

by an Inundation, an Earthquake or other Accident, the whole Loss will fall upon the Owner: Who will notwithstanding the Loss be accountable both for the Materials which the Undertaker has furnished, and for what is due on Account of the Workmanship. For whatever was built upon his ground was delivered to him l. 59. ff. de rei vind. But if the Building perish thro' Default of the Work, the Architect shall lose his Labour together with all the Materials that are destroyed, and he will likewise be liable for the Damage which the Master suffers. This Account l. 59. l. ult. ff. locati. ff. besides the Workmanship the Workman or Undertaker has been at any Expence in preserving the Thing, the Person who gave the Work out shall be bound to reimburse him Les Lois Civiles de Fland. Art. 8.

If it has not been the Fault of the Workman or Artificer, that the Work has not been finished within the Time agreed on, and that several Men be of Opinion that the Time allotted for finishing the Work was not sufficient; He who gave it out ought to allow the Time that is necessary, and cannot pretend any Damages for the Delay, even tho' Time had been stipulated in Case the Work were not done within the Time; for no Contract obliges People to that which is impossible. l. 5. ff. locati. But if the work was promised against a certain Day, or for a Use which could not admit of Delay, as if it was to be at such a Fair, or to be ready for such an Inundation; the Undertaker will be liable to make good the Damages of the Delay, and not to blame himself for having undertaken what he was not able to perform Les Lois Civiles de Fland. Art. 5. If it had not been the Fault of the Labourer that he did not do the Work or perform the Service which he promised within a certain Time, and that during that Time he has not been employed any other Way; he who engaged him for his Service is bound to pay the Salary for the Time he made the Labour l. 38. l. 19. s. 9. l. ult. ff. locati Les Lois Civiles de Fland. Art. 6. And if he who gave out the Work to be done, delays to receive it after it is finished, and the Thing perishes after his Delay; he shall nevertheless be bound to pay the Price of the Work l. 36. ff. eod. Les Lois Civiles de Fland Art. 7.

Sect. 3.
Of Partnership.

All Mankind together make one universal Society, in which those who happen to be united together by their Wants form among themselves different Engagements, proportioned to the Causes which

render them necessary one to another. And among the different Ways in which the World of Men tie them together, Partnership is of necessary and frequent Use. The Origin of this Kind of Union proceeds partly from the Nature of certain Works, of certain Commerces and other Affairs, which are of so large an Extent, that they demand the united Application Credit Purse and other Assistance of many Persons, who reap in Conjunction such Profits and Advantages, as none of them could be able to make by themselves; partly from the Smallness of the Stocks of particular Persons, who could not trade alone; partly from a common Desire of improving any Trade.

Partnership in the Civil Law is distinguished into General or Universal, and Particular Partnership l. 5. pr. ff. pro Socio.

General Partnership is an Agreement of Persons in a pro Universal standing together, whereby they join in common their whole Substance, that they may share among them all the Good or Profit to be had by the united Management of what they have, or shall acquire by Succession Legacy Gift or other Title whatsoever. But such a Partnership is not in Places. Nothing proper or peculiar to the Partner not being customary in Scotland, I shall not take Pains to describe the Nature and Effects of it, or Consequences of it which are handled at large by the Doctors of the Law.

Particular Partnership, is a Contract by which two or more Persons join in common Money or Goods, and Labour or Service, for carrying on some lawful Commerce, Trade or other Business, that they may share among them all the Gain or Loss thence arising. It is not enough to form a Partnership, that two or more Persons have any Thing or Affairs in common independently of their Will: Such as the Coheirs of one and the same Inheritance, Legataries Donataries or Purchasers of one and the same Thing, and those who thro' other Causes chance to have some Thing between ^{them} that is not divided, or some Affair belonging to them in common without any Agreement. For these Ways of having something in common among many not implying the reciprocal Obedience of the Persons, do not link them together in Partnership l. 35. l. 32. ff. pro Socio. Which entered into by Consent, but is termed Partnership *de re*, and therefore shall have Place among quasi Contracts.

The Contract here treated of is entered into by the Consent of all the Partners, who reciprocally chuse and approve of one another, in order to form among themselves a Tie, which is a Kind of Brotherhood l. 63. pr. ff. pro Socio. So that if one of the Partners takes another Person into Partnership with him, this third Person will not be a Partner with the others, but only with the Partner who has associated him l. 19. l. 20. ff. eod. l. 47. s. 5. ff. de reg. jur. And this will make among them a

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