inter hæredes, though not fenced in terms of the Act 1685. On this ground he contends that it cannot he held that the entails of the Hamilton estates are to all effects invalid as regards the prohibition against altering the order of succession, and that therefore the condition necessary to the application of the 43d section of the Act does not exist, but the cases of *Dick Cunyngham*, 14 D. 636; *Dewar*, 14 D. 1062; and *Ferguson*, 15 D. 19, are express authorities against that construction of the Statute. It has been authoritatively determined in these and other cases that the terms of the clause are too clear and imperative to admit of any doubt as to the effect which it must receive wherever any one of the three cardinal provisions is not valid in terms of the Act 1685, by compliance with the provisions of that Statute. This is nowhere more distinctly pressed than in the case of *Dempster* in the House of Lords, 3 Macq. 62."

The defenders reclaimed.

WATSON for reclaimers.

LANCASTER, for respondents, was not called on.

The Court adhered.

Agents for Pursuer—H. & A. Inglis, W.S.

Agents for Defender—Tods, Murray, & Jameson, W.S.

Saturday, November 21.

MORTIMER *v.* HAMILTON.

Master and Servant—Trade Debts—Mandate—Furnishing Goods on Credit. A servant cannot bind his master for the price of goods without a mandate, express or implied.

Mortimer, a butcher, sued Hamilton for £26, as the amount of an account for butcher-meat sold by the pursuer to the defender. Hamilton defended, on the ground that he had not ordered the articles, and that he had been in the habit of giving regular weekly supplies of money to his servant to purchase butcher-meat for his household for cash.

After a proof, the Sheriff-substitute (CAMPBELL) pronounced this interlocutor:—"Finds, in point of fact, that the various articles of butcher-meat specified in the pass-book which is annexed to the summons, and contains the account libelled, were furnished by the pursuer on the order of the defender's servant, Euphemia Webster or Mathieson, and were delivered to her personally, or at the dwelling-house of the defender, and were so delivered by the pursuer on the understanding and belief that the same were for the use of the defender; but finds that the defender did not order any of the said articles, or contract with the pursuer for the supply of these or any other furnishings, and that he did not authorize the said Euphemia Webster or Murray to contract debt on his account, or interpose his credit for the price of the said articles, or any part thereof; and that he did not know that the same had been furnished on his credit; and finds that, during the whole currency of the said account, the defender paid to the said Euphemia Webster or Mathieson £1 sterling weekly, and in advance, for the purpose of enabling her to purchase the butcher-meat necessary for the defender's household: Finds, in the above state of the facts, that in point of law the defender is not liable in payment of the account sued for; Therefore assoilzies the defender; Finds him entitled to expenses, &c., and decerns."

The Sheriff-substitute referred to the following authorities:—*Inches* v. *Elder*, 27th November 1793, Hume 322; Fraser, Pers. and Dom. Relations, vol. ii, p. 450-1, and notes; *Hamilton*, 22d February 1825, 3 Shaw 394; *Dewar*, 22d June 1804, Hume 340; *Faulds*, 5th February 1861, 23 D. 437.

The pursuer appealed.

The following authorities were cited:—*Stebbing* v. *Hainly*, Peake, 47; *Fleming* v. *Hector*, 1836, 2 M. & W. 181; *Pearce* v. *Rodgers*, 11th July, 1800, 3 Esp. 214; *Hunter* v. *Berkley*, 1836, T. C. & P. 413; *Hiscox* v. *Greenwood*, 4 Esp. 174.

TRAYNER for appellant.

BRAND for respondent.

The Court dismissed the appeal.

The majority of the Court held that the Sheriffs were right. The principle ruling this case had long since been fixed in the cases of *Inches* v. *Elder*, Hume, 322, and *Dewar*, Hume, 340. There was the greatest difference between giving a servant authority to purchase goods for ready money and giving her a mandate to pledge the master's credit. If a tradesman supplied goods on credit on the mere order of a servant, without having ever ascertained whether the master was cognisant of the servant having opened an account, he had only to blame his own rashness if he lost his money. A master supplying money to his servant for the necessary disbursements of his house, which money is appropriated by the servant to other purposes, is not to be made liable in double payment because a tradesman, without his authority, rashly supplies goods to that servant on credit. That was also the principle of the English cases. There must be a mandate, express or implied, before a servant can impledge a master's credit.

LORD DEAS differed, thinking that tradesmen would be very much surprised by the doctrine now laid down. Householders would be very much annoyed if tradesmen were always to insist on express authority from the master before furnishing goods ordered through servants.

Agents for Appellant—Murdoch, Boyd, & Co., S.S.C.

Agent for Respondent—D. F. Bridgeford, S.S.C.

TEIND COURT.

Monday, November 23.

FOGO (MINISTER OF ROWE) *v.* CALDWELL.

Teinds—Glebe Lands (Scotland) Act 1866—*Conterminous Proprietor.* A conterminous heritor offering to purchase portion of a glebe under section 17 of the Glebe Lands (Scotland) Act 1866, may withdraw his offer before a remit has been made to a surveyor to value the lands.

The Rev. Mr Fogo, minister of the parish of Rowe, obtained authority from the Court, under the provisions of the Glebe Lands (Scotland) Act 1866. to feu certain portions of his glebe. By section 17 of that Act, a conterminous proprietor may, within thirty days of the issuing of the interlocutor authorising the feuing of the glebe, intimate his willingness to feu, lease, or purchase as much of the glebe, at such a price as the Court shall fix, and on his so doing he is entitled to obtain the lands. Mr Caldwell, a proprietor whose lands are conterminous with the portion of the glebe to be feued, in virtue of his

pre-emptive right lodged a minute within the thirty days, agreeing to purchase the lands. But before the Court remitted to a surveyor to value the lands, he changed his mind and applied to the Court for permission to withdraw the minute.

LAWRIE, for the minister, argued that, on the analogy of the Lands Clauses Act and the interpretation put upon it, the lodging of a minute by Mr Caldwell was just an acceptance of the offer made to him in the interlocutor authorising the glebe to be feued.

J. M. LEES, for Caldwell, replied, that lodging the minute was a mere intimation of willingness, and did not complete the contract, for if it did, then the conterminous proprietor who applied first would be entitled to the lands; and this the Court had negatived in the *Rattray* case. (*Ante*, v. 659.)

The Court held that at this stage there was a power to withdraw.

Agents for Minister—A. G. R. & W. Ellis, W.S.
Agents for Heritor—Ronald & Ritchie, S.S.C.

Thursday, November 12.

SECOND DIVISION.

THOMAS *v.* TENNENT'S TRUSTEES AND OTHERS.

Trust—Failure of Trust Purposes—Revocation—Heir—Liferent. Circumstances in which *held* (1) that a trust-disposition and settlement was inoperative in regard to the fee of an estate, that having been conditioned by a previous will cancelled during the lifetime of the truster, and not being otherwise disposed of in a manner sanctioned by the law of Scotland; but (2) was available to establish a right of liferent in the truster's widow, the creation of that right being the primary object of the deed, which conveyed the right in a habile manner, and there being no evidence of any subsequent intention to annul it.

This was an action of reduction and declarator brought by Mrs Ann Armstrong Tovey or Thomas, heir-at-law of the deceased Colonel Tennent of Pynacles in the county of Middlesex, and of Annfield in the county of Stirling, against the trustees and executors, and also against the widow, of the deceased; and the object of the action was in substance to set aside—(1) A trust-disposition and settlement in the Scotch form executed by the deceased on 2d July 1864, whereby a liferent of the estate of Annfield was conferred upon the testator's widow, and a trust erected *quoad ultra* for purposes specified in an English will, which was afterwards destroyed; and (2) a last will and testament executed by the deceased in the English form on 2d February 1866, within sixty days of his death, whereby the deceased professed to dispose of his whole estate, and expressly revoked "all prior wills." This second deed was sought to be set aside only in so far as it operated as a conveyance or direction to convey, and not so far as it revoked prior wills.

The pursuer maintained (1) that the deed of 1866 was inoperative as a conveyance or direction to convey, in respect it was executed on deathbed; (2) that the deed of 1864 was also inoperative as a conveyance or direction to convey, in respect it was revoked by the deed of 1866, which was effectual as a deed of revocation.

The defenders, Tennent's Trustees, pleaded (1) that the deed of 1864, containing a disposition to trustees for trust purposes not now extant, and containing further a direction to sell, was truly a trust for behoof of the deceased's executors; (2) that the said deed of 1864 was not revoked or intended to be revoked by the English deed of 1866.

The defender (Mrs Tennent) pleaded that the deed of 1864, was, in any view, effectual to secure her liferent of Annfield, and she concurred with the trustees in maintaining that that deed was not revoked, or intended to be revoked, by the English deed of 1866.

The Lord Ordinary (BARCAPLE) pronounced the following interlocutor:—"The Lord Ordinary having heard counsel for the parties, and considered the closed record, productions, and whole process—Finds that the disposition and settlement in the Scotch form executed by the late Hamilton Tennent on 2d July 1864, founded upon by the defenders, is now altogether inoperative, and incapable of receiving effect in so far as regards the disposal of the fee of the property of Annfield, thereby conveyed in trust to the defender, Augustus Mason, in consequence of the prior will, dated 5th May 1864, to which said disposition and settlement bore reference, having been destroyed and revoked: Finds, *separatim*, that by clause of revocation contained in the last will and testament in the English form, executed by the said Hamilton Tennent on 2d February 1866, the said disposition and settlement in the Scotch form was effectually and totally revoked, both as to the fee of said property of Annfield and the liferent thereof thereby conveyed to the defender Mrs Howarth Graham or Tennent: Finds that the pursuer Mrs Anne Armstrong Tovey or Thomas, as heir-at-law of the said Hamilton Tennent, has good legal title and interest to challenge the said last will and testament, and generally to sue and insist in this action: Repels the defences; sustains the reasons of reduction; reduces, decerns, and declares in terms of the reductive conclusions of the libel: Finds, decerns, and declares in terms of the declaratory conclusions; decerns in terms of the conclusion for removing; and appoints the cause to be enrolled for further procedure in reference to the remaining conclusions: Finds the defenders liable in expenses to this date; allows an account thereof to be given in, and, when lodged, remits the same to the auditor to tax and report.

"*Note.*—The pursuer Mrs Thomas, as heir-at-law of Colonel Tennent, seeks to reduce—(1) A last will executed by him in the English form in 1866; and (2) a *mortis causa* conveyance of the lands of Annfield in Stirlingshire, executed by him in the Scotch form in 1864, with the infeftment which has followed on it—reduction as to both deeds being sought only in so far as they prejudice the pursuer's right to Annfield, or any other Scotch heritage belonging to Colonel Tennent. In so far as appears, Annfield is the only heritable property in Scotland of which he died possessed. It is admitted that at the time of his death he was domiciled in England, and possessed both real and personal property there. The defenders maintain that the deeds sought to be reduced are effectual totally to exclude the pursuer's claim as heir-at-law to Annfield, and that, at all events, if they are not effectual totally to exclude her right to that property, it is at least excluded to the extent of the liferent conferred upon Colonel Tennent's widow by the Scotch deed of 1864. This alternative form