendant. But adopting this narrow test of "whose" physician incorrectly diagnosed the injury appears to lead to technicalistic inquiry regarding selection and perhaps qualification of physicians not actually related to the primary question—when did the injury actually "manifest" itself. Nor does this line of inquiry take into account the slow-developing latent injury discussed in note 24, *supra*.

26. See La. R.S. (1950) 23:1209, and particularly the amendment of La. Act 29 of 1934; *Arnold v. Solvay Process Co.*, 207 La. 8, 20 So. 2d 407 (1944); *Anderson v. Champagne*, 8 So. 2d 373 (La. App. 1942); *Kinder v. Lake Charles Harbor and Terminal Dist.*, 31 So. 2d 498 (La. App. 1947); *Cook v. International Paper Co.*, 42 So. 2d 558 (La. App. 1949).

27. Since the delay period under the compensation statute is considered a preemption rather than a prescription, "the workman's cause of action is absolutely and irrevocably destroyed if not seasonably exercised, *Brister v. Wray*, 183 La. 562, 164 So. 415; *Heard v. Receivers of Parker Gravel Co.*, 194 So. 142," *Morgan v. Rust Engineering*, 52 So. 2d 86, 89 (La. App. 1951).

28. 49 So. 2d 38, 40 (La. App. 1950).

visions. The first step in understanding natural obligations, then, is to determine the purpose of our code provisions concerning them.

Although the French have only one provision on natural obligations,¹ and a very short one, they have written an appreciable amount on the subject. Why do natural obligations exist? Pothier stated, "The only effect of the obligation merely natural, is that when the debtor has voluntarily paid, the payment is valid and cannot be recalled; because he had just cause to pay, that is to say, to discharge his conscience. Therefore it cannot be said that it was done without cause."² Toullier expressed much the same idea.³ Marcadé had this to say, "We say then that the natural obligation is one which the legislature, after denying to it ordinary efficacy because of the general presumption of nonexistence or of invalidity, later sanctions because of a voluntary performance, a voluntary novation or some other act which reveals the real validity of the debt, proving to the legislature that its presumption was erroneous for this particular case."⁴

Pothier and Toullier both show the logic of preventing the repetition (recovery of payment) of that which has been paid pursuant to a natural obligation because there is a valid cause supporting the performance. Of course to say there is a valid cause does not answer the question: Why is there a valid cause? Marcadé says that the law, for the protection of the particular individual, makes certain obligations unenforceable. The law in those instances presumes that there is some vice in the obligation. When the capable obligor voluntarily performs the obli-

1. Art. 1235, French Civil Code: "*Tout paiement suppose une dette: ce qui a été payé sans être dû, est sujet à répétition.*"

"*La répétition n'est pas admise à l'égard des obligations naturelles qui ont été volontairement acquittées.*"

(Translation) "Every payment presupposes a debt; what has been paid without having been due, is subject to be reclaimed.

"That cannot be reclaimed that has been voluntarily given in discharge of a natural obligation."

2. 1 Pothier, *Treatise on Obligations*, § 195 (1802).

3. 3 Toullier, *Droit Civil Français*, title III, § 386 (6 ed. 1846): "There then is an effect common to all of the natural obligations; they prevent the repetition of that which has been paid. Why is that so? Because the payment has not been made without having been due, . . . But if the law recognizes that a debt exists, why does it refuse a right of action to the creditor, to compel the debtor to perform? From reasons of prudence and of justice which it is desirable to develop. . ."

4. 4 Marcadé, *Explication du Code Civil*, Art. 1235, § 669 (7 ed. 1873).

gation, that reveals to the law that it is wrong in that particular case.

Marcadé gets down to the basic concept underlying natural obligations: In certain instances the obligation of an individual would have been valid but for the presumption of invalidity in his favor; and if he proves by performance that the obligation was in fact real and valid, he is bound because the lawmakers were wrong in his particular case.

Do the Louisiana code articles on natural obligations track this policy? Or does our law, in some instances, permit a single individual to bind himself to the prejudice of the public as a whole?

AS WRITTEN, LOUISIANA'S ARTICLES TRACK THAT POLICY

Article 1758, Louisiana Civil Code of 1870, is the principal provision on this subject:

"Natural Obligations are of four kinds:

"1. Such obligations as the law has rendered invalid for the want of certain forms or for some reason of general policy, but which are not in themselves immoral or unjust.

"2. Such as are made by persons having the discretion necessary to enable them to contract, but who are yet rendered incapable of doing so by some provision of law.

"3. When the action is barred by prescription, a natural obligation still subsists, although the civil obligation is extinguished.

"4. There is also a natural obligation on those who inherit an estate, either under a will or by legal inheritance, to execute the donations or other dispositions which the former owner had made, but which are defective for want of form only."

This article is readily susceptible of an interpretation which would follow the French theory. Surely the drafters must have intended to follow that theory, for it would be indeed strange if the legislature in one breath condemned the legal operation of a type of transaction, thinking it bad for the general public, and then in another breath gave it life through the natural obligation. If the transaction is against public interest before it is performed, is there any reason for condoning it after performance?

If that were so, the obligee would be allowed to benefit from his illegal act, while the public would suffer from the countenancing of such wrongdoing. The problem, then, is to construe our statutory provisions on natural obligations to avoid that obviously unintended result, and to follow the theory underlying natural obligations as set forth by Marcadé.

Obligations rendered invalid for want of certain forms or for some reason of general policy, but which are not in themselves immoral or unjust, are natural obligations in Louisiana—unless they are mere moral obligations. That statement comes largely from Section 1 of Civil Code Article 1758.⁵

Good argument can be made that the subsequent sections are illustrations of the first by showing that Section 1, standing alone, covers their provisions. Section 2 exists for reasons of general policy. Interdicts and minors are presumed to be without the intelligence or experience to contract. The general policy is to protect them as individuals. Their contracts are presumed invalid. If upon coming of age, minors manifest an intention to be bound, the law allows them to do so: when they are old enough, they are free to waive their protection.

Particular forms, such as writings, are required for the validity of certain contracts. For example, the law does not think a man would casually promise to pay the debt of another; and so, to be sure that he really intends to pay, the law requires that the promise be in writing before it is binding.⁶ Clearly, under our law, an oral promise would leave a natural obligation to pay that debt, and any actual payment thereof would be binding. The obligor would have removed all doubt as to his intention to be bound by paying the debt. Of course, under Article 2134 of our code, even without an oral promise, the actual payment of another's debt would be effective.

Prescription covered by the illustration in Section 3 of Article 1758 is troublesome. It is doubtful that the laws of prescription were designed for the individual, solely. Surely there must have been some public purpose in putting an end to controversy over given subject matter after a stated length of time.

Marcadé, however, shows very good *personal* reasons why a legislature might enact prescription laws. He says that the

5. Art. 1758, La. Civil Code of 1870.

6. Art. 2278, La. Civil Code of 1870.

explanation is a presumption of invalidity which the law attaches to obligations long overdue for one or more of several reasons: (1) that the long period of delay on the part of the creditor in claiming his pay creates a presumption that the debt was not meant to be serious or binding, (2) that the debt has been paid, (3) that the creditor knew of the iniquitous foundation of his title, or (4) that he had some other legitimate reason for not enforcing the agreement. If the debtor, after entrenching himself behind the prescription bar, voluntarily fulfills the obligation, the law sees in that act the error of its presumption, and bars all repetition.⁷

The option of performing or not performing according to the wishes of the deceased as provided by the fourth illustration in Article 1758 is certainly personal in nature, as it affects directly only the individual heir or heirs.

As previously stated, Sections 2 and 3 of Article 1758 are very plausibly illustrations, but it is not quite so clear that the term "obligations" in Section 1 covers Section 4. However, it was decided in the recent case of *Breaux v. Breaux*⁸ that "obligations" in Section 1 includes the type mentioned in Section 4.

These last three sections, therefore, if illustrative of the controlling Section 1, indicate that only those obligations which are unenforceable for personal reasons can be natural obligations. Perhaps that is the key to the meaning of the words "immoral or unjust" as used in Section 1. Obligations which are "immoral or unjust" are rendered invalid for reasons of public interest, whereas those invalid because of policy are so for particular protection.

But, argument might be made that Section 1 of Article 1758 does not include the other three sections. The effect of such a finding upon the court's interpretation of Article 1758(1) should also be examined.

Article 1758(1) speaks of obligations rendered invalid for want of certain forms or for some reason of general policy. The word *invalid* as used in the article does not necessarily cover obligations rendered unenforceable through prescription.

Obligations such as substitutions and fidei commissa are pro-

7. 4 Marcadé, loc. cit. supra note 4.

8. *Breaux v. Breaux*, 51 So. 2d 73 (La. 1951).

hibited from ever having effect as civil obligations; whereas a debt which has prescribed was once, and still is, a valid civil obligation, but is unenforceable. If the word *invalid* be viewed in that light, it does not cover prescription in Section 3 of Article 1758. On the other hand, if Section 1 is a general article, the word *invalid* can be construed broadly enough to include obligations formerly valid but now unenforceable.

Section 1 speaks of *obligations rendered invalid* for certain reasons. If the word *invalid* means null and void, then the words *obligations rendered* would be unnecessary. The transaction or situation never is an obligation at all, and there is no obligation to render *invalid*. If the redactors had meant to say the obligation never existed, they could have used this language, "Actions of parties which are held for some reason of general policy to constitute no civil obligation at all, create natural obligations." From that viewpoint, it seems that the word *invalid* includes the word *unenforceable*.

Then in Section 3 of Article 1758 the code speaks of the civil obligations as being *extinguished* by prescription rather than made unenforceable. It seems that the word *extinguished* connotes a reduction to ashes, not merely a reduction to the status of ineffectuality.

Section 4 of Article 1758 provides for the inheritance of a natural obligation. The obligation which was reduced to the status of a natural obligation because of formal omissions must have been assumed by the deceased before his death. Its existence or non-existence is still governed by Section 1.

However, Section 1 makes no mention of imposing a deceased's natural obligation on his heirs, and possibly that one portion of Section 4 is not covered by Article 1758(1). It could be argued that even without Section 4 the heirs would inherit the natural obligations, since a succession includes not only the rights but also the obligations of the deceased.⁹

Even a showing that Article 1758(1) does not include all the other sections would not preclude a compliance with policy in interpreting those sections. Section 1 is the only one which has no illustration and it can be easily construed to follow the policy behind natural obligations.

9. Art. 873, La. Civil Code of 1870.

Requirements of form are imposed to insure real intent. This is a protection accorded in the interest of the individual—hence the resulting natural obligation when formal requirements have not been met.

Obligations invalid for some reason of *general policy* include only those invalid as insurance against individual harm, whereas obligations *immoral or unjust* (which cannot be natural obligations) include those invalid in the interest of the public as a whole.

In that view, a finding that Section 1 fails to cover the other three sections would not disturb our courts in applying our articles so as to follow the French theory. However, to find Sections 2, 3 and 4 to be illustrations demonstrates with more authority that the intent was to adopt the logical French theory of natural obligations.

COMPARISON OF THE JURISPRUDENCE AND POLICY

The case of *Breaux v. Breaux*¹⁰ illustrates one position of the jurisprudence. In that case, a fidei commissum, which is expressly forbidden by Article 1520 of the Civil Code, was declared to create at least a natural obligation.

It is obvious that fidei commissa are forbidden in our civil law property system for reasons of public interest—that interest being the free alienation of land. That being so, the decision is in conflict with the real purpose of prohibiting fidei commissa and consequently deviates from the policy underlying the existence of natural obligations.

If usurious interest is charged for a loan, the agreement is unenforceable; but it has been held consistently by our courts that a loan involving usurious interest, although not enforceable, creates a natural obligation.¹¹ The correctness or incorrectness of that holding depends upon the legislative reason for denouncing usurious interest. The law in that instance is protecting the individual obligor who finds himself in financial straits and at the mercy of moneylenders. He does not have to pay, but if he pays, then he alone is hurt. He has waived his protection. That being so, the court has followed the policy of natural obligations in holding such payments unrecoverable.

10. 51 So. 2d 73 (La. 1951).

11. *Perrillat v. Puech*, 2 La. 428 (1821); *Rosenda v. Zabriskie*, 4 Rob. 493 (La. 1843).

Another area of decisions concerns the difference between moral obligations and other types of obligations. A purely moral obligation clearly cannot be a natural obligation.

Article 1757 defines three types of obligations: The imperfect or moral obligation, the natural obligation, and the perfect or civil obligation. It expressly states that the duty of exercising gratitude, charity and the other merely moral duties are imperfect obligations, and create no right of action, nor have any legal operation. It speaks of natural obligations as being binding in conscience and according to natural justice. This definition seems to be applicable as well to moral obligations, and it would be easy to confuse the two. It is evident, however, that the redactors intended a distinction of some sort or they would not have made three classifications. Even the draftsmen in their notes to the projet of 1823¹² were careful to distinguish between the natural obligation and the merely moral obligation. Natural obligations were obviously not intended to include moral duties, but the jurisprudence has given, in many instances, the same effect to moral obligations as the code gives to natural obligations.

In *Banta v. McSpadden*¹³ an agreement for increase in the contract price, although not supported by consideration, was held to create a natural obligation. The obligor was not allowed to recover the excess payments because the court found he had paid pursuant to a natural obligation. The promise to pay additional compensation might be a legal obligation under the true theory of civilian cause, but if a consideration theory is used (as it has been by our courts), then there is no obligation at all which could possibly create a natural obligation. It might be said that there is an obligation with consideration lacking, but then it would also be necessary to say that it is merely moral, since it is binding only in a charitable sense.

12. 1 Louisiana Legal Archives, *Projet of the Louisiana Civil Code of 1825*, 226 (1937): "Although this kind of obligation [imperfect obligation] has no legal effect whatever, its definition is introduced because it is frequently referred to by commentators and sometime with such loose expressions, as might induce a belief that it has the effect of a natural obligation, unless the contrary were declared. In the common law of England, 'natural affection' which is an imperfect obligation, is a good consideration for a conveyance. As we do not mean to sanction this principle, it was the more necessary to declare it, because of the danger of introducing from the jurisprudence of our sister states principles inconsistent with that of our own."

13. 147 La. 847, 86 So. 287 (1920).

*Factors and Traders Insurance Company v. The City of New Orleans*¹⁴ held that an unconstitutional tax imposes a natural obligation to the extent that payment of it is not recoverable. *Cook v. City of Shreveport*¹⁵ and *Fusilier v. St. Landry Parish*¹⁶ held an assessment on property to create a natural obligation although not in proper form. In each of these cases involving invalid taxes, the finding of a natural obligation was based on the assumption that each person has an obligation to support the city and pay his share of the city's expenses. But, unless there is a *legal duty* to contribute to the welfare of others, that duty is purely *moral*. It is not binding in conscience and according to natural justice because the obligation is not of an onerous nature.

In *Interstate Trust and Banking Company v. Irwin*¹⁷ there had been an impairment of capital stock by the directors. They were under no legal obligation to make good that impairment. The court held that there was a natural obligation on their part to restore that amount which was sufficient consideration for a promissory note issued by them in satisfaction of it. There was no obligation stemming from an onerous transaction; in fact there was probably no obligation of any sort. In *United States Fidelity and Guaranty Company v. Murphy*¹⁸ a contractor had consented to allow the defendant to store liquor in the building under construction. The liquor disappeared, and the contractor, without being liable, paid the owner for the value of it. The court held he could not recover what he had paid, since he had done so in response to a natural obligation. Here again, unless there was a legal duty to pay, there was merely a moral obligation. And, there seemingly would not be even a moral obligation unless the contractor thought himself wrong and could see where he could have prevented the loss.

Notwithstanding the above cases, the court has followed the mandate of the code in some cases—though not always using the more desirable approach.

In *Succession of Miller v. Manhattan Life Insurance Company*¹⁹ it was held that the obligation to provide for one's wife upon one's death is a mere moral obligation of the husband. This

14. 25 La. Ann. 454 (1873).

15. 144 So. 145 (La. App. 1932).

16. 107 La. 221, 31 So. 678 (1902).

17. 138 La. 325, 70 So. 313 (1915).

18. 163 So. 724 (La. App. 1935).

19. 110 La. 651, 34 So. 723 (1903).

was held, however, not by applying the theory as set out by Marcadé, but by holding that the obligation fell without the exclusive provisions of Article 1758.

*Succession of Burns*²⁰ correctly held that a dation en paiement constitutes an extinguishment of the whole debt, and any difference between the value of the dation and the satisfied obligation is merely a moral obligation.

The following procedure is submitted for determining the existence or non-existence of a natural obligation:

(1) Is it merely a moral obligation? If it is, that should end the query. (2) If it is another type of obligation (one of an onerous nature), then what was the purpose of the drafters in rendering it unenforceable? If it was for the protection of the public generally, that should be the end of the probe. If it was intended to protect individual obligors, then it is a natural obligation.

OTHER VIEWS CONCERNING THE EXISTENCE OR NON-EXISTENCE OF NATURAL OBLIGATIONS

Although the procedure for identifying natural obligations set forth above seems to be the one which would follow true policy, other views have been suggested by the jurisprudence.

Some cases have been concerned with whether the four sections of Article 1758 are exclusive or illustrative. The cases of *Succession of Miller v. Manhattan Life Insurance Company*²¹ and *Succession of Burns*²² hold these sections to be distinct enumerations of the *only four* kinds of natural obligations and hold all other obligations not civil to be merely moral.

The federal case of *In re Atkins Estate*²³ holds them to be mere illustrations of natural obligations. This case seems to say that any obligation similar to the illustrations is a natural obligation. The court went on to hold a clearly moral obligation to be a natural obligation.

These cases failed to discuss the inclusiveness of Section 1 of Article 1758 or even the foundation of natural obligations. True, there is some basis for confusion in the wording of Article

20. 199 La. 1081, 7 So. 2d 359 (1942).

21. 110 La. 651, 34 So. 723 (1903).

22. 199 La. 1081, 7 So. 2d 359 (1942).

23. 30 F. 2d 761 (5th Cir. 1929).

1758, which begins as follows: "Natural obligations are of four kinds. . . ." But since it seems the first section of that article includes the three others, it must be the controlling section.

If the last three sections of Article 1758 illustrate the meaning of the first section of that article, they are not exclusive. Even a finding that Section 1 is not all-inclusive would not justify the line of approach adopted in these cases. Their procedure should have been first to eliminate mere moral obligations, and then to identify as natural obligations those rendered invalid for individual protection.

The court in *Commonwealth Finance Company v. Livingston*²⁴ submitted a formula for identifying natural obligations. The judge, when speaking of the obligation to pay usurious interest as being a natural obligation, said, "Were it one immoral in itself, it would have fallen under the general declaration that contracts contrary to bonos mores are void; and special legislation in regard to it, unnecessary." There the judge was speaking, probably, of Articles 1892 and 1895 of the Civil Code:

"Article 1892: That is considered as morally impossible which is forbidden by law, or contrary to morals. All contracts having such an object are void."

"Article 1895: The cause is unlawful, when it is forbidden by law, when it is contra bonos mores or to public order."

These two articles show expressly that no obligation contrary to morals or public order will be enforced, and it makes no exception for natural obligations. Where the legislature has specifically condemned certain activity, it has done so for reasons of general policy, for otherwise the legislation would be useless—there being a general provision condemning all immoral or unjust contracts already in the code.

It is evident that if this theory is followed, there will be no problem for the courts as to when there is and when there is not an immoral or unjust obligation. But, to follow this theory would be to say that even in instances where the purpose of the legislature in invalidating certain obligations was public and not special, a natural obligation would result. The case of *Breaux*

24. 12 So. 2d 44 (La. App. 1943).

*v. Breaux*²⁵ concerning prohibited fidei commissa is an example of what would happen under this view.

EFFECTS OF NATURAL OBLIGATIONS

What is the significance of finding a natural obligation? That question is answered in Article 1759 of the code.

“(1): No suit will lie to recover what has been paid, or given in compliance with a natural obligation.

“(2): A natural obligation is a sufficient consideration for a new contract.”

The first section referring to the performance of an unenforceable natural obligation presents no problem. If there was a natural obligation to perform, and the obligor has performed, he cannot recover what he has paid or given by way of performance.

The second section is not so clear. By noting the words carefully, it is certain that for this section to be applicable there must be a *new* contract which would be without consideration were it not for the natural obligation supporting it.

The cases of *White v. White*²⁶ and *McCreight v. Leavel*²⁷ illustrate what seems to be a correct application of this section. In the *White* case, there was a transfer of real estate by private act. This private act of sale, unless supported by consideration, would have been a donation and not being in the proper form would have been void. But, because the land was sold for the consideration of a natural obligation, it was a good sale. In the *McCreight* case, it was held error to exclude evidence showing indebtedness due by the plaintiffs to establish a natural obligation as consideration for the deed, notwithstanding the indebtedness was barred by prescription, such consideration being sufficient to support the deed.

In the above cases there was found a natural obligation; we are not here concerned with the *correctness* of that finding; we are concerned only with the *effect* of such a finding. The natural obligations and the contracts which they supported emanated from different sources. The supported contracts, sales in these cases, were *new* contracts as required by Article 1759 (2).

25. 51 So. 2d 73 (1951).

26. 7 So. 2d 255 (La. App. 1942).

27. 156 La. 156, 100 So. 289 (1924).

These two cases might be found to fall within Article 1759, Section 1. This would be so if the transfer of land was not a *new* contract, but was in fact a *dation en paiement* of the natural obligation to pay the prescribed debt. In this sense, the sale of the property would not be a contract at all, there being no promise to do or give anything. The payment of a debt would discharge and not create a contract, and the fact that payment was made with property would not change the basic concept. In another sense there is a contract in such cases resulting from the concurrence of the will of the obligee in accepting the *dation en paiement*.

The cases of *Rosenda v. Zabriskie*²⁸ and *Reid v. Duncan*²⁹ bring out the nebulous part of Article 1759 (2). If one promise is void because of general policy, there remains a natural obligation to perform. That natural obligation according to Article 1759 (2) is sufficient consideration for a *new* contract. Does that mean that a subsequent promise to do the same thing, since it is supported by the natural obligation of the first, would be enforceable? That argument was advanced in the two above cases with regard to the promise to pay usurious interest (which is held to create a natural obligation). In those cases, it was held that the subsequent promise was nothing but a *renewal* of the old or first promise, and as such was not a *new* contract as required by Article 1759 (2). And there is no reason why the court could not have said that, even though the first promise was sufficient consideration for the second and new contract, the second contract was still one to pay usurious interest, as such, infected with the same vice as the first promise to pay.³⁰ The court could have

28. 4 Rob. 493 (La. 1843).

29. 1 La. Ann. 265 (1846).

30. 3 Toullier, *Droit Civil Francais*, title III, § 396 (6 ed. 1846): "*Nous avons dit que, dans le droit romain, l'obligation naturelle résultant d'un pacte simple pouvait être érigée en obligation civile, par un autre pacte simple appelé pactum constitutae pecuniae. C'était une convention faite pour corroborer la première, et par laquelle on promettait de l'acquitter dans un temps donné. Quoique cette seconde promesse fût faite par un pacte simple, non revêtu de la stipulation, les prêteurs, par un retour à l'équité naturelle, donnaient une action contre le débiteur d'assez mauvaise foi pour manquer à une obligation ainsi réitérée, quoniam grave est fidem fallere, Leg. 1, ff de const. pecun., 13, 5.*"

"*Si le pacte constitutae pecuniae était fait pour corroborer une obligation civile, il en résultait une nouvelle action en faveur du créancier, qui avait un grand intérêt d'en avoir plusieurs, sous une jurisprudence hérissée de subtilités, surtout à l'égard des actions. Aujourd'hui que toutes les actions sont de bonne foi, et que les pactes simples sont obligatoires, le pacte constitutae pecuniae est sans utilité (1), et hors d'usage, lorsque le terme pour acquitter l'obligation est déterminé. Une obligation nulle, faute d'une formalité pre-*

interpreted the term "sufficient consideration" to mean that a second promise to pay the usurious interest would be binding because the obligor, after having been given one chance to escape liability because of a presumption of invalidity in his favor, had demonstrated his real intent by promising a second time. If that view be taken, the only question is whether or not there is a *new* contract.

The following hypothetical case may be posed: Suppose A, a real estate broker, operates without a license. The law expressly states that he cannot recover his commissions from owners for whom he sells when he is not properly licensed. A sells property for B, and of course B does not have to pay the commission; but B decides to pay him because of his good work. B therefore promises A that he will pay him for selling the land. Would this second promise of B's be enforceable? There might be some question as to the purpose of the enactment of the licensing statutes, but it seems likely that the policy behind them is the protection of individual owners of property against unqualified brokers. That being so, there is little doubt that such a promise to a broker would create a natural obligation. But would the second promise be a *new* contract, or would it be merely a renewal of the old contract? It could be argued that the second promise is not a promise to pay a broker's commission contained in a listing agreement, but a separate, *new* promise to pay a man for good services rendered. In that light, the promise would be enforceable.

It could be argued on the other side that this is merely a renewal of the promise contained in the old listing agreement, and as such is not *new*; also it is still a promise to pay an unlicensed broker's commission which is not enforceable. This hypothetical case is hard to distinguish from the usurious interest cases, but there is one difference; that is, that in the case of usurious interest, the second promise is still a promise to pay a higher percentage than the law allows and as such is still a contract to pay usurious interest. In the real estate case, the second promise is not made to the man as a broker, but an individual who has rendered valuable services.

scrite par la loi civile, ne serait point corroborée par une seconde qui contiendrait les mêmes vices. Nous en avons donné un exemple dans la ratification d'une donation entre vifs, nulle par le vice de forme (1339)."

CONCLUSION

Moral obligations are not natural obligations. The term "natural obligations" encompasses only those obligations of an onerous nature, as contra-distinguished from mere moral obligations. Of those kinds of obligations, only the ones made unenforceable for particular protection are natural obligations. Performance of a natural obligation cannot be recovered. The meaning of Article 1759 (2) is confused because of the uncertainty surrounding the question of when there is a mere renewal and when there is a *new* contract.

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