CHAPTER XVI.: The Interpretation of Treaties

I. If we consider the promiser alone, he is naturally bound to fulfill his engagements. Good faith, observes Cicero, requires that a man should consider as well what he intends, as what he says. But as acts of the mind are not, of themselves visible, it is necessary to fix upon some determinate mark, to prevent men from breaking their engagements, by allowing them to affix their own interpretation to their words. It is a right, which natural reason dictates, that every one who receives a promise, should have power to compel the promiser to do what a fair interpretation of his words suggests. For otherwise it would be impossible for moral obligations to be brought to any certain conclusion. Perhaps it was in this sense that Isocrates, treating of agreements, in his prescription against Callimachus, maintains that the laws enacted on this subject are the common laws of all mankind, not only Greeks, but barbarians also. It is for this very reason, that specific forms have been assigned for treaties, which are to be drawn up in terms of unequivocal and certain meaning. The proper rule of interpretation is to gather the intention of the parties pledged, from the most probable signs. And these are of two kinds, namely, words and conjectures, which may be considered either separately, or together.

II. Where we have no other conjecture to guide us, words are not to be strictly taken in their original or grammatical sense, but in their common acceptation, for it is the arbitrary will of custom, which directs the laws and rules of speech. It was a foolish act of perfidy therefore in the Locrians, when they promised they would adhere to their engagements as long as they stood upon that soil, and bore those heads upon their shoulders, in order to evade their promise to cast away the mould, which they had previously put within their shoes, and the heads of garlic, which they had laid upon their shoulders. Acts of treachery like these, Cicero, in the third book of his Offices, has properly observed, instead of mitigating, tend to aggravate the guilt of perjury.

"In all human affairs, where absolute certainty is not at hand to point out the way, we must take probability for our guide. In most cases it is extremely probable that the parties have expressed themselves conformably to the established usage: and such probability ever affords a strong presumption, which cannot be overruled but by a still stronger presumption, to the contrary. Camden, in his history of Queen Elizabeth, gives us a treaty, in which it is expressly said that the treaty shall be precisely understood according to the force and appropriate signification of the terms."—Vattel, b. ii. ch. xvii. sect. 271.

On the same subject, Judge Blackstone says, that "words are generally to be understood in their usual and most known signification; not so much regarding the propriety of grammar, as their general and popular use."—Introduct, to Com. ch. ii. p. 59.

Referring Principles:
IV.5.1 - Intentions of the parties