

l. 16. ff. Commod. in Order to produce the Action Commodati for returning the Thing lent, and exempting the Borrower from the Imputation of Theft upon the Score of his Detaining or using thereof. But such a Borrower hath not ~~any~~ ^{hereditarily any} Title to detain effectually the Thing lent till his Day, if recalled sooner by the Owner. He who has lent a Thing cannot take it back till it has served the Use for which it was lent l. 17. §. 3. ff. Commod. Because tho' it was free for him not to have lent it, yet having lent it he ought to stand to the Agreement. Every Loan contains a determined Time either expressly, as when the Use of a Thing is allowed till a certain Day, or tacitly as when a Book is lent to be copied, or a Horse to ride a Journey, which implies the Use of these Things for such a competent Time as the Book may be copied, or the Journey perfected Les Lois Civiles l. 10. Art. 10. Because a Lender should suffer the Borrower to reap Advantage of the Favour he bestows on him and ought not to turn his Kindness into an Injury or Mischief. The Lender may according to the Opinion of some Lawyers at any Time require back what he lent to another, if he hath reason to use for it himself. Quia quilibet sibi proximus, Lampac. Jurisprud. forens. Part. 2. Const. 37. Def. 6. Loes

But others think that this Privilege ought not to be indulged to the Lender so. Voet. Comm. ad Tit. ff. Commod. n. 9.

The Lender has Action against the Borrower (called in the Civil Law actio commodati directa) for causing him to restore the individual Thing lent in as good Condition as he got it 28 Novemb. 1626. ^{con.} Mohat at the Time and Place agreed on l. 5. ff. Commod. and to answer for any Prejudice it hath sustained thro' his Neglect, or for his using the same in any other than the agreed or intended Manner and to account for any other Damage he has been the Cause of thro' his not performing his Engagement to the Lender. But if the lent Thing was employed only to a Battle, or Cloaths to be worn, the Receiver is not liable, tho' the Horse become leaner by the Travail, or be wounded in Battle, or the Cloaths become worse thro' the wearing, without the Borrower's Fault l. 5. §. 4. & 7. l. ult. ff. Commod.

Again, he to whom a Thing is lent hath Action against the Lender (term'd in the Civil Law actio Commodati contraria) ^{a cross action of Loan} for Damages and Interests thro' his recalling the Thing borrowed too soon before the Time to which it was lent l. 17. §. 3. ff. Commod. 2. For Loss sustained by the Vitriosity or Faultiness of the Loan, if known to the Lender, and he did not forewarn the Receiver thereof: As if to prop up a Building he had lent Timber which he knew to be rotten; if to hold Wine or Oyl he had lent Vessels which he knew to be spoiled l. 17. §. 3. l. 18. §. 3. l. pen. ff. Commod. For we lend to do Service, and not to do Mischief. 3. The Borrower is intitled to recover by

by Way of Action any considerable or extraordinary Expences necessarily bestowed on the Thing lent, as in curing a Horse of some Distemper by a Hurt which he received without any Fault of the Borrower: But can expect no Allowance for any small or inconsiderable Expences necessary to preserve the Horse in the same State he was lent, or to fit him for performing the Use he was lent for such as large laid out for feeding or housing him l. 18. §. 2. ff. Commod. which the Use of the Horse should compensate.

2.

Of a Precarious Loan.

A Precarious Loan is a Contract whereby any Thing is lent gratis, to be used by the Borrower during the Time that the Lender is willing to let him have it, and to be restored whenever the Owner is pleased to call for it l. 1. §. 1. & §. 2. l. 2. §. ult. ff. de prec.

A Precarious Loan differs from a common Loan in some Things. 1. Whereas the latter is given for a Time proportioned to the Necessity of the Borrower or regulated by the Contract, the former is indeterminate and lasts no longer than during the Lender's Pleasure. However this is not to be extended to an incident Liberty of taking back the Thing without any Delay, and at an unreasonable Time, which might occasion Damage to him who was using it; but such a Time ought to be allowed for restoring the Thing is where as to be reasonable by the Circumstances l. 3. §. 3. ff. de Quod. l. 30. l. 33. ff. de reg. jur. Les Lois Civiles l. 10. Art. 10. l. 11. §. 1. l. 15. l. 16. §. 2. A Precarious Loan may not only be recalled by the Lender when he thinks fit even before it is yet at all; but also determined and expires by the Death of the Borrower l. 12. §. 1. junct. l. 14. ff. de precar. Because it is an Act of personal Friendship and goodwill to one without any Respect to his Heir. Domat. Les Lois Civiles l. 10. Art. 10. l. 13. §. 1. will have a precarious Loan to be at an End also at the Death of the Lender: Because Precarij Rogatio ita facta quoad is qui desisset vellet, morte eius tollitur. l. 4. ff. Locati. But that a Precarious Loan continues after the Lender's Death, till his Representative recall it is clear l. 8. §. 1. l. 12. §. 1. ff. de precar. Not doth the Text of Law founded on by that learned Civilian, support his Opinion: Because in the singular Case of that Law, a precarious Loan expressly destined to last during the Lender's Will or Pleasure, is not dissolved by the Lender's Death according to the Nature of a Precarious Loan, but because of these Words quoad vellet added to the precarious Loan, and his Will in that Matter was discontinued by his Death so. Voet. Comm. ad Tit. ff. de precar. §. 4. in fin. 3. An ordinary Loan for the Borrower's Use obliges him to