

be made without these solemnities the Church may claim the things alienated without paying Back the price or consideration given for them, leaving the Buyer to take his remedy against the person that made the alienation. l. 21. C. de R. & C. Nov. 120 Cap. 10. By the Canon Law, the person who doth so alienate, is liable to the punishment of excommunication, as one guilty of sacrilege. can. 5. ca. 17. qu. 4. By the Law of England, Churches are in the property of the Parson or Churchwardens for the use of the Parishioners, Degraded Sons Councillors C. 12. and the Goods belonging to a Church may be alienated by Consent of the ordinary Parson and Parson of Res Religiosae, such as Churchyards and other public Places wherein Persons are Buried are another kind of things that are nullius. I say publick places because, though any private Man may make a religious place by his own Authority provided he has the whole right of the Ground in himself, or leave from the lawfull Owner, yet private Buriall places are bought and sold like Lands, Craig. Feud. Lib. 1. Tit. 15. §. 7. In Holland Sacred and Religious Places of Temples and Sepulchres are not distinguished from pieces of Common use, and either belong to the Community or the Parson that Built them. Groenweg. de legib. Abrog. ad D. Inst. de Res. Divis. By the Law of England, Private places for Burying are either in the property of the Parson of the Parish or Churchwardens or may belong to some other particular Proprietors and are scarce distinguished from things sacre & Degraded Parsons Councillors Cap. 22. 30. Res Sacrae are also said to be nullius. Whereby we do not mean things of a Holy, but only such as are guarded from Injuries of Men by a Sanction or Penalty. As the Walls or Walls of Cities and Lawes §. 10. Inst. de Res. Divis. l. 11. Feud. l. 41. ff. de Paenis. It was Death to break down damify Scale or go over the walls of old Rome: Upon which account Romulus killed his Brother Rhemus. And no doubt, the scaling or pulling down any Wall of a City in time of War, especially is punishable at this day. Ambassadors are by the Law of Nations accounted Sancti, for that there is an absolute necessity to protect them, seeing every thing cannot be transacted by Letters.

Of Things that may be possessed and appropriated.

Things that may be possessed and appropriated are those which enter into Commerce, and of which one may become Master. Some things falling within Commerce are possessed and appropriated by the Sovereign power in a Nation, as Res Publicae; Others are possessed and appropriated by a particular Body of Men or Community, as Res Universitatis; A third sort are possessed and appropriated by single Persons.

Publick things are those which belong to some certain Nation or People, but may be used by all men. Such

Such are 1<sup>o</sup> High Ways, the Use whereof cannot be justly refused by one Nation to another, and if refused may lawfully force their way. As Simon going to Jacob's house through Ephraim, and Ayer's land in his return through Ephraim, while the Macedonians craved time to come Jultrabout an answer to his demand of a Passage through their Countreys, taking their delay for Denial, said, Consulty I will pass. Likewyse the People of Israel forced their way to Canaan by way through the Lands of the Amorites and Ammonites, upon the Nations refusing that Liberty to them. The reason why Passages in High Ways ought to be free to all Men, because Dominion was probably introduced at first with this limitation, the things should remain, which might be profitable to some, and not hurt full to others. Grass and Furrows growing upon the High ways are of Common use as the ways themselves; but Natural Furrows brought forth without disturbance as Nuts Berries or the like in proper fields, and pasture in winter time are not of this Nature, but generally permitted in many places of Scotland as things of little Value or consideration. Therefore the Common use of such furrows and pasture may be justly hindered by the Proprietors. All Persons are ordained to Herd their Horse Mault Sheep Swine and Goats all winter in day time, and keep them under night in Fences, Poles or inclosures, and made liable to pay half a Merck Scots for each Beast taken going upon another's Ground, by and without the Damage done to his Grass or planting, before the Beast be redelivered. Act. 11. Sept. 2. par. 17. 2<sup>o</sup> Rivers belonging to a particular Nation are common to all for drinking or drawing Water, or for Navigation or casting anchor. But the use of Banks of Rivers to unlaid Birthen on them, or Trees growing there for tying Cabels or Rops to for the use of Ports Harbours and Stations for Ships industrially made or fortified by Art for security, are Common only to the People to whom they appertain. However they are frequently allowed to others freely for Commerce sake, and some where for a reasonable consideration or satisfaction of Anchorage, Portage or other Shooes, which are often payable to private persons by right, Custom or publick Grant from the Supreme power. Grot. de J. B. P. lib. 2. Cap. 2. §. 14. Itait Inst. Lib. 1. Tit. 1. §. 5. In other Nations publick things belong to those who have the Supreme power per oz. in Tit. C. de Alluvione in fin. By the Law of England the property of such things is vested in the King or in those who claim under him, which many private Persons are in Possession of, others have right to. With us in Scotland those Jura Publica called Regalia Majora viz. the power of Making War and Peace, making Lawes, creating Magistrates, Naturalizing Strangers, Legitimizing Bastards, & remitting Crimes, cannot be alienated, but are inseparable from the Sovereign Authority.

Res Universitatis are those things whereof the property