

"tion, and in such case the compensation takes place from the time of pleading the exception only."

When compensation cannot take place *de plein droit*, by reason of the absence of one of the four conditions included in Articles 206 and 207, it may still be demanded when the condition wanting can be supplied. This compensation is called by Marcadé *facultative*. The four conditions required for compensation by operation of law are: 1. Mutual debtors; 2. Debts *fongibles*; 3. Debts *liquides*; 4. Debts *exigibles*. The article, as reported, is vague, referring as it does to causes which are not specified, and *others of a like nature*. An improved rendering would be the following: "When compensation by sole operation of law cannot take place by reason of the absence of any of the conditions required in Articles 206 and 207, the debtor who causes the accomplishment of all the conditions which may be wanting may demand compensation by exception. In such case the compensation takes place only from the time it is so demanded."

"218. The confusion which takes place by the concurrence of the qualities of creditor and principal debtor *in the same person* avails the sureties."

The words in italics are superfluous, being included in the definition in the preceding article.

"219. When the certain specific thing which is the object of an obligation perishes (add, *is taken out of commerce*, C. C., 1302), or the delivery of it becomes from any other cause impossible, without any act or fault of the debtor, and before he is in default, the obligation is extinguished."

## CHAPTER IX.

### *Of Proof.*

The title of this Chapter is objectionable, as well as the use of word "proof" instead of "evidence" in several of its articles. "The word evidence, in legal acceptance, includes all the means by which any alleged matter of fact, the truth of which is submitted to investigation, is established or disproved. This term and the word *proof* are often used indifferently as synonymous with each other, but the latter is applied by the most accurate logicians to the effect of evidence, and not to the medium by which truth is established." (Greenleaf, § 1.) This distinction ought to be observed throughout the chapter. In Articles 223 and 224, the word *evidence* should take the place of the word *proof*.

"227. It is necessary to the authenticity of an instrument, executed before a notary public, that it be received by him in the actual presence of another subscribing notary, or of two lawful subscribing witnesses."