

No 49.

solely profitable to him, and not to her; and the pursuer *answering*, that it was lawful to him, albeit he had been tutor, far more when he is factor only to the tutor, to acquire this tack, wherein he hath done no wrong to the minor, to purchase the same to him, after the decease of the pursuer's wife, who is the defender's mother, and who is conjunct fiar of the most part of the lands contained in the tack: THE LORDS found, that the factor might do no more than the tutor's self in this case, and the like cases, and that the tutor might take a tack to his own wife, for her lifetime of the teinds of such lands whereof she was liferentrix, she defalking a proportion *pro rata* of the grassum paid for the tack of the minor's lands; and sustained the pursuit and tack to her for the teinds of the lands only; but for the teinds of the rest of the lands of the minor, whereof she had no liferent, the LORDS found, that the benefit of the tack in that ought to accresce to the minor, and not to the conjunct fiar, the factor's wife, nor to the factor, nor to the tutor, the minor always paying a proportion *pro rata* of the grassum of the tack, and therefore would not sustain the action libelled for the teinds of these lands.—See TUTOR AND PUPIL.

Act. Nicolson.

Alt. Stuart.

Clerk, Gibson.

*Fol. Dic. v. 2. p. 24. Durie, p. 633.*

1710. June 16.

MURRAY against MURRAY.

No 50.

A FACTOR is bound to communicate cases; and it was even found, that a clause in a factory, giving liberty to a factor to purchase in claims against his constituent for his own behoof, was *contra bonos mores*, and void in law.

*Fol. Dic. v. 2. p. 24. Forbes.*\*\*\* This case is No 69. p. 9214. *voce* MUTUAL CONTRACT.

1736. January 15.

CORSAN against M'GOWAN.

No 51.

It is *contra bonos mores*, and would be of dangerous consequence to allow agents to purchase in debts against their constituents, upon which footing an agent was found obliged to account for cases to his constituent's heirs and creditors.—See APPENDIX.

*Fol. Dic. v. 2. p. 24.*

\*\*\* It was found, in the case of the York Buildings Company against Mackenzie, that the common agent for the sale of a bankrupt estate cannot himself purchase it, *voce* RANKING AND SALE.