

Having in the two preceding Books of this second Part discoursed at large of the Nature of Possession and Property, and the several Kinds of them: the next Step is to explain the Rights to Things consisting of Possession and Property which are either original Rights established in the first Acquirers, or Rights transmitted by Progress from them to others acquiring at the second Hand.

Book 3.

The general Ways how original Estates or Rights to Things may be acquired.

Right to Things is acquired to one 1^o By his own Fact in Deed, Occupancy. 2^o By Accession to what already belongs to him. 3^o By the Deed of another. Acquisition by one's own Fact and Deed is distinguished into Occupancy and Specification.

Occupancy is one's taking Possession of Things belonging to no private Person L. 2. ff. de acquir. rer. dom. But capable to be appropriated. For divine and holy Things, and those of a publick Nature cannot be so acquired. Occupancy may be distinguished into Occupancy properly so called, and finding a Thing lost.

Occupancy specially so called, is the seizing of wild Creatures, or of Things taken in War. Concerning Seizures in War vid. Supra Chap. 2. By wild Creatures I mean those that wander at large, and are under no Restraint or belong to no Owner, and not such as are fierce and wild in their Natures viz. Lyons, Bears, Tygers, which continue so, tho' under Confinement.

By the civil Law, those wild Creatures may be seized by Hunting Fowling and Fishing, and belong to the Person that first seizes them, tho' upon another's Ground, and belong to the Doge fore S. 12 & 13 Inst. de rer. divis. Bees being also wild by Nature, do not belong him on whose Trees they settle before he cover them with a Hive, more than they that have built their Nests there, or the young ones in their Nests, more than they taken.

So that it is lawful to take the Honey Combs from thence before, but not after the flying. Peacocks and Pigeons are also reputed of a wild Nature, and are appropriated by taming them. Creatures naturally wild continue so long as they are in our Sight, and under any Probability of Recovery, or while they retain their Custom of going abroad and returning to us.

Whereas Creatures tame by Nature as Geese Hens &c. belong to the Owner whatever Place they wander or stray to, and those that seize obtain or entice them away are guilty of Theft L. 5. §. 2. et seqq. l. 44. ff. de acquir. rer. dom. And tame Creatures which

wild again become theirs who regain and tame them a second Time without continuing to the first Owner, tho' by the civil Law the wild Beasts, Birds and Fishes are the property of the first Discoverer. But the People of the Northern Nations who observe the Roman Empire, continue the same in the Sea, tho' by the Roman Law the first Discoverer can take them for the sake of hunting fowling & fishing, and the people being possessors of the same only means of Subsistence.

from the Laws, and possession of the Sea by the vanquished Kings of the East and the Sea began to be divided into the Right of Hunting fowling and fishing and instead of a natural right to make it a Royal one. L. 9. ff. de acquir. rer. dom. l. 9. ff. de acquir. rer. dom.

This, Animals that live in their natural Liberty out of the Power of Man, as wild Beasts, Fowls and Fishes are now applied to the Use and come into the Power of Man by Hunting and Fishing according as the Use of these Sports is permitted by the Laws: The Liberty of Hunting Fowling and Fishing not being permitted to all Persons in all Places indifferently. See Lex Saxonica c. 1. Com. 1. Part. 1. Lw. Prælim. Tit. 9. Sect. 1. Art. 11. Lc. 3. Tit. 7. Sect. 2. Art. 7. There is now no Ground for Passage upon Account of Hunting Fowling or Fishing. And in several Nations the Use of their free Creatures are ordain'd to stay, but the sovereign Power. In some Countries Hawks Swans Whales extraordinary great Fishes, Salmon and Herringfishing are inter Regalia and exempted from the Property of the Commons. Inst. de jure 3. c. p. Lib. 2. cap. 8. §. 5. Item Lib. 2. Tit. 1. §. 5. cunct. §. 33. By the Laws of Scotland and England no Person except such as are particularly qualified either by their Birth or Estates can keep Guns, Dogs, or any Engine to destroy the Game, under severe Penalties. But the personal Restraint hinders not, why he may seize any wild Creature, tho' he be punishable for that trespass L. 13. §. ult. in fin. ff. de inter. sine nomine. Law may make the Pursuivant to be the Loss of what he hath taken; albeit it is not the first Attempt of prosecuting or wounding a wild Beast

Fish or Fowl, that determines the Property thereof: Not if the Pursuer or Hunter had thereby brought it so within his Power, that it could not use its native Freedom, or escape his Hands, it becometh actually his. As in the Whaling of Greenland, he that wounds a Whale so as she cannot keep the Sea but must needs come to Shore by Reason of the Smari or her Wound, is by Force to fall in upon another's Game, is liable to restore the Prey to the other who continued his Pursuit with a Probability of reaching it, Item Lib. 2. Tit. 1. §. 33.

Acquisition by finding which is properly of inanimate Things may be considered either with Respect to Things that never were in the Possession of any Person, as Gems precious Stones Pearl Coral &c. found in the Sea or upon the Shore, or with Respect to Things which once belonged to some Body and have no present Owner: The first Sort are acquired to him that finds them. Inst. de rer. divis. l. 1. §. 1. ff. de acquir. vel amit. poss. That is gets the first Possession of them L. 3. §. 3. ff. eod. I mean by Things upon the Shore, only what are produced in the Sea and are cast out there: For Goods thrown out of a Ship in Storms or cast out upon the Shore & ult. Inst. de rer. divis. or lost there by Chance or Negligence L. 43. §. 4 & 8. ff. de furt. should be returned to the Owner. If Gems and precious Stones &c. belong to the Finder, only in those Places where the municipal Law or Custom hath not otherwise determined. Item Lib. 2. Tit. 6. §. 5. In France by the Ordinance of Lewis 14 given at Fontainebleau in the Year 1601 (Sect. 45. §. 29.) Things of the Growth of the Sea, such as Amber Coral, Lard fish, and such other Things as had never belonged to any Body shall

Occupant