

and of procuring him Reimbursement of all the reasonable Charges he shall have been at. Again, if the Mandatory fails without just Cause to execute what he had undertaken, he will be liable to Reparation and Damages to the Person whose Affairs he took upon him the Care of and neglected; seeing otherwise they might have been intrusted to others. A Trust Contract may be entered into for the Interest of the Mandant and a third Person, as when the Mandatory is authorized to buy an Estate for the Authorizer and another. 8. For the sake of the Mandatory and a third Person, as when one has a Commission to lend his Money out at Interest to a third, where the Lender is concerned to have his Money in a right Hand, and the Borrower to get it for answering his Obligations. And the Mandatory acting pursuant to that Order, furnisheth an Interest, the Mandant to see that the Mandatory acted fairly, who may also call the Mandant to Account for acting towards him with any deceitful Design. An Order to the Behoof of the Mandatory only, as if one should persuade another to put out his Money to Use, or to buy Land thereunto, interesteth no Obligation upon him who giveth the Order for it save only merely of Advice and Counsel, which can be of no Advantage to the Mandant; the Quantity of the Sum, and the Person to whom it should be lent being left wholly to the Mandatory's Choice. 9. 6. Just. 6. c. 1. A Minute containing the Opinions of certain Friends sought by two Persons in some particular Questions about Matters contravened betwixt them, was found not obligatory upon the Parties to stand to it, because the same was only given by Way of Advice and Counsel; Albeit the Minute had that Inscription, Questions to be resolved by the Friends herein named. &c. with which both the said Parties were content, and the said Minute was at the End thereof subscribed by both the said Parties 12 July 1626. C. Dumfermling contra Lady Dumfermling. But with us some kind of Mandates, as Commissions or Grants of Offices, Abjurations, Procuratories of Resignation Precepts of Seisin &c. may be effectually conceived in Favour of the Mandatory only who is called Procurator in rem suam.

The Mandant is obliged to approve and ratify what is consequent to the Power he gave. l. 3. §. 5. ff. Mandate and to reimburse indemnify and save harmless the Proxy if there be Occasion for it. If the Mandatory has been at any Expence in executing the Order, with which he was charged as if he had made a Journey or advanced a Sum of Money, he who had employed him is bound to reimburse him of the reasonable Charges which he has laid out in executing the Order; even altho the Affairs had not the desired Success, unless it miscarries thro' his Fault. l. 10. §. 9. ff. mand. l. 20. §. 5. l. 4. Cod. altho the Expences of the Proxy should exceed what the Owner of the Thing would have be-

= Stowed

stowed on it if he had looked after it himself: yet the Owner will be bound nevertheless to refund all that has been disbursed reasonably and honestly altho with best Precaution, and with best Skill and Industry than he himself would have used. l. 27. §. 4. ff. mand. If the Person employed was obliged in the Discharge of his Trust to borrow Money or advance it of his own, his Employer must restore not only the Money laid out, but also the Interest of it, according to the Circumstances; whether it be because of the Interest which he who made the Advance hath paid for the Money himself if he borrowed it, or to indemnify him as a safe which the said Advance may have occasion'd him, who might not to suffer Loss by the good Office done to another. l. 3. §. 1. mand. l. 12. §. 9. l. 20. pr. ff. eod. Members of a Company were deceiv'd to relieve their Book and Cash-keeper of certain Sums of Money borrow'd by him for their and the Company's Use by their Treasurers and Fidei-jurati rationes; he always finding Caution to pay what should be due to them, in the Event of a Suit and Reckoning. A January 1709. In contra Corbats, Because it were hard to leave a Mandatory in Trust for Money borrow'd for the Mandant's Use, without Diligence in the Event of a Suit and Reckoning, which might depend on the Mandant. If a Proxy or Agent suffer any Damage or Loss on Account of the Affairs which he has taken in Hand, we must judge by the Circumstances, whether the Loss ought to fall on the Proxy, or on the Person whose Affairs he manages. Which will depend on the Quality of the Order which was to be executed, the Danger of Loss, the Nature of the Event which has occasion'd the Loss, the Connection between the Event and the Order that was executed, the Relation which the Thing lost, or the Damage sustein'd had to the Affairs which was the Occasion of it; on the Quality of the Person, that of the Loss, the Nature and Value of Things lost, the Cause of the Engagement between the Person who gave the Order and him who executed it; and on the Circumstances which may charge the one or the other with the Loss or discharge them of it as to which we must cast into the Balance the Consideration of Equity, and the Sentiments of Humanity, which one ought to have whose Interest has been the Cause or Occasion of Loss to another. The learned Domat gives some Instances which may be of Use for making the Application of this Rule. Les Loix Civiles de Louis. Part. 5. Tit. 5. l. 15. Sect. 2. Art. 6. Lieutenant Colonel Mercer having upon invitation from the Lady Aldie come from Ireland to Scotland in Order to a Match betwixt his Son and her Daughter the Heiress of Aldie, the Lady commended with him that he should go back and bring over his Son with Bills for 2000 Pound Sterling to be contracted for paying Debts of the Family; he fulfilled the Commission, but the Lady suffered not his Son when he came in suitable Equipage to have Access to her converse with her