

Chap. 2.

Of Obligations arising from Quasi-Contracts, or improper Contracts.

Because all Obligations cannot be confined to the general and regular Names of Contracts, Law doth allow some to pass under the Name of Improper or Quasi-Contracts, or Engagements which are formed without a Contract or by Accident, so called from the Resemblance they bear to Contracts.

A Quasi-Contract, is an Improper Obligation created by the presumed Consent of two or more Persons, arising from some Fact or Affair without any previous Agreement or express Consent called therefore in the Roman Law *Conditio ex re veniens*. Which Obligation founded in Equity and the Law of Nature, is without the Assistance of positive Law, as strongly binding as that which springs from a direct Contract. It is formed either by the Will or Deed alone of him who engaged himself without Participation of the Person to whom he is engaged; or even without the Will of either of the Parties by a mere Effect of the divine Providence or by Accidents and Events brought to pass by God without our Participation. Quasi-Contracts are many, according to the great Variety of humane Deeds and Business, some whereof as the Quasi-Contract between Heirs and Executors, and the Creditors of one deceased; and between one and their Tutor and Curators are handled elsewhere in their proper Places; I shall here take Notice only of these following.

~~Restitutio in integrum, seu in forma non secuta.~~

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The having Possession of a Thing given to one for something to be done on his Part, which he hath not performed, as Gifts in Contemplation of Marriage, after the Treaty is broke off and the Parties Design proves abortive. l. 7. §. ult. l. 8. ff. de cond. caus. dat. or if the Marriage dissolve within Year and Day without a living Child heard cry; which the Heir is obliged to restore, and if he refuse, may be recovered from him by an Action called *condictio* ^{causa} *non secuta*. Law interprets *causam non secutam*, where the Cause becomes impossible and so the Obligation ineffectual; and not where it is prestible, tho' not presently performed. There are innumerable Instances of Restitutio ^{causa} *non secuta* upon this ground, where any Thing come into the Possession of another, in Consideration of some lawful future Deed or Event on his Part, must be given back upon the not Performance or Failure. Thus a Bond for a Practice Fee may be reduce *pro tanto* and proportionably to the ^{Summe} the Apprenticed =ventures 5 June 1714 *Jun contra Frazer*. A Bond granted by a Man to

to his Lady for a Life Rent Annuity, in Respect of her disposing to their Son the Fee of her Heretage, was found null *causa data non secuta*. Because the Disposition was never delivered, and tho' bearing a Clause *visu* = pending with the not Delivery, appeared cancelled in her Custody after her Husband's Decease, and she was presumed to have cancelled it; albeit she offered to renew the Disposition which her Son declined to accept of 19 July 1711 Lady Greenock contra Sir John Schaw of Greenock her Son. But a Bond bearing borrowed Money, and Renouncing all Exceptions in the common Law, granted for the proceeding Cure of a Disease, was sustained. Altho' the Debtor offered to prove that the same was not effectually cured, but broke out after granting of the Bond worse than ever, thro' the Creditor who was a Doctor his Negligence in overseeing the Medicaments dispensed, and his misapplying them. 24 Decemb. 1708 *Frotter contra Telfer*. A Bond narrating that three Persons therein named had at the Grantors Desire accepted the Oversight of his Intermment, and Curators of his Children, which would require Trouble and Expence; and therefore obliging him to pay a certain Sum equally among them. In short and the next Term thereafter. Was found ineffectual in Favour of one of these Overseers, who died a little after he was seen at the Intermment of the Grantor of the Bond, the Term of Payment being elapsed, Altho' he had not lived to be at Trouble or Expence, in overseeing the Children 24 July 1707 *Rule contra Children of Reid*.

^{Restitutio in integrum, seu in forma non secuta.}

Where any Thing is received for an unjust Cause, Law obliges the Receiver to restore it to the giver, if he was innocent, and confiscates it if guilty. Altho' the Receiver had performed the unlawful Engagement in which he got it. Restitutio upon this Head is not as the former grounded upon the Want of a plenary Consent in the Giver to transfer the Property, but from Law which disappoints the Effect of Deeds and Gifts arising from an unlawful Cause or Motive. By unlawful Causes we understand here not only those which are prohibited by some express Law, but all those which are contrary to Equity, Honesty or good Manners, altho' there is no written Law which makes Mention of them. For whatever is contrary to Equity, Honesty or good Manners, is contrary to the Principles of both divine and human Laws. A Fact may be safe and unlawful ^{only on} the Part of him who gives: As when a Man makes a present under Pretext of Civility to a virtuous Woman with a Design to debauch her, who knew Nothing of his unjustifiable Intention; or makes a present to one who he knew would be his Judge or Arbitrator, and who on his Part was altogether ignorant of the Motive of the said Present. In which case the Receiver will not be obliged to give back the Thing received, unless it be that the Circumstances require his Duty in another Manner as when such Motive comes afterwards to the Judge or Arbitrator's Knowledge before he hath determined the former's Affair *Les Lois civiles* ec. Tom. 1. Part 1. Liv. 2. Tit. 7. Sect. 2. Art. 1 & 2.