

observed Annualrent paid by a Conditioner for the principal Debtor, bears
 Annualrent to the Conditioner, because to him it is a Principal Slave Fee,
 which he lends to the Debtor. But if a Creditor to secure his own Mortgage
 acquits the principal Sum and Interest owing by his Debtor to a Creditor
 who is prior to himself: This second Creditor cannot pretend to get more
 from his Debtor for the Sum, which he had paid to the first Creditor or on
 the Sum of Interest that was due. Because he paid the same at his
 Care of his own Concerns, and not at the Concerns of his Debtor. And
 seeing he paid for the Debtor only with view of securing his own, he can
 not make the Debtor's Condition worse l. 12. s. 6. ff. Qui petitor in pig.
 A Minor may exact lawfully from his Tutor, not only Interest for the
 arising from the Interest which the Minors Debtors have paid to the Tutor,
 but also Interest of the Interest of Sums of Money which the same Tutor
 has upon his own Account. For all the said Interests in the hands of Tutors and
 Guardians are Capitals which they are obliged once in their lives to pay up
 the Benefit of their Pupils and if they have paid to a third party
 money, or because they have laid the money upon their own particular
 concerns, they are bound to pay Interest for it from the expiring of that
 Term. In some may be a Plea of the Credit, which they
 have taken from Lands or Houses or Commodities, of their being taken
 in the Purchase of such Things. De Super Cas.

Tit. 2.

Of Pledges & Pawns.

Titius est rei incumbere, quam in personam. l. 14. ff. de
 oblig. que ex delict. As the greatest Force of Obligations, and the most perfect
 Integrity in those who are bound, would be all to no purpose if they had no
 Estates. So the Security even from those who have Estates, would not be entire
 if their Estates were not appropriated for the Payment of their Creditors.
 otherwise such Estates may be alienated by the Debtors, and thereby
 Persons become insolvent, which disappoints the Design of personal Action
 and leaves Creditors without Remedy. Upon this Account Law hath intro-
 duced the necessary Security by Pledges or Pawns in Favour of Creditors.

A Pledge or Pawn is divided into a Pledge properly so called, and a Pledge
 whereof the former only falls to be explained here, the latter being treated of
 where vis. infra Part 5. Book 5. Chap. 5. Tit. 2. Sect. 1. pag. 1125.

A Pledge in a proper Sense, is an Obligation whereby a Creditor has
 Right to the Movables of his Debtor, till he be paid or satisfied, which is
 either conventional, that is acquired by Action; or legal, that acquired by
 bare Effect of Law.

Sect. 1.
Of Conventional Pledges.

A Conventional Pledge, is an Obligation by which a movable Thing is
 given by a Debtor to his Creditor, for Security of the Debt on Condition, that
 when the Debt is paid the same individual Thing shall be returned.

We can only pawn such Things as may be sold l. 9. s. 1. ff. de pign. & hypoth.
 And what may not be sold cannot likewise be mortgaged l. 1. s. 2. ff. de
 pign. vel hypoth. dat. oblig. For the Use and Benefit of the Pledge consists
 only in the Alienation that may be made of the Thing in pignoration for
 Payment of what is due upon that Security. So there are other Things
 which one cannot pawn altho they may be sold, by which Law a Creditor
 cannot seize nor take in Pawn the necessary wearing Apparel of his Debtor
 Cod. 22. 26. Deuter. 24. 17. Nor the nether or upper Millstone, for he
 taketh a Man's Life to Pledge Deuter. 24. 6. The Civil Law makes Things
 belonging to the Church, though not alienable, Things necessary for living
 and cultivating the Ground incapable to be pawned or mortgaged by the Cre-
 ditor l. 7. l. 8. & Authenti. Agricultores C. Quae res pign. pign. l. 1. ut
 because of the presumption that it was not the intention of the Debtor and
 Creditor to strip the Debtor of Things necessary to his necessary use, but
 likewise because of the necessity of the Debtor's use, which is not
 such an obstruction of the Alienation. The Civil Law hath also made
 the Dependence of the Price, the Auctioneers bid Day or Month or Year
 of the Sale of such Things, to be subject to the mortgage l. 4.
 C. de execut. rei vend. l. 5. C. de res pign. pign. l. 1. ut
 Dividit fund. that is a Money fund not to be kept from the Use to which
 it was appropriated for the necessary Service of the Prince and of the
 Country. The Creditor who is put in possession of the Thing given in
 Pledge, has a Right to keep it till he is paid what is owing to him:
 And the Debtor cannot turn his Creditor out of possession, nor make Use
 of his own Thing, without Consent of his Creditor. If the Creditor is
 willing to let his Debtor have the Use of it for a Time, it is to be a Kind
 of Loan, which will give the Creditor a Right to take possession of it
 again, the Debtor's Disposition during the Time that he uses his own
 Thing, being very precarious l. 35. s. 1. ff. de pign. lit. if it happens
 that the Pawn which the Creditor had taken for his Security be not suffi-
 cient for his Payments, and that the Creditor cannot be charged with any
 Fault, whereby he may have diminished the Value of the Pawn, he will
 recover the Surplus of his Debt out of the other goods of his Debtor l. 28.
 ff. de rei trad. l. ult. s. 4. C. de fund. dom. impetrari. l. 9. ff. de distict.
 pign. l. 1. s. 1. C. de oblig. et act. One may mortgage his Estate not only for
 his own proper Debt but likewise for the Debts of others, in the same
 Manner as one may become Surety for other Persons l. 5. s. ult. ff. de
 Orig. & Hypoth.

The Use of a Pledge being to secure a Creditor his Payment out
 of it, if the Debtor does not pay it some other Way, the first Effect of it is a
 Right to the Creditor to sell it at his own Hand by the Roman Law,
 whether it hath been agreed, that the Creditor might sell the Pledge, or
 whether