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Natural Obligations - Sufficiency as Consideration

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for marriage licenses to give proof of parental consent or majority, but no sanction exists for enforcing these articles. It seems they could be enforced by imposing serious penalties or punishments on licensing officers who violate the provisions. Again, both parties to the marriage could well be required to appear before the license issuing officer. Of course, if all public officers and persons authorized to celebrate marriages made a conscientious attempt to abide by the articles of the Civil Code, penalties would not be necessary and problems as are herein discussed would not be likely to arise.

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NATURAL OBLIGATIONS—SUFFICIENCY AS CONSIDERATION—On November 22, 1933, Burns transferred to his first wife certain real and personal property in settlement of an indebtedness of fifteen thousand dollars arising from the dissolution of the community formerly existing between them. The transfer was accepted as full satisfaction of the debt. Subsequent to a second marriage, Burns and his first wife entered into a second agreement rescinding the first, evaluating the property previously transferred at six thousand dollars, transferring further property to the amount of one thousand dollars, and acknowledging a further indebtedness on his part of eight thousand dollars, for which three mortgage notes were given as collateral security. Burns died without making further payments on the debt. His widow sued to bring the mortgage notes back into the succession on the theory that they were void for want of consideration. The defense of the first wife was that the acknowledgment of the indebtedness was supported by a natural obligation arising from the fact that the value of the property transferred to her by the first agreement was not equal to the amount of the debt. The court held that the dation en paiement extinguished the debt in toto, as a full payment in money, and that if any obligation remained because the value of the thing given was not equal to the amount of the debt, it was not a natural obligation, but a moral one, and not sufficient to support a new promise to pay. *Succession of Burns,* 199 La. 1081, 7 So. (2d) 359 (1942).

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father and mother or the survivor of them; and if they are both dead, the consent of his tutor. He must furnish proof of this consent to the officer to whom he applies for permission to marry."

14. Art. 98, La. Civil Code of 1870: "Those who have attained the age of majority, on their demanding permission to marry, must furnish proof of their having attained that age."

Jurisprudence prior to the present case leaves in considerable doubt the question of whether there can be under our laws any natural obligations except those specifically enumerated in Article 1758. The supreme court, in *Succession of Miller v. Manhattan Life Insurance Company*,[1] held the natural obligations so enumerated to be exclusive. In *In re Atkin's Estate*,[2] a federal circuit court of appeals case, the enumerated natural obligations were held merely illustrative. Beyond these cases, the courts, expressly or impliedly, have frequently found natural obligations in situations not among those enumerated in Article 1758. It has been held that money repaid on a loan made at usurious interest is not recoverable;[3] that a new promise to pay a debt discharged in bankruptcy may be enforced;[4] that payment of an illegal or unconstitutional tax cannot be recovered;[5] that a payment by a contractor to reimburse the owner for whiskey which disappeared from a house which he was constructing is not recoverable;[6] that a voluntary payment of more than the contract price cannot be recovered where the original price was harsh;[7] that the price paid for improvements on public land to one not in a position to avail himself of preemption laws is not recoverable;[8]

1. 110 La. 652, 34 So. 723 (1903).

2. 30 F.(2d) 761 (C.C.A. 5th, 1929).

3. Perrillat v. Puech, 2 La. 428 (1831); Rosenda v. Zabriskie, 4 Rob. 493 (La. 1843).

4. Blanc v. Banks, 10 Rob. 115 (La. 1845) (court did not mention natural obligations); Bach v. Cohn, 3 La. Ann. 101 (1848) (promise held supported by a moral obligation); Beck v. Howard, 3 La. Ann. 501 (1848) (where the court held the promise supported by a moral obligation also spoken of as a legal obligation). See Linton v. Stanton, 4 La. Ann. 401 (1849); Bartlett v. Peck, 5 La. Ann. 669, 670 (1850); Glenn v. Dunbar's Administratrix, 10 La. Ann. 253, 255 (1855); Irwin v. Hunnewell, 207 La. 422, 433, 21 So.(2d) 485, 488 (1945).

5. Campbell v. City of New Orleans, 12 La. Ann. 34 (1857) (cites Art. 1751 (1), La. Civil Code of 1825); Factors and Traders Ins. Co. v. City of New Orleans, 25 La. Ann. 454 (1873); Book v. City of Shreveport, 144 So. 145 (La. App. 1932) (cites Art. 1758, La. Civil Code of 1870). Cf. Fusilier v. St. Landry Parish, 107 La. 221, 31 So. 678 (1902) (where the court cited the above cases with approval, but based its holding on estoppel); Lisso and Bro. v. Police Jury of Parish of Natchitoches, 127 La. 283, 53 So. 566 (1910); Simpson v. City of New Orleans, 133 La. 384, 63 So. 57 (1913); Louisiana Land and Improvement Co., Ltd. v. Police Jury of Grant Parish, 156 La. 849, 101 So. 241 (1924); Dupre v. City of Opelousas, 161 La. 272, 108 So. 479 (1926); City of New Orleans v. Jackson Brewing Co., 162 La. 121, 110 So. 110 (1926); Crescent City Bldg. & Homestead Ass'n v. City of New Orleans, 141 So. 412 (La. App. 1932).

6. United States Fidelity and Guaranty Co. v. Murphy, 163 So. 724 (La. App. 1935) (cites Arts. 1757, 1758. La. Civil Code of 1870).

7. Jackson v. Ferguson, 2 La. Ann. 723 (1847) (cites Arts. 2280, 2281, La. Civil Code of 1825).

8. Spurlin v. Millikin, 16 La. Ann. 217 (1861) (cites Art. 1758(1), La. Civil Code of 1870).

that the natural obligation of bank directors to replace the capital stock of the bank precludes recovery of personal funds of the directors so used;[9] that a promise to indemnify a wife for wounds inflicted on her husband is binding;[10]; that the new promise to pay by an indorser, released from liability on a note by an extension of time granted the maker, is enforceable;[11] that a promise to remunerate a faithful servant for long service at low wages is enforceable;[12] and that notes given by a father to certain of his children are supported by a valid consideration in the natural obligation to equalize his gifts to his children.[13] Notwithstanding such jurisprudence the present case held flatly that the natural obligations enumerated in Article 1758 are exclusive.

The French Civil Code does not define natural obligations; our Articles 1757, 1758 and 1759 have no counterpart therein. The only article in the French Civil Code dealing directly with the subject is Article 1235, disallowing repetition of *payments* made in response to a natural obligation. In practice, the French courts take a rather broad view of natural obligations, generally finding a natural obligation wherever a party acted in response to an imperious duty of conscience and honor.[14] When the drafters of our Code came to the subject of obligations, they considered it advisable to specifically enumerate the situations giving rise to natural obligations.[15] In addition, natural obligations were clearly distinguished from moral obligations, which were said to produce no effect whatsoever.[16] The purpose of the drafters in so doing was clearly expressed as follows:

"Although this kind of obligation [moral obligation] has no legal effect whatever, its definition is introduced because it

9. Interstate Trust and Banking Co. v. Irwin, 138 La. 325, 70 So. 313 (1915).
10. Beckley v. Clark, Administrator, 8 La. Ann. 8 (1853) (cites Arts. 1749, 1750(2), 1752(2), La. Civil Code of 1825).
11. Mortgage Investment, Inc. v. Natal, 181 La. 651, 160 So. 128 (1935) (cites Arts. 1758, 1759, La. Civil Code of 1870).
12. Barthe v. Succession of Lacroix, 29 La. Ann. 326 (1877). Cf. Succession of Rabasse, 49 La. Ann. 1405, 22 So. 767 (1897).
13. In re Atkin's Estate, 30 F.(2d) 761 (C.C.A. 5th, 1929).
14. For general discussions of this subject, see Supp. V Baudry-Lacantinerie-Bonnecase, Traité de Droit Civil (1930) 217, § 111; 2 Colin et Capitant, Cours Élémentaire Droit Civil Francais (8 ed. 1935) 265, § 275 (urging contrary view, but recognizing majority opinion); 4 Marcade, Explication Theorique et Pratique du Code Civil (7 ed. 1873) 541, § 669; 11 Planiol et Ripert, Traité Pratique de Droit Civil Francais (1932) 877, § 1517; 1 Pothier, Ouvres (1830) 50, § 191.
15. Art. 1758, La. Civil Code of 1870.
16. Art. 1757, La. Civil Code of 1870.

> is frequently referred to by commentators and sometime with such loose expressions, as might induce a belief that it had 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."[17]

This would indicate that the view taken in *Succession of Miller v. Manhattan Life Insurance Company*,[18] and reaffirmed in the present case, is in accord with the legislative intent.[19]

The Louisiana Civil Code of 1870 recognizes two kinds of contracts, as far as the motive for making them is concerned[20]—gratuitous[21] and onerous.[22] Gratuitous contracts include, in addition to certain specific types not involving a diminution of patrimony,[23] pure liberalities, or donations. Because the donation involves a diminution of patrimony of the donor without anything being received in return, it is subject to certain special requirements, notably the requirement that it must be in the form of an authentic act.[24]

Presumably, a promise supported by a natural obligation falls within the category of onerous obligations. It would seem to follow, then, that a contract not onerous by definition and not

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17. Louisiana Legal Archives, Projet of the Civil Code of 1825 (1937) 226, comment to Art. 1751(1).

18. 110 La. 652, 34 So. 723 (1903).

19. However, it has been noted that, contrary to the view expressed in the *Miller* case, the courts have frequently found natural obligations in situations not among those enumerated in Article 1758, and there is reason to believe that they will continue to do so. Commonwealth Finance Co. v. Livingston, 12 So.(2d) 44 (La. App. 1943), discusses the prior jurisprudence, and expresses doubt as to whether the *Miller* case will be followed. In re Atkin's Estate, 30 F.(2d) 761 (C.C.A. 5th, 1929), is approved; *Succession of Burns* is not mentioned. Irwin v. Hunnewell, 207 La. 422, 21 So.(2d) 485 (1945) contains dictum to the effect that a new promise to pay a debt discharged in bankruptcy is supported by a natural obligation. Arts 1757, 1759, La. Civil Code of 1870 are cited; Art. 1758 is not.

20. Art. 1772, La. Civil Code of 1870.

21. Art. 1773, La. Civil Code of 1870.

22. Art. 1774, La. Civil Code of 1870.

23. Examples of this type of gratuitous contract are the deposit (Art. 2929, La. Civil Code of 1870), the sequestration (Art. 2975, La. Civil Code of 1870), the Loan for use or *commodatum* (Art. 2894, La. Civil Code of 1870), and the loan for consumption or *mutuum* when not made at interest (Art. 2892, La. Civil Code of 1870).

24. Arts. 1536, 1538, La. Civil Code of 1870.

supported by a natural obligation would be gratuitous. The result of the adoption of a restrictive view of the theory of natural obligations is therefore to bring within the category of donations those contracts which rest upon an obligation not classifiable as a natural obligation as enumerated in Article 1758.[25] The use of the authentic act would be essential to the validity of such contracts.[26]

Granting that it was competent for the court to find that a natural obligation did not survive the original dation en paiement, the subsequent acknowledgment of indebtedness would constitute a gratuitous contract. This is but another way of saying that it was intended as a disguised donation. The inquiry would then follow whether it could be upheld as a donation. From the record it appears that the second agreement, referred to by the court as an "executed instrument" was in fact a contract under private signature. Notwithstanding, therefore, that the court did not seem to recognize the possibility of sustaining the promise on the suggested basis, such an inquiry would have led to the same result as that reached by the court. In short, the decision is considered to be correct although the supporting reasons were not definitive.

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PRIVILEGES ON OIL, GAS, AND WATER WELLS—ACT 232 OF 1916—ACT 68 OF 1942—Plaintiffs furnished materials used in the drilling of two oil wells for the defendants. Upon failure of the contractor to pay for the materials, the plaintiff sought to attach defendants' producing well, asserting a privilege under Act 232 of 1916.[1] The defendants had not recorded the bond required by the act, and the plaintiff contended that the failure to file the bond rendered the defendants liable for the value of the supplies

25. The Civil Code, of course, recognizes certain kinds of gratuitous contracts that are not treated as donations. The French call such contracts *contrats désinetrésses*. See Note 22, supra, for illustrations of this type of gratuitous contract. For discussion, see 2 Colin et Capitant, Droit Civil Francais (ed. 1935) 13, § 12.

26. This theory accounts for the number of decisions sustaining simulated acts of sale as donations where the transfer was in the form of an authentic act: Holmes v. Patterson, 5 Mart. (O.S.) 693 (1818); Rhodes v. Rhodes, 10 La. 85 (1836); D'Orgency v. Droz, 13 La. 382 (1839); Sémère v. Sémère, 12 La. Ann. 681 (1856); Wolf v. Wolf, 12 La. Ann. 529 (1857); Harper v. Pierce, 15 La. Ann. 666 (1860); McWilliams v. McWilliams, 39 La. Ann. 924, 3 So. 62 (1887); Reinerth v. Rhody, 52 La. Ann. 2029, 28 So. 277 (1900); Nofsinger v. Hinchee, 199 So. 597 (La. App., 1941). Semble Haggerty v. Corri, 5 La. Ann. 433 (1850).

1. Dart's Stats. (1939) §§ 5091-5097.