

to graze a Horse committed to his Care, whom the Owner appointed to be kept at hard Meat, was found liable for the Price of the Horse. In Respect the Horse while he was grazing fell over a Rock and broke his Neck, and the Order to keep the Horse within at hard Meat was found probable by Witnesses, seeing it was Part of the Bargain between the Seller and the Owner of the Horse 29 January 1667 Scot contra Gib.

The Thing deposited must be restored when the Depositor thinks fit to call for it l. s. §. 22. ff. Depos. Albeit it was agreed, that the Depositary should keep it for a certain Time d. l. s. §. 45 & 46. l. ii. C. 100. This Contract being made in Favour of the Depositor, and no Prejudice succeeding the Depositary from a more sudden Demand, which only easeth him of the Burden of Custody. But on the other Hand the Depositary cannot agree to the Depositors Will, and himself of the Trust committed to him before the agreed Time is expired without a just Cause l. s. §. 2. ff. Deposit. <sup>the Thing</sup> deposited continues to be the Depositors without any Right thereto transmitted to the Depositary l. s. §. 1. ff. Depositi l. §. 1. de rei. vind. By whom it is to be kept and not used: For the Depositary using it is guilty of Theft §. 6. ff. de obli. qua. ex del. nasc. Wherein ~~it differs~~ it differs from Statutum and Commodatum. If this Contract degenerate into Hiring and Letting to Hire, where the Depositary wants let out his Care. The Thing deposited must be restored with the Produce i. e. the Fruits and Profits. A Depositary of perishable Commodities as Salt and other Materials for Fishing, having disposed of them for his own Use, in Respect the Owners did not call for them in due Time, and Redelivery of those Goods being required afterwards, when the Value of them was raised to a great Height by Reason of the Union between Scotland and England, the Depositarys unwarrantable Intromission with them was sustained, <sup>relevant</sup> to make him liable not for the Price they might have been sold at at the Time when they were deposited; but for the Price of such Goods at the Time of the Requisition. In January 1755 Watson of Murrhouse contra Murrhouse of Applecroft. He who has undertaken the Charge of a Stock of Sheep, must restore the Wool and the Lambs which they produce. Where a Cabinet or Coffer is sealed up under Lock and Key, the Depositary is bound to restore it in the same Condition sealed or locked as he received it: And is answerable for every particular contained therein, whether these were shewn to him or not l. s. §. 45. ff. Depositi. And because of the acubert Trust in this Contract, the Depositor is allowed to prove the Particulars wanting and their Value by his own Oath in litteris secundum pretium affectionis l. s. §. 26. ff. Depositi 3 January J. Chapman contra Brand. Stair Lib. s. Tit. 13. §. 50. So that M. Domats Distinction Des Lois civiles de. Tom. 5. Part. 1. Liv. 5. Tit. 7. Sect. 5. Art. 17. betwixt the giving a Coffer sealed without letting the Depositary know what is in it, and the shewing him all ~~the Contents~~ the Particulars therein, as if in the former Case he

he were bound <sup>only</sup> to restore the Coffer in the same Condition, without being accountable for the Things the Depositor may pretend to have put in it: Is not warranted by the Text of the Civil Law (d. l. s. §. 45. ff. Depositi) cited by him as his Voucher. For that determines the contrary, and makes the Depositary answerable for every Thing in the Coffer whether shewn to him or not. That learned <sup>Lawyer</sup> has excerpted only the Opinion of Trebatius relative in that Text, without taking Notice of its being therein overruled by the Opinions of Sabes and Ulpian. And incivile est nisi tota servel lege perspecta, una ut una ejus particula proposita judicare vel respondere l. 24. ff. de legib. Depositi. By the Nature of this Contract is to be restored in the Place where it is kept, whether it was deposited there or not: And the Depositary is not obliged to transport it in Order to deliver it, unless he has knowingly removed it out of the Place where he ought to have kept it l. 32. §. 1. ff. Depositi. But the Depositor is bound to go and fetch it, and to be at the Charges of transporting it if any are necessary, or to reimburse the Depositary if he has advanced the Money d. l. 12. pr. ff. Depositi. Arg. l. 32. de ult. ff. Legat. l. 15. §. 2. l. 59. ff. de hert. Stair Lib. s. §. 45. ff. for Example he was obliged to give a Mable for keeping a Horse left in his Trust, or has been at the Charge of Maintenance of Cattle committed to his ~~Care~~ Care. But he cannot claim the Depositum with him, or some part of other extrinsecal. But owing to him of the Depositor or Master of the Thing deposited, even when it were another Deposition. But he must first answer his Trust, and each Depositary is obliged to restore the Thing deposited with him or in his Name l. ii. C. Depositi l. ult. C. de compon. in fin.

That a Writ out of the Hand of the granter was deposited upon Terms, and proved only by the Writ or Oath of the Person in whose Favour it is conceived, and not by the Depositary's Oath: Who, as a named Keeper of the Writ subject to what Law requires of such as have the Custody of what belongs to another, can never exoner himself by his own Affection. Because Delivery of a Writ out of the Granter's Hand is presumed, unless redargued by the Writ or Oath of him whose Name is therein filled up: And if a Depositary's Oath were sustained to prove the contrary, it were absolutely in his Power to make the Obligation subsist or not Stair Lib. s. §. 4. But that a Writ out of the Granter's Hand was never delivered but only deposited in a third Partys Hand, was found probable by the Oaths of the Depositary and instrumentary Witnesses: In Respect the Writ was not produced by the Party to whom it was principally granted, but by another in whose Favour a Clause therein was conceived 5 July 1662. Drummond contra Campbell. The Terms of depositing are either Expressed or presumed. The expressed Terms are ever to be observed, and may be chiefly proved by the signed Writ of the Depositor and Depositary, which cannot be taken away by the Depositary's Oath 24 Feb. 1678 Cowan contra Ramsey. But the Terms where they are not in Writing, may be proved by his Oath, the Deposee