

Things common to Contracts and other Rights conceived in Writ have been already set forth (vid. Supra Part. 2. Book. 3. Chap. 2.) and the peculiar Nature and Effects of the distinct Obligations of Parties in the several Kinds of written Contracts are treated of in the proper Places.

Feb. 4.

If Contracts perfected by sole consent.

These are selling and buying, letting out and hiring, Partnership and Donate or Commission.

Sept. 5.

of Selling and Buying.

Selling and Buying, is a Contract by which one gives a Thing for a Price in current Money; and the other gives the Price to have the Thing. The Name of this Contract is borrowed from both the Parties to denote the Unity thereof: for so far as Seller and Buyer are Correlatives, one whereof cannot be without the other. It was introduced to obviate the Inconveniences attending the Exchange of one Thing for another: It being found difficult to supply what was wanted in both Kinds, and to proportion the Value of Things mutually given: besides the chargeable Goods in Order to Barterings. All which Inconveniences are saved by the Invention of publick Coin which having its Value regulated and known makes the Price of every Thing that is capable of being estimated l. i. p. f. de contrah. empt.

A Sale is either Public and open by Auction or Retail; Or Private,

A Sale by Way of Auction or Roup, is when publick Intimation is made: a Day when, and the Terms upon which the Goods are to be exposed to Sale, by ~~the Auctioneer~~ some publick Officer. Term'd Sale by Cont or Auction p. d. It crease, because the Goods are sold to him qui plerumque rem auget, &c. in most for them. Such a publick Sale, is either Voluntary at the Pleasure of the Owner; or necessary, by Decree of Justice, which is a forced Sale, as when Creditors demand that the Goods of their ~~debtor~~ ^{Debtors} be exposed to Sale.

Redhibition, or Diminution of the Price, because of the Defects of a Thing sold, do not take place in publick Sales which are made by Decree of a Court of Justice. For in these Sales it is not the Proprietor who sells, but the Authority of Justice, which adjudges the Thing only such as it is to the Buyer, Les Loix Civiles &c. Tom. i. Part. i. Tit. 2. Sect. ii. Art. 17.

It being an Article of the Roup of a Ship, by Warrant of the Judge
Admiral, that the highest Offerer should be preferred, he forthwith giving
Bond

Bond and sufficient Caution to pay the Price offered to the Clerk of Court, within a certain time after the Auction under a Penalty; and in case of his failing so to do, the immediate preceeding offerer to be preferred, he under the like Penalty granting Bond and Caution as above. The highest Offerer who refused to sign his Offer and to give Bond and Caution for the Price was allowed to free himself from Payment thereof by residing, but being liable for the Penalty &c to much thereof as the Lord's Sale in Modesty 27 January 1710 Hamilton contra Forester. Because Stipulation initials is effectual for the Penalty tho' not for Portinence of tax to - Gauchon 15 June 1697 Sher contra Ship goods ^{received} from India.

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No Person can ordinarily be forced to sell or buy l. s. l. g. f. &c. act. res. amat. But it happens often, that Things which belong to parti-
-cular Persons, are found to be necessary for some publick Use: and
if in these Cases they refuse to sell them for a reasonable Price, they are
forced to it by the Authority of Justice And. Gail. 2. Obseru. 56. n. 7. et seqq.
Gomes. 2. var. resol. cap. 2. n. 51. Corpuzov. Jurisprud. forens. Part. 2. Const.
33. Def. 16. Thus a private Man is bound to sell his Lands or Tenements
if they be found necessary for some publick Work, at a reasonable Price:
As for the Building of a Parish Church, or enlarging it, to make a
Church yard, for making a Street or enlarging it, for making any Fortifi-
-cation or other Work for the publick Conueniency l. s. f. de. eccl. Ordinance
of