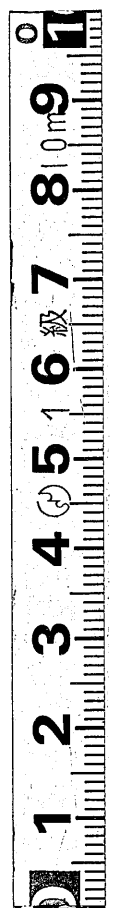


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Time Bargains

TRYED by the

RULES of EQUITY

AND

PRINCIPLES

OF THE

Civil Law.



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Time Bargains

BY

RULES & EQUITY

AND

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OF THE

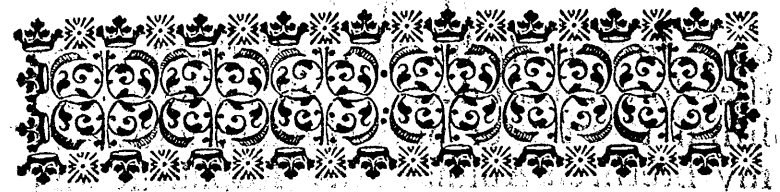
CIVIL LAW.

By W. J. ...

LONDON

Printed for ...

1711



TIME-BARGAINS

Tryed by

Equity and the Civil Law.

WHEN any great Point of Divinity, Law, or Politicks comes to be disputed, and to be the general Topick of all Conversation, every Man thinks himself obliged to say something to the Case, and this is the fit Time for a Man, who is either ambitious to appear in Print, or whose Necessities oblige him to become Author, to publish something to the World: I shall not determine which of these Reasons has brought this little Piece to the Publick, perhaps both. But as Humanity or Love to on's Country is every ambitious Mans, as well as Author's golden Leaf for his Acti-

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ons, so I must be in the Fashion; and therefore I must declare, that I have publish'd this out of pure Humanity towards my Brethren Animals, the Impudent and Ignorant. I have heard them talk so foolishly upon the present great Dispute, that I think its as much Charity to afford them some plausible Arguments, and to put learned Quotations in their Heads, as it is to give a Drunken Beggar a Farthing to buy drink with.

The present great Question in all Companies, is, what will become of TIME BARGAINS? Will they be good or not? concerning this grand Debate, I design to give my Opinion in the following Sheets. I shall not pretend to determine what would be the Issue, if this Point were to be try'd at Common Law, it would swell my little Volume to a Bulk too great for the Use of those Gentlemen, for whom I principally design it: I think this one Question affords such a Fund for Law Pleas, that it is of Consequence enough to deserve the Parliaments Notice, which cannot be Ignorant that Multiplicity of Law suits is of almost as bad a Consequence to the Nation, as Multiplicity of Trans-

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Transfers. The Parliament ought to give their Determination in all Cases, which they take Notice of, according to the Laws of Nature and Nations, and the universal Rules of Equity, and therefore in this Light only, I am to consider this Question, but shall first take a short View of the Principles of the Law of Nature, and of the Civil or Roman Law, with respect to Contracts, and more particularly with respect to the Contract of Sale. A Contract, to take it in its most general Signification, is much the same as with what the Civilians call *Conventio*, which is by them defined, *Duorum plurimumve, in idem, placitum & consensus.* The Consent and Agreement of two or more Persons about any Thing. By the very Nature of it, there ought to be an exact Equality observ'd, so that neither Party should be a Loser; and if any of them is wronged, then the Law ought to assist him, and do him Justice if the other Party will not, *Grotius lib. 2. cap. 12. § 8. In contractibus natura equalitatem imperat, & ita quidem ut ex inequalitate jus oriatur minus habenti,* and the Romans, those great Patrons of Justice and Equity, observed this Rule so exactly, that

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that in all Contracts, if either Party was wronged, he had several different Actions, by which he might get himself redressed, and the other Party was sure to be punished, if it was made appear that he had been guilty of Covin or Deceit.

The particular Sort of Contract we shall have Occasion to take most Notice of is, what we call a Contract of Sale. The Civilians *Emptio venditio*, which is by them defined *Contractus bonæ fidei, de re certo pretio permutanda.*

It was called *Contractus Bonæ Fidei*, because in any Suits upon this Contract, the Judge was not obliged to observe exactly the Terms of the Agreement, but had by his Office a Latitude to recede from them a little, and to determine according to what he thought Just and Equitable.

The Writers upon the Law of Nature and Nations are of Opinion, that there ought to be in this (as in all other Contracts) an exact Equality observed, and if the Seller sells his Goods below what they are worth, then he ought to be redressed, and the Buyer obliged to restore the

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the Goods upon receiving back the Price he paid, or to make up what is wanting of the Price. And upon the other Hand, if the Buyer pays more than the Value, the Seller is obliged, either to refund the Superplus, or to take back his Goods, and restore the whole Price received. *Grot. l. 2. c. 12. § 11. In ipso actu principali, hæc desideratur æqualitas ne plus exigatur quam par est. Quod in contractibus beneficiis vix locum possit habere — at in permutatoriis omnibus sollicitè id observandum est.*

The Civil Laws of all Nations differ more or less from this general Law of Nature, only for Conveniency, and to prevent the Multiplicity of Law-suits. The Romans allowed the *Actio de Rescindenda Venditione ob enormam lesionem*, only when the Inequality exceeded the Half of the Value of the Thing sold. *l. 2. Cod. de Rescind. vend. Rem majoris pretij, si tu vel pater tuus minoris distraxeris, humanum est, ut vel pretium te restituente emporibus, fundum venundatum recipias, auctoritate Judicis intercedente: vel si emptor elegerit, quod deest justo pretio recipias. Minus autem pretium esse videtur, si nec dimidia pars veri pretij soluta sit.* And there was the same Remedy for the Buyer, if he bought

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bought, by more than a half, dearer than he ought to have done. But by their Law there were several other Actions allowed for other Reasons, even when the Lesse or inequality did not extend so far, such as the *Actio Redhibitoria*, *Actio quanti minoris*, &c. And it was a general Rule with them, *In contractibus qui bonae fidei sunt, etiam majoribus officio Judicis, causa cognita, publica jura subveniunt* l. 3. *Cod. Quibus ex cau. Maj.*

By the Common Law and Customs of England, we are obliged for the Encouragement of Trade and Commerce, not to enquire so strictly into the Equality of Private Peoples Bargains, we allow every Man to make the best Bargain for himself he can, providing he makes use of no plain and open Fraud.

But when we come to consider a Case by the Laws of Nature and Equity, then we must have no respect to the Laws of any particular Country, for, as Cicero says, *Leges, iniquae tollunt quatenus teneri manu possunt, Philosophi quatenus ratione et Intelligentia.* And Grotius very well adds, *Hi vero qui legibus Civilibus Subjecti non sunt, id sequi debent, quod aequum esse ipsis ratio recta*

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recta dicitur Grotius. l. 2. c. 12. §. 12. If I understand right the Power of Parliament this ought to be their Rule.

The first Rule whereby to determine whether the Price be equal or not, is that Rule of the Civil Law laid down by *Johan. Voet.* in his Commentary on the Digests, l. 18. Tit. 5. §. 7. *Pretium autem an Justum, an Injustum sit, ex qualitate rei, et redituum quantitate aestimandum est.*

And the next Rule is : The General Opinion of the World about the thing sold ; For every thing is worth as much as the People of the Country where it is sold generally give at that time for such things. Providing the People be not some way or another, led into a general Error about the Value of the thing to be sold, for it's very certain, a whole People may be deceived as well as one Man.

If a whole People are in an Error, and believe a thing of more Value than it intrinsically is, no one of these People are obliged to fulfill the Bargains they made while they were led into them by this Error, no more than any private Man would be, if he alone were led into

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a Bargain by any Error about the value of the thing he bought. *Grotius, l. 2 c. 11. §. 6. Si promissio fundata sit in presumptione quadam facti, quod non ita se habeat, naturaliter nullam ejus esse vim; quia omnino promissor non consensit in promissum, nisi sub quadam conditione quae reipsa non extitit.*

Now, as to our TIME BARGAINS, that I may proceed in a Method, I shall divide them in Bargains on Stock; first and second Subscriptions; and Bargains on third and fourth Subscriptions.

The Bargains on Stock, &c. are either such as are already in a manner compleated by transferring the Stock, or assigning the Subscription Receipt, and taking Bills, Bonds, or other Security for the Price: Or such as stand in Contract between the Buyer and Seller, the Stock, &c. still remaining in the Name and Possession of the Seller.

These Bargains, which are so compleated, are again of two sorts. By (as I believe) most of them the Stock, &c. was sold a great deal above the Market Price at the Time, and a Bill or Bond taken for the Money payable at some time after: Others were sold at the Market Price, and a Bond
or

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or Bill taken for the Price with common Interest from the Date. This last sort hardly deserve the Name of TIME BARGAINS: However, we shall now consider them as such, and discuss them first, Because whatever Argument is good in Law against them, will be good against every one of the rest.

And even as to these Bargains we must distinguish, Whether there was any Deceit and Knavery committed in running up the Value of the Stock so high; or if there was not. Likewise we must distinguish Whether these Bargains were entered into with the Directors themselves, or with other People who knew nothing of the Management.

If the Directors and Managers have been guilty of no Sinister Means or Methods to raise the Price of their Stock above its real Value, (which I should be glad it were possible to believe) and are as Harmless and Innocent as any other that deal in that Stock: And if the Stock was Bought from a Man who was no ways concern'd in the Management, and knew nothing about the
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Value of it: The Buyer, by the Law of Nature, which requires an exact Equality in all Contracts, is free from his Bargain in as far as the Price exceeds the real Value of the Thing bought; and because he was in an Error when he promised so much for it: He imagined that the Company, that is, the Directors had a Scheme of Trade in their View, which would make great Returns Yearly to them, and so enable them to divide Fifty *per Cent.* But now he finds he was in a Mistake, they never had such a Thought. His Promise therefore being founded *in Presumptione facti quod non ita se habet*, is in it self void, and by the Civil Law, the Buyer is certainly Free, because the *Lesio* or Loss he sustains by the Bargain, is *ultra dimidium valoris rei vendita*: And likewise because there was a latent Defect in the Thing Sold, which if the Buyer had known, he would never have promised so much for it: For People commonly imagin'd that the Profits of the Company were to proceed from some Scheme of Trade, which would have made a great and lasting Dividend, whereas all the Profits the Directors ever had in view, was what they made by the new Subscriptions, which could make but a short temporary Dividend. In this Case the Buyer would have had by the Civil Law

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Law his Action *quanti minoris*, which was competent against the Seller, *ob defectum in revendita, quem si scivisset, tanti non fuisset empturus*, which Action was competent when the Seller was ignorant of the Defect, for if he knew of it, there was an Action *de dolo* against him, *ad totius damni reparationem*.

But if these Bargains were entered into with any of the Directors or Managers, there is a great deal more to say: For People are not only free from any TIME BARGAINS entered into with any of them, but have them further obliged to make up any Loss they have sustain'd by making such unreasonable Bargains. For the Directors and all those concern'd in the Management of that Stock, ought to know the Value of the Stock they have under their Care as well as any Artist ought to know that sort of Work he deals in: If they knew that what they sold was not worth half of what they got for it, they surely were great Cheats, and Guilty of the most heinous Fraud, in accepting of One Thousand Pound for what they knew was not worth Five Hundred; and if they were Ignorant of the Value of that very Stock they had under their Care, it was a supine Ignorance, and does not excuse

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excuse them from an Action *ad id quod Interest*. *Johan. Voet. l. 18. Tit. 1. §. 6. Nam si sciverit, vel supina aut affectata ignorantia in venditore appareat, majus est, ut nihilominus ad id quod interest damnari debeat, veluti Si vita ejus ac artis & instituti sit, ut ignorare non debuerit, istam rei a se venditæ qualitatem.*

We shall now suppose, for Arguments sake, that there were deceitful and false Stories handed about by the Directors, and other Managers, for making People believe that they had secret Schemes and Projects for making vast Profits, which would raise the Value of their Stock considerably above what it ever gave. If any of the Directors, or other Managers, ever told such a Story, or made such an Insinuation, it was deceitful, unless they can shew that they had a Project, which would have made the Stock intrinsically worth as much as ever was given for it. And since no such Project ever appeared, I conclude, that People were led in to make these Bargains, by the *Dolus*, or Deceit of the Managers.

If the Stock was bought from a Man who knew nothing of the Story, then the

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the Buyer is in the Case of those People who are brought into a prejudicial Bargain, by the *Dolus*, or Fraud of a third Party. And by the Civil Law, such a Man has an Action *de Dolo* against the Person guilty of the Fraud, and likewise he has an Action against the other Party Contractor, for Recovery of whatever he got more than enough by the *Dolus* of that third Party, *Johan. Voet. l. 4. tit. 3. §. 5. Si tamen non alterutrius ex contrahentibus, sed tertij dolus in emptione aliove Bonæ Fidei negotio intervenierit, rationis est, hanc dari de dolo actionem: ———. Quibus in casibus etiam non ad contractus infirmationem contendendi potest, sed tantum ad id quod interest, dolum haud intervenisse, si modo dolo careat uterque contrahentium;* so that in this Case likewise it's plain from the Principles of the Civil Law, that the Buyer would not be obliged to fulfill his Bargain, if he were by the Fraud of a third Party led in to give more for a Thing than it is worth.

If the Bargain was made with any of those People, who were guilty of this Fraud or Deceit, then the Buyer was brought into this Bargain by the *Dolus* of the Seller, and induc'd to give a great deal

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deal more for the Thing he bought than it was really worth; and consequently the Bargain is not only void, but the Seller, the Committer of the Fraud, is obliged to make up to the Buyer, whatever he lost by making such a Bargain. For this being a *Contractus bonae fidei*: *Si Dolus causam dederit contractui, ipso jure nullus est*, Johan. Voet. l. 4. tit. 3. Pandect. where he adds, *Licet autem ob dolum causam dantem, contractus Bonae Fidei nullus sit, tamen si ex tali contractu Laesionem sustinerit, qui ex dolo circumventus erat, actionem ex ipso illo contractu nullo est habiturus, ad id quod Interest. Si vero Dolus in contractu Bonae Fidei, incidit, contractus nullus non est, sed ex ipso contractu datur actio*. Voet. lib. 4. t. 3. §. 4. In the Civil Law it's said, that *Dolus dat causam contractui*, when the Deceit of one of the Parties leads the other into a Bargain, which otherwise he would not have enter'd into. And they say, that *Dolus incidit in contractum*, when the two Parties had from the Beginning a mind to make such a Bargain, but one of them happens to be cheated some way in the Bargain making by the *Dolus* of the other.

The Case I have stated, will further appear plain from several Texts of the Civil Law, l. 37. ff. de Dolo malo. *Quod venditor ut*
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Commendet dicit, sic habendum, quasi neq; dict' neq; promissum est. Si vero decipiendi emptoris causa dictum est: aequae sic habendum est, ut non nascatur adversus dictum promissumve actio, sed de dolo actio & l. 13. §. 14. ff. de acti. empti. *Si Titius fundum in quo nona-ginta jugera erant, vendiderit, & in lege emptionis dictum est, in fundo centum esse jugera, & antequam modus manifestetur decem jugera alluvione adcreverint, placet mihi Neratii sententia existimantis, ut, si quidem sciens vendidit ex empto actio competat adversus eum, quamvis decem jugera ad creverint: quia dolo fecit, nec dolo purgatur.* And to this we may add the Opinion of Jul. Paul. Recept. Sentent. l. 2. tit. 17. §. 4. *Distracto fundo, si quis de modo mentiatur, in duplo ejus, quod mentitus est, officio Judicis estimatione facta convenitur.* I think any of the Managers of South-Sea-Stock, or any of those who were in the Secret (as they call'd it) come very plainly within these Texts of the Civil Law, if they ever gave out that their Stock was worth 1000 per Cent. it being impossible for them to make it appear, that ever it was worth 500, or that they could make a perpetual Dividend of 50 per Cent. when as yet they can shew no View they ever had of making a perpetual Dividend of 25
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per Cent. By the Law of Nature and also by the Civil Law one ought to be so far from telling any false Stories in Commendation of the thing he sells, that if it has any latent Vice or Defect he ought to tell it. *Gro. l. 2. c. 12. §. 9. Quod is qui cum aliquo contrahit, vitia sibi nota rei de qua agitur significare debet. And Toto Titulo. ff. De Adilitio edicto.*

I shall now answer some of the chief Arguments commonly used for the Validity of TIME BARGAINS.

They pretend, that tho' the Bargains seem now to be unequal, yet they were not unequal at the Time when they were made, because the Buyer might have then sold out his Stock again for as much as he gave for it; and when the Equality or Inequality of a Bargain is examined, Respect ought to be had only to the Time when the Bargain was made.

I Answer, That to put this Argument in its plain Dress, it is as much as to say that the Opinion of the World is the only Rule whereby to fix and determine the Value of things; But I have already given another Rule, and certainly it is the Rule
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by which the Opinion of the World regulates it self, when it is not led into an Error by the Artifice of Cunning and designing Men; The Rule is, to fix the Value according to the Quality of the thing sold, or the Yearly Profit it may produce: The Scarcity or Novelty of the thing, and several other Accidents may reasonably alter its Value a little; but when the World, without any of these Accidents, raise the Price of any thing, it is because they are made believe that the thing has many more fine Qualities than they formerly thought it had, or that the Yearly Profits to be made by it are much greater than they expected, and if they are imposed upon, and made believe this, without any true Foundation, then they are in an Error and their Opinion is not to be the Rule.

To shew People that the World may be led into an Error both as to the Quality and Produce of any thing sold; I shall suppose two Stories both of which may happen. First, I shall suppose, That some adrait Chymist falls upon a Way of making the Counterfeits of any precious Stone, so very like, that it cannot be discovered but by the nicest and severest

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Tryal: This Counterfeiting Gentleman comes to *England* and disposes of a great many of his Jewels at vast Prices; the Buyers sell them again to others, for the Price agreed on, they get from some People ready Money, from others, Bonds and Bills; some wicked curious Fellow or another comes to put these Stones to the Tryal and finds them Counterfeit; upon which Discovery, they fall prodigiously in their Price, perhaps to one tenth of what they once sold for: Will not any reasonable Man say with me, that not only the Granters of the Bonds and Bills are not obliged to pay the full Contents, but that likewise, all the Money got by such Bargains, ought both by Law and Equity to be restored, and the Counterfeits all returned to the first Coiner, and he hanged for his Knavery.

Next, as to a general Error about the Yearly profits of any thing I shall suppose that five or six honest Gentlemen (or if you please two and thirty) have got a Grant of an Island discover'd by them; they divide their Property in this Island, into a thousand Shares, and they sell a good Number of them to their Friends, at a hundred Pounds each; before

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before they dispose of the rest, they go about and insinuate to every Body they meet, That there will a vast Profit arise out of this Island Yearly: The Credulous and Unthinking Multitude believe them, and they buy up their Shares at vast Prices, perhaps, two or three hundred Pounds *per* Share: Upon this, they open Books, and take in a Subscription at four Hundred Pounds for each Share; the People throng so upon them, that it's reckon'd a prodigious Favour to get a Subscription: The Gentlemen Managers think this a fit Harvest for them, and to raise the Prices of their Shares yet a little higher, they give out in all Companies, that their Shares will be soon sold for a Thousand Pounds *per* Share at least, because they find they will be able to make a Dividend of fifty *per Cent* out of the Profits arising to them by their Island, tho' at the same Time they know, that the Island will not be able to produce ten Thousand Pounds a Year neat Profit; however, finding the People fond of believing any thing they say, they open Books and take in Subscriptions at a thousand Pounds a Share, which immediately brings up the Price of the old Shares first disposed

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posed of to a Thousand: The Gentlemen then thinking they had made enough of the Credulity of the People, and fearing some Body should be at the Pains to take a View of their Island and discover the Cheat, sell out all the Shares they can, and advise their particular Friends to do so: This brings more of their Shares to the Market, than the Credulous have Money or Credit to buy, which makes them fall prodigiously in their Price: Then the People awoken out of their Dream, and they begin to examine what Reality is in the Matter; they find the Island is hardly capable of producing Ten Thousand Pounds a Year: Upon that, they come and ask the Managers (I had almost said Directors) how they came to give out, that they would make Fifty Thousand Pounds a Year of it. They gravely answer, Why, we never imagined we were able to make so much a Year from the Produce of the Island, but we have made such a Sum by the Subscriptions, and by Means of that we may divide to you for four or five Years fifty Thousand Pounds a Year, but then the Profit we have made by Subscriptions will be exhausted, and you must content your selves with the real
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Produce of the Island. I shall leave the cheated World to give what Names to these Gentlemen Managers they think they deserve.

But, in my Opinion, the World is here again in an Error as to the Value of a Thing upon Account of over-valuing its yearly Produce; so that in such Cases as these, the general Opinion about the Value of a Thing ought not to be the Rule, but all Bargains ought to be void which were made while the World was in that Error. I have before cited *Grotius* as an Authority for my Opinion, That by the Law of Nature, no Man is bound to stand to a Promise which by any Deceit or Error he is induced to make, and if any will alledge, that it adds to the Validity of a Man's Promise, That other People were in the same Mistake; I shall ask what Number of People must be in the same Mistake with him in order to make his Promise good; if one should answer, Every Body, Then I am sure this Argument will do no Service to South-Sea Bargains, because a great many had never any Faith that Way, and if one should fix upon a Number, I shall take *Horace's* Way of arguing

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ing, and ask what Difference One less would make, or the Reason that ten thousand Peoples agreeing in the Value of a Thing should make a Promise good which nine thousand nine hundred ninety nine Peoples agreeing would not.

If the South-Sea Stock was not intrinsically worth the Price it bore, every Man who, knowing what it was, sold it to his Neighbour at the current Price, cheated him in so far, as he exacted more than the known Value of the Thing sold, the Man to whom he sold it, might perhaps, keep the Candle from burning his Fingers, but he could do it no Way but by putting the Cheat upon another. It was like selling a Horse with a secret Disease, the Buyer had no Way to save himself harmless but by putting the Cheat upon a third Person, and so getting rid of the bad Bargain before the Disease broke out.

The second Argument made use of by the Sellers of TIME BARGAINS is that what they sold was an uncertain Chance much like a *Factus aleæ* or *Retis*, and therefore there could be no Inequality in the Bargain, since there was no determin-
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ing the Value of the Thing sold; it might have been worth a great deal more than they sold it for, as well as less.

Answer'd, That a Chance may be bought too dear as well as other Things. There is a Method of putting a Value upon any Chance that can happen: If two Gamesters were throwing a Main at Dice for a Guinea, and the Caster had Ten against Seven, it's a Chance which of them shall have the two Guineas; the Setter has the most Probability to have them, because he has Two to One, and consequently, his Chance is worth Twenty Eight Shillings. But if some ignorant Man should come in, and give him Ten Guineas for his Chance, sure there's no Body but will confess, that such a Bargain ought to be made void by the Laws of Equity.

If any Man will shew that *South-Sea* Stock could ever have been worth a Thousand Pound *per Cent.* of intrinsic Value, he may have something to say, at least, it would then come to a Calculation of the Probabilities on each Side, and we could put an exact Value
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upon the Chance. But I believe no Man will say that there was ever any Probability of its coming to be worth near to what it was sold for.

3. If these Gentlemen offer to put their Case upon this Argument, I think they very fairly bring themselves within the Meaning of *Stat. 9. An. C. 14.* which avoids all Securities for Money won at Play or by Betting; and it's very probable, that the Judges will bring all dealing in Stocks after their Price rises above the real Value, under the Meaning of this Act; for then the Price depends entirely upon the Whim of the People, and all Dealing in them is nothing but Betting or Wagering whether or not the Whim will last longer, or will raise the Price of Stocks higher.

They say, That *England* being a trading Nation, it tends to the Encouragement of Trade, and is consequently for the Interest of the Country, that every private Man be left to make the best Bargain for himself he can, without any Questions whether it be equal or not.

Answer'd,

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Answer'd, It is certainly the Interest of *England* to encourage Trade as much as possible, and for that Reason, no Notice ought to be taken of what Bargains People make in that Way, unless plain Knavery appear; but the Trade properly called Stock-jobbing, which is a Way of Dealing in publick Stocks, not with any Design to let the Money remain there, and trust to the Dividend for the Interest, but only with a Design to make Profit of it by buying to sell it to another, perhaps next Day, or by selling now to buy cheaper afterwards. This Trade, I say, is a prejudicial Trade to the Nation, and consequently ought to be discouraged by all Ways and Means possible; among which, I believe, it would be one of the most effectual, to avoid all TIME BARGAINS in Stocks, where the least Inequality appear'd; especially, if at any Time, a Set of designing Men should by their false Stories and Insinuations, make the People run mad, on Purpose to make their own Advantage of the Simple and Credulous.

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4. They alledge, That there is the same Reason for avoiding all Bargains in Stocks which have been made since *January* last; That there is, for avoiding the TIME BARGAINS, we are now speaking of, but there have been so many of these made, and in such a private Manner, that it's impossible to get it effectuate: The Consequence would be, That the real honest Men would be the only People undone, because they would declare honestly what Bargains they have made; and the Knaves, who could swear heartily to any thing that's for their Interest, would be the only Gainers, for they would deny upon Oath the most Part of their Bargains; and if the Parliament should resolve to make void only the TIME BARGAINS, it would be an Injustice done to a great many who had bought Stock with ready Money, and sold it out to Time.

To this I answer, That I am positively of Opinion, that if it were possible all Bargains made since People were first led into that Error, or rather Madness, of paying great Sums for they knew not what, ought to be made void, and the
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more of them are sustained, the more Injustice is done. It is perhaps impossible to avoid all the Bargains that are now long ago compleated and done; but tho' that be impossible, the Other is not; for all the TIME BARGAINS may be easily proved, and the Inequality made appear, so that all that can be inferred from this Argument, is, that the Parliament out of Necessity, and for the Tranquility of the Nation, will be obliged to do a Peice of Injustice, that is, to confirm all the Bargains in Stocks which are now entirely compleated and finished: But as to the TIME BARGAINS they have not this Necessity to pretend, they may be all easily discovered, and made void; the only remaining Reason then is, that it would be an Injustice done to the Sellers, who had bought with Money, and sold out to Time which I deny. If there is any Injustice done to the Seller, it is the not giving him Repetition against the Man he bought from, which is a Peice of Injustice occasioned by Necessity, and for the Sake of publick Conveniency, which is always preferable to any private View: But the obliging the Buyer upon Time to make good his Bargain, would be doing a Peice of Injustice to one Subject, for no other Reason
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son, but to prevent another's Loss, whereas if there is any Favour to be shown, it ought rather to be shown to the Buyers than to the Sellers, because if the Thing sold was a Cheat, and not worth the Price agreed to be given, it may be supposed that the Seller was a Cheat, and knew that the Thing sold was not worth what he was to get for it: But it can never be supposed, that the Buyer knew any Thing of its not being worth the Price it bore. Another Reason is, that if this Affair of TIME BARGAINS is examined, it will be found that the supporting the TIME BARGAINS will ruin a great many Families of poor Traders and Merchants, to make a few Stock-Jobbers and Gentlemen too Rich, and the avoiding of them, tho' it may make some People poorer than they think themselves at present, yet it will quite ruin none. In this Case, I think its no difficult Matter to determin what to do.

All the Arguments I have yet made use of, are good against all TIME BARGAINS in General. I come now to speak of the other Sort of Bargains, in which Credit is given for the Price, viz. where the Stock or Subscription was sold a good

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good deal above the Market, and a Bond or Bill taken for the Price agreed on, payable such a Time after Date; the particular Argument against Bargains of this Kind, is, That they are Usurious, and consequently void in Law.

Money of its own Nature is barren, and can produce nothing; but since a Man who has Money may buy Lands, or may merchandize with his Money, and so make Profit; therefore the Law allows him when he lends his Money to another, to put a Value upon that Hope or Expectation of Profit he might have had, if he had employ'd his Money himself. By the Law of Nature there is no particular Value put upon this Hope, but the Parties Contractors are allow'd to put what Value they please upon it, according to Equity and their own Consciences. But by the Civil Law of each Nation, there is a certain Value put upon this Hope of Gain, and every Man who lends out his Money, must lend it out at this set Value; let him value this Hope of Profit as high as he pleases, yet he cannot by Law demand more from the Borrower for the Use of his Money, than the Legal Value:

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Value: If he thinks it not enough, than he may make Use of his Money himself, and so get the Profit he expects, by which Means there is no Injustice done him. This is the Argument made use of by all Writers for the Lawfulness of Usury. *Dum ergo per mutuum concesso alteri nummorum suorum usu, sese lucra superioris varie captandi facultate privat, aliisq; lucrandi prebet occasionem, quidni vicissim ab eis jure paciscatur usuram legitimam, eamq; certam, incerti lucri, sed tamen pretio certo aestimari soliti, vicem suppleturam,* are the Words of *Johan. Voet. l. 22. Tit. 1. §. 4. De Usuris.*

And all Lawyers know, that the lending of Money, or what the Romans call'd *Mutuum*, may consist in the giving one any Commodity to sell and to make Use of the Price as borrowed Money, *Vini Instit. l. 3. Tit. 15. Prin. Num. 6. Item, Si Lancem tibi vendendam dederim, ut nummis uteris, perinde mihi obligaberis, ac si vendidissem ipse, pretiumq; tibi tradidissem.* Now, I take it to be the same thing, when a Man sold another a thousand Pounds South-Sea Stock when it was giving eight hundred *per Cent.* and took his Bond payable for it six Months after,

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ter, as if he had lent him eight thousand Pounds; and therefore for the Forbearance of eight thousand Pounds for half a Year, he might have taken his Bond for the eight thousand Pounds and two hundred Pounds more by Way of legal Interest: But if, instead of this eight thousand two hundred Pounds, he takes a Bond for ten Thousand Pounds payable half a Year after, it is down right Usury; For it can never be said, that the whole ten thousand Pounds was by Way of Price for a thing that every Body knows might have then been bought for eight thousand Pounds. This would be Extortion to the highest Degree, so that the only Pretence for the two thousand Pounds more, is, that it was paid for Forbearance of the eight thousand Pounds for half a Year, which is just fifty *per Cent. per Ann.* a pretty tolerable Interest.

Nor is it any Excuse for the Seller, that both the Buyer and He, expected that the Stock would have been above a thousand *per Cent.* in that Time, and therefore it was reasonable the Seller should have ten thousand Pounds for his one thousand Pounds Stock: For this

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is selling his *spes Lucri futuri* above the legal Value, and is consequently Usury. If he had not a Mind to content himself with the legal Value of his Hope of Gain he might have kept his Money, that is his Stock to himself, and so the great Profit he expected by the Rise of Stocks, would have all accreed to himself alone.

And as for the Argument of its being a Bargain of Chance, it is of no Weight, for let it be as great a Chance as ever yet was, if that Chance comes to be sold at a certain Value or Price, any Man who takes more for it than the current Price and legal Interest for the Time, upon Account of the Forbearance of Payment, is guilty of Usury.

By Stat. 37. H. 8. C. 9. It is Enacted, that none shall sell his Wares or Merchandise to any, and within three Months after buy the same again, at a lesser Price, knowing them to be the same Wares; or buy any corrupt Bargain of Wares, Money, or other Things; or buy any Mortgage of Land, and take in gain, for giving Day of Payment more than according to the Rate of 10 per Cent.

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Cent. for one whole Year. And by Stat. 13. El. C. 8. all Bonds, Contracts, and Assurances upon Usury, are declared void. And it is further Enacted, that the Stat. of H. 8, shall be observ'd largely and strongly, against the Party offending by any Way or Device, directly or indirectly. And all our Statutes since that Time Enact, that none shall take directly or indirectly, for the Loan of Money, or any Commodity above the Value of 8, 6, or 5 *lib.* for the Forbearance of 100 *lib.* for Year, and all Bonds, Contracts, &c. whereupon more shall be reserved, are made void. If the selling of any Commodity, thirty or forty *per Cent.* above the Market-price, because of the Delay of Payment, for half a Year or three Months, is not a Way or Device, of indirectly taking Usury: I am sure we can fix upon no indirect Way at all of being an Usurer, and if this is not judged within the Meaning of the said Stat. 13. El. It will be very easy for two Co-partners in Usury to elude the Statute of H. 8. for one of them may sell the Goods at a great Price to the poor Borrower, to be paid such a Time after, and the other may buy them back immediately at an under-value, and furnish the ready Money to the oppressed Man,

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who must of Necessity have it at any Rate,

I come now to consider the TIME BARGAINS, which are not as yet compleated, but stand in Contract betwixt the Buyer and Seller; the Stock or Subscription still remaining in the Name and Possession of the Seller. Besides the Arguments already advanced, there is a peculiar Argument against this sort of Bargains, *viz.* That after the Stock or Subscription was sold, and before it was delivered, the Seller render'd the Stock and Subscription much worse than it was when he sold it, by his consenting, either tacitly or expressly, at the General Court, to the giving the Annuityants and Third and Fourth Subscribers at 400 instead of 800 and 1000 *per Cent.*

I know it is alledged, by the Sticklers, for the Validity of TIME BARGAINS, that they who bought Stock, bought it with all the Dangers of Loss and Hopes of Advantages that attended it, and therefore they are as much oblig'd, notwithstanding of this Resolution of the General Court, as the Sellers would have been, tho' there had been a Subscription taken

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taken in at 1500, after they had sold, and before they deliver'd.

I grant, that if the Stock had been immediately transferr'd, or the Subscription Receipt deliver'd, the Buyer could have made no Complaint upon this Account; but it's a known Principle in Law, that while the Thing sold remains in the Possession of the Seller, if it becomes worse either by his Act and Deed, or by his Neglect, he is oblig'd to make up the Loss to the Buyer: This being a Contract for the Use and Profit of both Parties; by the common Rule of the Civil Law, *Venditor in re asseruanda tenetur prestare dolum, latam & leuam Culpam. l. 23. ff. de Reg. juris.*

From thence I conclude, That the Seller could not either tacitly or expressly consent to any Resolution that would make the Stock worse then when he sold; otherwise he thereby oblig'd himself to make up the Loss to the Buyer. If therefore he was at that General Court, and consented to the Ease (as they call it) of the Annuityants and Third and Fourth Subscribers, he made the Stock he had sold worse

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worse by his own Act and Deed; and if he was not there, he made it worse by his Neglect, so that in either Case, he is oblig'd to make up the Loss to the Buyer. For altho' the Buyer bought it with all the Dangers of Loss and Hopes of Profit that attended it; Yet if any of these Losses was occasion'd by the Act and Deed, or Fault of the Seller, he must make up the Loss. Indeed, if the Seller can shew by a Protestation taken against that Resolution, that he did all he could against it, then he would be in no Fault, and consequently the Buyer could make no Use of this Argument.

I have now only remaining to consider, the Contracts upon Third and Fourth Subscriptions, against which every Argument as yet adduced will be good; that is to say, against those Bargains where extravagant Premiums have been promis'd. I shall further add a particular Argument against them likewise. When any Man bought one of these Subscriptions, he consider'd the Capital that Company were to have by their old Stock and the new ingrafted Stock, he foresaw that a Company with such a vast Capital would be able to procure

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procure what Favours and Immunities were necessary from the Government, and that by this Means they would be able to engross the whole Trade of *Europe* to themselves, if their Stock were kept under any tollerable Management: From this they behov'd to make great Profits, and for that Reason he was very willing to have Share in it at any Rate. But since he had not (as he thought at that time) the good Fortune to get in as a Subscriber, he (seduc'd by the vulgar Error) was content to pay a Premium to any Body that would give him a Right to a Subscription; most part of this Premium he paid for the Use he was to have of so much Money for such a Time: If he bought Stock at that time, he was oblig'd to pay Ten Thousand Pound for each Thousand Pound Stock: If he bought a Thousand Pound Third Subscription, then he was to have the Use or Forbearance of Nine Thousand Pound for half a Year, of Eight Thousand for half a Year more, &c. This Forbearance of Payment he reckon'd worth such a Premium, and therefore he willingly gave it. But when the great Alteration was made by the General Court, and the Subscriptions brought to Four Hundred instead

stead of a Thousand, by the Consent of those very People of whom he had bought Subscriptions, the Value of the Stock was very much reduc'd, and the View of their Profits diminish'd, which is one Argument already made use of for the avoiding of these Bargains. But then another is, That by this Alteration he was to have the Use of Three Thousand Pound only, instead of Nine Thousand for such a Time. And sure no reasonable Man will expect that a Man should pay as large a Premium for the Forbearance of the Three Thousand Pound, as he was to pay for the Forbearance of Nine Thousand Pound for the same time.

I have now examined the several Branches of this great Question as briefly as I could; I believe I have afforded a good deal of Coffee-house Talk to People who love to hold forth. I hope the Justness of my Way of reasoning will easily appear to every Man who is not a Seller; as for these Gentlemen, they have an Argument on their Side, *viz.* Self-Interest, which I cannot answer, nor do I know any Argument strong enough against it, but an Act of Parliament,
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and for this Reason I humbly think, that the Members of Parliament are in duty obliged to put an End to a Dispute, which if left to the ordinary Courts may produce thousands of Vexatious Law-Suits, and abstract Peoples Thoughts from their ordinary Business for many Years to come; nor let any Man imagine that the determining of two or three different Cases will put an End to all the rest: When a Man's Interest is concern'd, he is easily persuaded, and a clever Attorney will soon find Arguments to persuade the Seller, that his Case is different from every one of those Cases in which Judgment is given.

If no Act of Parliament intervenes, I take the Freedom to foretell, that every one of these TIME BARGAINS will come to a Tryal in *Westminster-Hall*, if they are not made up before this Session of Parliament is at an End; at present the Sellers are easie and good natur'd to their Chaps the Buyers, because they fear an avoiding Act, but if they were once out of that Danger, they will appear in their natural Light, as *Nero* did, full of Cruelty and Tyranny. The Parliament ought to consider that there are

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a great many of these Bargains ought to be performed at *Christmas*; if they adjourn without taking Notice of this great Controversy, they will make a merry *Christmas* for the Bailies and Spunging-houses, but a melancholly one for many a poor Tradesman and his Family. It would have been a happy thing for this great City, if Credit could have been revived and our Money made circulate before this Time of General Dunning came on: But it's impossible to revive Credit as long as these TIME BARGAINS hang over Peoples Heads, for no Man will trust another because he knows not but he is engaged in some TIME BARGAIN for more than he is worth.

It is very certain that there may be Ways and Means fallen upon to make the South Sea Company able to Divide five or six Millions Yearly out of the Profits of their Trade, &c. and at the same Time to be very useful to all our private Traders in General. Any Man who considers that the King of *Great Britain's* Subjects are worth a thousand Millions Sterling at least, and that they spend Yearly at least sixty Millions, will find it no hard thing to believe what I say. If

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If the late Managers had not gone so rashly and so forwardly to work, they might have succeeded much better, for Credit is like the String of a Violin, if you stretch it by Degrees to its due Length, it produces a glorious and sweet Harmony among the Subjects, but if you offer to stretch it too far or too quick, it breaks asunder and is not easily restored.

I doubt not but the Parliament will take the proper Measures for establishing that Company upon a lasting and solid Foundation, but I am afraid it cannot be done before *Christmas*, and therefore some People must turn our Days of Feasting into Days of Fasting.

F I N I S.

