Replied for the defender; The statute declares, 'that it shall not be leisome,' &c. and nullum est quod fit jure prohibente l. 7. § 16. D. De pactis, l. 5. 6. C. De legibus. For though where a prohibitory act imposes a penalty upon the contravener, without declaring the deed unlawful, as if it had been conceived thus, 'If any member of the College of Justice purchase a plea, he shall tyne 'his office,' the deed contrary to the law might stand, and the penalty only be incurred; yet where a statute, as in this case, declares expressly, the deed to be unlawful, and adds a particular penalty upon the contravener, it both annuls the deed and subjects him to the penalty. If it were otherwise in this case, the design of the law would be frustrated, by making unjust acquisitions in favours of heirs, and concealing them till their death, when there is no place for depriving them of their office. Besides, the deprivation may happen *ex accidenti* to be a very great punishment to persons of eminence, who are least likely to transgress; it would be hardly a punishment to persons of employment of lesser form about the College of Justice who are most ready to be litigious. And the sanction of a law must be interpreted as it may effectually restrain all sorts of offenders. No. 48.

THE LORDS repelled the objection founded on the act of Parliament anent buying of pleas by members of the College of Justice, and found that the certification therein doth not annul the right of the acquirer; and therefore sustained process at Sir Patrick's instance.

Fol. Dic. v. 2. p. 24. *Forbes, MS. p.* 12. 13.

*** A similar decision was pronounced 30th July 1635, Richardson against Sinclair, No 34. p. 3210. *voce* DEATH-BED.

SECT. X.

Factors and Agents purchasing Debts of their Constituents.

No 49.
The factor named by tutors can no more take the benefit of the pupil's debts purchased by him, or of rights on the pupil's estate, than the tutor himself can.

1632. *March* 28. L. LUDQUHAIRN *against* L. HADDO.

L. LUDQUHAIRN pursuing wrongous intromission of teinds, compeared L. Haddo, and *alleged*, that the tack, which was the title of the pursuit, was acquired by the L. Ludquhairn, he then being factor to his tutor, and so who ought to be reputed as his tutor in this, that he might do nothing in *re minoris*, to his hurt; whereby that his tack, which was of the teinds of the defender's own lands and heritage, albeit he hath acquired the same to his wife during her lifetime, and to the defender thereafter after her decease, yet it must be

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.