

themselves by Meiths and Marches. Which Claimant
 Mens est Ager ille *Grus Avis* In *Empio Sacro*
Divisio Ageris Arbitrio populi Latine. Seneca de Hippo-
lito. When any Society Swelled to that Number in
 greatnes, that their Territorys could not contain them,
 they either whole Sale or a Colony of them flitted and
 planted their Habitations in uninhabited places where
 they might breathe more at large or made Room for
 themselves by expelling others out of their Seats and
 taking possession.

The earth growing thus divided into limited Parts, Possession
 of one of these parts was understood to be attained by exercising Posses-
 sory Acts on any particle thereof if there was no Countervailing
 by another elsewhere upon it. In process of time Rights and the
 ways of acquiring them were according to human Expediencies
 variously Contrived: And the Notions of Possession and Property
 departed from their Ancient Simplicity, by receiving Different
 Names according to the Interests of several Persons in the same
 thing, V. G. Where one was Vested in the Property, another in the
 Profit, a third in some Service upon it, a fourth had it pledged
 for debt, a fifth had a lease of it. All which parties exercising
 their respective interests by themselves, their Children, Servants
 or Factors in their Names, even by Interfering Acts; the Matter
 of Possession and property turned very subtle and Difficult, and grew
 by little and little to that degree we find it in all present. But
 yet in many things the primitive Communion remains either
 by Nature, as in the Air, Ocean, and for want of opportunity
 of appropriations as in *Terris incognitis*.

Of things that may not be possessed and
 appropriated.

Things that may not be possessed and appropriated or out of
 Commerce or do not enter in to it or fall under it or which can
 not belong to any one in Particular, may be distinguished into
 things common and those which are *Nullius*.

Things Common are those in which no person has or can have
 property or make himself Master of them or can deprive others
 of the use of them which is common to all. 1^o Those things which
 are so necessary that no Body can live without having a free
 and continual use of them, Such as the Air and light which have
 no limits. For the Air in compass of the Whole Earth which is
 the Habitation of Mankind, and that is penetrated by the light
 which comes from the Heavens; so that no man can be deprived
 of the use of the Air and of light, unless condemned to lose his
 life. And the Government takes precautions to keep the Air
 pure by forbidding to throw out or expose any thing in publick
 places which may infect it and render it unwholesome. 2^o Any
 running water is common. But Standing Water that is
 capable of Bounds may be appropriated *Stair Inst. lib. 2. tit. 1. §. 5.* 3^o The vast ocean is common to all mankind for
 uses of Water Navigation and fishing, because boundless
 and sufficient to all men. Thus the *Seneca* says

to be independant of the Empire, and a Free State acknowledges
 no Superior, because their City is Built upon the Sea, and
 Soil of which had no proprietors. But now by immemorial Custom
 long possession and by Leagues and treaties Several parts of
 the Sea cease to be common and have particular proprietors.
 The Dane Claims the dominion of *Baltick*; the King of Great
 Britain the Dominion of the four Seas which bordered the
Atlanti the Venetian the *Adriatick* &c. *vid. Geldenius mare*
Claudum. And where the Sea is enclosed in Bays, Creeks or
 otherwise capable of Limits, as within the points of certain
 Lands, or in the view of such Passage for Commerce, as upon
 Lands, and fishing, except as to certain kinds of fishes, as
 Herrings &c, *Craig Boud. lib. 6. tit. 15. §. 11. Stair Ibid. 4. §. 1. tit. 1.*
Maris the Sea Shore, which is all the ground quatenus *Hyber-*
nus fluctus Maximus excurrit, that the greatest Winter
 tide can cover, i. e. the greatest ordinary tide, is understood to
 be common to all Mankind who may land, dry Sticks, or build Cottages
 upon it, take in Ballast or water, residing in fountains there
Stair Ibid. Therefore it was found, that the Heritor could not
 for inclosing his ground run his *Dike* within *Littlus Maris*
 June 1713 D. *Roseburgh contra Town of Dumbar.* Not
 doth it follow, that the Shore is not common because Enemies
 are hindered from using it in that manner? Seeing as we
 may take away from those what is proper by their own, and
 may attack their Persons and goods within their own bounds,
 we may much more abridge them of the common use of things
 within ours. But yet the Shore remains proper as to Jurisdic-
 tion, Houses or works built thereon, Minerals or Coal found
 therein *Stair Ibid.*

Res nullius or things belonging to no man are 1^o Those that
 are *Divini Juris* of Divine Right as Churches, Bells,
 Jewels, Challices and other utensils of Churches & *Inst.*
de Res. Div. which the Romanists use superstitiously to con-
 secrate by holy Water, Unctions, Sprinkling of Ashes, Exorcisms,
 and so did we before the Reformation, but we have now no
 such Consecrations. Yet some things as *Stair George Mackenzie*
(Inst. lib. 2. tit. 1. §. 4.) observes, have so far a relative holyness &
 Sanctity, that they cannot be bought and sold by private persons,
 or are out of Commerce, while they continue under such des-
 tination to the Divine Service. By the Civil Law things
 sacred or consecrated are forbidden to be alienated or pawned,
 unless by Decree of the Prelate with consent of the Chapter,
 for the Redemption of Captives (a man being of greater Value
 than inanimate things) or for relief of the poor in time of
 great Famine & want, or for paying the debts of the Church
 where a supply cannot be raised otherwise or in other cases
 of Necessity or great advantage to the Church, *Stair*
lib. 2. tit. 1. §. 4. tried before the alienation, if alienation