

which he himself had to the one half of it, and acquires the Right which his Coheirs had to the other half, and he who takes the House, retains in the same Manner the Right which he himself had to the one half of it, and acquires the other half which belonged to the other. And they ought reciprocally to warrant one another their Portions against Eviction. *Comm. de Monty* l. 25. §. 21. ff. Fam. Erud. l. 14. C. 1. Cod. When the Division of a Partnership is made, the Writings and Rights which are common to all the Partners are left in the Custody of him, who hath the greatest Interest, and the rest get Transcripts or authentick Copies and an Obligation upon the Keeper to produce the originals when it is necessary, or whenever he is occasioned. *l. 4. §. ult. l. 5. ff. Fam. Erud.* An heir, whose was in title to get up the Charter Chest of the deceased. But the Letters to whom a considerable Part of the Estate was disposed, was ordered to get up all the valuable Bonds, and the Writs of the Laines disposed to her. Where Writs contain Laines belonging to both, either Party having the greater Interest, was to have the Principals and other Transcripts, with an Obligation to make the Principals forthcoming. Renominations of Rights, Discharges of Debts, or retired Comproissings, tending to disburden the Estates, were appointed to be set down in an Inventory to be signed by the Lords of Session. The Use of both Parties 10 July 1600 *Dutchess contra E. Lauderdale*. If there happens to be any considerable Wrong done to the Parties concerning that Division of Lands and a Mill between them by an Inquest, without casting Lots upon it, was refused in respect of a considerable inequality, the for within half the Value. Albeit the Division proceeded upon a Brief raised by the Reviewer, and was made by an Inquest called by himself, 2 Decemb. 1669. *Monteith contra Boyd*. By the Usage in France, the Wrong done in a Partition might be between a third and a fourth Part, in order to intitle the Party aggrieved to a new Partition. *Les Lais Gwiles & C. Journ. l. Part. 3. Liv. 2. Tit. 5. Sect. 2. Art. 14.*

2. While a Thing belonging in common to several Persons remains undivided, the Proprietor who has it in his Custody, is obliged to take the same Care of it as if it were wholly his own, and will be answerable for Faults contrary to the Care required of him. But he is not bound to the same Diligence as he is, who takes upon himself voluntarily the Charge of the Affair of another Person's because in the present Case it is his own Interest, which has engaged him in an Affair in which he was concerned, and it is only by Chance that another Person has an Interest therein. *l. 25. §. 16. ff. Fam. Erud.*

He who has had the Enjoyment of the common Thing, ought to communicate all the Fruits and all the Profits which he has made by it. For without this Communication the Equality which ought to be observed among all the Copartners

would be violated. *in fin. Comm. divid. l. 4. §. 3. ff. cod.* If one of the Proprietors of a Thing or Affair that is common among them, has been at any necessary Expence about it; such as Reparations, the Charge of a Law Suit, and the like, he will recover the same with Interest from the Time that he advanced the Money. *l. 4. §. 3. l. 11. ff. cod. l. 31. §. ult. ff. de negot. gest. l. 6. §. 2. l. 52. §. 10. ff. pro socio.* For these Expences have preserved the Thing or have raised it more valuable, and may have been chargeable to the Person who has advanced the Money. Those who have an Affair or other Thing in common together are mutually accountable to one another for their Management and their Conduct in Relation to it, and every one of them must answer for the Damage and Loss which they may have occasioned to the common Thing. *l. 19. pr. l. 31. §. 2. ff. comm. divid. l. 11. §. 6. ff. Fam. Erud.* None of the Proprietors of a common Thing, can make any Change in it, without the Approbation of all the Parties concerned. And any one of them alone may in Opposition to all the rest hinder a Partition. *l. 28. ff. comm. divid. l. 2. §. 1. in fin. l. 1. in l. 1. pr. l. 1. For every one of them is at Liberty to preserve his Right even as it is. But this is to be understood of Changes which are not necessary for the Preservation of the Thing. For it would not be reasonable to let the Thing perish, since the Consent of one of the Proprietors. *Les Lais Gwiles & C. Journ. l. Part. 1. Liv. 2. Tit. 5. Sect. 2. Art. 6.* If one of the Proprietors make a Change in the common Thing without the Consent of the others opposing it, or make such Change in Absence or without Knowledge of the others to his Loss, he shall be obliged to restore Things to the Condition in which they were at first, if it can be done; and to make good all the Damage which he shall have occasioned. *l. 28. ff. comm. divid.* But if the Change has been necessary and consented to tacitly or expressly by who consented to it or suffered it cannot afterwards complain of it, even tho' he should suffer from it some Loss or Damage. *l. 28.* When it happens that two or more Things belonging to several Masters, are against their Will or without their Knowledge so mixed together that they cannot easily be separated, so as to give each to every one his own; this whole Mass becomes common to the Persons whose Things are mixed. Not so, as for all of them to have a common undivided Right to the whole, for the one hath no Right to the Thing of the other that is mixed with his, but their Right is in Proportion to the Share which every one had in the whole Mass. And this Event forms among them the Engagement either to divide the Thing in the Manner that is possible, or to do one another Justice otherwise by valuing every one of the Things which have been mixed together. Thus for Instance if two Pieces of Gold belonging to two Persons have been melted down into one Mass, or that a Stuff hath been made of Wool belonging to different Owners, or that Things of several kinds have been mixed together any other Manner of Way, such as different Metals or Liquors of different Sorts; in these Cases, it is necessary either to divide the Thing, if it is possible to divide it, and to give every one in Proportion to the Value he has in the whole Mass, or to make an Estimate of the whole,*

The next in the English Law that says for those who hold Lands or Tenements pro in Quibus...