

offer to give were equal, or even should exceed the Value of the Thing due. Suing Undertakers and Artisans are Debtors for work which they undertake to make, and that these are words of such a Nature, that it is of Importance to have them made by the hand of the Printer, Bookbinder or Workman himself who undertook them; those who are oblig'd to make with their own hand words of this Nature, cannot discharge themselves of their obligation by delivering the work of another. *L. 31. F. de solut.* Some times Performance by an Equivalent is sustained. In all Filles may be valued, and valued duty paid, in Lieu of the *pro Persona, act. 17. Par. 1. Ch. 1. junct. act. 30. Sep. 2. Par. W. 8. M. A Person decreed by a Decret Arbitral to procure in favour of the other, submitted, a Decret of Prorogation of a tack of Bishop's Filles for three distinct Years; was found to have complemented the Decret Arbitral by procuring a four Nineteen Years tack from the Sovereign, who became secular by the suppression of Bishops; In respect the former tack being before the Decret Arbitral, it could not be prorogated; and the tack from the Sovereign was Equivalent to the factum *Impostata* 8 January 1708 Representatives of the City for the Grand. The Annual Value of Services, commonly called personal attendance; hosting, watching and warding, due by any Charter Contract Custom or Agreement, was appointed to be paid annually in Money 17. Cap. 5. 10. 11. 12. 13.*

The Question in what specie, and according to what Value Borrowed is to be repaid is handled *supra* Page 793 794.

One cannot be forced to receive payment in part, unless it were agreed *L. 41. 1. F. de Univ. l. 9. C. de solut. Cap. 200. Jurispr. Forens. Part 2 Const. 28 Sept. 13.* As it is by the Constitution of the Bank of Scotland, which allows the taking the partial payment of both Bills and Bonds from their Debtors, with this Difference, that when any pays some part of a sum contained in a Bill, the Old Bill is destroyed and a new one made for the remainder: Whereas Bonds are not altered upon Partial payments, but the Debtors get receipts *pro parte*; the Reason is, because there are Current Accounts kept in the Bank with Debtors by Bonds; and not with Debtors by Bills, these not being taken for lying Securities as Bonds are. But some thing which cannot be performed all at once, as the Delivery of Corns, or acts requiring divers seasons must be performed in parts: And it sufficeth that there be no Intermittion.

Or

or Discontinuance made in the Performance, save only what the Nature of the Deed requires. *Stair Lib. 1. Tit. 17. § 20. Vers. The Manner Also.*

Again a Creditor is not oblig'd to accept of payment in a species of Money that is just going to be dyed down *L. 99. F. de solut. ff. the Creditor* having Delayed to receive his payment; the Money should have been paid before the Debtor had actually made a tender of the Money to his Creditor; the loss which would be occasioned by paying down the species that remained still in the hands of the Debtor, would fall upon the Debtor; for he was still Master of them while they were in his hands *L. 102. F. de solut.*

In An Alternative obligation to one or other of two things the Debtor has the Election what to pay: Or the person oblig'd Indeterminately to one or other of two things, is at Liberty to give that which he pleases, if the Contract contains nothing to the contrary. *L. 103. ff. de jure Dolium l. 25. pr. ff. de contrah. Erupt.* Which Election, the Debtor loses, after the Creditor has made his demand by process. *3 Feb. 1703 Henderson and Shomson contra Debtors of Thomson.* Or the Matter ceasing to be entire. *18 January 1704 Election of the Taxation contra English.* but where one binds himself to pay to another a certain sum at such a term, and in case of failure at the said term, to pay that other in his hands: The Clause was found to contain an Alternative where of the Debtor had not the Election to pay or grant his payment, but that it was in the option of the Creditor either to seek payment of the Money or his payment 8 July 1623 Brown contra Wright.

The Debtor only or his Creditors are oblig'd to pay. Concerning the Import of the obligation upon Cautioners *vid supra* Page 1020.

When several Debtors are bound to the Creditor jointly, they are only liable *pro parte*, if all be solvent, and the Shares of the insolvent lay upon the solvent Debtors. But if they are bound jointly and severally, *Stair lib. 1. Tit. 17. § 20* or as Co principals and full Debtors *26 De comb: 1707 Ely horns contra York town,* or as Principal and Cautioner and full Debtors *26 January 1631 L. Glover hill contra L. Leidy land* or bound jointly to Deliver a thing or perform a deed that is Indivisible, as to Deliver a horse, *Forde c.* which cannot be divided without destroying the thing; or bound to Perform, or not to hinder the performance of a fact which obligation is Indivisible. They