Furniture, Freight &c. to pay to the Creditor or Order such a Sum upon the Safe Ar-
-rival of the Ship at the designed Port, or so many Days thereafter. Im-
proper Bills of Bottomry are drawn by the Master of the Ship payable out
of the Cargo upon the safe Arrival of the Goods, or at some Time asterd
know not whether these distinguishing Terms be proper, nor am I
solicitous because I know none fitter. This Difference is observed betwi
these two Kinds of Bills of Bottomry, that, which is very singular, in
Competition of Creditors by proper Bills of Bottomry, the Obtainer of
last Bill is to be preferred, it being by Virtue of his Money that the
Ship put out to Sea. Whereas Possessors of such as I call improper Bills
of Bottomry are brought in pari passu without any Preference. Vide
in Pex. Comm. in L. 5. §. 7. et segg. ff. de exercit. act. The Money lent upon
by Bills of Bottomry is called pecunia traiectitia: Because its upon
the Peril of the Lender, who loseth his Money if the Ship perish, or
all be spoiled without any Fault of the Borrower, otherwise not. C.
Decisions Christin. Vol. 3. Decis. 47. n. 5. 6. That is if the Ships be
cast away, tho' the Apparel and Rigging or some Remains thereof be
preserved, the Creditor will have no Advantage thereby l. 6. ff. de naut.
fen. Respons. jurisc. Hollandiæ Part. 4. Consil. 3. & 124. In proper
Bills of Bottomry where the Arrival of the Ship is the precise and
-ly Condition of Payment, without Respect to the Goods or Lading the
Creditor should suffer a total Loss tho some of the Ship Fragments be
-trieved. But in Improper Bills of Bottomry the Creditor in Case of a Wre
should have a proportional Payment of a Part of the goods be prefer
Seeing a Ship is understood to be safe in Order to the Obligation to con
-tribute when facto she is sunk in another Place, and the Goods of some
were brought up by Diving l. 4. ff. ad L. Rhod. de jactu. (8) Some Persons
-not effectually borrow so as to oblige themselves to restore: As Pupils
Minors having Curators without their Consent, except in so far as they a
locupletiores facti Gainers thereby l. 4. §. 4. ff. de dolimali & mal. ex
The Macedonian Decree in the Roman Law restrained the Lending of
Money to Sons under the Power and Tuition of their Fathers, tho' of pa
-ternal Age l. 1. & tot. Tit. ff. de Senatusc. Maced. which was calculated to pre
-vent the pernicious Practice of Macedo a wicked Usurer, who trusted M
-ny to such Persons payable with heavy Usury, in Case they survived th
Fathers; who thereby were tempted to commit Parricide, at least anti
diem patris inquirere in annos, to wish for their Father's Death, tha
they might get rid of such Debts. But there is no such Prohibition in
the Laws of Scotland England or any European Country so far as I
know. Our Custom considers Children in Familia paterna only as Mi
while they are under Age so as to annull Contracts made by them with
out Consent of their Father who is their Administrator in Law, unless
in

(7) Or when a person lends money to a minor that who wants it to buy Stock and is to be paid a great
regard to what the Interest of Lenders than what is allowed by Law, it is not usury.
(8) As stands by 26 Geo. 1. cap. 18 Impowered his majesty to grant two Charters for the insurance of ship
Bottomry, and to incorporate the adventurers, in consideration of a large sum of money advanced
Void.

in Things of small Importance, or in Matter of their or their Trade
Stair Lib. 1. Tit. 11. §. 3. Societies as well as private Persons may bor-
row Money in the Way prescribed by Law. But to prevent the royal Bor-
rows from falling under great Debts and Burdens to the Diminution of
the Dignity of that Estate, and disabling them to serve the Crown and government
as they ought by the Mal-Administration of the Magistrates and others to whom
the Management of their publick Goods and Revenues is committed: It is not
lawful to the Magistrates and Town Council of any Burgh Royal to contract
Debt or give Bond for the same obliging them and their Successors in Office, without
a previous Act made in the Town Council, in the publick Convention of Merchants
and Deacons of Crafts, containing the Causes and Uses for which the Debts are
contracted, and Bonds granted. The Magistrates and Others shall otherwise
contract Debts and grant Bonds, or if the Causes and Uses expressed in such a
previous Act shall be found not to be true just and real: The Contract is null. Sub-
-scribers and the Successors in their private Fortunes are personally liable to creditors
and disburses for Sums of such Debts; and may be sued for last End before the
Lords of Session at the Instance of any Burgess who has born the Office of Ma-
-gistrate of the Burgh without Prejudice to the Regal and Security of the Bur-
-ty Creditors Act 20. Sess. 4. Par. W. & M. 2nd Impr. page 1527.

The Lender must be Proprietor of what he lends or have Commission
from the Proprietor for that End. For the Property of the Thing lent is trans-
-ferred to the Receiver and may by him be alienated l. 2. §. 2. C. de l. C. 45. in
-mes ff. de rei vind. §. 2. post pus. mod. re contrah. oblig. l. 1. §. 2. ff. de oblig.
et act. If the Borrower became not Proprietor of the Thing lent he would
have no Right to consume it: And People borrow Fungibles for no other
End but to use them as their own, and to have the Liberty of consuming
them. Salmasius alone contra totum mundum hold that Property in mutuo
did not pass from the Lender to the Borrower. But that great man is not. Thana-
-tus in the Case: For his Opinion is built upon a mere Sophism, viz.
what is given to be restored is not alienated to the Receiver, and Money
borrowed is given to be restored Ergo &c. This I say is a mere Sophism, seeing the
giving a Thing to be restored in the same Kind only, doth not hinder the Pro-
-perty to be transferred. Which singular Opinion is contradicted both by the Ety-
-mology aforesaid of the Word Mutuum, and the necessary End of the Contract,
that the Money may be of Use to the Borrower. It is true that Money
hath been sometimes lent to no other Purpose than to make a Shew of it:
But that is a Loan of Things to be restored in specie, and not a Loan of Things
which may be restored in Kind, and of the like Quality. Hence it follows, that
the Peril of the Thing lent is the Borrower's after Delivery to him: Accor-
-ding to the Rule, Res perit suo domino. So that, albeit it were destroyed by
more Chance or carried away by Robbers, he behoved to make Restitution of
the Equivalent Stair Lib. 1. Tit. 11. §. 2. Mckenzie Inst. Lib. 3. Tit. 1. §. 7.

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