

in one part of it taken separately, or by a Defect in the Expression. Again the Order of Clauses in an Act of parliament is sometimes observed. 29 January 1662. L. Samington contra Chiesly 21. February 1668 Lord Borthwick contra his Wadsetters.

Defect in Expression
If any thing essential to a Law, or that is a necessary Consequence of its Disposition, or that tends to give to the Law its entire Effect, according to its Motive, happens to be omitted therein; the Judge may in this Case supply what is wanting in the Expression, and extend the Disposition of the Law to what is included within its Intention, altho not expressed in the Words. l. 13. ff. de Testib. l. 13. ff. de Legib. l. 11. ff. de Prescript. verb. l. 7. s. 2. ff. de Jurisd.

Cases omitted in the Law
Some Lawgivers cannot comprehend all Cases, Statutes may be construed according to Equity. Coke 1 Inst. 29. b. which is the universal Spirit of Justice restrained to what is agreeable to the Intention of the Lawgiver, and is a mild and benign Interpretation of the Law, consistent with the true and just Meaning thereof in such a Case. Sive enim leges, non est verba earum tenere, sed vim et potestatem. l. 17. ff. de Legib. Even penal Laws may be so interpreted with a Temperament of Equity. Coke 1 Inst. 54. For what is out of the Mischief, is out of the Meaning of the Law tho it is within the Letter, and Cases within the same Mischief, must be taken within the same Remedy.

Cases of Interpretation
Some Laws are inflexible and are to be interpreted according to the Rigour of them, tho that may seem to be Summa in iura, or to have some Hardship in particular Cases. l. 21. s. 1. ff. qui & a quib. manum. Such Rigour of a Law ought to be followed when it is essential to the Law, and cannot be separated from it without annulling it. V. g. If there is wanting to a Writ any one of the Formalities required by Law, this Writ will be absolutely null, whatever Certainty we may have of the Grantor's Intention, and however favourable the Contents of the Writs may be, because these Formalities are the only Way which the Law allows for proving the Grantor's Will. Les Loix Civiles dans leur Order Naturelle. Tom. 1. liv. preliere. Tit. 1. Sect. 2. s. 4. But if the Hardship or Rigour of a Law be not a necessary Consequence of the Law and inseparable from it, but that the Law may have its Effect, which mitigates the said Rigour, and by some Temperament, which Equity, that is, the Spirit of the Law requires; we must in this Case, prefer Equity to the Rigour, which the Letter of the Law seems to demand, and follow rather the Spirit and Intention of the Law than the strict and rigid Way of interpreting it. Ibid. s. 5. So that we must judge according to the Temperament of Equity, if a Law will bear it; or according to the Rigour and Hardship of the Law, if the Law admits of no Mitigation. And altho the Rigour of the Law seem to be distinct from Equity, and to be even opposite to it; it is never the less true that

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that even in the Cases in which this Rigour ought to be followed, another View of Equity makes it just. And as it never happens, that what is equitable is contrary to Justice, so likewise it never happens that what is contrary to Equity. For Justice, tho founded on the Rigour of the Law which cannot be mitigated, without annulling the Law hath its Equity in the public Good. Ibid. s. 8.

Doctrinal Interpretation of Laws is either Declaratory, Extensive, or Restrictive.

A Declaratory Interpretation, is when the genuine Sense of an obscure Law is cleared up by applying an equivocal Word or Sentence therein, to the proper rather than to the improper Sense; unless the common Use of speaking persuade the contrary.

The extending and Restriction of Laws is reckoned Materia Brocardica, because of the seeming Contrariety of Rules and Opinions about it. Concerning which vid. prosp. Jurin. Fragm. Crim. part. 1. Arg. Extensio et N. 51. et seqq.

An extensive Interpretation, is an Application of the Law to other Cases than those expressed, as implied and supposed to fall under the Spirit and Intention or Meaning of the Lawgivers. For when the Breakers of Acts of Parliament are ordained to be punished after the Form and Ordinance thereof. Act 29. Dec. 2. s. 1. that is not so to be understood, as if all Acts of Parliament were stricti juris, and not to be extended de casu in casum; seeing with us Laws are so extended: But the Meaning is, that the Judges have not the Liberty to commute a Punishment expressly determined by Law. McKenzie Observ. on d. Act 29. Such an extensive Interpretation may be gathered From: 1. From other Laws, or other Parts of the same Law. 2. From a contrary Sense.

3. From a consequential Reasoning: is when a Thing is prohibited, every Thing that follows it, or follows upon it is also forbidden. In Laws which permit any Thing, we draw the Consequence from the greater to the lesser. l. 21. l. 26. l. 163. ff. de reg. jur. In Laws which forbid any Thing, the Consequence is drawn from the lesser to the greater. l. 4. ff. de Senator. l. 7. s. ult. ff. de inter. & releg. l. 5. ff. de serv. ex post. Which Extension of Laws from the lesser to the greater, and from the greater to the lesser, is limited to Things of the same Kind with those mentioned in the Law, or such as its Motive ought to be extended to; and is not to be drawn to Things of a different Kind or such as the Spirit of the Law is not applicable to. Les Loix Civiles Tom. 1. Part. 1. Liv. Prelim. Tit. 1. Sect. 2. s. 24. 4. Extension of a Law is made from the Reason which induced the Lawgiver to make it; Hence the common saying, ubi eadem ratio, ubi eadem jus; where there is Parity of Reason, there ought to be Parity of Decision. Thus the Law discharging Members of the College of Justice to buy Lands Rooms & Possessions depending in Pleas. Act 21. Dec. 14. s. 6. is extended by Parity of Reason to Movables. McKenzie Observ. on d. Act 21. s. 6. If a Law put a Stop to the Inquiry of any Abuse by

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