

§. 2. ff. de negot. gest. He who has undertaken the Affair of another Person without his Knowledge is obliged to take the same Care of it as if he were con-stitute the other's Agent or Factor, for he is in Steu of one, and seeing he does a good Office, he ought to do it so as it be no wise prejudicial either tho his Ignorance or Negligence or other Fault. Thus he shall be accountable ^{not only} for any Fraud or unfair Dealing, which he may be guilty of, but likewise for Want of Care. And a very exact Care of the Affairs of another Person which he has undertaken, and he will be answerable for the smallest Fault and Neglect which is contrary to exact Diligence §. 1. Inst. de Oblig. qua ex quasi cont. l. 24. C. de inst. l. 20. de negot. gest. If the Person who has undertaken the Management of the Affairs of one that is absent neglects a Part of them, and his taking the Management upon him binds other Persons from looking after them, he shall be made accountable for the said Neglect according to the Circumstances l. 6. §. 12. ff. de. But if on the contrary he intercedes without Necessity some new Affairs which Nothing obliges the absent Person to engage in, as if he interceded in some Merchandise, or engaged him in some Commerce, he alone shall bear all the Loss that shall happen by this new Business, altho the Profit that it may yield will belong to the absent Person l. 11. ff. eod. But if there happen to be in the same Affairs Loss one Way and gain another, he who has undertaken it may compensate the Loss with the gain d. l. 11. He who is not obliged to concern himself in any Ways in the Affairs of another Person may confine himself to one Affair, and not meddle with others, if there be no Connection between them l. 20. C. de negot. gest. But if the absent Person whose Business another has undertaken dies before the said Person intermeddles with it l. 3. pr. 28. C. l. 12. §. ult. ff. de. he will be obliged to continue his Administration for the Benefit of his Heirs and Executors or other Persons who may have an Interest in the said Affairs. For it is a Consequence of his Engagement, which he must consider in its Business, without Regard to the Change of Masters that may happen. If in the Administration of Affairs or Estate of an absent Person, there remains after Deduction of all necessary Charges, any Sum of Money in the Hands of him who had the Management, and he convert it to his own Use, or neglect to lay it out for the Benefit of the Owner, as if he fails to discharge a Debt of the absent Person which concerns Interest, for these and the like Cases, whether he was guilty of any unfair Dealing or not, or of any Negligence for which he may be blamed, he may be liable for the Interest of the said Sum according to the Quantity thereof, the Time which he kept it by him, and the other Circumstances l. 31. §. 3. l. 19. §. 4. ff. eod. Altho those who intrude themselves into the Affairs of others, are bound especially to a most exact Care of them; Yet if the Circumstances be such as it would be a Hardship to require such an exact Care, some Abatement may be made of the Rigour of the Law, and the Managers made responsible only for dishonest and unfair Dealing. Which Abatement ought to depend on the Quality of the Persons, on the Tie of Friendship or Relation between them, the Nature of the Affair, the Necessity there was to look after it, as if it was to

to prevent a Seizure or Sale of the Goods of the absent Person on the Difficulties which it may have been attended with, the Conduct of the Person who has taken upon him the Management, and on the other Circumstances of the like Nature l. 3. §. 9. ff. eod. Any Rights or Bonds the Negotiator acquires by Sale of the absent Person's Rents or Effects, accrue to him in his Name in the Negotiator's Name. Thus a Person having a Way of Contract for some Virtual of the growth of Lands whereof he had taken upon him the Management in Absence of the Proprietor, and obliges the Buyer to pay the Price to him or his Heir: The Price was found not to be in Bonds of the Seller was paid before the Term of Payment, not affected by an Interdict 15 March 1707 Ray contra Ray and others. But Compagnie des Indes proposed against an Interdict upon a Point by the Court and assigned the Debtor after the Charge of Assignation, but intimated not his Intention, and not delivered to the Debtor Assignation, but to his Advocate, who put upon this Ground, that his Advocate had no Warrant from the Debtor to propose the Compensation to assign, since Assignation before the Charges Rights or if he had such a Warrant, that he got not Delivery of the Assignation before the Charges ~~Assignation~~ Intimation of Feb. 1712. Southwell contra. & raising Char. vid. how this Decision is marked by others than the Lord Stairs.

Contribution for the Loss of what is thrown into the Sea in a Danger of Shipwreck. When in Order to lighten a Ship at Sea, that is in Danger of a Storm, Part of the Cargo is thrown over Board, the Master of the Ship and those whose Goods and Effects are thereby saved are obliged to bear their Share of the Loss of that which was thrown over Board for the Common Safety, in Proportion to the Value, and not to the Burden or Weight of what is safe, which Contribution is called Average.

Of all the Naval Constitutions made by the Inhabitants of the Isle of Rhodes so famous for their Excellency as to have been adopted into the Body of the Roman Law l. 9. ff. de lege Rhodia that de Jactis & Contributione is the chief: Which for its Equity and Expediency is now become the Law of Nations, for encouraging Merchants to throw out Goods for the common Safety. The Loss of what was thrown overboard is common to all those who had any Thing to lose in that Danger, if the Ship by that Means is saved l. 1. ff. de lege Rhodia. That is, the Master of the Ship, all those whose Goods or Effects have been saved, and those whose Goods have been thrown overboard, will bear every one of them their Share of the Loss, in Proportion to the Interest they had in the whole l. 1. §. 2. ff. de lege Rhodia v.g. if the Ship and whole Cargo was worth 100000 Crowns, and what was thrown over Board was valued at 20000 Crowns, the Loss being of a fifth Part, every one of the Parties concerned will contribute a fifth Part of the Value of what they save, which will make in all 16000 Crowns; and by this Contribution, those who lost the 20000 Crowns recovering 16000 of them, will be ~~lesser~~ only of a fifth Part as all the other Les Lad Liv. 2. l. 1. §. 1. Part 1. Liv. 2. Tit. 9. Sect. 2. Art. 6. According to the Roman Law, the Contribution for indemnifying those whose Goods or other Effects have been thrown over Board, ought to be regulated on the Foot of the Estimate