it; for he was not as yet Creditor l. 16. pr. ff. de Condict. indeb. Tho' if the Condition were such, that it must necessarly happen, there would be no Recovery of said Payment l. 18. ff. eod. Where he who owed one of two Things has given him both either by Mistake or out of Ignorance, he who has received them shall not have the Liberty to chuse which of the two he has a Mind to Keep; but the Debtor shall retain the Right of Chusing and of leaving with the Creditor the Thing which he pleases to give him, and of taking back the other l. pen. C. de condict. indeb. If each of two correi debendi do successively make compleat Payment to the Creditor, he who paid last only hath Right to claim Restitution. For the first Payment did extinguish the Debt l. 25. l. 5. ff. de cond. indeb. for. Vet. fol. n. 5.

A Debt is not due ex personam when that which is owing to the Receiver is paid by another than the Debtor, as to which our Law copying after the Civil Law l. 31. ff. de Recep. polit. l. 38. §. 2. in fin. ff. de solut. l. 19. §. 5. princ. l. 44. ff. de cond. indeb. distinguisheth whether the uncontierned third Party who was not reader indebted, did pay in his own Name, in the Belief that he acquitted his own Debt, or paid in the Name of the true Debtor, allowing Restitution in the first Case, and not in the last. Thus in Exer. Curia pursuing upon his Confirmation, got Payment of for Sentence from the Heir of one as his Debtor's Debtor, was ordained to restore the Money upon that Heire producing a Discharge of the Debt granted to his Predecessor by the Exors. Debtor 30 January 1673 Ramsay contra Robertson. Quia jus non pluribus dem hic exigit: And here the Exer. Creditor founded on his Autheors Right claiming under him, so that he behoved to run the Hazard thereof. As an Assigny getting Payment of a Debt allaged due to the Cedent who was not Debtor to the Assigny before the Assignation, would be liable to restore if that Debt were found not to have been due 23 Feb. 1681 E. Mar contra E. Calander. In both which Cases the pretended Debtor pays in his own Name to a Person receiving in Virtue of another's Right. At the same Time it is to be noticed, that here the Exer. got Payment before Sentence: Because had Payment been made after a Decreet in foro, the Payer might have been ex Chuse from founding on any new Writ, as nonvitur venisse ad notitiam which tho' ordinarly admitted against the principal Party, would not perhaps have been sustained against a Decreet in Favour of a Creditor in Order to obliging to restore what he bona fide received. Again, a presumptive Heir being informed of the Death of his Relation to whom he Had Right to succeed, and Knowing Nothing of a Fuzzie which cuts him off from the whole Inheritance, pays out of his own Bodset before he intermeddled with the Goods of the Succession a Debt owing by the deceased, thinking thereby to discharge himself as being Heir, and laying out his Money to that End: The Creditor who received that Money is bound to restore it, and shall retain his Right or Demand upon the Estate of the deceased l. 19. §. 5. ff. de cond. indeb. But if the said Creditor Had destroyed the Title by which he instructed his Debt, as if it was a Bond which he tore in Pieces so that his Debt would either be Lost or in Danger of being so, the Payment in this Case would subsist: And he who paid the Money would have himself to blame for it, and would have his Action against the Heir or Exer. for recovering

= covering what he Had paid for his Behoof Les Loix Civiles &c Tom. 1. Part. 1. Liv. 2. Tit. 7. Sect. 1. Art. 2. But a Person paying to another's Creditor by Delegation or by Virtue of a Precept drawn upon him by that other, can never have Restitution from the Creditor qui suum recepit; tho he should evidently prove he was not Debtor deleganti or to the Drawer of the Precept but can only recur upon him for whom he paid 23 Feb. 1601 E. Mar contra E. Callander. Seeing payment here is taken non pure authoris sed sui, and made by the Payer not in his own Name, but in the Name of the Receiver's Debtor. Yea if a third Person pays to another what he knows to be owing to that other by the Debtor, the said creditor will not be obliged to restore it: For he has received only what is his, tho this third Person might have compelled to accept it then for l. 44. ff. de cond. indeb. He who pays by Mistake what he thought he owed and what he did not owe, may recover it whether it be that the Thing was never in Effect due or that it was due some Event had happened which annulled the Debt and which was unknown to the Debtor v. g. If a Debtor having paid his Debt to the Heir of his creditor there appear afterward a Testament by which the Creditor had orginen the Debt. But he who knowing that he had Means whereby to defend himself against his Creditor by natural Equity, has nevertheless pay willingly cannot demand what he has paid. For it was in his Power to renounce the Reasons and Defences which he might have had to some paying the Debt l. 5. §. 5. l. 26. §. 3. ff. de cond. indeb. And Restitution, which in this Case is only allowed from the Principles of Equity, cannot take Effect where there is a natural Obligation or Obligation in Equity to pay l. 30. ff. de relig. & sumt. f. l. 16. §. 4. ff. de Reciprocis. For Example of a married Woman who Had during the Marriage entered into a Bond, results in her Widowhood nor Obligation, tho' it would have been valid de jure stricto in Law; she cannot alledge said in Question the Payment which she has made of the said Debt and a Minor being arrived at the years of Majority and paying from a Debt against which he might have been relieved cannot demand back what he has paid. But what is paid from an Obligation ad aliquid or a Principle of Gratitude to recompence one good Turn with another may be sought back: For that Positive Law hath given no Force or Effect to such Obligations which are very unclear and uncertain. If one do not pay but grant Bond for that which is not due; he may not only defend himself against Payment thereof by Exception, l. fin. ff. de Senatusc. Maced. but may also pursue the Receiver to deliver back his Bond. But there is no Restitution in certain Cases of indue Payment, as 1. What is paid by Transaction to free the Payer from farther Trouble cannot be sought back upon Pretence that Nothing was due l. 65. §. 1. ff. de cond. indeb. l. 2. C. de Transact. provided the Transaction be of Force l. 23. §. 1. & segg. ff. de cond. indeb. Because Parties transacting (who do for Quiet's Sake abate part of their Claims) tacitly renounce all future Question upon any emergent Light in the Matter, Fraud and Force only the common Exceptions in all humane Actions being excepted, upon which and no other Grounds, the Transaction can be ript up. 2. Payment by Sentence of a Judge cannot be quarrelled as not