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OBLIGATIONS

An English Translation
By The
Louisiana State Law Institute

A. N. Yiannopoulos, Translator

COURS DE DROIT CIVIL FRANÇAIS

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Volume IV—Sixth Edition
by
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An English Translation
by the
LOUISIANA STATE LAW INSTITUTE
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FOREWORD

The publication of this translation of the volume on *Obligations* of Aubry & Rau's lucid treatise on the French civil law, *Cours de Droit Civil Français*, is an event of especial significance. It is the initial volume in a new series entitled *Civil Law Translations* which, with the concurrence of the Louisiana State Law Institute, will be distributed by the publisher as an integral part of the *Louisiana Statutes Annotated*, presently comprising the Louisiana Revised Statutes, the Constitution, the Civil Code, and the Code of Civil Procedure. In addition to *Civil Law Translations*, the expanded LSA will eventually include also, each in a separate series, *Civil Law Studies* and *Civil Law Treatise*. The former series will include papers presented at the Institute's colloquia on the civil law, special studies, and other matters of particular significance such as reprints of rare civil law materials. The latter will constitute, when completed, a comprehensive treatise on the basic civil law of Louisiana.

The Institute is particularly indebted to the West Publishing Company for facilitating in such a concrete way the discharge by it of its statutory responsibility, "To make available translations of civil law materials and commentaries and to provide, by studies and other doctrinal writings, materials for the better understanding of the civil law of Louisiana and the philosophy upon which it is based." LSA–R.S. 24:204(7).

The *Cours de Droit Civil Français* by Aubry & Rau covers the entire field of civil law with the conciseness and the clarity of style for which the authors are noted. The first edition appeared in five volumes published between 1838 and 1847. The authors, professors of law at Strasbourg and later counselors at the Court of Cassation, drew their inspiration from a German manual published in 1808 by Charles Solomon Zachariae. The arrangement of the treatise is original. Unlike that of preceding commentaries, it does not follow the order of the Code. This fact, together with its concise and careful statement of conclusions, has resulted in its general recognition as one of the foremost works of its kind.

Volume IV of the Sixth Edition, published in 1942, which served as the basis for this translation, was edited by Étienne Bartin, honorary professor at the Faculty of Law of Paris. The matter enclosed in brackets is not in the original text. It represents additions by subsequent editors, chiefly Bartin.

FOREWORD

The translator, A. N. Yiannopoulos, is a native of Greece. He was educated basically in Thessaloniki. In addition, he holds advanced degrees from the University of Chicago, the University of California, and the University of Cologne. He is presently professor of law at Louisiana State University, and Coordinator of Program and Research for the Civil Law Section of the Louisiana State Law Institute.

Because of the unprecedented reliance of the French courts on the formulae of the authors, including the incorporation of the text, frequently verbatim, in their decisions, the translator has refrained from taking liberties with the original text merely for the purpose of enhancing readability. In the interest of accuracy of exposition, he has endeavored to maintain the original flavor of the treatise.

The generosity of Librairies Techniques in granting to the Louisiana State Law Institute the right to publish a translation of this volume attests its active interest in furthering the science of law and a praiseworthy readiness to assist a kindred jurisdiction in the continuing development of its basic law. The Institute expresses its sincere gratitude and appreciation.

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FIRST TITLE

OBLIGATIONS IN GENERAL

Sources: Napoleonic Code, Articles 1101–1314. The redactors of the Napoleonic Code have included in a single title the general rules concerning obligations and contracts. In that regard, their principal and exclusive guide has been, with certain exceptions, the Roman law—not as found in the original authorities—but as expounded in the treatises of Dumoulin, Domat, and particularly of Pothier. These commentators, therefore, offer the best commentary on this part of the Code.

Bibliography: Pothier, *Traité des obligations*; Commaille, *Traité des obligations*, Paris, 1805; *Traité des conventions ou Commentaire sur les lois des 17 et 19 pluviôse an XII, formant les titres III et IV du livre III du Code Napoléon*, Paris, 1807; Daubenton, *Traité des contrats et des obligations*, Paris, 1813, vols. 3; Carrier, *Traité des obligations*, Dijon, 1819, vol. 1; Duranton, *Traité des contrats et des obligations en général*, Paris, 1821, vols. 4. Duranton republished this work in a re-arranged form as *Cours de Droit Civil*. In the absence of other indication, all our citations refer to the latter work. Molitor, *Des obligations en Droit romain avec l'indication des rapports entre la législation romaine et le Droit français*, Paris, 1851–1853, vols. 3; Larombière, *Théorie et pratique des obligations*, Paris, 1858, vols. 5;

[Demogue, *Traité des obligations en général*, 1923–33, vols. 7 (incomplete); Planiol and Ripert, *Traité pratique de Droit civil*, vols. 6 and 7, by Esmein, Radonant and Gabolde; Beudant and Lerebours-Pigeonnière, *Cours de Droit civil*, vol. 8, by Lagarde; Gaudemet, *Théorie générale des obligations*, 1937; Ripert, *La régle morale dans les obligations*, 3d ed.]

INTRODUCTION

GENERAL PRINCIPLES

§ 296

To every right corresponds an obligation.[1]

This is also true of real rights to which corresponds the obligation, imposed on all persons, not to interfere with the exercise of these rights. However, this general and negative obligation is not the immediate object of real rights which exist independently of the fulfillment of any obligation. On the contrary the object of personal rights is a performance, i. e. the fulfillment of an obligation without which these rights would not exist.[2]

We are concerned here with obligations which are the object of personal rights. Nevertheless, the principles governing obligations of this nature apply, as a general rule, to all kinds of obligations.[3]

An obligation is a legal bond by which one person is bound towards another to give, to do, or not to do something. Cf. Article 1101. The person entitled to demand performance is called creditor; the one who is obliged to perform is called debtor. For this reason, the obligation and its correlative personal right are called respectively, debt and credit.[4]

1. In Roman law, the word *obligatio* applied only to obligations correlative of personal rights. In the French legal language the word obligation is used indifferently whether its correlative right is personal or real. The term *engagement* is employed to indicate from among the obligations corresponding to personal rights particularly those created by a personal act of the obligor. Use of this word in Article 1370 to designate obligations created by operation of the law is incorrect.

2. Zachariae, § 296. The theory of personal rights is thus reduced to an analysis of principles applicable to personal obligations. The relations between a personal right and its correlative obligation may be compared to the relation between cause and effect. An inverse relationship exists between a real right and its correlative obligation.

3. Zachariae, *loc. cit.*

4. In inventories and in liquidations of a succession, of community property, or of a partnership, the terms *active debts* and *passive debts* are frequently employed to designate credits due to an estate and debts due by an estate. These expressions are employed by the law in connection with bankruptcy. Cf. Commercial Code, Arts. 439 and 444.

CHAPTER I

DISTINCTIONS OF OBLIGATIONS

§ 297

I. Natural and civil obligations [1]

Duties, in a broad sense (*sensu lato*), are either legal duties or purely moral duties depending on whether or not they are susceptible of becoming legally and rationally, the object of external coercion. Only duties of the first kind constitute obligations in the legal sense.[2]

Obligations are either natural or civil.

1. Distinguishing features of natural and civil obligations

Civil obligations are those which are fully enforceable by means of *an action, i. e.*, a right accorded to a creditor to obtain satisfaction by means of legal proceedings and under the protection of the state.

Ordinarily, civil obligations are founded on a juridical cause whose existence and binding effects are conceived as independent of the rules of positive law providing for their enforcement; in which case, we may say that an obligation is both natural and civil.

There are, however, obligations which are purely civil in the sense that their existence and efficacy depend exclusively on rules of positive law. Such are, in general, obligations arising from an irrebuttable presumption which in a concrete instance conflicts with reality, and, in particular, an obligation resulting from an unjust or erroneous judgment which has acquired the force of *res judicata*.

Natural obligations are, in the first place, duties founded on a juridical cause of a nature sufficient to generate a right to a perform-

1. See, in that regard, Saturnin Vidal, *Dissertation*, 8 *Revue étrangère* 312, 367 (1841); Holtius, *Dissertation*, 3 *Revue de législation* 5 (1862); Cauvet, *Dissertation*, 1 *Revue de législation* 193 (1853); Schwanert, *Die Naturalobligationen des röömischen Rechts*, Göttingen (1861); Massol, *De l'obligation naturelle et de l'obligation moral en Droit romain et en Droit français*, Paris, 1862; [Ripert, *La règle morale dans les obligations civiles*, No. 186 *et seq.* (3rd ed. 1935)].

2. The expressions *natura debere, naturaliter debere, debitum naturale*, as employed by the Roman jurisconsults, included moral duties and duties of piety; therefore they had a broader meaning than the terms *obligationes naturales*. The Romans never employed the term *obligatio* in connection with duties of that kind. See Schwanert, *op. cit.* § 9, note 26, §§ 10–11 and authorities cited. Our ancient authors, and particularly Pothier (Nos. 1 and 197) applied to moral duties the expression *imperfect obligations*, in order to contrast them to legal obligations, civil or natural. This incorrect and equivocal terminology, followed by certain modern authors (see 4 Taulier 260; Larombière, Art. 1101, No. 6) is, perhaps, one of the causes of confusion encountered in the theory of natural obligations.

ance for the benefit of one person and against another, but which, though legally and rationally susceptible of becoming object of external enforcement have not been recognized as civil obligations by the legislature.[3] In this connection, it should be noted that in the absence of a personal act imputable to its author, or of a preexisting legal relation between two persons, the juridical cause spoken of here does not exist.[4] Natural obligations are, in the second place, obligations both natural and civil in their origin, from which the legislator has for reasons of social convenience withdrawn the right of action.

2. Enumeration of the principal natural obligations

The first category of natural obligations includes the following:

a. Engagements which, though contracted by persons morally competent to undertake an obligation, are nevertheless subject to annulment or rescission because of a provision of positive law which declares these persons incompetent. Such are, for example, the engagements of a minor having reached the age of reason, the engagements of an unauthorized married woman,[4a] and those contracted by an interdicted person during a lucid interval. Nevertheless, such engagements, in spite of subsequent annulment or rescission, engender natural obligations.[5]

3. Quite frequently, natural obligations are defined as those founded on equity or conscience or even those which delicacy and honor impose. See Toullier, VI, 377 *et seq.*; Duranton, X, 54 *et seq.*; Marcadé, on Art. 1235, No. 2, and on Art. 1338, No. 2; Larombière, Art. 1235, No. 6; Aix, April 22, 1828, Sir., 29. 2. 105; Grenoble, June 4, 1860, Sir., 6. 12. 152; Nîmes, Dec. 5, 1860, Sir., 61. 2. 1. These definitions, in addition to lacking precision, are essentially faulty because they fail to take into account the proper nature of legal duties which always presuppose the legitimate and rational possibility of application of external coercion. If, in certain circumstances, which shall be indicated later on, the judge is authorized to give effect to an engagement or a payment prompted by an individual sentiment of equity, of conscience, of delicacy or honor, it should not be concluded that there is in such a case a natural obligation, *viz.*, a duty which the legislature could impose in these circumstances on any person. See, in this sense, Civ. Cass., April 4, 1820, Sir., 20. 1. 215; Civ. Cass., August 4, 1824, Sir., 24. 1. 371.

4. Civ. Cass., May 5, 1835, Sir., 35. 1. 466; Orléans, April 23, 1842, Sir., 43. 2. 383.

4a. Of course this was so before the Law of February 13, 1938, which suppressed the civil incompetence of married women.

5. Argument based on Article 2012; *Exposé des motifs* by Bigot-Préameneu (Locré, *Lég.*, XII, p. 364, No. 113); *Rapport au Tribunat*, by Jaubert *(Ibid.*, p. 460, No. 5); Colmet de Santerre, V, 174 *bis*, IV; Paris, May 12, 1859, Sir., 60. 2. 561. But see Marcadé, on Art. 1272, No. 3. Colmet de Santerre goes still further (V, 174 *bis*, V). According to him, any obligation subject to annulment for any cause is a natural obligation, if susceptible of confirmation. The proposition thus generalized seems to us to be incorrect. An annulable obligation because of violence, error, or fraud is is not a natural obligation, and if for any reason the debtor performs this obligation with perfect knowledge of the cause, this performance would not by itself create or imply a natural obliga-

b. Engagements arising from contracts or other juridical acts which, though executed in conformity with all requisite conditions for their intrinsic validity, are not dressed in the extrinsic forms required by law for their legal effectiveness. Such is the duty of an heir to respect and execute the last dispositions of his ancestor even if not contained in a valid testament or where only orally expressed.[6]

c. Engagements arising from agreements lawful and valid in themselves but for the enforcement of which the legislature, for reasons of public policy, has not accorded to the creditor the right of action. Such are gaming and gambling debts.[7]

d. The duty of parents to provide for the welfare of their children by marriage settlement or otherwise.[8]

e. The duty of near relatives, other than those mentioned in Articles 205 and 207 of the Code, to furnish, in proportion to their ability, alimony to their needy legitimate or natural ancestors.[9]

f. The duty to acknowledge, and to compensate for, services rendered when these services are such as are ordinarily offered for money. This is the case of extraordinary services rendered by a serv-

tion. Besides, the question does not involve any practical significance in case of confirmation since once an annulable obligation is confirmed it is to be considered as free of vice from the beginning.

6. Colmet de Santerre, V, 174 *bis*, VI; Req. rej., Jan. 26, 1826, Sir., 27. 1. 139; Nîmes, Dec. 5, 1860, Sir., 61. 2. 1; Civ. rej., Dec. 19, 1860, Sir., 61. 13. 70. [Req., Nov. 20, 1876, Sir., 1877. 1. 169; D. P., 1878. 1. 376; Toulouse, April 5, 1892, Sir., 1892. 2. 155; D. P., 1892. 2. 568; Montpellier, Jan. 30, 1893, Sir., 1894. 2. 84; D. P., 1894. 2. 15; Amiens, May 12, 1903, Sir., 1904. 2. 239; D. P. 1904. 2. 439; Cass., (conclusions of law) Jan. 10, 1905, Sir., 1905. 1. 128; D. P. 1905. 1. 47–48; Besançon, Dec. 6, 1905, Sir., 1906. 2. 198; D. P., 1908. 2. 330; Nancy, Oct. 26, 1923, Sir., 1924. 2. 102; Dist. Cognac, July 22, 1934, Sir., 1935. 2. 138.] Cf. L. 68, § 1, D. *ad. S. C. Trebell.* (36, 1); L. 2, C. *de fideic.* (6, 42); L. 5, § 15, D. *de don. inter. vir. et uxor.* (24, 1). There is a controversy among the commentators of Roman law as to whether the duty discussed in text constitutes a veritable natural obligation or only a *natural debitum pietatis causa.* See Schwanert, *op. cit.*, § 10, note 19.

7. Argument based on Article 1235 in combination with Article 1967; Colmet de Santerre, V, 174 *bis*, VIII.

8. Argument based on Articles 204, 1438 and 1439. If the legislator had not considered the parents as bound by a natural obligation to provide for the welfare of their children, the children would not have been deprived of the right of action for the enforcement of this duty. Cf. § 500, text No. 2 *Rapport au Tribunat*, by Duveyrier (Locré, *Lég.*, XIII, p. 355, No. 31.); *Discours prononcé par le tribun Siméon au Corps législatif* (Locré, *Lég.*, XIII, p. 460 et 461, No. 31). But see Colmet de Santerre, V, 174 *bis*, X.

9. Req. rej., August 22, 1826, Sir., 27. 1. 152; Cf. Civ. rej., August 3, 1814, Sir., 15. 1. 10; Req. rej., May 5, 1868, Sir., 68. 1. 251. But see Colmet de Santerre, *loc. cit.* [Cf. Grenoble, Nov. 4, 1937, Gaz. Pal., 1937. 2. 872 (child reared by grandmother because its mother could not support it; the decision affirms liberal intention).]

ant to his master, or those rendered by a mandatary in the performance of a gratuitous mandate.[10]

The second category of natural obligations includes:

a. The obligation which remains imposed on a debtor after the action of his creditor has prescribed.[11]

b. The obligation which remains imposed on a debtor in whose favor exists a legal presumption which precludes action by the creditor, as for example the presumptions based on the principle of *res judicata* or on a decisive oath when, in reality, these presumptions are contrary to truth.[12]

c. The obligation which remains imposed on one discharged in bankruptcy to satisfy his creditors fully in spite of the remission of debts he obtained by the discharge.[13]

10. Cf. § 659, text *in fine;* § 702, text and note 2; Req. rej., May 22, 1860, Sir., 60. 1. 721. [Cf. Riom, Feb. 15, 1894 under Cass., Sir., 1897. 1. 234; D. P. 1896. 1. 284; Req., March 12, 1918, Sir., 1921. 1. 70; Grenoble, June 17, 1930, Gaz. Pal., 1930. 2. 419.]

11. The question whether prescription of the creditor's action gives rise to a natural obligation imposed on the debtor is the subject of a vivid controversy among the commentators of Roman law. The texts on point seem to be reconcilable only by means of certain distinctions. Thus, on the one hand, a distinction should be made between the prescription of the ancient temporary actions and the Theodosian prescription and, on the other hand, between the more or less extended effects attached to the various natural obligations. It is certain that a prescribed credit was not susceptible, like natural obligations in general, of being opposed in compensation. Cf. Savigny, *System des römischen Rechts*, V, §§ 248–251; Vangerow, *Pandecten*, I, § 173, Schwanert, *op. cit.*, § 22. Be that as it may in the theory of Roman law on natural obligations, the solution given to this question should, without hesitation, recognize that in the spirit of our law the prescription of the creditor's action does not destroy either the duty of conscience or of honor which, in any case, would not be controverted, nor the veritable natural obligation. See authorities cited in note 2 of § 775.

12. Argument based on Articles 1351, 1363 and 2052, combined with Article 1352, § 2. Cf. L. 28 and L. 60, *proe., D. de cond. indeb.* (12, 6); L. 28, § 1, *D. rat. rem. hab.* (46, 8). The legal presumptions of the nature discussed in text preclude exercise of the action and deprive the obligation of its civil effectiveness; but they do not free the debtor of the natural bond. Pothier, No. 145; *Exposé des motifs*, by Bigot-Préameneu (Locré, *Lég.*, XII, p. 364, No. 113); Colmet de Santerre, V, 174 *bis*, IV.

13. Argument based on Commercial Code, Article 604 ff.; Duranton, X, 40; Colmet de Santerre, V, 174 *bis*, VII; Bordeaux, August 24, 1849, Sir., 50. 2. 17. Cf. Req. rej., Dec. 1, 1863, Sir., 64. 1. 158. [The debtor of a sum of money who at the time of performance benefitted from the devaluation of currency, is comparable, from this point of view, to a bankrupt and remains bound *naturaliter* towards his creditor. The court of Nîmes has held (Jan. 9, 1928, D. P., 1928. 2. 28) that the debtor bound to pay a sum in gold or in foreign currency, and who actually discharged his obligation in this way without raising the question of nullity of the gold clause in a period of forced circulation of French currency, could bring an action for the recovery of the difference of the exchange value only under the conditions of Article 1377. This is an implicit admission that the debtor is bound at least *naturaliter* for the difference of the exchange value (cf. § 442, text at note 2) as is the bankrupt.]

d. Finally, the obligation to pay a feudal or semi-feudal rent suppressed by the revolutionary legislation without indemnity.[14]

To conclude this illustrative list of natural obligations, we should add that we consider as such, and not as civil obligations, the engagements which the parties themselves have designated as engagements of honor and those which according to their intention ought not to be judicially enforced.[15] Such an intention may be presumed in certain circumstances as where a bankrupt or insolvent debtor promises to his creditors in a discharge in bankruptcy or in a contract of respite to satisfy them in full if his fortune should turn to the better in the future.[16]

3. Effects of natural obligations

In contrast to civil obligations which are enforceable by either action or plea of exception, natural obligations do not give rise to a right of action. Nevertheless, they are not completely devoid of legal consequences. According to the principles of French law, the effects of natural obligations may be summarized in the following propositions:

a. A natural obligation furnishes a plea of exception to a demand for the recovery of what has been voluntarily paid to discharge such an obligation.[17] Articles 1235 § 2, 1967.

b. A natural obligation may be the cause of a legally enforceable engagement; in other words, it may be converted by novation into a civil obligation.[18] In this way a feudal or semi-feudal rent may be converted into a rent of lands pure and simple.[19] [A legally enforcea-

14. Taking into account the historical origin of feudal rents, the economic organization of society, and the state of legislation at the time they were created, we are forced to recognize that the obligation to pay them did not constitute a purely civil obligation but was also a natural bond which should survive after suppression of the civil obligation due to purely political expediency. Toullier, VI, 186 and 383; Civ. Cass., July 3, 1811, Sir., 11. 1. 321; Angers, July 31, 1822, Sir., 22. 2. 30; Req. rej., June 19, 1832, Dal., 1832. 1. 250.

15. Cf. Limoges, August 27, 1811, Sir., 12. 2. 237; Paris, April 24, 1858, Sir., 58. 2. 423.

16. Bordeaux, May 31, 1848, Sir., 48. 2. 604; Colmar, Dec. 31, 1850, *Jurisprudence de la Cour de Colmar*, 1850, p. 178; Req. rej., Dec. 1, 1863, Sir., 64. 1. 158; Req. rej., February 25, 1835, Sir., 35. 1. 225; Bordeaux, March 11, 1858, Sir., 58. 2. 660.

17. Cf. on the *condictio indebiti*: § 442.

18. L. 1, § 1, D. *de nov. et del.* (46, 2); Pothier, No. 589; Duranton, X, 337 *et seq.* and XII, 293; Larombière, III, Art. 1235, No. 9; Colmet de Santerre, V, 174 *bis*, III, and 219 *bis*, VII; Demolombe, XXIV, 351; Bordeaux, Aug. 24, 1849, Sir., 50. 2. 17; Req. rej., June 19, 1832, Sir., 32. 1. 859; Paris, April 24, 1858, Sir., 58. 2. 423 [Bordeaux, June 16, 1896, Sir., 1897. 2. 275; D. P. 1897. 2. 394].

19. Merlin, *Quest.*, Rente foncière, § 22; Toullier, VI, 186; Civ. Cass., Feb. 15, 1815, Sir., 15. 1. 83; Caen, April 26, 1817, Sir., 24. 1. 45; Plenary Ct., Cass., July

ble engagement, however, may in certain instances result from events which do not constitute a novation properly so-called.[19a] Whether such events give rise to a natural or civil obligation is a question to be determined by the power of the trier of the facts].[19b]

As an exception to this principle, gaming and betting debts cannot be transformed into civil obligations by means of new engagements contracted by the debtors.[20]

c. Engagements undertaken with the view to discharging a natural obligation constitute onerous rather than gratuitous transactions, and, for this reason, they are not subject to rules governing gratuities either as to form or substance.[21]

d. Engagements subject to annulment or rescission because of the legal incompetence of the debtor, may become object of a legally binding security transaction. Article 2012, § 2.

The effects enumerated above are the only ones produced by natural obligations in French law.

Thus, a natural obligation is not transformed into a civil obligation by a simple act of ratification, express or implied; and it follows that partial performance of a natural obligation does not entitle the creditor to sue for payment of the whole.[22]

Further, natural obligations are not compensable debts,[23] nor can they be, in general, the object of a legally binding suretyship.[24]

26, 1823, Sir., 23. 1. 378; Civ. Cass., Jan. 28, 1840, Sir., 40. 1. 230; Caen, Nov. 28, 1840, Sir., 41. 2. 90.

19a. See, for example, Besançon, Dec. 6, 1905, Sir., 1906. 2. 98; D. P. 1908. 2. 330.

19b. Rouen, July 29, 1908, Sir., 1909, 2. 211; D. P. 1909. 2. 208.

20. Cf. § 386.

21. See authorities cited in § 659, note 24, and § 702, note 2. The proposition in text must also be applied in the determination of the question whether or not a particular transaction is a liberality subject to registration charges. Championnière and Rigaud, III, 2221 and 2417; Civ. rej., Dec. 19, 1860, Sir., 61. 1. 370.

22. *Confirmatio nil dat novi.* Larombière, III, Art. 1235, No. 9; Zachariae, § 339, text and note 6; Req. rej., Oct. 25, 1808, Sir., 11. 1. 323; Civ. Cass., July 27, 1818, Sir., 19. 1. 126; Angers, July 31, 1822, Sir., 23. 2. 30; Orléans, April 23, 1842, Sir., 43. 2. 383. Toullier (VI, 186, 390 and 391) criticized the first of these decisions because he failed to see the difference between the new engagement having as its cause a natural obligation and the confirmation of a natural obligation.

23. The Roman jurisconsults had adopted the opposite conclusion, at least with respect to certain natural obligations, without realizing that they were thus creating an indirect means of enforcing these obligations. This solution, tied to their ideas concerning compensation (see Schwanert, *op. cit.* § 15, No. 6), is incompatible with the principles of our law according to which compensation operates *ipso jure* and is admissible only as between credits equally exigible. Articles 1290 and 1291. Cf. § 326, text No. 3.

24. The opposite view had prevailed in Roman law. It was grounded on the