

sequence another man may prescribe to have them, within a certain precinct or place; for it may be intended to have a lawful beginning by the Kings Grant. *Co. lib. 7. f. 16. a. b. & 18 a. b.*

Also young Swans or Cygnets, they do belong to both the Owners in common equality, *sc.* to the Owner of the old Cock, and to the Owner of the old Hen, and the Cygnets or young Swans shall be divided between them, *Co. 7. 17.* And to steal such Cygnets is Felony; for they shall be of the same nature with the old Cock or Hen.

10 E. 4. 15.
Stamf. 350

Also it is Felony to take a tame Deer which is marked and domestical, especially if the Taker knows it to be tame and domestical, or that it wear-eth a Bell. §. 4.

If a Hart, Buck, or other Beast which hath been wild by nature, and made tame, and hath at his neck a little Collar of Leather, or any other notorious sign, and doth go abroad, and returneth again to the house (of his Master or Owner) at his pleasure, if he be taken by a stranger and killed by night, or in other secret manner, this is Felony by the Common Law. *Grompt. Author des Courts 167.*

But by the Common Law, Larceny cannot be committed by taking of savage or wild Beasts, Fowls or Fish, found in their Wilderness and abroad, or at large; as Deer, Conies, Hawks, Doves, Pheasants, Partridges, Herons, Swans unmarked, or Fish that are at liberty, &c. for no persons can claim property in them, *Fitz. 87. a. Fi. 45.*

By the Stat. *de Foresta c. 10. Nullus de cetero amittat vitam vel membrum pro Venatione nostra,* (*sc. pnr tuer Deere le Roy:*) which branch is but an affirmance of the Common Law, *Grompt. Author des Courts 166.*

361.

25.

4.

P. Felon
21.
Lamb. 271

Howbeit by Stat. it is now made Felony to hunt Deer or Conies (after some sort) in a Forrest; Park or Warren; or to take a tame Beast or other thing in a Park, by manner of Robbery. See the Stat. made 3 Ed. 1. 20. & 1 H. 7. c. 7. *Vide postea Felony by Stat. tit. Hunting.*

P. Felon.
20.

Also by Statute it is Felony to steal, take away, or conceal a Hawk. *Ibid.*

r. 92

1951

b.

95

73

Co. 17. b.
Fl. 4.

But for the better understanding what the Law is in things that be *feræ naturæ*, observe these differences.

In some things that be *feræ naturæ*, a man hath right and property, and in some of them a right of privileged. §. 5. Property

There be three manners of rights of property: *sc.*

1. Absolute. This property a man cannot have in any thing which is *feræ naturæ*, but only in such things as are *domitæ naturæ*.

2. Qualified. } These properties a man may have in things *feræ naturæ*; and to such properties a man may attain by two

3. Possessory. } means: *sc.*

1. By industry: and this may be either by taking them only, (and yet such things be his no longer than they be and remain in his possession or custody;) or by making them tame, (*sc. mansueta; id est, manui assueta, or domestica, id est, domui assueta.*) But in these last a man also hath but a qualified property, *sc.* so long as they remain in his possession, and so long Felony may be committed by taking of them away; but if they attain to their natural liberty, and have not *animum revertendi*, then the property of them is lost.

§. 6
Property
how gotten

2. *Ratione impotentia & loci:* As where a man hath young Goshawks, or Herons; or the like, which are *feræ naturæ*, and do breed (or air) in his Ground, he hath a possessory property in them; so as if one takes them when they cannot flie, the Owner of the soil may have an Action of Trespass, *Quare boscum suum fregit, & tres pullos Espervorum suorum, or Ardearum*