

whether no Mention at all has been made of it l. 4. ff. de pign. act. By the Usage of France and England the Creditor cannot of his own Authority sell the Thing he has in Pawn, without Consent of the Debtor, or Decree of a Judge. Lex Civiles Sec. Tom. 1. Part. 1. Liv. 3. Tit. 1. Sect. 3. Art. 9. Words are per. Inst. pag. 219. Nor doth our Law allow a Creditor to sell the Pledge; he may spend it, or assign his Debt to a Trustee who may arrest the Pledge, his Hand and pursue a Forthcoming Star Lib. 1. Tit. 13. s. 11 & 13. If the Creditor receives from the Sale of the Pledge more than the Debt amount to, he will be obliged to restore the surplus Lex Civiles Sec. Tit. Sect. 4. Art. 4.

The Creditor is accountable for what Prejudice happens to the Pledge in his keeping, thro' any Fault which a careful and circumspect Person would not be readily guilty of; l. 13. s. 1. C. 14. ff. de pign. act. s. ult. de sub. mod. rei contract. oblig. For if the Pledge perishes in the Hands of the Creditor by an Accident, he does not answer for it. And the Creditor is not to use the Pledge against the Will of the Debtor, if being given him in Charity, not for Use. But seeing it may be the wife for repairs, Yea a Cloth for who uses a Towel which will be the wife by Usage, as Apparel set against the Will of the Debtor commits a Breach by Statute l. 24. s. 1. ff. de pign. act. A Pawn or Creditor may use a Thing that will not be the more wearing as a jewel Watch &c. Tho' in that Case it is at his peril; and he is answerable to the Debtor, as the using of such a Nature, that the Keeping is a Charge to the Debtor, as a Case of a Knife &c. he may break the one, or ride the other kind.

A Creditor cannot lawfully stipulate; that if he is not paid at a Time agreed on, the Pledge shall from thenceforth be his, in Lieu of the Payment, called pactum legis commissorie; which is disallowed by Law, contrary to Humanity and good Manners l. 3. C. de pact. pign. Sec. 1. The Pledge may chance to be of greater Value, or may be esteemed by the Debtor to be worth much more than the Debt; And it is given to the Creditor only for his Security, and not that he may take Advantage of the Poverty of his Debtor. But the Debtor and Creditor may agree, that if the Debtor do not pay within a certain Time, the Thing engaged shall remain as sold to the Creditor for the Price which they shall then regulate between themselves, when the Sale is to take Effect. For this is a conditional Sale, which has Nothing unlawful in it l. 16. s. ult. ff. de pign. & hypoth. Provided that the Thing be estimated at a reasonable Price, either by a Court of Justice, or by the mutual Consent of Debtor and Creditor, and with a Duty to the Debtor either to part with the Pledge to the Creditor at that Time, paying the Overplus, if the Pledge be not enough to acquit the Debt; or to have it sold by Court or Auction; or to take it back himself he

ing the Debt. And if the Debtor makes Choice of this last Expedient, the Judge may fix a Time for his paying the Debt, and taking up his Pledge. But as is above insinuated the Creditor may procure Leave from a Judge, to have the Pledge appraised and sold; or may assign his Debt to a Trustee, who may arrest it in his Hand, and pursue a Forthcoming thereof.

If the Creditor has been at any rate or charge for Preservation of the Pledge, the Debtor is bound to reimburse him, altho' the Thing were no longer in Being. And if the Pledge is still in being, and in the Custody of the Creditor, he may detain it for Expenses of this Kind, for that signifieth the Debt, and are a part of it l. 8. ff. de pign. act. l. 6. C. de pignor. Lex Civiles Sec. Tom. 1. Liv. 3. Tit. 1. Sect. 3. Art. 19. If a Pawnee hath used the Pledge whereof the Keeping was a Charge to him as the minding a Case or riding a Horse, such Usage shall go in Recompence for his Charge 3 Salk 260

Sec. 2.

Of Legal Pledges.

A Legal Pledge is a right of Pledge, imputed whether expressed or not, which a Creditor acquires by Law in his Debtor's goods without being put in Possession of them, called a tacit Hypothec from the first into all Parts.

The Roman Law creates tacit Hypothecs upon various Accounts, whereof our Customs allow only a few, that Persons may, for the Benefit of Commerce, be preferred according to the Priority of their Diligence. 1. That Law allows a tacit Hypothec to the King or the Crown in the Effects of those who are Debtors to it l. 2. C. in quib. caus. pign. vel hypoth. tac. contra. l. 3. C. de pign. factis. l. 4. s. 3. ff. de jur. fisci. To a City in the Estates of those who are accountable to it for their Administration l. 3. C. de jur. Reuol. l. ult. C. duo quisq. ord. conven. To Minors in the Goods of their Fathers and Curators for what they shall appear to be indebted to the Minor after stating their Accounts l. per. C. in quib. caus. Origin. vel. hypoth. l. l. C. de admin. s. peric. l. ult. To a Wife in the Goods of her Husband for recovering her Dower l. unie. s. 1. C. de rei. iur. act. To Legatees in the Means of the Testator l. 1. C. comman. leg. l. ult. To Pupils in Things bought with their Money l. 7. pr. ff. qui pot. in pign. l. 1. and in Goods sold to the Seller for the Price l. 19. C. 33. ff. de contrah. empt. l. 13. s. 1. ff. de act. empt. In a House for the Expence of building or repairing it.

None of which tacit Hypothecs obtain in our Law. For Goods sold are not hypothecate for the Price as June 1676 Cashing contra Christy 22 Decem. 1680 Orme contra Pallat. Yea a Seller of Corn to a Tenant to sow the Ground has no Hypothec for the Price June 1667 Simons contra Summers. Nor is a House repaired hypothecate for the Expences of Reparation 5 Feb. 1680 Rae contra Fulcrayson.