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MODUS ET CONVENTIO VINCUNT LEGEM.

It is proper at the outset to endeavour to understand the exact meaning of this important maxim of the law.

Taken in the strictest sense of the words used, when translated into English, it expresses a proposition essentially different from that which it is intended to affirm. The student of English law would make a very serious mistake if he accepted its meaning as that stated by Broom in the ninth chapter of his *Selection of Legal Maxims*, viz., that "the form of agreement and the convention of the parties overrule the law" (a). Still less does it establish the possibly more alarming rule evolved from its literality by Coke (2 Inst. 73) i.e., "Custom and agreement overrule law" (b), although the honours of translation may fairly be divided between the two commentators.

A more correct rendering of the principle which the maxim seeks to embody is given by Ulpian: "Contractus legem ex conventionione accipiunt" (c). But, taking the maxim as couched in its familiar phraseology, it is quite obvious that a great deal of difficulty would be avoided if the word 'vincunt' were translated 'secure' or 'establish,' as it properly may. In no sense is it true that citizens may overrule the law of the State by their private agreements,—"*Privatorum conventio juri publico non derogat*" (d). But it is possible for the parties to a contract to secure, under certain restrictions, legal relations between each other which are unique and peculiar,—in other words, they establish a 'conventional law' for themselves.

(a) Dr. Broom's own excursus on the maxim shews this definition to be misleading.

(b) On the contrary, custom may make the law but not overrule it.

(c) Dig. xvi., 3, fr. 1, § 6, and see Puffendorf, *De Jure*, etc., v., c. x., § 5, n. 1.

(d) Dig. 59, 17, 45.