

III.

162. *No Persons can covenant for others, nor to their Prejudice.*—Covenants being formed by the consent of parties, no man can covenant for another, unless he has power from him so to do. And much less can any persons do prejudice, by their covenants, to others.

IV.

163. *1st Exception. Proxies may covenant for their Constituents.*—Proxies may covenant for those persons from whom they have power so to do;¹ and they may engage them so far as the power reaches which they have received from them.²

V.

164. *2d Exception. Of those who have a Right to treat for others.*—Tutors and curators, governors and heads of corporations, and masters of companies, factors and agents that are employed in any particular commerce, and all persons who have others subject to their power, or under their conduct, or who represent others, may make covenants in their names, according to the extent of their ministry or power,¹ as shall be explained in its proper place with respect to every one of these kinds of persons.

VI.

165. *Of him who treats for another, undertaking for his Consent.*—If a third person treats for one that is absent, without his order, but undertakes for his consent, the absent party does not enter into the covenant but when he ratifies it; and if he does not ratify it, the person who undertook for his consent shall be bound, either to pay the penalty to which he submitted, or to make good the damages which he shall have occasioned, according to the na-

¹ L. 38, § 17, *D. de verb. obl.*;—§ 18, *Inst. de inutil. stip.*;—l. 9, § 4, *D. de reb. cred.*;—l. 73, § ult. *D. de reg. jur.*;—l. 3, *C. ne ur. pr. mar.*;—l. 10, *D. de jurej.*;—l. 74, *D. de reg. jur.*;—l. 27, § 4, *D. de pact.* See the two next articles.

² L. 10, in fine, *D. de pact.*

³ L. 5, *D. mand.*;—l. 3, *ead.* See the second and third articles of the third section of *Proxies*.

⁴ L. 15, *D. de pact.*;—l. 14, *D. de pact.* See the fifth and following articles of the second section of *Tutors*; the fifth article of the first section, and the first and third articles of the third section, of *Syndics, Directors, and other Administrators of Companies and Corporations*; the sixteenth and seventeenth articles of the fourth section of *Partnership*; and the first and second articles of the third section of *Persons who drive any Public Trade*.

ture of the covenant, the consequences to which he shall have given occasion, and the other circumstances. But after that the absent person has ratified what was done in his name, although it prove to his prejudice, he cannot afterwards complain of it.¹

VII.

166. *Covenants are in Place of Laws.*—When the covenants are finished, whatever has been agreed upon stands in place of a law to those who made them;² and they cannot be revoked but by common consent of the parties,³ or by the other ways which shall be explained in the sixth section.

RULES FOR THE INTERPRETATION OF COVENANTS.

VIII.

167. *1st Rule. Obscurities and Doubts are to be interpreted by the Common Intention of the Contractors.*—Seeing covenants are to be formed by the mutual consent of those who treat together, every one of them ought to explain in the covenant sincerely and clearly what he promises, and what he pretends to.⁴ And it is by their common intention that we are to explain whatever may be obscure or doubtful in the covenant.⁵

IX.

168. *2d Rule. Interpretation made by Usage, or by other Ways.*—If the common intention of the parties does not appear from the words of the covenant, and if it can be interpreted by any custom or usage of the place where it was made, or of the persons who made it, or by other ways, we must keep to that which shall appear to be the most probable, under all these views.⁶

X.

169. *3d Rule. To judge of the Sense of every Clause by the Tenor of the whole Deed.*—All the clauses of covenants are inter-

¹ L. 9, *D. de neg. gest.*;—§ 3, *Inst. de inutil. stip.*;—§ 20, *ead.*

² L. 23, *D. de reg. jur.*;—l. 1, § 6, *D. depositi*;—l. 1, *D. de pact.*;—l. 34, *D. de reg. jur.* See the twenty-second article of this section.

³ § ult. *Inst. quid mod. toll. obl.*;—l. 35, *D. de reg. jur.*

⁴ L. 39, *D. de pact.*;—l. 21, *D. de contr. empt.*;—l. 99, *D. de verb. obl.*

⁵ L. 34, *D. de reg. jur.*;—l. 168, § 1, *ead.*

⁶ L. 34, *D. de reg. jur.*;—l. 114, *ead.*

puted one by another, in giving to each one the sense which results from the tenor of the whole deed; and even from what is set forth in the preamble to it.*

XI.

170. *4th Rule. The Intention to be preferred to the Expression.*— If the words of a covenant appear to be contrary to the intention of the contractors, which is otherwise evident, we must follow this intention, rather than the words.^a

XII.

171. *5th Rule. Of Clauses that have a Double Meaning.*— If the words of a covenant have a double meaning, we must take that which is most conformable to the common intention of the contractors; and which has the greatest affinity to the subject-matter of the covenant.^b

XIII.

172. *6th Rule. Interpretation in Favor of him who is obliged.*— The obscurities and uncertainties of the obligatory clauses are to be interpreted in favor of him that is obliged, and we must always restrain the obligation to the sense which diminishes it.^c For he that obliges himself is willing only to be engaged for as little as he can, and the other party ought to have taken care to have it clearly explained what he pretended to.^d But if there are other rules which demand that the interpretation be made against the person who is obliged, as in case of the following article, the obligation is extended according to the circumstances. And in general, when the engagement is sufficiently understood, it ought neither to be extended nor restrained to the prejudice of one party in favor of the other.^e

XIV.

173. *7th Rule. Interpretation against him who ought to have explained his Meaning.*— If the obscurity, ambiguity, or other de-

* In the same manner as we interpret the several parts of a law. *L. 24, D. de legib.*; — *l. 134, § 1, D. de verb. oblig.*

^a *L. 219, D. de verb. sign.*; — *l. 6, § 1, D. de contr. empt.*; — *l. 7, in f. D. de suppl. leg.*

^b *L. 67, D. de reg. jur.*; — *l. 80, D. de verb. obl.*

^c *L. 47, D. de obl. et act.*; — *l. 38, § 18, D. de verb. oblig.*

^d *L. 99, D. eod.*; — *l. 109, D. de verb. oblig.*

^e *L. 3, D. de rob. cred.*

fect of expression, be an effect of the knavery or fault of him who ought to explain his intention, it is to be interpreted against him, because he ought to have explained distinctly what his meaning was. Thus, when a seller makes use of an equivocal expression concerning the qualities of the thing which he sells, his words are explained against him.^a

XV.

174. *8th Rule. The alternative Obligation is in the Choice of him who is obliged.*— If one is obliged indeterminately to one or other of two things, he is at liberty to give that which he pleases, if the covenant contains nothing to the contrary.^b

XVI.

175. *9th Rule. Obligations of Things whose Goodness and Value may reach to more or less.*— In the covenants, where one is obliged for things whose value may reach to more or less, according to the difference of their qualities, such as provisions,^c some kinds of works,^d or other things, the obligation is not extended to that which is best, and of the greatest price, but is moderated to that which is called good and merchantable.^e And the debtor, for example, who owes wheat, discharges himself of his obligation, if he gives wheat that is good and vendible; because it is presumed that the contractors did not think of any other but that which is of common use. But if the covenant regulates that which is due, or if the intention of the contractors appears by the circumstances, we must hold to that.^f

XVII.

176. *10th Rule. How the Price of Things is regulated.*— If in a covenant the parties omit to regulate the price of a thing,^g it is to be estimated neither at the highest nor lowest price,

^a *L. 39, D. de pact.*; — *l. 21, D. de contr. empt.*; — *l. 33, D. de contr. empt.*; — *l. 172, D. de reg. jur.*; — *V. l. 69, § 5, D. de evict.*; — *l. 39, D. de act. empt. et vend.* See the tenth article of the third section of *Hiring and Letting to Hire*; and the fourteenth article of the eleventh section of the *Contract of Sale*.

^b *L. 10, in fine, D. de jur. dot.*; — *l. 25, D. de contr. empt.*; — *v. l. 21, in fine, D. de act. empt.*

^c *L. 75, § 1, D. de verb. obl.*; — *d. l. § 2*; — *l. 52, D. mand.*

^d *L. 54, § 1, D. de verb. oblig.*

^e *L. 19, § 4, D. de act. ed.*; — *l. 18, eod.*; — *d. l. 18, § 1*; — *l. 16, § 1, D. de op. lib.*

^f *L. 75, § 2, D. de verb. obl.*; — *V. l. 52, D. mand.*

^g *L. 16, § ult. D. de pign.*