

overing; the Buyer whose Fault it is, that he did not sooner receive the Thing sold, cannot complain of the Delay of Delivery l. 51. p. ff. de act. empt. If the Seller having been in Delay, offer afterward to Deliver the Thing Matters being still intire, and the Buyer delays to receive it, or on the contrary, the Buyer having been in Delay and afterward using Diligence for recovering the Thing, the Seller does not deliver it. The Changes which have happened during the last Delay, will fall upon him who has been last in the Fault, for the Things not being delivered l. 11. ff. de per. & comm. rei vend. Delivery of the Thing sold ought to be at the Time ~~and~~ regulated by the Contract. And if the Contract says Nothing of the Seller ought to deliver the Thing without Delay, unless the Delivery should require that the Thing be transported to another Place, than that where the Parties entered into Contract, for the doing of which a Delay would be necessary l. 14. ff. de reg. jur. l. 45. s. j. ff. de vers. oblig. Delivery ought to be in the Place agreed on. And if the Contract makes no Mention of the Place of Delivery, the Seller ought to deliver the Thing sold in the Place where it happens to be at the Time, unless the Intention of the Contractors seems to demand that Delivery should be made in another Place l. 12. s. j. ff. de pign. l. 30. ff. de judic. If the Seller fail to deliver the Thing sold on the Day and at the Place where Delivery ought to be made, he is bound to make good the Damage which the Buyer shall sustain by his Delay according to the Condition of the Things and the Circumstances vid. Les Lois Civiles &c. Tom. 1. Part. 1. Liv. 1. Tit. 2. § 17 18 & 19.

The first Engagement which the Buyer is under, is to pay the Price, and to pay it on the Day and at the Place regulated by the Sale, whether it be at the Time of Delivery of the Thing sold, or before or after, according as has been agreed on. For the Buyer does not become Master of the Thing but by this Payment, or by some other Surety which is in Lieu of it l. 19. c. 53. ff. de contrah. empt. If the Buyer does not pay at the Time appointed, and the Seller had not as yet delivered the Goods, he may keep them by Way of Pledge till he be paid l. 35. s. 2. ff. de Edil. edict. l. 13. s. 8. ff. de act. empt. Whatever Loss the Failure of paying the Price may have caused to the Seller, or whatever Profit it may have prevented, the Reparation of the Damage is reduced to the Interest of the Money, in Stead of all Damages of this Kind l. ult. ff. de per. et comm. rei vend. But the Buyer is not faulty for not making Payment, if he delays it only because of an Motacle which he meets with from some Accident l. 3. s. ult. ff. de act. empt. If in Default of Payment of the Price, the Seller finds himself obliged to detain or take back the Thing sold and its Value be diminished, the Buyer is bound to indemnify the Seller for this Diminution as for as the Price agreed on amounts to l. 1. s. p. ff. de per. et comm. rei vend. For the Sale being perfected the full Price is due whatever Change may happen to the Thing sold. But if the Buyer discovers before Payment of the Price

Price, and make appear, that he is in Danger of an Eviction, he cannot be compelled to pay the Price, till after he is secured in his Possession l. 18. s. j. ff. de per. & comm. rei vend. In a Plea for the Price of a Horse sold in a publick Market, commenced about a Year after the Bargain, it was found not relevant for the Seller to libel, that the Horse was sold at such a Price and delivered, which may be proved by Witnesses, without libelling also that the Price was resting owing, which is only probable by Oath or Word of the Buyer (December 1687) *Hume contra Bishop*. Because great Faith is between Parties in the Matter of Bargains, and it is rare to have two Witnesses present at paying the Price of a Horse, It being ordinary for the Buyer to carry his Friends or Neighbour along with him to the Market who will see the Bargain completed and the Horse delivered, when none are present except the Buyer and Seller at paying of the Price, who ordinarily go of the Market with some drinking House, for that End, and not one of a Hundred Buyers requires a Discharge of the Price. Who are liable for the Price of Goods taken off from a Merchant by one Person, or another.

Albeit this Contract is perfected by bare Consent, that is the Engagement of the Contractors to perform reciprocally what they promise one another is thereby formed. Yet Delivery of the Thing sold or transferring it into the Power and Possession of the Buyer consummates the Sale and gives it the last Accomplishment. That if of the Seller is the right owner of the Thing sold, makes the Buyer fully Master of it and gives him a Right to enjoy use and dispose thereof; without any Hypothec upon it to the Seller for his Security of the Price 22 December 1685 *Drines contra Ball* at 27 July 1685 *Martin contra Maxwel Hop*. may. *Drat. ff. de impl. Partes contra Cain* *Shair Lib. 1. tit. 14. s. 2. Vers.* Sale being perfected. If the same Thing is sold to two Buyers by the same Person, the last Buyer who gets first Delivery and Possession of the Thing, is preferred to the first Buyer l. 18. c. de rei vend. Who has himself to blame for not taking Possession of the Thing in Order to make himself Master of it. For tho' the Sale is so far accomplished by bare Consent of the Parties, that if the Thing perishes before it is delivered, the Loss is the Buyers; yet it is only by Delivery that the Sale receives its full Accomplishment, which makes the Purchaser Master of the Thing sold. And it is likewise for the Interest of the Publick, that Persons should not be disturbed in their Possessions by Sales transacted in private, in which Case the other Buyer will have his Action of Warrantie against the Seller who acted so dishonestly Part l. 6. c. de hæred. vel act. vend. However natural Delivery of the Goods is not always necessary to transmit the Property, but a feigned Delivery sufficeth. So the Property of a Ship bought by a part-owner was found trans-

ferred