

Insolvent. To which it being answered, that he was not
 In more to procure the Translation, unless the pursuer had
 Produced to him the Bond and Assignation, ~~but that~~
~~of~~ to crown the translation by the Lords Repelle the
 Defence, and found the pursuer not obliged to offer the Bond
 and assignation, but that the Defender being obliged to
 perform at a term, should have demanded the same if he had
 been at a term, 1673 Sealon contra L. Craigvar. A person
 obliged to give or deliver goods, both by his being in a law, become
 liable to make them good to the Creditor, tho' they change to
 Perish without the Debtors fault: Unless it be made suppon
 that they would have so perished with the Creditor without
 easily to be done; it being presumable that had the goods been
 delivered, the Creditor would have run himself of the hazard
 By disposing on them, especially if they were sale goods, and
 occasion offered to send them off. Stair lib. 1. Tit. 17. § 13 ver. 2.
 : gal Execution. By the special nature of a Contract or sale,
 the accipiens and fruits belongs to the Buyer from the time
 the sale: But these in other Contracts are only due after
 Delay, and not by the Nature of the Bargain Stair lib. 1.
 17. In obligations to pay, delay on the part of the Debtor is
 allowed to be purge in some Cases in Arbitrio Judicis,
 where the penalty is Grievous: As Juritancies & non-rehaling
 Canonem, which Infer the loss of the feu, Juritancies for Rea-
 : So to &c. but delay in Obligations to give or deliver goods, is
 not if incurred, purgeable by offering performance thereat
 especially if these goods be only usefull at a certain season of the
 Year, and were not delivered in due time, Stair lib. 1. Tit. 16.
 Vers. in obligations in dano.

If a Creditor Refuse payment of Money offered to him, either
 because he thinks more is due to him than the sum offered, or
 for that he hath not got due permission to receive it, or per-
 haps because he knows not how to Reemploy it to advantage,
 The Debtor may take Instruments upon his offer and the Cre-
 ditors Refusal, and deposite the Money in the hands of the person
 named

Named in the obligation for offering the Money to, or in the hands
 of the Clerk of the bills if no other person is named for that
 Effect, which is called consignation. The person who deposite the Money
 is termed the Consigner, and he with whom it is lodged, the Consignatory.
 Where a Debtor is willing to pay, and the Creditors Refuse to receive
 : him, by reason of his absconding or being out of the Country, the Creditor
 : lesion will upon a supplication presented to them, grant letters of Liquidation
 and offer to be served and executed against him at the Marshall Crook of
 Edinburgh and peer of Liddesdale and Stirling, tanquam in Communi
 Salva, are presumed to have procurators to answer for them Stair lib. 1. Tit.
 18. § 4. Due and ordinary consignation is equivalent to payment, stops the course
 of Annals, and puts the Consigner free from the period of the Money, and all other
 : upon him, see. l. in supra part. § Books. Chap. 1. Tit. 2. Sect. 1. § 8. So that he is
 not obliged to uplift the sums Consigned, and strike them forth coming to the
 Creditor: but if they be lost or become irrecoverable through the Consig-
 : natories insolvency, they are paid to the Creditor, who may petition of
 his own right, that he be restored the Consignation being due. Stair lib. 1. Tit.
 : July 1669. l. 1. contra Simon l. 15. Feb. 1678. l. 1. contra Lockhart. But
 if the Consignment shall not be made according to form, as when a part
 : only of the sum is due, and tho' the whole is Consigned, or whereby the Con-
 : signation of the whole is made, the thack of the Consignatory is left to the Con-
 : signer; the Consignment is upon his perill, and he must make the Money
 good to the Creditor, in the event of the Consignatories proving insolvent.
 The Consigner must take wise answer for others Consigned if the Con-
 : signment was perilled, and simulate, and he took up the Money again.
 : Stair lib. 1. Tit. 18. § 6. l. 1. supra pag. Thus the Debtor in a Bond being
 Consigned the sum there in and after wards uplifted them, he was found
 : liable to pay the Consignation sums with Annual rent thereof since his
 Uplifting of them: Altho' the Consignation was not made thro' his
 : fault, and the sum being upon his perill, he had reason to Uplift the
 : Money, and tho' he offered to depone, that he kept it all by him with-
 : out Making any profit of it. 14 January 1665. Mackerson contra
 Wedderburn.

A Person owing several Debts to one and the same Creditor is
 at liberty to pay which of them he pleases first l. 1. De solut. M
 : tho' he pay nothing of all the other Debts provided he acquit entirely
 The Debt which he offers to pay. Yet tho' he do not declare at the time
 : which of the Debt he has a Mind to Discharge, the Debtor will
 have