

The individual Thing borrowed is not to be restored, but as much of the same kind and of the like Quality. The Receiver having no Occasion to use or dispose of the Thing borrowed may indeed if he think fit restore the same ^{the} individual: Because the Power of using thereof, and satisfying his obligation, Restitution of the same Kind, is a Favour provided to him by Law which he may renounce. l. pen. C. de pacti. But it is not sufficient for him to receive a Thing of another Kind as Wine for Oyl or Corn for Wine, or Silver for Gold: Seeing unless a Creditor consent one Thing cannot regularly be given in Payment for another l. 2. §. 1. ff. de reb. cred. Any Thing given in mutuo except coined Money, as Wine Oyl from Bullion &c. is to be restored in the Quantity and Quality l. 3. ff. de reb. cred. whether it be risen or fallen, excepted coined Money, because Silver may be repaid for Gold, or what is borrowed in one Species of any Coin may be repaid in another of the same Value; unless it be otherwise expressly agreed, Arg. l. 3. ff. de reb. cred. Corpuzo. jurispru. forens. Part. 2. Const. 28. Def. 2 & 4. & the Creditor is to be commiserated by it l. 9. ff. de soluti. in being offered perhaps a great Sum in the smallest Coins which looks like Spoils and Vexation, in Multis non est indulgentium, Groenueq. de legit. artoq. in l. 9. ff. de Solu. n. A. Corpuzo. Ibid. Def. 3.

Bullion for Bullion

Whether in Case of the rising of the Value of Money, a Debtor ought to pay conform to the Value at the Time of the Contract or at the Time of Payment is a Question which many have handled but most Part so indistinctly, that it is hard comprehend their Meaning. For clearing whereof we must distinguish the Judgment from the Extrinsic Value, The Intrinsic Value of Money is lessened when either a Piece is made lighter without Derogation to the Fineness, or with a Mixture of baser Metall retaining still the same Weight. The Extrinsic Value of Money is that which is set upon it by lawful Authority. By our Laws borrowed Money was to be repaid with the same Intrinsic Value as received Act 36 Par. 8. §. 2. Act 19. Par. 3. Act 69. Par. 8. §. 3. With respect to the Extrinsic Value at the Time of Payment conform to the Law of Saxony Corpuzo. Ibid. Def. 4. & 5. But this was justly altered by posterior Customs, allowing Debts to be paid according to the Course of Money or the extrinsic Value by lawful Authority at the Time of Payment Stair Lib. 1. Tit. 11. §. 5. M'kenzie Observ. on Act 36. Par. 8. §. 2. and Act 69. Par. 8. §. 3. v. g. 100 Crowns borrowed may be repaid in fewer if the Species of Money was cried up and heightened in Value before the Payment and more should be repaid in case of the Value's being lowered. Which is both agreeable to the Opinion of eminent Lawyers Jo. Voet Comm. ad Jus ff. de reb. cred. n. 24. Christian. Vol. 3. Decis. 1. n. 5. Molynaud de Usur. Quaer. 96. Neastad. Cur. Holl. Decis. 37. Grot. Manud. ad jurispru. Lib. 3. Cap. 10. n. 11. 19. Cap. 34. n. 39. 40. 41. and founded on good Reasons. Because if the Money were cried up, so it may be cried down and the Debtor should run an equal Risk

as the Creditor. 2. Money is not regarded as a Body, but as a Fungible or Quantity of Extrinsic Value determined by publick Authority. 3. It is not to be supposed, that the Lender would have kept the Money in his Hand, till the Extrinsic Value might alter to his Advantage, or that the Borrower kept it by him without making Use of it. This Rule will take Place even where the Term of Payment was before crying up of the Species, if neither Debtor nor Creditor was in Mora. But if a Debtor understanding that the coin is going to be cried down, after Payment to the Creditor before the Value is lessened, and upon his Refusal to accept thereof to assign the Money, any Damage thro' the supervening Abatement of the Value must rest upon the Creditor. Arg. l. 9. C. de mutuo. l. 4. §. 1. ff. de usur. As on the other Hand if after Payment was demanded and pursued for by the Creditor the Value of Money is raised by publick Authority, the Debtor ought to pay conform to the Value it has at the Time of Discontestation: Seeing the Debtor's Delay to pay should not advantage him, or wrong the Creditor, who had his get Payment in due Time might have reaped the Benefit of the rise of Value l. 37. in fin. ff. mancati l. 17. ff. de pot. C. comm. rei vna. Jo. Voet Lib. 1. Tit. 11. §. 3. in fin. ff. mancati l. 17. ff. de pot. C. comm. rei vna. Jo. Voet Lib. 1. Tit. 11. §. 3. They ordain all Debts which of the Terms of Payment had passed before raising of the Value to be paid according to the former Course of such Money, Act 69. Par. 8. §. 3. that no Mans Breach of Obligation and Delay to pay his Debt might be advantageous to him. For where Money is agreed to be paid in a certain Species as Rosenobles, Guineas &c. Payment must be made in some species, if so much of that kind as Money can be had: And if not so much of the Coin current as will amount to the specified Sum when the Obligation was granted Act 37. Par. 6. L. 11. 4. March 1623. 2. Sincithgow contra Sharp M'kenzie Observ. on Act 36. Par. 8. §. 2. because in that case pactio est legem contractui et sic the Borrower is ~~not~~ understood to regard the Substance and Matter of the Coin, more than the Quantity or extrinsic Value l. 30. §. 6. l. 51. §. 1. 508. §. 10. ff. de legat. 1. l. 1. §. 7. ff. de dote preleg. Jo. Voet Ibid. Craig Feud Lib. 1. Tit. 16. §. 16. If the Value of the same Coin ^{at the} in different Countries we are in making Payment to follow the Value of it in the Place of Payment and not the Value it hath where the Contract was made Arg. l. un. C. ubi conven. qui cort. loc. cor. prom. l. 3. ff. de es quod certo loco C. ult. in fin. ff. de cond. tritic. l. 22. in fin. ff. de reb. cred. Because one is held in Law to have contracted there, where he stands bound to pay or perform l. 21. ff. de oblig. et Act 63. in fin. de reb. Act. jud. Jo. Voet Ibid. n. 25.

sect. 2.

The Loan of Things to be restored in specie, or in the same Substance.