

upon pretences of favourable or Not favourable, *De Quingra*
Credita Seniors Caplandra.

In a Competition where a point is doubtful, the Civil law
dictates, that you do, *pro libertate, pro innocencia, pro Reg, pro*
debetore Respondentium.
The obligations and uncertainties of obligatory blanks are to
be interpreted in favour of them that is obligee, and we must all
ways restrain the obligation to the sense which *Dignitellus*
l. 7. *De obli.* & l. 2. *88* & 18. *De Verb. Oblig.* got the who as
yet himself is willing only to be Engaged for as little as he
can, and the other party ought to have taken care to leave
clearly expressed what he intended to be. *gg* & l. 109. *De obli.*
if one is obliged indeliberately to one of two things, he is a
liberty to give that which he pleases, if the Contract be in
no thing to the contrary. *l. 10* & l. *109* *De obli.*
De Contract. Empt. & l. 109 *De obli.* *De obli.* *De obli.*
against the person obliged, but when the ambiguity, ambiguity
or other defect of Expression is the Effect of the Quavery or
fault of him who ought to Explain his Intention, it doth
Explained against him, because he ought to have Explained
distinctly what his Meaning was, *De Long. Empt. & l. 109*
1 part. *De obli.* *De obli.* *De obli.* *De obli.*
which use of an Equivocal Expression concerning the qualities
of the thing which he sells, but words are Explained against the
l. 39 *De obli.* *De obli.* *De obli.* *De obli.*
l. 39 *De obli.* *De obli.* *De obli.* *De obli.*
pound of Penalty, and a clause of annual rent in a bond, read
smallest sum is to be presumed, and consequently it could be
proven an obligation only for 238 shillings Scots, in respect
that not only the bond was writ by the debtor who was
an ordinary Writer, and read it over expressing a certain
sum to the witnesses before signing, and these after had
several persons which might be the import of a bond, the
sum to be definite sum of pounds or pence; but also
the penalty expressed was about the fifth part of 238
pound, and the fifth part of the principal sum was to be
deducted as Penalty in bonds of borrowed money, 17 Novemb.
1713 *Bochan contra Bryffons.*

Puis

Plus valet quod agitur, quam quod simulatur. *Constitutio*
More regard is to be had to what appears to have been the Interest
and Intention of the parties, than to what the Words bear. For
if the words of a Contract appear to be Contrary to the Inten-
tion of the Contractors, which is a (thorowly) evident, we must
follow the Intention, rather than the words. *l. 2. 109* *De Verb.*
Signif. l. 6. 51 *De Contract. Empt. l. 7. 82* *De obli.* *De obli.*
De obli.

That Judges may not Interpret words arbitrarily and
put upon them a sense which the words cannot bear, is a
non est *Locus Proprietatis*. When an Engagement is sufficiently
Unmistaken, it ought neither to be extended nor Restricted to the
prejudice of one party, in favour of another. *l. 3. 109* *De obli.*

Nemo presumitur donare. Under which the Stronger Rule,
debitor non presumitur donare, is comprehended. But this does
and good may be a More pregnant presumption of a Disingul
gift arising from the words. *l. 109* *De obli.* where a Civil lease, that a person
debtor or obligor himself to deliver things, he is presumed rather
to sell them than to gift them: But when the words in these
two are genuine, they import an act of free liberality they
are to be interpreted accordingly. *l. 109* *De obli.* *De obli.*

In Contracts and *primus ad omnia Voluntas Defuncti*
obit, *ca negotiorum hinc Civ. pr. De obli.* *De obli.* *De obli.*
words in Letters, Wills or gifts made in prospect of death, are
favourably, and take effect full, provided, than words in deeds
inter vivos. In Contracts we must Consider Differently
either the Common Will of those who deal together, or
the bare will of one of the two without regard to the will of
the other. But in Testaments where the Testator alone ex-
plains his will, that will alone is always the only Rule.
The Doctors of the Civil law have given large beatitudes
Conjecturalis Mentis Defuncti, which are not so useful to
us in Scotland, where the subject of a Testament is not so
extensive as it was among the Romans, but Restricted
to Movable, sometimes to half of things, and *Modus* doth
not exceed a third parts One having, by Testament left his
goods to a Colledge to be kept by a Bibliothecary, and a
Salary to the Bibliothecary whom the Name, and was master
of the Colledge, appointed another to be chosen by the Colledge.
The Interest of the Colledge to Name and chuse the Bibliothecary
was found not to be temporary, and prima Vice only, *De obli.*