

Term for paying delivering or doing any thing is not in
 Delay nor can it Tunc till the last moment of the term is expired
 For it cannot be said that he has not satisfied his obligation till the
 Delay is fully Expired. Thus he who is bound to make payment within
 a year a month or a day, has for his delay, all the Moments of the
 Year the Month and the day &c Just. de verb. Oblig. l. 42 ff. de
 50 ff. de oblig. & Act. Bolls of Vicual one to a Minister for his
 Slipper Vicual Gule and Candles may be paid on Candlemas
 day 16 June 1673 Gray contra L. Falkbourn. And not only may
 An offer of money which obliges the Creditor to grant a
 Receipt be made on the term day: but also Bolls of Vicual
 which cannot all be received in one day and require for
 more time for delivery may be offered on the term day
 Under the Debtor from being liable for the highest price
 if he deliver the Vicual within a reasonable time as is
 necessary for that End, Eodem die inter Eodem observari
 Discretion. and in some Cases it may be Equitable to Excuse
 a Delay according to the Circumstances, as when it may be
 excused no damage, or if there is any when it may be
 paid; by suffering the Debtor to purge his Default with
 out Expenses if the Creditor has suffered no prejudice
 the Delay, or with reparation of Damages which the Debtor
 may have Occasioned. Regre magnum Damnum est in Mora
 Modici temporis l. 21 ff. de Judic. l. 135 ff. de verb. Oblig.
 Mora esse is Incurred when the Debtor cannot perform
 that the Creditor may make a demand from him l. 23 ff. de
 usur. As when he is absent or dead without any repre-
 sentatives; Or where the Debtor is not known to the Cre-
 ditor, as when one finds what another has lost. 31
 Mora ex re takes place in obligations arising from Primes or
 Gros papes, where the Debtor is always in Delay he gives Satis-
 faction l. ult. ff. de Cond. furt.

When the Creditor in an obligation Refuses to accept of pay-
 ment or performance offered by the Debtor, he is Understood
 to be in Delay.
 Delay, whether Incurred by the Debtor or by the Creditor
 hath

Hath several Effects. Delay incurred by the Debtor, affords
 Action and Legal Execution to the Creditor for Compelling him
 to pay or perform in the terms of his Obligation. For albeit a Cre-
 ditor may for Securities sake Arrest this Debtors goods, or sub-
 scribe to Alienate his heritages any time even before Requi-
 sition or the term of payment; and an Anticipating Suit is
 Allowed in some special Cases, as against a Debtor who is a
 genus ad inopiam; and tenants Warrice to Remove, may be
 Pursued before the term, to remove at the term: Yet regula-
 riter a Debtor cannot be enforced or subjected to legal
 Diligence for payment or performance till he be in Mora.
 Action against a Debtor in delay to pay a sum, lies not
 only for the Money, but satisfying the Creditors Damages for
 Interest and Expenses. In which Case Interest according
 to the Condition of the Creditor, & in some Cases, Interest
 Damnum Emergens et Lucrum Refers, the loss he sustains
 And the gain he wanted or might have made, as when he
 is a Trafficking Merchant or Banker: but more Commonly
 Interest comprehends only Damnum emergens Sicut
 Lib. 1 Tit. 17 ff. de Ver. This is a generall Rule in Obligations
 for performing a Dece. The Doctors are Generally of Opinion, that
 the Debtor is free from Interest, and from the Compulsion to
 Precise performance l. 72. l. 81. ff. de verb. Oblig. l. 13. Pr. de Pr. ff. de Re. Ju.
 But the Lord Stair (sic) goes into the Opinion of Huber and some
 others as more suitable to Equity. that it is in the Creditors Option
 either, to sue for performance or interest, as he thinks fit; provided
 that both are prestatite: And that the Debtor who either will
 fully or deceitfully puts off or delays the performance till the
 same might turn Imprestable, may be subjected to a
 Personal Execution by Captio and Excheat. One having
 Obliged himself to Cause another subscribe a translation of a
 Bond beluat and a certain day in favour of a third person who
 had the Bond and assignation in his own custody, was pursued
 for payment of the sum in the said Bond, being the translation
 thereto was never granted till the Debtor became all together