

in Consideration of his Factory before he be obliged to quit his Possession. 30 June 1686 Chalmers contra Bopity. The Master ceases to be liable for his Factors Deeds if there be a publick Intimation affixed upon his Shop or Office discharging all Persons to contract with such a one as his Factor l. ii. §. 2 de lib. ff. de inst. act.

Altho a Tutor or Curator cannot pursue the Minor into redditus rationes: yet a Tutor may pursue his Constituent before he hath cleared his Accounts & furnished 1600 Melville contra L. Melville. A Factor was found obliged to instruct the Agents of his Disbursements, according as the Nature of each Article requires: For these are not sufficiently instructed by his Books containing the Way and Manner of his Disbursements 4 July 1688 Binning and Baird contra Alexander.

Upon the whole our Custom has not so fully owned the Roman Law: to Insurers i. e. Factors and Land Agents as it hath done in Relation to Executors or the Owners and Freighters of Ships

Chap. 3.

Obligations arising from Crimes and Offences ^{or Transgressions} _{to the prejudice or Injury of private Persons.}

Seeing by Commission of Crimes and Offences, the Offender stands bound not only to publick Punishment, to which he may be brought by a criminal Action: but also to repair the Loss and Damage of private Persons he hath injured, which may be compelled to do by a Civil Action: If shall, leaving the publick Satisfaction that is due by Offenders, to be treated of in the Second Volume, consider here the Civil Obligation arising from Crimes and Offences for Damages to the Parties injured, falling under the Cognizance of our Judges of Civil Right.

Damage (in Latin Damnum a demendo, because it takes away something from another) in general, is any Diminution of a Mans Stock or Goods l. 3. ff. de damn. infect. arising either from ones ~~transgressions~~ omitting what he stands obliged to do in Favour of another, or committing against another what ought not to be done. The Reparation whereof are called Costs and Damages. I shall first speak of Damage proceeding from Faults of Omission, and then of that which is incurred by Faults of Commission.

He who inhabits a House, whether he be Proprietor of it Tenant or other, is liable for the Damage which is caused by any Thing carelessly thrown out or poured out of any Place of the said House, whether by Day or by Night, upon Streets Squares or other Places where People use to go. He ought to answer for it to him who suffers the Damage, whether it was he himself that threw it out, or any of his Family or Domesticks, even altho it were in his Absence or without his Knowledge. Because he is answerable to the Publick for the Persons whom he receives into his House: to what concerns the Matter of Policy. And besides the making good the Damage sustained by throwing or pouring out, he who dwells in the House will be condemned to the Penalty which the Civil Policy may have established, or to such other Penalty as the Judge shall think fit to inflict according to the

the Circumstances l. i. pr. §. 1 & 2. ff. de his qui effud. vel dej. Les Loix Civiles. Form. i. Part. 5. Liv. 2. Tit. 8. Sect. 1. Art. 3. If several Persons inhabit the same Place, from whence any Thing hath been thrown or poured out, every one of them will be answerable for the whole Damage, unless it can be known who has caused it, either which of the Masters, or of the Persons for which each Master is answerable. But if their Habitations be distinct every man is answerable for what shall be thrown out of his Place which he occupies l. i. §. ult. l. 2. c. 3. l. 5. pr. ff. de his qui effud. vel dej. Altho the Proprietor & principal Tenant of the House occupies only a small Part of it, if he lets Chambers, or Lodges, or some of them to one of his Friends, he shall be answerable for the Fact of the Thing, whom he receives into his House. But if it appear out of what Room, or Room has been thrown, the Action may be brought either against the Proprietor or Tenant in the said Room, or against him who has the use of the House l. 5. §. 1 & 2. ff. de Schol. Master, Tradesmen and others who take into their Houses Scholars, Apprentices or other Persons to instruct them in some Art, Manufacture or Trade, are answerable for the Fact of these Persons l. 5. §. 3. ff. de

The Trees which stand planted in Society together, obliges every one to be in Manner to have themselves to any Particular use, but likewise obliges every one to keep what is in and depend on them, in such a Manner that no Body may receive from it any Hurt or Damage. If Cattle has depastured in a Place where the Master of the Cattle has not a Right of Pasture, or at a Time when the Pasture was not permitted, or has a Fine or some other Damage in another Mans Ground, the Master or other Proprietor of the Cattle will be obliged to make good the Damage and will likewise be fined if there be ground for it l. i. ff. si Quadrup. paup. fec. in ill. l. 1. l. 2. §. 1. ff. de acq. l. 50. §. 1. ff. de ac. By the Roman Law, he who takes the Cattle of another Person feeding in his Ground, or doing any other Damage, cannot use any Violence that may hurt the Cattle, nor Drive them out in any other Manner than he would do his own. And if he causes any Damage to the said Cattle, he is bound to make it good, l. 34. ff. de Leg. Aquil. But by the Customs of some Places it is allowed to impound the Cattle that do any Damage, and to keep them some Time for a Proof of the Damage, and a Fine is inflicted on the Owners or Proprietors of such Cattle, altho the Cattle has strayed or made their Escape from their Keeper. Which is agreeable to our Laws Art. 11. Sep. 2. Par. §. 7. ^{and also the custom in England & in the highest part of the Roman Civil Law of l. i. Book 4. pr. §. 1. §. 2.} As to all other Damage which may be done by Beasts, he who is the Owner, or who has the Charge of them, will be answerable for it, if he could or ought to have prevented the Evil. Thus a Mule Driver a Waggoner or other Carrier who hath not Strength or Skill enough to hold in a mettlesome Horse, or an unruly Mule, will be liable for the Damage which they shall cause. For he ought not to have undertaken what he had not Skill or Strength enough to perform l. 1. §. 1. ff. ad L. Aquil. The Proprietor of an Ox that hath a Trick of pushing with his Horns, or of a Horse or Mule which kicks or bites ought either to warn People of the Beasts being vicious, that they may avoid him, or to take Care to have it well watched to prevent all Occasions of Danger; otherwise he will be liable for the Damage it shall happen to do, Exod. 21. 29. 36. l. 52. §. 3. ff.

The next in the English Law, that has been in the Field of Law, or long since, and in the Roman Law.