

Ship or Merchant himself otherwise particular Persons would be liable to be created upon the publick Faith. But the Owner or Freightor of a Ship is not chargeable with any Contract entered into with the Person having the Charge of the Ship upon extraneous Accounts or Considerations foreign to the Subject of the Proprietors. l. i. §. 4. 5. 7. 12. l. 4. §. fin. ff. de exerc. act. So Owners of a Ship were not liable for a Stock Purse trusted to the Skipper upon his Receipt for buying of Timber and Tar in Norway; in Respect the Skipper was not hinc rei propositus, and it belonged not to the presumed Subject of his Trust. 12 Decemb. 1707 Matthei contra Coltran and Julem. If there be several Owners of the Ship or Merchants, every one is liable for the whole of what is done, or committed by their Skipper or Supercargo l. i. §. ult. ff. de exerc. act. ne in plura adversarij. et distinguatur qui cum uno contraxerit l. 2. ff. de ad. For every one of the Owners or Supercargo has perhaps had in his View one of the Partners, and has transacted with the said Skipper or Supercargo purely in Consideration of the Security which he proposed to himself, by having that Partner bound for what the Skipper promised. So the Owners of a Ship were made liable solidly together to a Merchant, for the Damage of his Lardo spoiled by the Skipper's Fault. 12 Decemb. 1672. Corneij contra Napier. By the Dutch Law, the Owners are liable no further than for the Value of the Ship if it be less than the Damage charged upon them. K. Grob. de f. 3. & p. Lib. 2. cap. 11. n. 13. Groeneweg. de Leg. abrog. us §. 2. post quem cum eo qui in alieni pot. Where the Owners or Merchants of a Ship command the Ship themselves having no input Master, they are liable only provided for what is treated with one of them in Name of the Company l. 4. pr. ff. de exerc. act. So that Domat is in the Wrong to assert (Les Loix Civiles de France l. 1. art. 2. l. 2. Tit. 16. Sect. 3. Art. 7.) them to be bound in such a Case in the whole and solidly for what is contracted.

The Action arising from this Quasi Contract, is called Actio exercitoria, which hath the same Effect in Scotland, as in the Roman Law. Stat. l. i. §. 10. He who lends Money for the Use of a Ship, is not bound to instruct that it was duly applied to such a Use, but only to make appear that Things were wanting to the Ship that would cost so much Money; and that he either furnished the Things or Money to buy them for that End. Which sufficeth to found the Lender's Claim against the Owner or Freightor of the Ship, tho' the Skipper misapplied the Things or Money and converted the same to another Use l. i. §. 9. l. ult. pr. & §. 1. ff. de exerc. act. Because the Owner or Freightor should know whom he trusts with the Charge of his Ship. Nor is one lending Money to a Skipper for the necessary Use of the Ship or Company or for performing the Voyage under any Necessity in Order to found his Action for Reimbursement against the Executor, tho' he instruct that the Skipper had a Commission to borrow upon such Account, which is inferred from his being set over the Ship and inherent in the Office of Skipper. But the Skipper borrowing Money upon extraneous Accounts, as for buying Goods to load the Ship &c. doth not oblige the Executor, unless it ap-

Case in the English Law that one who lends Money to a Skipper or Merchant to buy Goods or to load the Ship

pear that he had a positive Commission to do such Affairs. Stat. l. i. Tit. 12. §. 10. The Creditor may also if he thinks fit, pursue the Skipper or Supercargo upon his Contract l. i. §. 17. ff. de exerc. act.

Tit. 11.

The Quasi Contract of those who carry on any Commerce or Business at Land.

Those who have any Commerce or Business at Land, as Shopkeepers buying or selling Ware, Trades in Bills of Exchange &c. are obliged by the Deeds of their Factors and others set over it, in what relates to such Commerce or Business, for which they are placed, in such a Manner that the Deeds of their Factors or Agents who represent them in what relates to that Business is their own proper Deed. They are obliged to ratify what has been concluded with their Factors or Agents, and must answer for the Fact, Fraud or Deceit of the Person whom they have set over their Business l. i. l. 5. §. 11. ff. de instit. l. 1. Which Factors or Overseers have their Power regulated by the Quality of their Commission. But Traders by Land are not bound by the Deeds of those substituted by their Factors or other Overseers l. i. §. 5. ff. de exerc. act. De exerc. act. n. 9. n. 10. Sub. Praelecti ad Tit. Insti. quos cum eo qui in alien. pot. n. 5. in fin. For this plain Reason, that the Circumstances the Master of a Ship may be in doth not allow that Freedom, which a Factor may have in the Choice of one whom the Trust may be subcommitted to. Nor is there the same Necessity of treating with Factors, as with Skipper's having the Charge of Ships, and his easier to learn who is the Person employed as Factor, and how far his Power extends. Factors trading in the Name of their Masters are not personally liable by the Engagements they contract on Account of the Business intrusted to them l. ult. ff. de instit. l. 1. l. 2. l. 3. l. 4. l. 5. l. 6. l. 7. l. 8. l. 9. l. 10. l. 11. l. 12. l. 13. l. 14. l. 15. l. 16. l. 17. l. 18. l. 19. l. 20. l. 21. l. 22. l. 23. l. 24. l. 25. l. 26. l. 27. l. 28. l. 29. l. 30. l. 31. l. 32. l. 33. l. 34. l. 35. l. 36. l. 37. l. 38. l. 39. l. 40. l. 41. l. 42. l. 43. l. 44. l. 45. l. 46. l. 47. l. 48. l. 49. l. 50. l. 51. l. 52. l. 53. l. 54. l. 55. l. 56. l. 57. l. 58. l. 59. l. 60. l. 61. l. 62. l. 63. l. 64. l. 65. l. 66. l. 67. l. 68. l. 69. l. 70. l. 71. l. 72. l. 73. l. 74. l. 75. l. 76. l. 77. l. 78. l. 79. l. 80. l. 81. l. 82. l. 83. l. 84. l. 85. l. 86. l. 87. l. 88. l. 89. l. 90. l. 91. l. 92. l. 93. l. 94. l. 95. l. 96. l. 97. l. 98. l. 99. l. 100. Factors must either be registered or given up to those who deal with the Factors as their Warrant. Factors may sue in their own Name without Mention of the Constituents, but the Defenders may prove any Allegation against them by the Oaths of the Constituents. 15 January 1676. Oulon and Hoffmann contra Dilaire and her Husband. Factors and those intrusted with the Care of the Affairs of others, cannot purchase the goods of those whose Affairs are committed to their Management l. 34. §. ult. ff. de contrah. empt. Unless they purchase them of the Owners themselves. Factors not being granted to sell or not to act at the Factors Pleasure, Factors are by the Nature of their Office liable to do Diligence unless they be expressly freed therefrom by their Factor's.

The Powers of Factors or Agents expires by the Master's Revocation thereof. Yea a Faculty granted for a certain Time was found revocable before that Time was elapsed, the Factor being always reimbursed of what he profitably expended in