

Book. 2.

Of Property and the several Kinds of it.

Property is a Right of claiming or using any Thing, unless the Law or Faction doth hinder:
Such free disposing is hindered by Law

Faction doth stand in the Way of one's free disposing of any Thing, when the Proprietor hath for a Time given the Profit of what is his to another, or the simple Custody thereof for Security of Debt, called a Pledge or Pawn, or conferred some Interest or Use therein called a Service.

When this Right of disposing of or claiming any Thing, is appropriated to single Persons, or to Societies or Corporations (who are considered as one Body politick) it bears the special Name of Property. When it belongs equally to several Persons, it is termed a Common, or Community. Which differs from Things common to all Men: in that the latter are so far extra commercium, as they cannot be appropriated ^{upon} to single Persons, whereas the former may. If in a Voyage by Sea or any other the like Occasion, where many Persons may chance to be in Company together, the Provisions of Victuals fall short, and it be found that some of the Company have Provision for themselves in Store, when it is not possible to procure any for the other Passengers any other Way; what some of the Company have in Store for their own particular Use, becomes common to the whole Company l. 2. s. 2. in fin. ff. de Lege Rhod. Les Livres l. 1. s. 1. Part. 1. Liv. 2. Tit. 9. Sect. 1. Art. 4.

Two Persons cannot have Property of the same Thing, for there is only one who is the true Owner l. 5. s. 15. ff. commod. But there may be a twofold Property of the same Thing divers respects, as dominium directum in a Superior, et utile in the Vassal Craig Feud. Lib. 1. Tit. 9. s. 9.

Property is divided, 1^o into civil and Ecclesiastical 2^o into moveable or personal, and immoveable or heritable. 3^o into absolute and limited Property.

Chap. 1.

Of civil, and ecclesiastical property.

Civil Property, is that which belongs to Laymen, or Lay Corporations.

Ecclesiastical Property, is the Patrimony of the Church, or the Livings

of the Clergy, which are called Benefices: because these were the Effect of the Bounty and Liberality of such as mortified Rents and Possessions to pious Uses. Benefices were Terms used in Times past, to signify Funds given to Soldiers for a Reward of their Service. The Name passed to Ecclesiasticks about the 12 Century, when they got the like Funds of Subsistence.

The first Years Rent of Benefices thence called Annats, anciently applied to pious and publick Uses, were claimed by the Pope, as his Property. Some say John 22, others that Boniface 9 was the first who pretended to annex them as a fixed Casualty to the See of Rome. Polydore.

Virgil (de invent. rer. Lib. 8. Cap. 2. runs their Original much higher. But they could never be exacted in Scotland, without the King's Consent, who got the fifth penny; and were sometimes disposed of by the Parliament Act 4. Oct. 3. 2. M. For even in the Time of Popery, the absolute Authority of the Roman See was much limited by our Parliaments in Matters touching the regale: as the French Kings and other Princes, did limit it by Concordates with the Popes.

Benefices were 1^o either regular or secular; The former belonged to Monks and Regulars; and the latter were the proper Livings of Chantry-men. When the Monks and Nuns got up, they gained so upon the Minds of People by an outward Shew and Projection of more than ordinary Strictness of Life; that there was a general Forwardness everywhere to make liberal Provision for them. Every Body being possessed with a Frenzy that the Prayers of so many devout Men assembled in one Place, would stand them in great stead, parted cheerfully with their Lands and Tithes to Monastries. Our Kings and Country men with their Consent, frequently mortified Churches whereof they were Patrons, with all the Endowments of Lands and Tithes to such religious Houses: which unneeded Churches were served by Vicars put in by the Convent. Others were acted and carried by a strange Zeal to erect new Monastries and Nunneries, and to endow them with Lands and Tithes, as the most compendious Way to save their Souls. These Fraternities not content with the inactive Ropes of the next World, became the most sublimated Genius's in acquiring Riches grandeur and Dominions in this World, not sparing, but stripping the secular Clergy of their best Revenues. I have heard the Monastries in Scotland reckoned to be about 74 in Number. But in a Word, nulla regio, as the learned Gaig (Lib. 1. Feud. Tit. 13. s. 9) observes in hoc nostro reano fragmento aut rerum aliarum ad usum humanum necessarium ferre, in qua locus precipuus ad haec monachia destinatus et extractus non erit. As the Christian Faith began to spread and get footing in particular Nations,