

tracting, is to be regulated by the character under which he acts; and that a factor, or person acting by commission, is understood to bind his constituent only, and not himself.

No 17.

Answered for the pursuer; Though the letter bears the defender had a commission, yet the same was not shown to him at or before the bargain; he relied solely on Mollison, and cannot be supposed to have acted on the faith of a commission not seen, which, now it is produced, is indefinite as to quantity, price, and date. *2do*, Supposing the defender had acted *procuratorio nomine*, yet that could not free him, because, as such, he was bound as well as his constituent, See *L. 13. ff. § 25. De act. empt. L. 1. § 17. De exer. act. 3tio*, The letter or commission from Mr Arbuthnot to the defender does not give him a power to conclude a bargain with any person, and therefore he cannot give a third party a legal action against his constituent, though, from his commission, the Court may find the defender has an implied relief.

THE LORDS found the defender was not personally liable, but only to furnish the pursuer with a commission.

Fol. Dic. v. 1. p. 288. C. Home, No 87. p. 141.

1738. July 20.

FORD against CRICHTON.

FOUND that a factor officiously acquiring debts of his constituent, to which the constituent has but the shadow of an objection, must in the mean time account, and not stave off his constituent till his objections to such debts be determined.

No 18.

Fol. Dic. v. 3. p. 202. Kilkerran, (FACTOR.) No 1. p. 181.

1739. June 6.

AINSLIE and FACTOR against ARBUTHNOT.

FOUND that a factor having taken bills in his own name from his constituent's debtor, without any notice given to his constituent or any posting by the factor in his books, whereby it might appear that the said bills were in his name for his constituent's behoof, the loss happening by the after bankruptcy of said debtor, falls upon the factor and not upon the constituent.

No 19.
A factor taking bills in his own name from his constituent's debtor, the loss falls upon the factor.

This was afterwards altered, July 13. 1739, not upon the general point, but upon the *species facti*; it being thought to appear from a book called a bill-book, that there was evidence of such posting as the former interlocutor had supposed necessary; but this last judgment was reversed upon an appeal, the House of Peers having no regard to a bill-book as not *nomen juris*.

Fol. Dic. v. 3. p. 202. Kilkerran, (FACTOR.) No 2. p. 182.