

given by them is in effect given by his Majesty, from whom the Authority is derived; as, for example, in this case where they were not before the fight prohibited to grant Quarters. As the Lords of the Privy Council might upon the pannel's submission have secured their Lives without an express Remission from the King; so might his followers by indulging them. Quarters; the latter having as much power in the field, as the former at the Council Board.

2^o The Difference between a just and unjust War is, that prisoners taken in the former are without Quarters given cannot be killed: whereas Captives in an unjust War are not safe unless they have Quarters. The unjustness of the War on the pannels side, might induce them to have been a Ground to refuse them Quarters; But the publick Faith by Quarters given ought to be observed. 3^o Remission of a Crime which is the sole Act of the Conqueror, doth lastly differ from the granting of Quarters by way of Transaction or Imposition; in contemplation whereof persons supposing their Lives secured come peaceably under the Conquerors power: whereas the Kings officers might have been killed by the pannels had they stood out, and not got the Benefit of Quarters. And if all the Effect of Quarters were only to reserve the obtained to a publick Trial for his Life, none would ever accept of it, but persons once up in Arms would continue desperate and uncontrollable. 4^o Lawyers are clear that the privilege of Quarters should be observed inviolably even to Rebel Subjects. Grot. de J. B. lib. 3. cap. 19. And so it was done to those engaged in the civil wars of France & Holland; and also to such as were active in our Intestine Divisions during Cromwells usurpation. you, such a number of Rebels having surrendered upon the Faith of Quarters given to them, was expelled, albeit the General who gave the Quarters was expressly empower'd by his Commission to give Quarters, and to indemnify such as surrendered themselves to him. In 1649 James Finlay's Rebels. And whereas the King with Advice of his Privy Council issued forth a proclamation promising Indemnity to Rebels who were up in Arms against the Government upon their Laying down their Arms, two of these Rebels, who had been taken prisoners before by his Majesties Forces, and were detin'd Captives at the Time of the proclamation, were not allowed the Benefit thereof. In respect their Arms having been taken from them at their becoming prisoners, they had none to lay down. Albeit was pleaded for them that they ought not to be in a worse than if they had at the Time been actually in Arms in the Field of Battle with their Arms. In 1666 John Birchall and John Roffe's Rebels. Innocent Hostages ought not to be put to death; the same Captives as Rebels are no less offenders may be capitally punished. H. Grot. lib. 3. cap. 11. The old Law of Nations, which allows to make Slaves of Captives taken in War, obtains now only betwixt Christians and Mahumetans; the latter forcing the other to such Methods against Christian prisoners, by a barbarous usage of Christians.

Rights annex'd to persons over other persons are not acquired to an Enemy, by those persons in whom such Rights were Lodged falling into the Enemys power. Thus a Princes Kingdom is not acquired to those who make him prisoner of War: And the taking a Husband or Father, doth not give the Enemy power over the Wives or Children. Nor are things whose Right belongs to a person, acquired to his Conqueror. But the Right thereof passeth to other persons of the same Commonwealth as to him who would have been the Captive or Heir at Law, had he died a Natural Death, or in default of the same to the publick, Grot. lib. 3. cap. 12.

Non est contra Naturam spoliare vim quem non est necesse. It is therefore no wonder, that the Right of War doth allow to waste an Enemys Lands and Houfes with fire and sword, and spoil him of all his Goods: Nor are Things sacred, and Religious as Monuments of dead exemplars from such outrages of War mov'd by the Law of Nations, setting aside the consideration of other Duties. Quia cum loca sint a hostibus omnia desinant esse sacra: et sepulchra hostium nobis religiosa non sint. Therefore, may take away the Stones and convert them to what use we please; so, no violence is offered to the Bodies of the dead. H. Grot. lib. 3. But we ought not to waste things profitable to us and out of the Enemys power, that they can be of no use to him, polydorus (lib. 5) thought it an Act of the highest madness to destroy those Things, which being destroyed would not the Enemy, nor brought any Advantage to the side that destroyed them; such as Churches, Schools, Schools and Religious houses. And the Things, dedicated to sacred Uses, and Things religious be expose to the Will of the Conqueror; yet the Reverence due to the former, and Humanity to the latter, plead strongly for their preservation. H. Grot. lib. 3. cap. 12. A Civil Empire or Right of Sovereignty may be acquired by War. H. Grot. lib. 3. cap. 12. But that the Conqueror should be at the Conquerors disposal of his Kingdom, is not only humane

Quarta in impetu belli

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Non est contra naturam spoliare vim quem non est necesse

Sometimes good policy, if not strict equity, is not concerned in the War, except in extreme necessity, and when the Right owner hath not the like necessity for it. Nor even in such a case ought more to be taken than present necessity requires, and the full value must be paid for what is taken. H. Grot. lib. 3. cap. 17. § 2. But then it is the Duty of those not concerned in the War to do nothing whereby the that amounts an ill cause may be strengthened, or that moves in a good cause may be hindered; and where the cause is doubtful to show them favors equally, either to both parties, neither by suffering them to pass and oppose thro' their Country, or by not assisting either with supply or aid. The Right of Neutrality is in such sort to be used, as not to assist the one party helping the other, but to sit still as well respects to both, and perform the common duties of Humanity to either. H. Grot. lib. 3. Great contests always stir up about what may be lawfully done to those who are not at least willing to be reputed Enemies, and yet supply one Enemys with such things as they need. which difficulty the most us this Resolution (lib. 3. cap. 1. § 2.) § 1. persons pretending to Neutrality supply the Enemy with things that are of no use in War, as Arms and Ammunition, they are to be esteem'd and treated as Enemies. 2^o persons furnish the Enemy with things no ways profitable to the War, but only for pleasure, they cannot be quarrell'd. 3^o when the Enemy is furnish'd with things useful both to peace and War, as Money, Victuals, Apparel, Ships and Materials for Shipping, depending no certain determination from the Law of Nations what ought to be done to the Neutral in such a case, distinguish this from the Law of Nature. If one of the parties cannot defend himself, unless he intercepts these things of doubtful use which are sent to the Enemy, he may oblige him to take them upon condition of Restitution, unless there be sufficient cause to the contrary. But that where a pretended Neutral sends such supplies to both the Enemy in his unjust War, as when Money is sent to the publick use, or supplies the Enemy with things of private use, to hinder him to surrender a Town or Fort besieg'd closely, as Victuals and provisions: such Goods may not only be seized, but also it is a Ground to make War upon the sender. However these Distinctions, tho' not not incautiously made, are not so strictly to be observed, as to deny any place for Exception. The preservation of humane Society seems to require freedom of Commerce, neither too narrow nor too much enlarged. Whence it is that Neutrals are to be discharged from trading with the Enemy in some kind of Goods which may add courage and strength to him, commonly call'd countenance Goods.

According to Grotius (lib. 3. cap. 13.) and other Lawyers (Abbot, Gentil, Angolus, Ripa and Salycetus) things are said to be taken in War, or to become the Factors, when they are so detin'd from us, that we are depriv'd of any probable Hopes to recover them, and are no longer able to pursue them: which in things movable is presum'd as soon as they are carried into the Enemys Garrison, arg. lib. 3. § 1. If do captives, goods, ships and other Goods are carried into the Enemys Harbours or to the place where their whole Navy resides, so long their remains no Hops of recovery, others more probably, hold that Goods thus taken become those that take them immediately after the seizure, arg. lib. 3. § 1. If do acquir. pag. 512 Inst. de Ac. de. By a later Law of the German Nations, some Time, as a civil Day, is required to transfer the property. H. Grot. lib. 3. cap. 13. § 2. Marquard. de Jure Moral. § 2. § 3. observes that the States of the united provinces did by a publick Edict in the year 1632 adjudg'd the seizure of a Ship and Cargo taken by the Enemy to the Recoverer, before it was carried intra praesidia hostium, without respect to the Time the same had been in the Enemys power. This obtains as to movable Goods, besides Moulden, Comm. in Grot. lib. 3. cap. 6. § 3. comprehending Ships. Lands are not said to be taken, as soon as the Enemy sits down upon them, but only when so immured or secured with walls, Forts, Ramparts and such like Muniments, that without doing away the Enemy that holds them, the former owners can have no probable Access to them. Whence Julius Flaccus doubts the word Terrarum a Terrondis hostibus, from detaining the Enemy to approach to it. H. Grot. lib. 3. cap. 6. § 4. War can transfer no Right to us by seizure in any Thing not belonging to the Enemy, tho' found in his Camp or Garrison. And the Goods found in the Ships of our Enemies are presum'd to be those, this presumption is dash'd and taken off by pregnant contrary Evidence. Neither are the Ships of our Confederates forfeit, tho' loaded with Goods belonging to the Enemy. H. Grot. lib. 3. cap. 6. § 5. But if the Enemy had any Interest in those Things found with them, as if they were taken by him as a pledge for some Debt, or retained for the performance of some Contract,

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