

‘ If one takes a Sheep in my Pasture or Fold, or a Calf in my Pen, &c. and killeth the same, and be found or taken doing it, and then begins to flie; this is Felony, though he hath not carried the same away out of the place where he first took it.

Next, Of what things Larceny may be committed, and of what not.
C H A P. CLVI. V. 103.

§. 1. **N**ote, That all felonious taking of any thing whereof another hath property, is Felony, 22 H. 6. Br. Coron. 190.
Moveable Goods. And therefore Larceny may be committed by taking any of the moveable Goods of any Person, as Mony, Plate, Apparel, Household-stuff, or Corn, Hay, Trees or Fruit, (that are severed from the Ground) or the like; the stealing of them is Felony.

Domestical It is also Felony to steal any Horses, Mares, Colts, Oxen, Kine, Sheep, Lambs, Swine, Pigs, Hens or Geese, Ducks, Turkeys, Peacocks, and other Domestical Birds or Beasts of tame Nature, 18 H. 8. 2. For the Nature of these things being tame, (and not savage) if they shall run or flie away, though out of sight of the Owner, yet in what place soever they be found, they cease not to be his, so as whosoever detaineth them from the Owner is punishable by way of Action.

§. 2. **I**t is Felony also to take some things that be of wild nature: As to take young Pigeons which cannot flie, out of another Mans Dove-house or other House; or to take young Hawks, or young Herons, out of their Nests (or Airies) and breeding in a Park, or other several Ground; so to take Fishes that be kept in a Trunk or several Pond: For that the property of such things shall be always adjudged in the Owner of the Dove-house, Ground, Trunk or Pond, in as much as such things cannot (of themselves) go or get out thereof, but that the Owner of such Dove-house, Ground or Pond, may take them at all times at his pleasure, 10 E. 4. 17. a. Bingham, & 18 E. 4. f. 8. a.

So of old Doves taken in the Dove-coat (in the night time especially;) and so it seemeth of any other wild Beast or Fowl (being of value) and taken within a Mans house.

At Cambridge Summer Assizes Anno. 1627. there were two indicted and arraigned of Felony before Sir Francis Harvey, for taking Fish out of a Net lying in the River, being the several Fishing of Sir Ed. P.

Also it is Felony to take any Swans that be lawfully marked, though they be at large; for a Man hath property in such. See Co. L. 16. b. 17. a. Quere, if they be flying Swans, and not pinioned.

§. 3. **A**lso for Swans unmarked, if they be Domestical or Tame, scilicet kept in a Moat, or in a Pond near to a Dwelling-house, and so be *Domni* or *Manui assueti*, to steal such is Felony, See Co. 7. 17. b. *Hic postea*.

So it seemeth of Swans unmarked, so long as they keep within a Mans Mannor, or within his private Rivers; or if they happen to escape out of a Mans Mannor, or private Rivers; yet if they shall be pursued and taken, and brought in again. See Co. 7. 16. b.

But if Swans that be unmarked shall be abroad, and shall attain to their natural liberty, then the property of them is lost, and so long Felony cannot be committed by taking of them.

And yet such unmarked and wild Swans, the Kings Officers may seise them (being abroad) for, and to the use of the King, by his Prerogative, they being *Volatilia Regalia*: Also the King may grant them, and by consequence

Fitz. 361.
Stamf. 25.
c.
18 E. 4.

Br. Cor. 92
22 Ass. 95
Rit. 9. b.
27. b.
22 H. 8. 95
16 E. 4. 73