

may be more consistent with his health and ability of body *McKenzie's Crim. part; tit. 19 p. 15*

By the civil law theft is not committed of a thing which hath no owner *l. ult. ff. de acq. lit. hered.* And taking away the goods of a deceased person before a title is made up to them by one at law, is not theft *l. 6. ff. de furtis* these being the proprietor or possessor to give consent or to deny it. But both by our law and by the law of England there may be theft in taking goods whose property there is no owner. For in some cases the law will give a property when first none there is none rather than suffer an offender to escape. Hence he who steals goods belonging to a parish church, may be punished for stealing goods of the Parishes; *4th kind pl. Cr. lib. 1. chap. 33 p. 29.* And one who takes off a silvered things or other goods from a dead Corpse, is understood to steal from the Executors or other owners. Hence when put on the Corpse the added view is not having any property *Book 3 Just. 110.* He is capable of ^{being punished} *McKenzie's Crim. part; tit. 19 pl. Cr. 67.* *Hawkins's Cr. lib. 1. c. 10 p. 54.* So that for George McKenzie (*Cr. lib. 1. c. 10 p. 54.*) is mistaken when he says, that such a fact is not accounted theft by the law of England. It is also felony in England to steal the goods of a Church or Chapel or Corporation the it is in the time of a Vacation of a Govern our thereof *Book 3 Just. p. 126.* *Hawkins's Cr. lib. 1. c. 10 p. 54.* Albeit they be not properly committed of a thing which hath no owner; yet the taking of goods whose the owner is known is properly theft *l. 43 p. 54* *ff. de furtis*. *McKenzie's Crim. part; tit. 19 p. 15* And the King hath privilege to claim the goods and punish the offender *Hawkins's pl. Cr. lib. 1. chap. 33 p. 29.* If one who finds a Baif or Stray, doth not proclaim it, nor endeavour to discover the owner, he may be charged with the theft by our law *McKenzie's Crim. part; tit. 19 p. 15*. But by the law of England if one finds the goods of another that were lost, or find a Waif or Stray before they have been seized by the party who have a Right thereto, and convert them to his use

up he is not guilty of Larceny *Book 3 Just. 108 ff. de acq. lit. hered. l. 67.* *Hawkins's Cr. lib. 1. c. 10 p. 54.* If he find the first taking was lawful, and the owner doth not appear. Nor is the party much aggrieved when nothing is taken but what he lost before.

It is not commonly reckoned theft, unless the goods be taken away, and removed out of that place *l. 30 ff. de acq. lit. hered. l. 67.* Because otherwise the possession remains still with the true proprietor. But the removing them out of the place where the owner put them, is theft *l. 10 ff. de acq. lit. hered. l. 67.* not taken out of his house, or removed quite away by some other person. As when a Dog is taken out of the house, or off his food and carried them or other things out of the house, being apprehended there; or one takes a horse out of a stable, being apprehended before he can get out of the stable, or who is apprehended before he can get out of the pasture, or who pulls off the wool from another's sheep, or strips their skins with a Dog, or takes them where it was, and lays it on the floor, and is dug up, or where he can carry it off *Book 3 Just. 108 ff. de acq. lit. hered. l. 67.* *Hawkins's Cr. lib. 1. c. 10 p. 54.* *Hol. Reg. 31.* *Hawkins's Cr. lib. 1. c. 10 p. 54.* And some are guilty of stealing goods the thief had possession. And some are guilty of stealing goods, without carrying any thing away; as the stealing of sheep, without carrying any thing away; as the stealing of and hogsties of wool or Axon or other felle in labouring time; Cutters or Destroyers of plough or plough gear in tilling times; Slicers or fallers or borers or oxers in times of rearing Corns or fowls; wilful cutters and Destroyers of Green trees or growing Corns; and breakers of Milns act is *Parl. 7. June act 32 Parl. 11 J. 6.*

By the civil law, theft is divided into Manifest and not Manifest theft. Manifest theft is when the thief is seen and discovered with an out Cry in the Commission of the theft or laden in the very Act or Place the place where it was committed, before he brought the stolen goods to the place he designed to carry them to, that day