is not a contract in the sense of the Constitution,[2060] nor is marriage.[2061] And whether a particular agreement is a valid contract is a question for the courts, and finally for the Supreme Court, when the protection of the contract clause is invoked.[2062]

The question of the nature and source of the obligation of a contract, which went by default in *Fletcher v. Peck* and the *Dartmouth College* case, with such vastly important consequences, had eventually to be met and answered by the Court in connection with private contracts. The first case involving such a contract to reach the Supreme Court was *Sturges v. Crowninshield*,[2063] in which a debtor sought escape behind a state insolvency act of later date than his note. The act was held inoperative, but whether this was because of its retroactivity in this particular case or for the broader reason that it assumed to excuse debtors from their promises was not at the time made clear. As noted earlier, Chief Justice Marshall's definition on this occasion of the obligation of a contract as the law that binds the parties to perform their undertakings was not free from ambiguity, owing to the uncertain connotation of the term "law."[2064]

These obscurities were finally cleared up for most cases in *Ogden v. Saunders*,[2065] in which the temporal relation of the statute and the contract involved was exactly reversed—the former antedating the latter. Chief Justice Marshall contended unsuccessfully that the statute was void because it purported to release the debtor from that original, intrinsic obligation that always attaches under natural law to the acts of free agents. "When," he wrote, "we advert to the course of reading generally pursued by American statesmen in early life, we must suppose that the framers of our Constitution were intimately acquainted with the writings of those wise and learned men whose treatises on the laws of nature and nations have guided public opinion on the subjects of obligation and contracts," and that

---

[2060] Morley v. Lake Shore Ry., 146 U.S. 162 (1892); New Orleans v. New Orleans Water-Works Co., 142 U.S. 79 (1891); Missouri & Ark. L. & M. Co. v. Sebastian County, 249 U.S. 170 (1919). *But cf.* Livingston's Lessee v. Moore, 32 U.S. (7 Pet.) 469, 549 (1833); and Garrison v. New York, 88 U.S. (21 Wall.) 196, 203 (1875), suggesting that a different view was earlier entertained in the case of judgments in actions of debt.

[2061] Maynard v. Hill, 125 U.S. 190 (1888); Dartmouth College v. Woodward, 17 U.S. (4 Wheat.) 518, 629 (1819). *Cf.* Andrews v. Andrews, 188 U.S. 14 (1903). The question whether a wife's rights in the community property under the laws of California were of a contractual nature was raised but not determined in Moffit v. Kelly, 218 U.S. 400 (1910).

[2062] New Orleans v. New Orleans Water-Works Co., 142 U.S. 79 (1891); Zane v. Hamilton County, 189 U.S. 370, 381 (1903).

[2063] 17 U.S. (4 Wheat.) 122 (1819).

[2064] 17 U.S. (4 Wheat.) at 197.

[2065] 25 U.S. (12 Wheat.) 213 (1827).