

inter hæredes, though not fenced in terms of the Act 1685. On this ground he contends that it cannot be 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 assoliszes 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 appellat.

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