

not due upon any subsequent Question l. 1. ff. de cond. indeb. l. 29. §. 5. ff. manic
 Stat. Lib. 1. Tit. 7. §. 9. Vers. Positive Law Because res judicata pro veritate ha-
 betur l. 25. ff. de stat. homi. ^{in matters of judgment taken for granted} Nor can it be sought back which is given to one
 uniform to his oath ^{deferente ad veritas} l. 5. §. 2. ff. de puresit. Non
 fid. Because referring to his oath implies a Condition that he who refers shal
 stand to it right or wrong: and an oath is an End of all Controversy, so the
 Swearer falsely may be punished for Perjury. 3. Conventional Penalties if paid
 cannot be sought back l. 42. ff. de cond. indeb. 4. One who after the sum in a
 Bond granted by his Father had been overpaid, did errore facti grant a Corrobor-
 = tion of the Bond to an Assigny thereof when the Representatives of the Debetor
 was Amisrupt; The Bond of Corroboration was found not extinguishable upon
 that Account, and the Creditor therein not obliged to restore any Overpaid paid to
 the Debetor more than was truly due; because any Loss happening thro' the Error
 of the grantor of the Bond of Corroboration ought to lie upon himself and not upon
 the Creditor in the said Bond 24 July 1723 D. Brytle contra Representatives
 of L. Kierraig. The Action for recovering what is unduly paid is called with us
 as in the civil, conditio indebiti, and in the Law of England it is termed an
 = ular. Same

Tit. 4.
 Exhibition and Delivery of writs or Things Detained from the owner without a
 just cause.

Where one has Writs or Novates in Custody belonging to another with-
 = out any Title to detain them, he is bound to make Restitution to the owner, in
 whole or in part, if he is in the Civil Law an Action called conditio sine causa
 of any movable Thing in Controversy that can be carried before a Judge, may be
 pursued as if the Right to a Horse be controverted, he may be craved to be ex-
 hibited and produced before the Judge; that the Witnesses may be more clear to de-
 = termine to whom he doth belong. But this Action is most ordinarily used for obtaining
 Writs to be delivered. The Title of a Summons of Exhibition of Writs runs thus

Exhibition and Delivery is competent to any Person in whose Favour a Writ
 out of the grantor's Hand is conceived, without Necessity to prove that it was deliv-
 = ed if June 1630 Fairly contra Fairly. For seeing our Writs do not as those in Eng-
 = land signed sealed and deliver'd before the instrumentary Witnesses, Delivery is
 presumed from their being out of the Hands of the Grantor. Therefore tis ordinarily
 required, that the Grantor be called in the Exhibition, that he may be heard to
 = impugne any Thing to take off the Presumption of Delivery. Its that it was Depo-

deposited on Terms not performed or lent, or stolen, or past from. But this calling
 of the Grantor is not necessary in the Exhibition of some Securities or other real
 Rights of Subjects where the Pursuer is in Possession Stat. Lib. 1. Tit. 7. §. 14. Vers. Exhibition
 and Delivery and in several other Cases Writs are expedial without Delivery vid. supra
 pag. 62 Not only may one crave Exhibition of a Writ intively belonging to him-
 self but even of that whereon he hath a commission interest with others l. 52.
 ff. de ad. vult. Action for Delivery of Writs was sustained at the instance of
 a Minor having Curators without their consent or concurrence against an Amisrupt
 Keeper of the Writs; in whose Custody the same were put by the Minor and his Curators
 20 June 1629 L. Hadd contra Norval. A Woodriller having granted on his debt
 Bond and Judgment, the Creditor in the heritable Bond was found to have suffici-
 ent Interest to pursue Execution and Recovery of the Writs Right against a Person
 in whose Hands it had come by Ways and Means, albeit the Defect being Right to
 the Writs seeing the Necessity of his heritable Bond and Judgment depending upon
 it, 13 July 1630 Row contra Graham of Garroch. The ordinary Service exhibited
 in an Exhibition being, that the Defender had, has or has fraudulently put away
 the Papers or Things heave to be exhibited: It is not obliged to exhibit except
 he had them since the Citation or fraudulently put them away before to be appointed
 a future Citation M. Henrici Inst. Lib. 4. tit. 1. §. 10. His having been since Cit-
 = ation tho' they be Writs of great Importance may be proved by Witnesses, 30 January
 1629 Crawford contra L. Lamont. The simple proving whereof sufficeth
 to infer the Conclusion, that the Defender had fraudulently put
 them away, may be instructed a Judge, and at his saying to have them
 = Stat. Lib. 1. Tit. 7. Vers. From the Right of Exhibition & Vers. Delivery. From
 of Proof from. But Witnesses are not admitted to prove, that any Writ found in the
 Hands of the Grantor, or in the Hands of his Curator, is who dears that he got it
 from the Principal, was delivered to the Party in whose Favour it was conceived,
 whether it be Bond or Assignation in Decemb. 1666 Fairly contra Creditors of
 Dick 26 June 1623 Cornichael contra Hoy. Because (Chirographum pene
 = scilicet Writs which are never delivered, upon the Account of the Grantor's
 changing his Mind. Besides Nothing is more usual than to receive delivered
 = Bonds without taking Discharge thereof. But a Bond being found in the Hands
 of a Cautions, who does not appear to have got it from the principal Debtor
 or found in the Custody of an Agent, will not infer the Presumption of Satisfac-
 = tion. For that simple relating to these, without Discharge or Assignation, doth
 not suffice Stat. Lib. Vers. There is a second Member. And a Bond of borrowed
 Money by a Principal and Cautions Bland in the Creditor's Name, being left in
 the Hands of the principal Debtor, to be a Fund of Credit to him at his Occasion,
 should require, and delivered by him after the Term of Payment to his own
 = Creditor, for Security of what he owed him. The Receiver was found not liable, to
 exhibit the same, as instrumentum pene debitorum in a Process of Exhibi-
 = tion at the Cautions's Instance 7 July 1700 L. Sallon contra Elphinstone. The
 Conclusion of the Libel, viz the Defender's fraudulent putting away the Writs in
 = Question before Citation, being actus animi is, probable by Writ or oath of
 = Party.