of Philip the fair in the year 1303.
Because private Interest of particular Persons should give Way to the publick Interest in necessary Cases. In the Year 1675 when all Houses near the Parliament Close in Edinburgh were burnt, the Privy Council of Scotland decreed the private Heretors of the Waste Ground to sell the same for enlarging the Entry to the Parliament House M.Lenzie Hetero. on Act 22 Dec. 14. J. 6. In the Time of a publick Necessity, and at a Time when there is great Scarcity of Corn, such Persons as have great Plenty of it by them are compelled to sell it at a reasonable Price C. 2. ff. de L. Jul. Annona C. 6. ff. de extraord. Crim. And are not allowed to keep it up in a Dearth or to export it to forein Places. As there uses to be a Restraint of Import from thence, when there is Plenty of Corns at a low Price at Home. The Civil Policy obliges Butchers and Bakers and other Craftsmen and Sellers of Ale Wine Bread and other Victuals to sell their Goods and work at reasonable Rates C. 3. 8. 11. ff. de Off. Praef. Vrb. Act 50. Par. 8. J. 4. Act 30. Par. 4. J. 8. Act. 23. Par. 8. Q. Mar. Act 12. Par. 7. Act 53. Par. 11. J. 6.

The Essentials in a Contract of private Sale are the Consent of Parties the Merchandize or Thing which is Sold and the Price.

The Consent of Parties being a common Essential in this and other Contracts, is already explained supra Par. 503 & 991.

All Things that lay in Commerce, either actually existing or the uncertain Expectation of what may be, as a Draught of Fishes before it is cast or drawn not is, or Net is thrown may be Sold C. 8. 8. 1. ff. de contrah. empt. For a Sale doth not require a positive Certainty of the Thing bought, and it was the Expectation that was Sold, or the Right of having whatever should be taken. Yea the Sale of a Thing belonging to a third Person subsists to make the Seller liable for Damages to the Buyer in case it be evicted by the true Owner, or justly claimed by others in whole or in Part C. 28. ff. de contrah. empt. For since it often happens that the Possessors are not the right Owners of what they possess; and that likewise the Purchasers may not know whither the Sellers are or are not the true Owners of the Things which they sell: It is natural, that one should have Power to sell a Thing of which he is not Master, and the Sale subsists till the true Owner make his Right appear and dissolve the Sale. So the Seller implements his Part by delivering the Goods or Things bought, with the implied Obligation of Warrandice, tho' the Buyer could make it

it appear that they belonged not to the Seller. Whereas in Excambion the Things delivered mine unto might to become the Receiver's, and if either of these appear before Delivery to belong to a third Person, they may be repised Mair lib. 1. Tit. 14. 8. 1. Vers. Secondly. Some Things are altogether exempted from Commerce: As Things Sacred or publick, namely Sea-Ports High-Ways publick Market Places &c. which are of common and publick Use by Law C. 6. pr. ff. de contrah. empt. 8. 5. Inst. Empt. vend.

A Parcel of Brandy that had not paid the Duty fell at an easy Price, upon Account that the Buyers were to run the Risque of bringing it home to their own Houses, being Seized by the Custom-House Officers, the Buyers offered caution for the Price supposing upon their Right to Some Knew a Time they bargain anew to save Circumstances but refused it for the unlawful Nature of Commerce. It is the same Case as a Bargain super re illicita or a Thing simply prohibited: And this was Brandy known by the Buyer to be in the Lands of the Seller by Theft from the Publick, and is more strictly prohibited than stealing from Private Persons. 2. This was not only a Bargain and Commodity whereof he knew had not paid the Duty but an Undertaking to conceal the Import as expressly stipulated. Whatever other Party becomes partaker of any Bargain in their unwarrantable or after he obtains the other Part may subject both to a Penalty, so that a Merit the Suspender who actually received the Brandy the Price did not demanded from him by the Charger. It was the Nature of Brandy to be the Subject of Commerce and ought to be deemed mere illicita the Importation and Use of it discouraged, and Payment of the Duty secured by many Precautions. Whereas if forbidden if either imported in prohibited Seasons or if seized in the Running the Duty may be recovered if the Importation can be proved by the Parties Oath, and the Persons who run it rendered infamous as Perjurers. But here the Law stops: And as all prohibitory penal Laws are to be strictly interpreted so where certain Penalties are enacted, none other or greater can be exacted. Any Agreement for running of Goods unlawfull: That is if a Person bargains with a Runner to run them Ashore, or transport them by Land, both are guilty of trespassing the Law and defrauding the Revenue. But when the Goods are safe in the Proprietor's Cellar the single Act of buying and selling them after they were run is not unlawful. 2. The Seller was not at all concerned what the Buyers did with the Goods, if the proceed to evade the Custom-House Officers, they were accountable only to themselves for the Hazard they run: The Bargain with the Seller consisted singly in this, that he was to receive the Price and deliver to them the Brandy, about which he was no further concerned after it came in their Possession. The Lords sustained Action for the Price of the