

answerable for his Knavery, his Fault, his Negligence, in a different Man-
 ner, according to the different Causes for which the Thing is committed to his
 Charge, as whether it be for his own Interest alone, or for the bare Interest
 of the Owner, or for the common Interest of both Parties; which subjects
 him to more or less Care and Diligence. If it be adjusted in the Contract
 what Care he ought to take who is intrusted with the Affair or Thing of
 another Person, or which is common to both, it is necessary to keep to that,
 and such Agreement is the Rule of his Diligence l. 23. ff. de reg. jur.
 But no Body is bound in any Kind of Contract to answer for the Loss
 and Damages occasioned by Accident or Chance, such as a Thunderbolt, an
 Inundation, a Torrent, Force, and other Events of the like Nature l. 23.
 ff. de reg. jur. l. i. C. de commod. Unless it has been otherwise agreed
 on, or that the Loss or Damage may be imputed to some Fault for which
 one of the Contractors is accountable, as his Refusal to deliver it,
 which he ought to have done before it perished l. 5. ff. de reb. cred. l. 1.
 §. i. ff. locat. cond. l. 11. ff. de neg. gest. l. i. §. 4. ff. de oblig. & act.

Where the same Thing or the same Affair is an Occasion of Gain
 or Loss according to the Variety of Accidents, it is always understood that
 he who reaps the Profit ought to bear the Loss l. 10. ff. de reg. jur. un-
 less the Loss ought to be imputed to the Fault of the other Party, as
 if the Thing perishes or is diminished while he is in Delay to deliver
 it l. 14. ff. de peric. et comen. rei vend. or there is not equal Reason for
 the Loss as for the other l. 37. pr. ff. de reg. jur.

In Contracts in which any Estimation of Things is to be made
 if the Contractors refer the Matter to the Arbitration of a third Person,
 it is the same Thing as if they had referred it to the Arbitration of
 a Person of Probity and Skill in the Matter, and such Reference implies
 the Condition, that what shall be regulated therein shall be reasonable,
 and any Estimation beyond the Bounds of Reason and Equity is of no
 Force l. 76 & seq. ff. pro socio l. 30. pr. ff. de oper. libert. Wherein this
 Sort of Arbitrators differ from Arbitrators named in a Submission or Com-
 promise Les Loix Civiles &c. Tom. 1. Part. 1. Liv. 1. Tit. 1. Sect. 3. Art.

In Contracts where Persons treat of a Right or other Thing, which
 depends upon some uncertain Event, and from which there may accrue
 either Profit or Loss, according to the Difference of Events that may
 happen, it is free for the Parties to treat in such Manner that the one
 for Example renounce all Profit, and free himself from all Loss; or that
 he take a certain Sum in Lieu of all he could expect of Profit, or that
 he charge himself with a certain Loss, for all the Losses he had to fear.
 And such Contracts have their Justice founded upon this, that one Party
 prefers a Certainty whether of Profit or Loss, to an uncertain Expecta-
 tion of Events; and the other Party on the contrary, finds it his Advan-
 tage to hope for a better Condition, Les Loix Civiles &c. Tit. Sect. 4.
 Art.

Contracts may be variously divided. Some are μονοπλευροι obli-
 gatory upon one Side, or upon one of the Parties only, as mutuum &c. O-
 there are διπλευροι reciprocal and obligatory upon both.

By the civil Law Contracts obligatory only upon one Side, are stricti
 juris, strictly interpreted, and to be observed according to the Letter or precise
 Terms agreed on, which the Judge must stick close to and cannot go beyond.
 But Reciprocal Contracts that oblige both Parties are generally bonae fidei;
 that is include several Things not expressly mentioned by a benign and libe-
 ral Interpretation. Because the great Variety of Circumstances arising
 from mutual Obligations, that are not so exactly defined and circumstanced,
 it seemed expedient to leave it to the Judge to supply any Defect or Un-
 clearness in the express Agreement of Parties, from their preference
 Meaning deduced from the natural Principles of Equity. We do not thus distin-
 guish Contracts bonae fidei from those that are stricti juris. For we consi-
 der more whether the particular Clauses in Contracts be favourable or
 such as in the Construction of Law deserve to be extended; than whether
 they be inserted in mutual Contracts. So Rescissions and Renunciations
 being in themselves unfavourable, these two contained in mutual Contracts
 are stricti juris, and not to be extended by Parity of Reason beyond what
 is expressed. Nay, are sometimes restricted within the narrow Circuit of
 the Words against the common Principles of Law, v. g. Tho' reguliter
 quae nobis acquiritur hereditas nostra sequiturus and the proprietor
 may dispose of his own as he pleases; yet Rescissions do not pass to Heirs
 or Assigns, unless it be so provided. Mackenzie Treat. of Actions Chap. 2. On
 the other Hand we reckon Contracts bonae fidei which give Birth to an
 Obligation upon one Side only if that be favourable.

In mutual Contracts, the one Party subscribing is not obliged, until
 the other subscribe also.

But a Contract registered and Letters raised thereon were sustained a-
 gainst the Subscriber, tho' he who entered the same in the Register had
 not subscribed: Because at discussing he did subscribe, and consent that
 summary Execution might be granted against himself, as if it had been
 registered against him ab initio 19 Feb. 1627 M. Duff contra M. Culloch.

It is an important Question, whether one of the Parties in a reciprocal
 Contract or his Assigns, can require Implement of the Articles in his Favour,
 till he fulfill or cause to be fulfilled the other Part? About which our De-
 cisions have varied and fluctuated exceedingly. But the now fixed Rule is
 this. Where mutual Obligations are either conceived conditionally, viz. That
 the one Part being performed the other should be performed also; or where
 they are Causes of each other, that is, where the Engagement of one of the
 Parties is the Foundation of the Engagement of the other: Neither Party
 can