

ing this Grant. Brown, his Heirs and Assigns might dig also, and like to the Case of Ante 122. a. Common fauns nombre. Thirdly, That the Lord Mountjoy might assign his whole Interest to one, two, or more; but then if there be two, or more, they could make no Division of it, but work together with one Stock; neither could the Lord Mountjoy, &c. assign his Interest in any Part of the Masse to one or more, for that might work a Prejudice and a Surcharge to the Tenant of the Land; and therefore if such an uncertain Inheritance descendeth to two Coparceners, it cannot be divided between them.

But then it may be demanded, what shall become of these Inheritances? The Answer is, That it appeareth in our Books, that regularly (a) the Eldest shall have reasonable Estovers, Common, Piscary, Coroddy incertain, &c. and the Rest shall have a Contribution, that is, an Allowance of the Value in some other of the Inheritance, and so of the like. But what if the common Ancestor left no other Inheritance, to give any Thing in Allowance, what Contribution or Recompence shall the younger Coparceners have? It is answered, That if the Estovers, or Piscary, or Common be uncertain, then shall one Coparcener have the Estovers, Piscary, or Common, &c. for one Time, and the other for the like Time: As the one for one Year, and the other for another, or more or lesser Time, whereby no Prejudice can grow to the Owner of the Soil. Or in the Case of the Piscary, the one may have one Fish, and the other the Second, &c. or the one may have the first Draught, and the Second the second Draught, &c. And if it be of a Park, one may have the first Beast, and the Second the Second, &c. And if of a Mill, one to have the Mill for a Time, and the other the like Time, or the one the one Toll-dish, and the other the Second, &c. And this appeareth to be the ancient Law; for it is said, [b] Sunt aliæ res hereditariæ quæ veniunt in partitionem, quæ cum dividi non possant conceduntur uni, ita quod aliæ cohæredes alibi de communi hereditate habeant ad valorem, sicut sunt vivaria, piscariæ, parci, vel saltem quod partem habeant pro defectu, sicut secundum piscem, tertium vel quartum; vel secundum iracundum, tertium vel quartum. Item in parci secundam, tertiam aut quartam.

But now let us turn our Eye to Inheritances of Honour and Dignity. And of this there is an ancient Book Case \* in 23 H. 3. tit. Partition 18. in these Words: Note; If the Earldom of Chester descend to Coparceners, it shall be divided between them as well as other Lands, and the Eldest shall not have this Seigniorie and Earldom entire to her self; Quod nota, adjudged per totam Curiam. By this it appeareth, That the Earldom (that is, the Possessions of the Earldom) shall be divided; and that where there be more Daughters than one, the Eldest shall not have the Dignity, and Power of the Earl, that is, to be a Countess. What then shall become of a Dignity? The Answer is, [c] That in that Case the King, who is the Sovereign of Honour and Dignity, may for the Incertainty confer the Dignity upon which of the Daughters he pleases. And this hath been the Usage since the Conquest, as it is said.

But if an Earl that hath his Dignity to him and his Heirs dieth, having Issue one Daughter, the Dignity shall descend to the Daughter; for there is no Incertainty, but only one Daughter, so the Dignity shall descend unto her and her Posterity, as well as any other Inheritance; and this appeareth by many Precedents, and by a late Judgment given in Sampson Leonard's Case, who married with Margaret the only Sister and Heir of Gregory Fines, Lord Dacre of the South, and in the Case of William, Lord Rois.

But there is a Difference between a Dignity or Name of Nobility, and an Office of Honour. For if a Man hold a Manor of the King to be High Constable of England, and die, having Issue two Daughters, the eldest Daughter taketh Husband, he shall execute the Office solely, and before Marriage it shall be exercised by some sufficient Deputy; and all this was resolved by all the Judges of England, in the Case of [d] the Duke of Buckingham. But the Dignity of the Crown of England is without all Question descendable to the eldest Daughter alone, and to her Posterity, and so it hath been declared by Act of Parliament: \* For Regnum non est divisibile. And so was the Descent of Troy.

Præterea sceptrum Ilione quod gesserat olim  
Maxima natarum Priami.

Virgil. 1. Æneid.

If a Castle, that is used for the necessary Defence of the Realm, descend to two, or more Coparceners, this Castle might be divided by Chambers and Rooms, as other Houses be; but yet for that it is Pro bono publico & pro defensione Regni, it shall not be divided; for as one saith, Propter jus gladii dividi non potest. And another saith, Pur le droit del espee que ne soeffre division en aventure que la force del Realm ne defaille pax taunt. But Castles of Habitation for private Use, that are not for the necessary Defence of the Realm, ought to be parted between Coparceners as well as other Houses, and Wives may thereof be endowed, as hath been said in the Chapter of Dower.

If there be two Coparceners of certain Lands with Warranty, and they make Parti-  
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