

CHAPTER II. EFFECT OF ~~A~~ CONTRACT.

369. – A party to a reciprocal contract may refuse to perform his obligation until the other party [performs or] tenders performance of his obligation. But this does not apply, if the other party's obligation is not yet due.

(J. 533; G. 320 – 2; Fr. 1612 – 3; S.O. 82 – 3).

370. – If the object of a reciprocal contract is the creation or transfer of a real right in a specific thing, and such thing is lost or damaged by a cause which is not attributable to the debtor, the loss or damage falls upon the creditor.

To a non-specific thing the provisions of the foregoing paragraph apply from the time when the thing has become specific in accordance with the provisions of Section 195 paragraph 2.

(J. 534; c/p G. 323).

371. – The provision of the foregoing section do not apply, if the thing which forms the subject of a reciprocal contract depending upon a condition precedent is lost or destroyed while the condition is pending.

If the thing is damaged by a cause ~~whether~~ [not] attributable to the ~~debtor~~ [creditor] ~~or not~~, the ~~creditor~~ [latter], when the condition is fulfilled,

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may at his option **[either]** demand **either** performance **of the-**
contract with reduction of his counter performance or rescind
the contract; provided that in the case where the cause of the
damage is attributable **at [to]** the debtor, the creditor's right to
compensation is not affected thereby.

(c/p J. 535).

372. – Except in the cases mentioned in the two foregoing
sections, if an obligation becomes impossible of performance by
a cause not attributable to either party, the debtor has no right
to receive the counter performance.

If performance becomes impossible by a cause
attributable to the creditor, the debtor does not lose his right to
the counter performance. He must, however, deduct what he
saves in consequence of release from the performance, or what
he acquires or **ma[il]**iciously omits to acquire by a different
application of his faculties. The same rule applies if the
performance due from one party becomes impossible, in
consequence of a circumstance for which he is not responsible,
at the time when the other party is in default to acceptance.

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