

to be done, or the Way of doing it. But tho' in private Commission something is understood to be left to the Mandator's Discretion in the Execution by Equivalents l. 62. §. 5. ff. mandati. This Liberty is not to be taken in Execution of public Commissions given to Ambassadors or Envoys, who must not depart a little from the strict formal Words, unless they have to justify them therein the usual Clause in their Commissions, to supply and change as the Interest of the Person authorizing shall seem to lead, or Expressions to that Purpose.

A Mandate for managing one and the same Affair may be given to one or more Persons either separately or jointly, or with a certain Quorum: express when two or more Proxies are intrusted with or underlike Direction of the same Affair if they be named separately, as A. or B. or C. to manage or any one may act effectually by himself without the others. And tho' the Business consummates the Power of all of them, the rest have no more Power in what is already done l. 32. ff. de procur. If two or more named jointly to manage an Affair as A. B. and C. they must all observe the Commission. Star Lib. 1. Tit. 12. §. 13. Nothing would oblige the Managers employ'd therein except what had been transacted jointly by all of them. For they could not divide the power which they had but in conjunction with one another in Configuration of the personal Abilities Industry and Fidelity of all of them. Thus for Instance if two Persons had a single Power to transact a Suit of him who employ'd them, and one transacted it without the other, the Transaction may be dissolved by the party concerned. For he had not Power to himself the Power all alone, and the Profession of the other might have helped to alter the Condition of their Principal See Law. Cuius de Jur. h. nob. l. 1. §. 15. Inst. 3. Tit. 14. It is otherwise in the Office of Tutor or Executor which is committed by one Decree to several Persons without the Name of a Quorum, may be exercised by the Plurality Star Lib. 1. The Reason of the Disparity is because latter Wills are always interpreted in an favourable Sense they can bear not to disappoint the Execution toward the Design of the testator: Qui requirit ampliat velle who is not intended to give further Orders in the Matter seeing the Party being on Life, he may alter or renew them when fallen to the Ground in other Sorts, or in Favour of other Persons as he pleaseth. The Lord Stair (l. 14) makes four Exceptions from the Rule here laid down. 1. That one of several Mandataries may do a thing common and ordinary, as one of more Curators may authorize a Minor. But I am not of his Opinion as to this Point, either as to Mandataries or Curators. 2. A Commission given to several Mandataries for doing something manifestly to the Advantage or Disadvantage that admitteth no Delay, as to solemnize a Marriage or receive a Crown, may be well done by any one of them tho' the rest should dissent. But Ambassadors sent to negotiate a Treaty of Marriage or Peace, or to surrender a Kingdom or Fort, where the Execution of the Mandate may be hazardous or prejudicial to the Prince who gave it, must all concur in

in the Negotiation. 3. When the Execution of a Mandate given to several Persons is necessary, and cannot bear Delay, as a Commission of ordinary Jurisdiction; the Executor is always understood in such to be lodged in the Plurality. 4. That a Plurality of Mandataries may have Power to act in Pursuance of the Commission if agreeable to the Custom of the Place, or if the Mandant used before to authorize expressly such Proceeding Where a certain Number of Mandataries is appointed a Quorum, no fewer can do Business, and if one or more be named *uno quo* or *one quibus non*, the Person or Persons so named must act as one Mandant. If several Mandataries be appointed, tho' a Commission given to three Persons to the Judges or Arbitrators, whom of two agree and one dissent, the Court is not parallel. If one of the same genus not named in a majority refuse his Consent, the Force of a Commission might ex nobili opere supply it, should they be each of several Mandataries or Proxies appointed for the same Affair, are answerable to the Mandant for the whole, unless their Commission equals it otherwise l. 60. §. 2. ff. Mandati. Star Lib. 1. Tit. 14. For the Affair is intrusted both to the one and the other, and each of them makes himself answerable for it when necessary, except the Cases because almost many Commissions are *decedit* or *decedunt* in regard of some Mandant being wanted in the Execution and severally are liable *one pro rata*: Yet several Commissions are *decedunt* and *separatim* as *decedunt* and *separatim* are liable severally in some Cases.

A Mandatary cannot subdelegate his Authority or authorize another Person to perform the thing committed to him, unlessword be so in the Mandate and Procurator Star Lib. 1. Tit. 12. §. 7. Because *delegatus non potest delegare* especially in Matters of Jurisdiction 2. A Mandatary cannot in any Manner of his personal Affairs in which he is personally concerned, not be bound upon another without the Authorizers Consent. 3. A Mandatary will not go to a Place in a Mandate *non dicitur* can far less pass over to Assignys or Substitutes. But there are some Exceptions from this Rule, as if some Mandates are so general that they cannot be performed by one, without his devolving some Part of the Charge upon another. 2. Some are of a Nature so common that they are made without any personal regard to the Fitness of the Mandatary as Receipts and Assignments which are commonly directed with a *Blania* for the Mandataries Name, that any Persons Name may be therein filled up. 3. Some Commissions are granted expressly with Power of substituting and assigning. In which Case *delegatus potest delegare*. But the Privilege of being the Sovereign *privilegium* Immunity and Exemption from all Taxations Rents Annuities and Impositions upon that Office of Trade, being granted to a Person his Partners Substituted and Assignys; an Assignment by one of these Partners of his Share of the Gift, was found not to transfer to the Assignys an Immunity from public Burdens, when the

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