residue destined by Mrs Wilson's trust-deed to Mrs Elizabeth Moffat or Purves in liferent, for her liferent use allenarly, and to her children in fee?"

Agents for Mrs Ann Moffat or Roper, &c.,—Duncan, Dewar, & Black, W.S.

Agent for Mrs Purves' Representatives—John Rutherfurd, W.S.

Agents for John White, &c. (Mrs Wilson's next of kin)—H. W. Cornillon, S.S.C.

Thursday, July 13.

SECOND DIVISION.

PITTS *v.* WATSON.

Obligation—Agent. A business was carried on by deputy, who was paid by a weekly salary, and had the full control both of ordering the goods and selling them—*held* that the deputy, after the principal's bankruptcy, was personally liable for goods ordered by him for the business, whether he ordered them in the name of the principal or his own.

This was an action at the instance of Edward Kemble Pitts, glaziers' patent diamond manufacturer, London, against Robert Boyle Watson, of No. 165 New City Road, Glasgow, for payment of £29, 10s., being the amount of an account for diamonds furnished by the pursuer to the defender. The defender admitted that he had ordered and received the goods in question, but pleaded that they had been supplied solely on the credit of the Nailsea Glass Company, now bankrupt, but formerly carrying on business at Bristol, for whom the defender acted as agent in Glasgow.

A proof having been led, the Lord Ordinary (ORMIDALE) decerned against the defender, on the ground that the diamonds had been furnished to him on his individual account and credit, and not as agent for the Nailsea Glass Company. From the proof it appeared that the defender had, when in London at the beginning of 1868, ordered the diamonds, partly for his son and partly for himself. At this time he had charge of the Glasgow warehouse of the Nailsea Glass Company; was paid by salary; and rendered to the Company weekly or monthly accounts of the sales. It appeared, however, that while the defender had full power to buy diamonds and other articles in the line of the Company's business, the Company had no means of ascertaining the purchases made on their account, except from the receipts sent in by the defender of the accounts settled by him. There was no proof, beyond the defender's own statement, that the diamonds in question had been sold on the Company's account.

The defender reclaimed.

R. V. CAMPBELL for him.

BLACK and BEGG for the respondent.

The Court unanimously adhered, on the ground that the defender had not acted *factorio nomine*, and indicated opinions that, even if the goods had in the pursuer's knowledge been ordered on the Company's account, the exceptional character of the defender's agency would have rendered him personally liable. He was clearly the *dominus* of the business, as he ordered the goods and sold them on his own responsibility. This was not an ordinary case of agency. The goods were no doubt sent with an invoice to the defender, and it was his duty to show that they were not sent to him on his own account, and he had failed to do so.

Agents for the Pursuer—Morton, Whitehead, & Greig, W.S.

Agent for the Defender—J. Knox Crawford, S.S.C.

Friday, July 14.

FIRST DIVISION.

COUNTESS OF CROMERTIE, AND MACKENZIE OF KILCOY *v.* THE LORD ADVOCATE.

Teinds—Titular—Bishops' Teinds — Crown—Error—Condictio Indebiti — *Repetition — Interest.* Teinds had been erroneously regarded as bishops' teinds, and on that belief had been paid to the Crown for a series of years. In an action of declarator and repetition at the instance of the true titular and of the heritor jointly, the Crown allowed decree to pass in terms of the declaratory conclusions, and agreed to repay to the heritor the principal sum erroneously paid by him. *Held* (altering judgment of Lord Gifford, and *diss.* Lord Deas) that the pursuers were not entitled to interest on the said sums, except after the date of formal demand for repayment.

Till recently, it was believed that the teinds of the lands of Drumderfit and Wester Kessoch, in the parish of Kilmuir Wester, and county of Ross, belonging to Charles Mackenzie, Esq. of Kilcoy, were bishops' teinds, and consequently that the surplus teinds belonged to the Crown. In 1854 the Crown demanded payment of the surplus teinds of these lands from Mr Mackenzie, and threatened legal proceedings. In consequence, arrears from 1839 were paid. Mr Mackenzie continued to pay the surplus teinds to the Crown down to 1864.

In 1864 the Duchess of Sutherland and Countess of Cromertie discovered that the teinds in question were not bishops' teinds, and that the Crown had no right whatever to them; but, on the contrary, that they belonged to her (the Countess), as patron of the parish of Wester Kilmuir. It appeared that by charter of erection and donation, dated 3d February 1588, which narrates that the teinds of the church of Kilmuir belonged to the Dean of the diocese of Ross, James VI. gifted the patronage of the church of Kilmuir Wester to Sir William Keith. The teinds were by this charter reserved to the then Dean of Ross for his life, and provided to the minister of the parish after his death. The patronage ultimately came into the Cromertie family, who acquired right to the teinds by the Act 1690, c. 23. In the early part of this century a dispute arose between the Crown and the Laird of Cromertie in regard to the patronage of the church of Kilmuir Wester. After a lengthened litigation the right of the Cromertie family to the patronage was sustained by judgment of the House of Lords, dated 27th July 1814. Although these proceedings disclosed the true state of the titularity, for some inexplicable reason it seemed to be taken for granted by all parties that the teinds belonged to the Crown.

On discovering her rights the Countess of Cromertie intimated them to Mr Mackenzie of Kilcoy, who, in consequence, refused to pay any more surplus teinds to the Crown. A formal demand was made upon the Crown on 12th March 1868, and on 26th April 1870 the present action