

= send or do not descend to their Heirs and Executors: It not to be understood in
 differently of Partnerships in which other Persons are interested, as the Part-
 nerships of Farmers, or Under-takers of any Work. For in these Kinds of
 Partnerships, we must distinguish two Engagements, one of the Part-
 ners among themselves, and the other of all the Partners to the Person to
 whom they take either a Farm or any Thing to do. And since this last
 Engagement descends to the Heirs or Executors of the Partners; it is a Conse-
 quent of it, that they being under a common Engagement to others,
 they be mutually engaged to one another. Thus the Executor of a Farmer
 being bound to perform the Conditions of the Task to the Letter and having
 Right to manage the Farm or to cause it to be managed for his Heir, he
 cannot be excluded from the Farm even tho' the Partners had not begun to
 manage it before the Death of the Partner to whom he succeeds l. 59. pr. l. 2.
 §. 8. ff. pro socio Les Loxa Civiles de. Form. s. Part. s. Liv. s. Tit. 8. l. 1. l. 2. l. 3.

The Action that lies for dividing the joint Stock after Dissolution of a
 Partnership, is in the Civil Law termed actio communis dividende. The Part-
 nership being ended, the Partners reciprocally reimburse themselves of
 what they have advanced and share their Profits: And if there remain
 any Debts to be paid off by the Society, any Expences to be laid out, and any
 future Profits or Losses, they take their respective Shares for all these
 Consequences l. 27 l. 30. ff. pro socio. In a Process of Court and Re-
 sponding at the Instance of one Partner against another, or at the In-
 stance of one against his Factor, the Defender may be compelled to produce
 his Account Books for making up a Charge against himself: Because
 these are upon the Matter the Pursuer's Books, both Parties having
 alike Interest in them 7 July 1660. ^{So, doct. comm. Tit. de. §. 2. l. 1. §. 3. l. 4.} *Dabon contra Tatum* Which is an
 Exception from the Proverb *Heine tenetur edere instrumenta contra se*
in vincendum litem. bid. supra pag. 1629.

Sect. 4.

Of Mandate or Commission.

A Mandate or Commission (termed in England a Procurator
 or Letter of Attorney) is a Contract by which one gives Power to
 another receiving, to look after his lawful Concerns judicial or extra-
 judicial, as if he were present. Whether it be, that he is to manage and
 take Care of some Estate, or some Affairs, or that he is to treat for his Name
 with others. It is called Mandatum either quasi de mandatione, because
 it is an Authority given out of ones Hand or Management to another,
 or from mandare to command, seeing it uses to be expressed in imperative
 Terms; or perhaps it may be fetch'd a mandatione, for that one pro-
 = miset

= miset Something to another by giving him his Hand upon it, whence
 that of Virgil, *fallere dextra significat to break Faith*. The Giver of
 the Mandate, or Person authorizing is called the Mandant, the Under-taker
 to perform, the Proxy or Mandatary or Attorney.

This Contract deriv'd its Original from the Necessities of Man-kind,
 when Persons who because of Sickness, Absence or other Impediment cannot
 attend their Affairs personally, give Power to others to act or treat for them, and
 do what they would do themselves if they were present. A Mandate or Com-
 mission may be given not only by a Faculty or Letter of Attorney in due
 Form; but also by a bare private Letter or other ways which explain
 the Commission or Power that is given. The Contract which makes the
 Engagements between the Mandatary and the Person who constitutes
 him, is formed when the Procurator or Commission is accepted, either
 expressly when the Mandatary charges himself with the Execution of
 what is contain'd in it, or tacitly by executing it. The Affairs to be done
 must be honest and lawful: For the Performance of an Order evil
 in it self, or against good Manners, as to kill or wound any Person to
 commit Adultery with another Mans Wife, can afford no Relief
 or Remedy to the Mandatary, tho' he suffer in Body and Purse by it,
 against the Authorizer l. 6. §. 3. l. 12. §. 22. l. 22. §. 6. ff. mandati;
 but the Mandant is liable also to Punishment l. 6. §. 3. ff. de injur. l. 7.
 §. fin. ff. de pignorat. l. 2. §. 1. ff. de eo qui pro facti. By the Civil
 Law a Mandate, according to the simple Nature thereof, may do three
 usually contriv'd and enter'd into upon just distinct Accounts pr. Inst. §. 8.
 §. 1. ff. de mand. s. For the sake of the Mandant only, as when he miti-
 = mises another to buy Things for him: 2. Upon the Account of both
 Mandant and Mandatary, when both the one and the other are interest'd
 in the same Thing: As when the latter is order'd to lend Money at the
 Interest to a third Person who is to employ it upon the former's Affairs;
 or when in a Contract of Sale, the Seller constitutes the ^{Buyer his} Proxy to recover
 out of the Hands of a third Person the Title of his Right to the Estate
 that is sold, or the Purchaser appoints the Seller his Proxy to receive from
 a Depository or from a Dealer of the Purchaser the Money restin'd for
 Payment of the Price of the Sale. 3. One may by Commission charge
 another with the Affairs of a third Person whether he who gives the Order
 or he who accepts it, have Interest in the Affairs or not. The said Order
 puts the Person who gives it under a twofold Engagement, viz. to ans-
 = mises wer to the third Person for what shall have been ill transacted by
 the Man employ'd in his Concerns, and to be accountable to him he
 has employ'd in the Concerns of that third Person, for all the Consequen-
 = ces of the Engagement into which he makes him enter, such as that of
 getting what he shall have transacted well to be satisfied by the Party concern'd,
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