second Partnership distinct from the first and entitled to the Share of that Partner who has assumed to himself another.

Partnership may be contracted either by tacit, or by express Consent. Partnership is entered into by tacit Consent inferred from Deeds of Persons carrying on a joint Trade and Sharing the Profit and Loss l. 4. pr. ff. pro Socio. But if two or more Persons having a Mind to buy the same Thing agree in Bidding to raise the Price by bidding against one another, to buy it jointly together either by one of themselves, or by a third Person; this Agreement makes the Thing bought to belong to them in common, but it does not join them in Partnership l. 33. ff. pro Socio. For they are not linked together by the Choice of the Persons but only by thing which they have in Common.

Partnership may be contracted by express Consent given either in Writing or without Writing, and even among Persons absent by Letter Proxy or other Mediator. A Company of Persons in Copartnery may agree upon any Rules for regulating their Management that are consistent with the publick Laws of the Nation, as to allow a Factor to act for one of their Number, because he has no Skill in their Affairs, or for that he lives not on the Place 27 January 1687 Muirhead contra Craich and others. Yea they may make it a Rule that the Majority of the Partners may lawfully exclude any particular Member and assume others in their Place, which would stand as lex contractus.

All Partnership ought to be to an honest Purpose, for any that is founded upon Injustice, is void and null l. 53. l. 57. ff. pro Socio.

Money or Goods only, and Labour or Service only, may be contributed by all the Partners, or Money and Goods by some, Labour and Service by others, §. 2. Inst. de Societate l. 29. l. 75. ff. pro Socio Because the Industry of one may be worth another's Money. Labour and Service only on both Sides is brought into Partnership, when all the Partners are Artificers. The Contribution may be either equal or inequal. But each Partner must contribute Something either of Money or Goods or Labour. For Partnership cannot be contracted only to colour a Deed of Gift from one of the Parties in Favour of him to whom perhaps it could not by Law be made l. 5. §. 2. ff. pro Socio l. 35. §. 5. ff. de don. mort. caus. The Goods put in Partnership become common to all the Partners altho they are not delivered, but remain in Possession of the Partner who was owner of them before contracting of the Partnership. For the Intention of the Partners to communicate the Goods, is a tacit Delivery of them, and each of the Partners possesses for all the others the Things belonging to them in common which are in his Custody l. 1. §. 1. l. 2. ff. pro Socio

The Nature of this Contract doth chiefly consist in the communication of Loss and Gain. For understanding how that is to be done, we must distinguish three

three Cases: Either Nothing is expressly agreed as to that Matter, or every one's Share of both Gain and Loss is adjusted, or the Shares of the Gain only, or those of the Loss only. Where Nothing is expressly agreed as to the Communication of Gain or Loss, all are to share therein proportionally according to their Contribution of Money or Goods or Pains §. 1. Inst. de Societ. l. 1. l. 80. ff. pro Socio or by a respective Equality termed Geometrical or quotative Proportion, v. g. if one contributes 2000 Pounds and another 1000 Pounds, and there is 300 Pounds of Profit, the first gets 200 Pounds and the latter 100 Pounds; or in the Event of so much Loss, the greater Contributor bears Double of what the other sustains. If it be thought fit to have the Share which every one is to have in the Partnership expressly regulated, that may be done by the Partners themselves, or they may refer the Matter to the Arbitration of Other Persons, or even to one of themselves. Where it is referred to other Persons or to one of themselves, it is the same thing as if they had referred to the Arbitration of skilful and honest Men: For what is determined upon such a Reference by the Persons named will not take Place, if any of the Partners can just Reason to complain of it, such a Reference not being a proper Mediation to Persons to determine arbitrarily, but only to measure according to Equity l. 76. l. 77. l. 78. l. 79. l. 80. ff. pro Socio. Where the Shares of Profit and Loss that every one is to expect are expressed that must be observed whether it be agreed that they shall be equal, where the Contribution is inequal; or inequal where the Contribution is equal. For Pactum dant legem contractui l. 23. ff. de reg. jur. And it may be justly stipulated that one shall have a greater Share of the Profit, than he shall bear of the Loss, and that another shall suffer a greater Part of the Loss, than of the Profit; and that a third have a Share of the Gain, and be altogether free from Loss. Because the Advantages which the Company may reap from the Credit, Interest, or Knowledge of one Partner, or from the Pains, Mistakes, or Dangers he exposes himself to in the Management of the common Concern may compensate the allowing him to share in the Profits without Hazard of Loss §. 2. Inst. de Societ. l. 29. §. 1. ff. pro Socio. And he might very lawfully have refused to engage himself except upon such a Condition in the Partnership which perhaps could not have been settled and managed without him. Huber (ad tit. Inst. de Societ. §. 4.) and the Lord Stair (Inst. Lib. 1. tit. 16. §. 3.) would have such a Pactum that one should share in the Profit without freeing any Loss to be unlawful and usurary, unless the Party exempted from the Hazard by Loss, contributed more of Stock or Pains or Skill to the Society, that is equivalent to what is contributed by any of the other Copartners. But it seems more agreable to the liberal and the Nature of this Contract, to sustain such an Agreement, that one of the Partners should partake of the Gain and he not bear all the Loss, whether the Contributions be equal or inequal. Yet such an Agreement, that the whole Loss should fall upon one of the Partners, and the whole Profit go to the other, is unlawful and inconsistent with a Partnership l. 29. §. 2. ff. pro Socio. This in the Roman Law is termed Societas Leonina, from the Fable of a Partner

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