

under any Manner of Engagement, unless the Damage has happened by the Master's Fault, or by the Fault of Persons for whom he is answerable: For it is a bare Effect of this Accident l. 29. s. 2 & 4. ff. ad L. Aquil.

Those who having it in their Power to prevent a Damage, which some Duty obliged them to prevent, have neglected to do it, may be made answerable for it according to the Circumstances. Thus a Master who sees and suffers Damage done by his Servant, when he might have hindered it is answerable for it l. 44. s. 1. l. 45. pr. ff. ad L. Aquil. l. 4. C. de noxal. act.

The Failure in the Performance of an Engagement is also a Fault which gives Occasion to Damages, which the Party who fails will be liable to, - when the Failure is wilful because he will not perform or because he cannot do it. Thus a Seller who refuses to deliver what he has sold, a Depository who does not restore the Thing deposited with him, and all those who having in their Possession a Thing which they ought to deliver up refuse or delay to do it, are liable not only for the Damages which their Delay shall have occasioned, but also for the Value of the Thing if it perishes after they should have been in Fault for not delivering it, even altho' the Thing should perish by some Accident: For that Accident might not have happened to the Thing, had it been in the Hands of the Owner, or he might have disposed of it before it perished l. 5. ff. de reb. vend. When a Person cannot thro' his own Default perform what he is obliged to, loci facti impræstabilis succedit in - muni & interesse 2 July 1712 Formis & Paterfon contra Lady Colclough. A Person charged upon his own Obligation to deliver to the Charger and Judication upon a Third Party's Estate against a precise Day, under a Penalty by an Act of Performance, having made diligent Search for the Thing in Order to Delivery, and not being able to find it, was made liable for Damage and Interest only to the Charger in so far as his Right to the Thing in the Judication might have been made effectual against the adjudged Estate had the Judication been delivered in due Time 20 June 1700 Hampton contra L. & Lady Kirth. But Action was not sustained competent against an Heir for Damages to the Predecessor's Relict thro' the Want of her jointure-House all the Years of her Widowhood, occasioned by the Not-Performance of her Husband's Obligation in her Contract of Marriage to build and repair the House for her Accommodation, unless the Heir had been required to build and repair in her Lifetime. And the Requisition was then made, Action was sustained for Damages only from the Date thereof 10 Novemb. 1712 Nairn contra Barclays. Because the Obligation to repair consisting in facts prestable at no precise Time, the Husband's Heir could not be liable for Damage and Interest, till they were in mora by being required in the Lady's Lifetime to perform. The Maxim quod sine die debetur pre - sentis die debetur, has indeed this Effect, that the Creditor may immediately demand

Demand Performance: But Requisition must be used to put him in mora, so as to be liable to Damage and Interest for not performing.

Damages arising from Deeds of Commission are either general, which for Want of particular Names are pursued under the general Denomination of Damage and Interest, or they are known by special Names signifying properly the injurious Deeds that found such Obligation for Damage. Damage arising from injurious Deeds in general is the taking away or diminishing any humane Right or Enjoyment, as J. Life Member Health or Liberty, or these lie in themselves inestimable l. 3. ff. de Quod. pign. sic. Yet accidentally they may be valued and repaired as that of a Wife or Children maintained by Husband or Parent Child, or under Restraint or constraint to work in their Living Cyac. 14. Observ. Cap. 4. The Damage of the Loss of a Wife and the unprovided Person's Loss by not being able in the future to prosecute his ordinary Business or Employment. 2. A Man's Health in his Estate and Ability by hurting of his Fame Reputation and Honour v.g. The seducing a Veteran's Wife - ript or Cheat may hinder his Trafficking for want of further Credit. To sur - prise one's own's a Man's will to marry, that he is impotent or infected with any noisome Disease may be the Deception of losing a good Match or to - tier 3. A Man sustains Damage in the taking away his goods from him - or the depriving him of Access to his just Possession. 4. A Person sustains Da - mage thro' Distress is unwarrantable Diligence under colour of Law, as when one is denounced to the Horn before the Days of the Charge are elapsed and Caption against him raised upon such a precipitant Denunciation 2 8 Nov - demb. 1710 Wood contra Fullerton.

Damage sustained by Persons in any of their Rights aforesaid is to be repaired and made up by the Delinquents who are either Principal or accessory. Dam - ages committed by principal Delinquents one or more concurring jointly in the Fact. Accession to Trespasses or Offences causing Damage to Parties, is either antecedent concomitant or subsequent thereto. All which Accessions are termed Art and Part in our Law. Antecedent Accession is incurred by Counsel Justifica - tion Prompting or Connivance. Thus a Person was found liable by Way of Dam - age, to aliment his Son's Wife separately from her Husband who had deferted her thro' Justification of his Father's Letter threatening to disown him if he married her 8 Feb. 1700 Fea contra Trail. One is understood to connive at or give Way to another's Offence. Specially when he knows of his being about to com - mit and doth not hinder him, tho' he might and ought to have done it. As a Master who sees and suffers Damage done by his Servant when he might have hinder - ed it, is answerable for it l. 44. s. 1. l. 45. pr. ff. ad L. Aquil. l. 4. C. de nox. act. 2. One is held generally to connive at others doing Damage by