

Such a Loan is given either for a certain Time and particular Use; or is given to be used so long as the Lender pleases which is called a precarious Loan. Belibiat these two the Roman Law distinguishes carefully.

J.

Of an ordinary Loan for a certain ^{Time} and particular Use.

Such a Loan is a Contract, by which one gives a Thing to another for a special Use, on Condition, that after he hath used it so long as his occasions required, the same individual Thing be returned, in as good Condition as it was when lent without paying any Hire or Reward for the Use of it §. 2 Inst. quod pro. re cont. oblig. This is termed in Latine Commodatum, quasi commodatum, to be used in a certain Manner, or quasi commodatum, because it is profitable to the Borrower. Whick Contract is of frequent Use, and absolutely necessary in Society; Seeing it were inconvenient for one to buy or hire every Day Things he has Occasion to use but a little Time. It may be made not only verbally, but even without Words by any intervening Sign of the Parties Meaning. Thus a Member in Parliament having taken out his Watch to see what Hours it was, and given it according to the ordinary civility to one sitting by him, who upon that some Account put forth his Hand for it without uttering any Words; the Receiver was found obliged as a Borrower to restore the Watch to the Lender, albeit at the same Time he the Borrower lent it to another, upon the like Sign made by him of a Desire to look the Hours, in Presence of the Owner who did not oppose his doing so; In Respect the handing over the Watch to the second Borrower was so sudden an Act, that the Owners Silence could not import a Consent to it 3 July 1662 L. Cooper contra L. Ditzeligo.

Diligence ordinarily required from a Borrower in keeping and using the Thing lent varies according to Caution, or according as the Thing is lent for his or the Lenders Use and Behoof. He who borrows a Thing for his own Use, as a Horse is made a journey for his own Business, is obliged to take Care of it with all the Exactness that is usually observed by the most diligent Persons; and is to answer for all the Loss and Damage happening for Want of such Care (see l. 5. §. 2. ff. commodati. For seeing he has the free and gratuitous Use of that which is lent him, he ought to preserve it with all the Circumspection that is possible to be used by the most careful Persons. ~~When~~ a Thing is borrowed for the mere Behoof of the Lender as a Horse to go into the Country about his Affairs; the Borrower is liable only for what may happen thro' his Fraud, or any gross Fault that is next Door to it l. 5. §. 1. ff. commodati. If the Loan be given for the common Advantage of both Borrower and Lender as a Horse to the Lenders Co-partner, to go and look after the common Concerns of the Company; the Borrower must answer for what falls out thro' his Neglect of that Care, which a discreet and diligent Man takes in his own Concerns l. 10. pr. ff. commodati. Tho' the Borrower was not more careful in his own Affairs, than he was with Respect to the Thing lent. But if it has been agreed

agreed what Care the Borrower should take of the Thing lent, such Agreement is the Rule of his Diligence l. 23. ff. de reg. jur.

Seeing the Lender remains Proprietor of the Thing which he lends, if the Borrower has used it only during the Time, and for the Purpose to which it was lent him, and it perish or be diminished, without his Fault by Accident or by the bare Effect of the Use which he had Right to put it to; the Owner bears the Loss unless the Borrower took upon him all Accidents either expressly, in which Case it perishes to the Borrower, who must answer to the Lender for the true Value l. 1. C. de commod. Or tacitly, as when a Thing lent is estimated between the Lender and Borrower, prior to it, just what the Borrower shall restore, in which Case if he do not restore the Thing itself, he shall be accountable for this Value, altho' the Thing should perish or be diminished by an Accident l. 5. §. 3. ff. commodati. l. 6. §. 1. ff. de acquir. act. To he who lends in this Manner over it, that he may secure to himself in all Events the Recovery either of the Thing which he lends or of the Value of the Thing perished; which is an alternative Obligation upon the Borrower. But the estimation a Thing lent to a certain Value to be paid in Case of the Loss or Detraction thereof signifies only the Value to be received in such an Event, and doth not make it Commodatum estimation, or give the Borrower his Option to restore or pay the Price. Therefore the Contents of a Loan for the Defense of a Town against the Enemy in these Terms; to restore them without Skilth Part or Damage one in Case of Damage to pay 500 Merks for them at the agreed Price; was found not to make in Peril the Borrower, or to oblige him to pay that Price where the Loans were taken away by the Enemy, and set Diligence done by the Borrower to preserve them 17. Febr. 1663 Dinean contra Town of Arbroath.

If the Lender declares for what Use he lends the Thing and for what Time, his Intention shall serve as a Rule, and if the Thing lent be used to another Purpose than that for which it was borrowed it perishes to the Borrower and he is answerable for Chances tho' inevitable l. 5. §. 3. C. de commodati. and commits a Kind of Theft l. 40. ff. de furt. When the Use to which a Thing borrowed is to be employed, is not regulated by the Contract, it is limited to the natural and ordinary Service that may be had from it. Thus he who lends a Horse, is presumed to lend him for a Journey, and not for the War Les Loix Civiles de. Tom. 1. Part. 1. Liv. 1. Tit. 5. Sect. 1. Art. 9.

Not only Things movable but also immovable as House or Land may be lent l. 5. §. 4. C. de ff. Commodati. Yea any Thing may be given in Loan, that doth not perish in the using. And Fungibles or Things which cease to be by the using, may be lent to pompam, or any other Use than that of Consumption, as Money to one that he may seem rich, or may make a Tender or feigned Consignation therewith l. 3. §. ult. l. 4. ff. commodati. On Condition that the Borrower take it up again and restore the same in specie. One may lend what is not his own and only belongs to other Persons l. 15. C.