

whose Interest he knew without being liable to satisfy the Merchant For otherwise all Merchants might be ruined, Persons of Quality not being in Use to take off Goods immediately from Merchants but to leave the same hereof to Tailors and Servants 20 Feb. 1669 Bruce contra L. and Lad. Stanhope. A tacit Mandate is also inferred from the giving or having of Writs. Thus a Person having a Precept in his Hand, is a tacit Mandate to the Grantors Bailie to give Seisin thereon to the Heir as Mandate may for him in whose Favour the Precept is conceived. Procurators being inferior Courts are tacitly authorized to appear for those whose Papers they have in their Hands or for whom they propose special Allegations upon Matters of Fact Stat. Lib. 1. Tit. 12. §. 12. But cannot enter the Verity of Point to the Jury darts with strain in remedia, without a special express Mandate for that Effect 18 January 1712 Jingles contra Fuller. A Procurator's Appearance for one before an inferior Court without the giving the Party's special Warrant for so doing, or producing Writs on him that might infer a Warrant will not make a Decree pronounced against the Party upon such Appearance to be a Decree in case of Appeal. Law contra Smith and Ferris 24 Novemb. 1676 Grant contra Brock and Devocales at Law are presumed to have a Warrant by their names from the Persons for whom they appear Stat. Lib. 1. Tit. 14. A Wife by having her husband's Bond in her Hand which she impignorated for 100 Pounds was presumed to have a Warrant from him as to be a Matter of some Importance. A Feb. 1665 Jalterson contra Pringle. A Warrant for requisitings and charging upon a Bond, is presumed from the having thereof, unless the Creditor disclaim the same; being otherwise at legal Executions might be capably omitted, for which there is said in several written Mandates granted by the Creditor. Again a tacit Mandate is inferred from a Banker's selling a Person over his Office, or a Retailer's committing the Care of his Shop to one, and allowing him to trade and do Business there for the Employer of which I shall treat in another Place *vid. infra* pag. 926. In general, all Proxies may do whatever is comprehended within the Letters of Procurations, or Intention of the Persons who have employed them, and whatever naturally follows from the Power that is given them, or is necessary for executing it l. 56. ff. de procu. l. ult. §. i. ff. mand. Thus the Power of receiving what is due, implies that of giving a Discharge; the Power of demanding a Debt, implies that of distraining the Goods of the Debtor to procure Payment Les Lois l. 1. c. 1. §. 1. Tom. 1. Part. 1. Liv. 1. Tit. 18. Sect. 3. Art. 10.

Mandates are 2^o. either undertaken gratuitously, merely to serve the Authorizer; or for a Reward, as Factories. By the civil Law, all Mandatories are liable for the exactest Diligence l. 13. l. 25. l. mandati l. 24. l. de usura. Which is contrary to its own Rule determining the Diligence to

to make humane Acts not culpable ~~in the~~, according as the Contract is conceived in Favour of the Actor or of the other party l. 5. §. 2. ff. Commod. For that Mandates are gratuitous Contracts, and some of them only for the Behoof of the Mandant, which should therefore oblige the Trustee to less Diligence. But our Law both more reasonably distinguishes Cases, and require Diligence in some Mandates and not in others. A gratuitous Mandate obligeth to no Diligence, but only to the best of his Power a Commission to receive Money upon a Precept, was found not to oblige the acceptor of the Commission to any Diligence but only to present the Commission and receive the Money when paid 17 July 1792 E. Heems contra Thompson. And a Commission to a Buyer of Land, to inspect the Seller and himself and all other things necessary for his Security, who is allowed to retain the Expenses out of the Price in his own Hand till his own Security be not oblig'd him to Diligence. That it was the Interest of the Seller to have the Obligation fulfilled that the Price might be paid, he might have the Commission given to the Buyer in his own Name and Security, he might use it or not as he pleased, especially seeing the Seller was bound to provide the Buyer's Security, 16 Decemb. 1708 Frazer contra Keith. But Factors who have Salaries are obliged to the exactest Diligence having a Salary to be put in a Fault to the Mandant. Tracy for the Defendant of an Affair committed to him, such as to prosecute or prosecute a Law suit he was not sent into in great haste, but for the Interest of the Trustee who has employed him, but it is to be noted if he gives a reasonable expectation, and his Fault be such as to be done in an honest manner, l. 20. §. 4. ff. mandati. A gratuitous Mandate obligeth to the exactest Diligence and Expenses in executing the same, l. 10. §. 1. l. Mand. l. 10. §. 1. ff. Mand. But Factors who are paid for their doing, cannot use incipient Goods from the Mandant l. 10. §. 1.

Mandates expire variably according to the different Nature of the Mandate. They expire by the timely Revocation of him who gave the Mandate, or Renunciation of the Mandatary made known to the other Party, if the Mandate was given for the sake of the authorized one being held of Friendship might not be extorted. A Revocation or Renunciation on is understood to be timely and reasonable, while the Mandate is in whole. Nothing is done in prosecution of the Mandate, and the Mandant or Master is able to do the Business himself or by another, or has Time to employ another Mandatary. But if Things be not Intire, or the Proxy or Agent have already executed the Order, or begun to execute it before he knew any Thing of the Revocation, it would be without Effect, as to what has been already executed, and he would be indemnified or obligated, as to any Obligation into which the said Order may have engaged him §. 9. l. 11. ff. de mand. l. 12. §. 1. ff. de mand. l. 15. l. 27. §. 2. ff. mand. A Mandate wholly to the Behoof of the Mandatary,