

Tit. 7
Obligations between Brokers, and such as employ them.

The Profession of Brokers, or Drivers of Bargains (Called in the Civil Law, *procurator* l. 2. ff. de procuratoribus) is to bring dealers together, and to mediate Bargains between those who, according to their respective wants are desirous the one to sell, and the other to buy, or to exchange, to let or to hire, and to deal in any commerce or affair of what nature soever it be. The origin of the word *procurator* comes from one who by his office was a Broker, Trader, and Agent. Such brokers are principally necessary in the sea ports, and in trading towns, to facilitate to Strangers and others the commerce which they deal in, by addressing them to the persons with whom business is to be done, to know the Intentions of the one to the other; serving as Interpreters if there be occasion, and rendering them the other Services which they are capable of doing by their Mediation. There are even publick officers, whose functions oblige them to deal in this sort of business; such as Brokers Licensed by publick Authority.

The Engagement of a Broker, tho' like to, is different from that of a Proxy, a factor or other Agent, for the Broker being employed by Persons of opposite Interests, he is as it were agent for both, the one and the other, to negotiate the commerce and affair in which he concerns himself. His engagement consists in being faithful to the parties in the Execution of what every one of them intrusts him with. His power is not to treat but to explain the Intention of both parties, and to negotiate in such Manner, as to put them who employ him in a condition to treat together personally. All Brokers have their functions limited to such commerce and Affairs as are lawful and honest, and to the ways allowed for treating the same, and bringing them to a good Issue. And all Brokers in such Commerce and other things as are unlawful, or by Unlawful ways in such things as are permitted, forms no other Engagement than that of repairing the harm that has followed upon it, and of undergoing the Penalties which such Unlawful dealing may have deserved, according to the Quality of the fact and the Circumstances. l. 3. ff. de procuratoribus. Brokers are not Responsible for the Events of the

But such were formerly admitted to that Employment.

In which they intermeddle, unless they have been guilty of some fraud or some fault which may be justly laid to their Charge. Nor are they bound to warrant the Sufficiency or Ability of the persons to whom they procure Money, or any other thing to be lent; altho' they receive a Recompence for their pains, and speak a good word in favour of the Borrower; Unless there had been either an express Agreement that they should warrant, or that it appears they have been guilty of some fraud in the Matter l. 2. ff. de procuratoribus. Les Loix civiles l. 1. §. 1. Tit. 17. Sect. 1. Art. 3.

Being persons who employ Brokers give them their Orders, they are obliged to satisfy what sever is intimated Pursuant to the Power which they gave, in the same Manner as those who appoint Proxies, or who give Commissions and other Mandates. If the Broker does not give his service for nothing, he who has employed him owes him a Salary or Fee, called in the Civil Law *Procuratorium, Brokage*, either such as had been agreed on; or according as it is regulated, if the Broker be an officer who has his wages or hire taxed; or such as shall be decreed him by the Judge, if the parties do not agree the Matter by Mutual Consent, l. 1. c. 3. ff. de procuratoribus. For this function being Lawful, it ought to have its Salary proportionable to the Nature of the commerce or other affair, to the Quality of the person to the time Employed about the business, and to the pains taken by the Broker. All be it there are no Brokers in a certain place licensed by publick Authority; yet those who assume the office of driving a Bargain here, are limited by Law, to the taking no more than the Value of five shillings Sterling, for procuring the Loan, or forbearing payment of 100 pound Sterling for a Year and so Rateably, l. 2. ff. de §. 2. Cap. 16. §. 2.

Tit. 8
Of Second or third Bills of Exchange.

There is yet another sort of necessary obligations, viz. Second or third Bills of Exchange given for the same Parcel. In which case an Indorser may be taken and Diligence proceed at the Indorser's Instance upon any one of these Bills, without Necessity to