

with the diminution of the aristocratic element, may be looked upon as highly honorable; mercantile business affords a familiar illustration of this. Thus what at one time is lease at another becomes mandate, and it is never possible to specify with an absolute certainty under which of the two contracts the exercise of a large number of occupations would be ranged. This is evident from the constant disagreement on the subject, among jurists of the highest authority. In Rome, painting was the object of lease and hire; Pothier holds it to have been a liberal profession in France; Cujas holds, with respect to advocates, and Guy Coquille, with respect to attorneys, that their services are the object not of mandate but of lease, while Pothier, Merlin and others are of the contrary opinion.

Pothier, Mandat, nos. 23, 125.—Merlin, Rép., vo. Notaire, § 6.
6 Marcadé, 518 et seq.

2 Championnière et Rigaud, 1487, p. 432.—Clamageran, p. 270.—Austrian Code, art. 1163.

These observations are submitted to shew that the distinction between the contracts, when the service is to be paid for, is so purely theoretical that for all practical purposes they may be considered identical. Yet no code in Europe, with the exception of that of Austria, has been bold enough to regard this distinction as the offspring and relic of a condition of things which has long since passed away, and to treat all services which are paid for as the objects not of mandate but of lease and hire.

It would, however, be improper to leave unnoticed that the law as it stands is earnestly defended by most of the great jurists of France, among them are Pothier, Merlin, Troplong, and all the more distinguished commentators on the Code. Marcadé resumes the opinions of them all and approves the bitter observation of Troplong on the Austrian code, that its dispositions in this respect are worthy of a nation which enforces its military discipline by blows. Championnière and Rigaud take a different view of the subject, and their reasoning, which is just and sensible, provokes an answer from Marcadé more remarkable for its vivacity than for the close logic which usually distinguishes that author. For the reasoning upon the whole matter reference may be had to the citations made above.

The title is distributed into six chapters corresponding for the most part with divisions found in Pothier. The first of these chapters contains general provisions; the second, the obligations of the mandatary, subdivided into two sections; 1., of his obligations towards the mandator, 2., of his obligations towards third persons; the third chapter, of the obligations of the mandator, is also subdivided into two sections in the same manner as the preceding one; the fourth chapter is of advocates, attorneys and notaries; the fifth, of bankers, factors and other commercial agents;—and the sixth, of the termination of mandate.

Chapter I.
General provisions.
Arts. 1, 2.

This chapter consists of eight articles. Art. 1 includes a definition of mandate and the rule by which the contract becomes binding on the mandatary. The substance of articles 1794 and 1795 of the Code Napoleon have been combined in this article; it nevertheless does not follow the Code in its definition which is declared to be defective by Troplong and most of the other commentators. The wording of the article is taken from the analysis of the civil law by Dr. Halifax, and follows in substance the definition by Pothier and the authorities under the ancient law, except as to the point of the contract being gratuitous. This is provided for in the following article, 2, by which it is declared that it is gratuitous unless there be an agreement or established usage to the contrary. This rule is, without doubt, consistent with the spirit of the ancient law of France and the law of our courts.

Troplong, Mandat, no. 7, n. 2.

Arts. 3, 4.

Articles 3 and 4 require no remark; the former follows articles 1987 and 1988 of the Code Napoleon; the latter follows article 1989, with an addition of the last sentence which is