Nation that doth Confiscate them, and the Kings own Subjects and their Ships ought to be no less favoured than the Ships of any Nation Stuart to Dis. Vol. 2. fol. 1. double Gil. Wrecks This Regulation of the Matter according to the Custom of other Nations by doing to them as they do to us, is founded Super Leg. Italionis, and the Gil. Quod quisque Juris in alieno Solo erit. Bl. Bill. Sir George Mackenzie (Observations on Act 124) thinks, that the Custom of Nations can be more Justify'd, than the Eating our own among Enemies should be a President for us to eat them: And that therefore Letters of Mart ought rather to be granted, when Scottish Ships suffering Wreck in other Countries are Confiscated, and Restitution when demanded Refused. The Lord Stair also seems to be of the same Opinion, when Lib. 3. Tit. 3. says, That where ever the true Owner Claimeth and Instructeth his right by writes or Documents in the Ships Cargazel in the case of Reprisals he ought to have his goods and there should be no Confiscation of them.

But how the Law of Britain in this particular is More favourable to the owners of goods lost in this Calamitous Manner, than the Law of Nations, appears by the Statute 27 Edw. 3. cap. 13. which declares, That the goods lost and cast from Ships forced on Shore, or Stranded upon the Coasts of Britain or any other of his Majesties Dominions, may be Restored to the right full owners within a Year, upon payment of Salvage, and Publick Sale of Perishable goods is forth with to be Made, unless Immediately Claimed by some body; and of the Wreck goods not Claimed within a twelvemonth: and after all Charges deducted, the Residue of the Money arising from such Sale, is to be Intromitted to the Exchequer for the Benefit of the owner; Who, upon Proof of his property before one of the Barons, shall by his order Receive the same. Which is without prejudice to the right of the Soverign or his Grantee, to Jetsam, Flotsam, and Lagan. 12 H. 8. Sess. 2 Cap. 18 and 4 G. 1 Cap. 12 Sect. 5. None of which are to be esteemed Wreck so long as they Remain upon the Sea and are not cast upon the Land by the Sea. But belong to the Admiral by Virtue of his gift from the King. Jetsam or Jetsom from the French jetter to cast out, are those goods cast into the Sea when the Ship is in Danger and after perisheth, and beaten to the Shore by the Waves or thrown on the Shore by the Mariners within the highest flood Mark, which bounds the Admirals Jurisdiction. Flotsam for any thing cast upon the Land by the Sea is Wreck. Flotsam alias Flotson, are goods lost by Ship Wreck, that by floating or swimming upon the top of the Water. Lagan or Ligan Ligandi are goods which Mariners in Danger of Shipwreck cast out and sink in the Sea with a Buoy or Cork fasten'd to them, that they may be found again.

Sect

Sect. 3.

Of Treasure-Trove, or Treasure Found.

A Treasure is Gold or Silver or other precious things Discovered or found in any Secret place or the Earth, where it has long ago been deposited for Safety from Thieves, or from Plunder in time of War, of which the Proprietor or his Heirs or others having any right do not appear and are not known: or if more proved who had the Money or Owner thereof, and upon what account it was hid, it would not be Esteemed a Treasure Trove. 1 Bl. 81 Roe Register. Ker. Decis. Vo. Treasure. Gold or Money digging upon the Earth Seemed to be a Treasure. Treasure Trove is Fellow in England Treasure Trove, i. Some Commence from the French Trover trouver. Bynkersh. Quæst. Jur. Pub. Lib. 2. Cap. 9. Gro. de J. B. & P. Lib. 2. Cap. 8. Sect. 4. Puff. Lib. 4. Cap. 6. Sect. 3.

By the Civil Law a Treasure belongs to the Person who finds it if the Discovery be Made either Casually or by Deliberate Search in the Ground of another Private Person (whether it be the Prince, a Fisc or Private Person) Shared Equally with the Finder. 832 Just. Inst. Ger. Dict. The right which the Proprietor of the ground has to that Treasure found therein by another is Built upon these Accounts 1st Because he is understood to possess every thing that is in his ground, and has an Express Intention to possess and to have to himself all the rights which are Annexed to his right to the ground which Implies right to the Treasure. 2d Because probably the Money was hid by some of his Ancestors, Covering their own ground the Safest Receptacle for it. The Finders title to this Treasure is wholly Natural, and Built upon two Foundations, one is the Divine Providence which Directs and Orders the Events, and by putting into his hands that which is found in the Treasure Seems to give it him. And the other is, Because if it were not for the Finder the right of the Proprietor of the ground would be all together useless to him, So that it is just that the Finder should have a Share in the Treasure. If a Treasure be Discovered by Search and Industry in another man's ground, the Finder gets no part but must Restore it wholly to the owner of the ground L. Un. C. de Thesaur. As their Wild Beasts taken in Another's Field even by Search and Industry belong to the Occupant 8 12 Just. de Rer. Div. The Reason of the Disparity is, because one has not so Certain Prejudice by others Hunting or Hawking in [illegible] Ground, as would be Creatio to him by