

are given or sold to him; *fictioe brevis manus*, the Pledge or Loan is supposed to have been returned to the Owner, and by him redelivered by Gift or Seal.

Possession is acquired to one without Shadow of Delivery, and inferred merely from a joint or relative Interest betwixt him and another Possessor: as when a Liferenter's Possession is accounted the Fiar's Possession, or a Husband's Possession is reckoned the Wife's Possession.

Tit. 2.

How Possession is lost or interrupted.

Possession is simply lost to one, when another comes to possess. For there can be only one true Possessor of the same Thing by an independent Right, or by the same Kind of Possession at the same Time, and two or more Possessors ~~are~~ as Liferentors v.g. cannot so possess one Thing in solidum or whole. *l. 3. §. 5. ff. de acquir. & amit. poss. l. 5. §. ult. ff. cominod.* One's Entry to possess what is already so possessed, both only introduce a partial or compound Possession. But several Persons may possess the same Thing wholly by a different Kind of Possession, as one may possess civiliter, the other naturaliter *l. 3. pr. ff. uti possid. l. 15. §. 4. ff. de precario*, that is, one may have the Right only, and the other be in Possession. And two may possess by Rights subordinate and depending one ^{upon} another, as Liferenter and Fiar, Superior and Vassal, Master and Tenant or the like.

Possession is lost 1^o Without Consent of the original Possessor, when forcibly taken from him

Possession is lost with Consent of the Possessor, by his Delivery thereof to another or even by a bare Declaration of his Mind to have it so, altho' he afterwards continue in the Possession *l. 3. §. 6. l. 17. §. 1. ff. de acquir. vel amit. poss.* It is not easie to know when Possession is detained. But there is a general Rule, that a Man is not presumed to abandon his Possession unless his Design appear from plain declaratory Acts or Circumstances, as when the Owner of a moveable Thing throws it away in some publick Place, where it cannot fail to be taken up, or when another is suffered to possess any Thing without Contradiction; or when the Owner hath for long Time abstained from exercising any possessory Acts. But it is no *arbitrio judicis*, what Stress or Weight to lay on such Conjectures or Presumptions *Stair lib. 2. Tit. 3. §. 20.*

Possession is interrupted, troubled or disquieted by contrary Acts and Attempts made by others to attain it.

Chap. 3.

The Effects of Possession.

Possession hath many advantageous Effects.

For maintaining and preserving the peace in civil Society, no Man can recover what is his own out of the Possession of another by Violence, but only by Order of Law. A violent clandestine or plainly unlawful Possessor cannot be forcibly dispossessed or disturbed; nor can one who is violently dispossessed turn out by Force the violent Possessor *ex intervalla*. But Possession may be continued or defended by private Force, against contrary violent or clandestine Acts *ex incontinenti*, immediately after actus the former, or Notice of the latter, *l. 1. §. 27. l. 3. §. 9. ff. de vi armata. Stair Inst. Lib. 2. Tit. 1. §. 20 & 22.* One cannot enter to the Possession of what was possessed by a Person deceased, to whom another is or may be Heir in that Thing; their Possession being reckoned in Law one Possession, as they are accounted one Person. For apparent Heirs tho' not in fact, have such Right to possess the Predecessor's Estate that tho' they die in the naked State of Apparency, their nearest of Kin or Creditors, will have Right to the Aunts thereof resting from the Death of their Predecessors, till their own Death when they might have entered *Stair ibid.*

Possession is the ordinary way of attaining Property, and doth often make or give the Property. It hath in some Cases this Effect, at the same Time that one enters upon Possession. Thus Things being ing to no Body, are acquired by one's laying Hands upon them, and getting them in his Power, as by Occupancy, or by finding. Again, Current Money doth so far become the Property of the Possessor, that it passeth from Hand to Hand, without any Question about the Owner's Title to it *l. 70. ff. de solut. Stair ibid. §. 34.* The same obtains for the Security of Commerce in all other Fungibles, or Things which are not discernable from others of that Kind. Possession supplies a Title in Ejections and Spulzies. In other Cases Property is acquired by Possession, not in instanti, but by such as is continued during the Time regulated for prescribing, whereby all other Rights are introduced *l. 3. ff. de usurp. & usucap.*