

on which such Right depends. A Right given to one is understood to be granted also to his Heirs or Executors, the text expressly mentions 25. an 1628. *Summe contra Summe quia contrahens sibi, confetur prospicere*. *Redibus l. 9. ff. de prob. l. 13. C. de contrah. Stipul.* unless in the Right there be some special Respect to a certain Person, as in the case of *Trusts* &c. *Stat. Lib. 3. tit. 5. §. 5.* That Heirs were formerly under an obligation to pay a yearly *Annua rent* resting to the Decessor, the mention'd not to whom it was to be paid 2 Feb. 1662. *Pauvic contra Diket.* It is free for Persons that are capable of using their Rights to renounce what the Law has established in their Favour, as *episc. et cleric. l. 29. C. de pact.* But this Liberty of renouncing Right, does not extend to cases in which third Persons have an Interest, or where the renouncing of ones Right would be contrary to good Manners or is prohibited by Law *l. 74. ff. de reg. jur. l. 7. §. 4. ff. de pactis Les. l. 1. c. 1. l. 1. Liv. prelin. Tit. 1. Sec. 2. §. 27.*

The Subject Matter of a Right must be a Thing in Commerce. Some Things are altogether exempted from Commerce, as those set apart to a sacred Use, or belonging to the Publick &c. *Stat. de empt. vend. l. 1. Tit. of Honour ii July 1633* *Elephant contra Elephant.* Some Things are not altogether exempted from Commerce, cannot warrantably be disposed by the Owner in Favour of particular Persons as *contrabans* Goods to Enemies. Other Things some persons are discharged to purchase, in others are not. As Members of the College of Justice or of inferior Courts or any Person to their Behof, are prohibited to buy depending Pleas, or litigious Rights, upon Pain of losing their Places and all the Privileges thereof Act 216. *Par. 19. J. C. vid. infra* *Page 295.* Apparent Heirs were in the Year 1695 restrained from purchasing any Rights to their Predecessor's Estate, otherwise than fairly at a publick Roup, upon Pain of being liable as Heirs, *Stat. 24. Sep. 5. Par. K. W.* But such apparent Heirs as before that Time had purchased partial Rights to their Predecessor's Estates, were allowed to proceed in purchasing according to the Law before in force Act ii. *Seb. 6. Par. K. W.* The Maker of a Right should not only be under no Prohibition to be alienated, but also should be in Mans Power to grant. For no Person can be bound to what is simply impossible. *§. ii. Inst. de inutil. stip. l. 105. ff. de reg. jur. l. 131. ff. de oblig. et act. unlawfull or dishonourable, l. 137. §. 6. ff. de verb. oblig. l. 9. l. 14. ff. de condit. instit.* Now is the Obligation liable for the Value of these or to pay a Penalty in Case of not performing. I say that Things simply impossible, are not the habile Subject of Obligation. A Man may oblige himself to do something not in his own Power, as to cause another dispose Lands, and will, if he fail be liable for the Value of the Land and Interest, or for the Penalty. In which Sense the Rule *loco facti impossibilis*

*subit damnus et interesse*, is to be understood *Stat. Just. Tit. 1. lit. 10. §. 1.* Vers. Thirdly. *MacLennan Just. Tit. 3. §. 2. 3.* The Matter of a Right must also be such as Law allows of. *Precept* was sustained against an. for Payment of a Sum which he had promised to pay to the Plaintiff in Case he the Plaintiff should be married upon the Plaintiff giving him a Piece of Gold in the mean Time, which he the Plaintiff refused to give. *Precept* happened to marry, the sum of the Money was of Operation that *Sponsio* Judicia of that Nature might not be all-void. *Tit. 1. Sec. 327.*

*Pactum de quota litis*, is a Promise made by one Party to another of the future Profit of a depending Plea, & commonly is made before the Plea is begun. *Law l. 53. ff. de pact. l. 5. C. de postul.* It is by our Law, *Stat. de iur. Jur. l. 1. de iur. ansa calumnia*, & prevent *Stat. de iur. Jur. l. 1. de iur. ansa* in Pleas. Where an Advocate takes a *quota litis* in a depending Plea, it should be decreed in a depending Plea the *quota litis* should be given, will even at the Instance of the Debtor, he not married in the Court, the more the *Pactum*; but that the Right was granted *de quota litis*, was admitted to be proved by the Advocates Oath, and not by the Clients Oath. 23 June 1606 *Ruthven contra Weir*, by the Civil Law, an Advocate making a *judicium de quota litis* is to be deprived of his Office. *l. 5. C. de postul.* But the Client who made such a *quota litis* with his Lawyer, incurs no Censure or Prejudice; the Law being calculated for the Advantage of distressed Clients, to hinder ravenous Advocates, & to prevent them from making a Prey of them. *Drasp. Par. de var. ac divers. crim. quest. 106. n. 66.* No Conveyance or Promise thereof relating to Lands in Suit by a Father to his Son, or by any Ancestor to his Heir, apparent is forbidden, since that only gives them the greater Reason & Argument to do, what by Nature they are bound to do. *Like 2. Inst. 567. Hawkins Pl. Cr. Ch. 64.* Now is the giving of Part of the Thing in Suit, after the End of it to a Counsellor for his Wages, quarrellable, if it evidently appear that there was no precedent Bargain relating to such Gift. *Hawkins Pl. Cr. §. 19.* A Writer employed by an apparent Heir to purchase with the Writers own Money Assignation to a Debt due by the Predecessor, having thereupon adjudged the Predecessor's Estate, did then grant a *Back-Bond* obliging himself to decide in Favour of the Apparent Heir upon Payment of the Sum given for the Assignation, and the Expence of the Plea, and retaining to himself a fourth Part of the Subject adjudged for the Hazard he undertook and his Pains; That Agreement for Retention of the fourth Part, was not annulled