

Appellants' Authorities.—(1.)—4. Ersk. 4. 80; 2. Fount. 477; Warren. Nov. 19. July 8. 1822.
1771, (13933); 2. Esp. p. 10; 1. Sand. 131; 3. Esp. 33; Buller's N. P. p. 14;
1. Camp. 206.

Respondent's Authority.—(1.)—Thomson, May 16. 1810, (F. C.)

J. CAMPBELL,—SPOTTISWOODE and ROBERTSON,—Solicitors.

(*Ap. Ca. No. 28.*)

PATRICK CRAWFORD BRUCE, Esq. Appellant.—*Moncreiff*— No. 40.
Skene.

JOHN NORMAN M'LEOD, Esq. and NORMAN M'LEOD, Respondents.—*Jeffrey*—*Fullerton*—*Mackenzie*—*Robertson.*

Landlord and Tenant—*Singular Successor*—*Sale*—*Relief.*—Held,—1.—(reversing the judgment of the Court of Session,)—That a singular successor or purchaser of an estate is not liable to implement in favour of a tenant an obligation for payment of meliorations granted by the former proprietor, not contained in his tack or title of possession, but that the obligation is effectual only against the former proprietor; and,—2.—(affirming the judgment,) That there existed circumstances in this case sufficient to constitute in favour of the former proprietor a right of relief against the singular successor.

THE estate of Glenelg in the county of Inverness, belonging to the respondent John Norman M'Leod, Esq. having been advertised for sale, Mr. Duncan, W. S. the agent of the appellant Mr. Bruce, addressed to Mr. M'Donald Buchanan, W. S. the agent of Mr. M'Leod, a letter, on the 22d of November 1810, stating, that 'I am now authorized by a client who is very desirous to purchase the estate of Glenelg, to offer £97,500 sterling for that property, bearing interest from Martinmas last.' Mr. Buchanan having demanded £100,000, it was agreed to split the difference, and that the offer should be increased to £98,750, subject to the approval of the parties. Accordingly, on the 3d of December, Mr. Buchanan wrote to Mr. Duncan, that 'I communicated your offer, dated the 22d ult. of £97,500 for the estate of Glenelg, to M'Leod, and I have this day received his answer, authorizing me to close with your offer, with the addition which I mentioned to you verbally, and to which you agreed, of £1250, being half the difference between your offer and the price required by M'Leod.' He also stated, that 'it is not unusual, for the encouragement of the tenants in building proper steadings and making enclosures, to allow them the value of such, as the same shall be estimated at their removal. As the benefit of any such stipulations must now be derived by the purchaser, it is understood that he is to relieve M'Leod of all

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1ST DIVISION.
Lord Pitmilley.

July 8. 1822. ' such claims for meliorations to tenants, and to which they may
 ' be entitled at their removal.' On the following day, Mr. Dun-
 can wrote to Mr. Buchanan, that, ' pretty late last night, I was
 ' favoured with your letter, stating a good deal of the substance
 ' of our conversation in the forenoon, and I should be very sorry
 ' if any thing should occur to prevent our treaty respecting the
 ' sale and purchase of Glenelg from being brought to the desired
 ' conclusion; but, as your letter contains two stipulations never
 ' mentioned to me before,—one, that the purchaser shall relieve
 ' M'Leod of all claims by tenants for loss sustained by enclosing
 ' the woods,—the other, to relieve M'Leod of all claims by tenants
 ' for meliorations on their houses,—let me beg you will give me
 ' some idea of what these claims may amount to, for you will
 ' allow they are quite indefinite as to their extent. My client
 ' lives at some distance, and you will allow me to impart to him
 ' what you have written and are to write on this subject, and time
 ' to receive his answer, which I shall press to have without delay.'

On the same day, Mr. Buchanan returned an answer, stating,
 that ' as to claims by tenants for meliorations, I believe that
 ' would have at any rate attached to the purchaser, as forming
 ' part of a contract of lease. With very few exceptions, I be-
 ' lieve that, by the whole leases upon the estate of Glenelg, the
 ' houses and fences are handed over from the one tenant to the
 ' other, and the incoming tenant pays the outgoing tenant any
 ' improvement that shall have been made. By the lease of Arnis-
 ' dale, indeed, the rent of which is £800 per annum, the tenant
 ' was permitted to lay out in meliorations a sum not exceeding
 ' £500, but I do not believe he has laid out one shilling; but I
 ' consider whatever is laid out in this manner to be much for the
 ' benefit of the proprietor, and the easiest manner in which such
 ' meliorations can be done, as the incoming tenant is always happy
 ' to pay for a good steading. Your friend will see from this ex-
 ' planation that he need not be much alarmed as to these stipula-
 ' tions, which I thought it best now to bring under your view, to
 ' prevent any future discussion.' On the 13th of December Mr.
 Duncan communicated to Mr. Buchanan, that ' I have received
 ' answers from my client to both your letters of the 3d and 4th
 ' current, in which he agrees to purchase the estate of Glenelg
 ' on the terms thereof, with this explanation, that if you or
 ' the Laird of M'Leod shall purchase from Government the
 ' old barrack and barrack-ground on that estate, which you
 ' have now in view, that purchase shall be made over to him in
 ' the same terms on which you make it. I consider this, there-
 ' fore, as a concluded bargain, and request that you will be

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' pleased to send me the title-deeds, tacks, searches, &c. of and
 ' relating to this estate, with your first conveniency.' Mr. Buch-
 anan accordingly, on the 18th, sent the title-deeds with the leases,
 and, among others, that of the farm of Islandrioch, which had
 been let to the other respondent Norman M'Leod, the factor on
 the estate. By a clause in that lease it was stipulated, that in
 ' regard the said Norman M'Leod has now a dwelling-house on
 ' the said farm of Islandrioch, it is hereby declared that said
 ' dwelling-house shall, at the expiry of this lease, be comprised by
 ' the ordinary birleymen of the barony, or by two or more per-
 ' sons to be named by the parties ; and whatever the value shall
 ' turn out to be on said appreciation, he the said Norman M'Leod
 ' shall be allowed and paid the same by the said Colonel Norman
 ' M'Leod as a melioration, not exceeding £200 sterling, if the
 ' house shall be worth that sum ; but, supposing it should exceed
 ' that sum in value, he the said Norman M'Leod shall not receive
 ' more than £200 sterling : And farther, in case the said Nor-
 ' man M'Leod shall, during the currency of this lease, build
 ' good and sufficient stone dikes on the said farm, and leave
 ' them in a sufficient and fencible condition at his removal from
 ' the lands, it is also declared that said dikes shall be in like
 ' manner comprised, and whatever the value shall turn out to be
 ' on the said appreciation, he shall be paid the same by the said
 ' Colonel Norman M'Leod, not exceeding £150 sterling, if the
 ' dikes shall be worth that sum ; but although they should ex-
 ' ceed that sum in value, he the said Norman M'Leod shall not
 ' be entitled to receive more than £150 sterling ; and it is here-
 ' by understood and agreed that no other meliorations than those
 ' above mentioned are to be allowed to the tenant, either on pre-
 ' tence of improvements on the said farm, or otherwise.' This
 lease, which had been granted in 1795, was to expire in 1814 ; and
 the tenant having in the mean while erected additional houses,
 the landlord Mr. M'Leod, in the month of August 1810, address-
 ed a letter to him, stating that ' I agree to allow you meliora-
 ' tions to the amount of the value of those houses now erected,
 ' and £100 sterling additional for a new byre to be built on the
 ' farm of Islandrioch, if the same shall be of that value.'

In transmitting the leases to Mr. Duncan, Mr. Buchanan men-
 tioned to him, that ' the factor's house (that is, the tenant of
 ' Islandrioch) being a comfortable one, and where the laird ge-
 ' nerally resides, as by his lease he was limited to the sum of
 ' £200, M'Leod, by a missive of which I have no copy, extend-
 ' ed the meliorations to the actual value of the house at his re-
 ' moval.'

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Subsequent to this communication, the disposition conveying the property to Mr. Bruce was executed, on the narrative that it had been agreed to 'in consequence of a treaty and correspondence carried on between' the above gentlemen; and there were excepted from the warrandice 'the current tacks, minutes or missives of tack of the said lands and others, for all the years thereof.'

In the month of March 1811, and about two months after the execution of the disposition, the above missive or letter was sent to Mr. Duncan. In November 1812, Mr. Duncan having learned that the claim for meliorations would extend to upwards of £1600, wrote to Mr. Buchanan that he did not consider that, according to the terms of their bargain, this burden was to be sustained by Mr. Bruce. Mr. Buchanan, on the other hand, contended that he had expressly stipulated that Mr. Bruce was to be liable for all claims for meliorations, and that he had made him aware of the existence of the missive before the execution of the disposition.

On the expiration of the tack, M'Leod the tenant obtained a valuation of the meliorations, which were found to amount to £1377: 10: 8, for payment of which he raised an action before the Sheriff of Inverness, both against Mr. Bruce and Mr. M'Leod, libelling on his tack and the above missive. The Sheriff-substitute decerned against them, but the Sheriff-depute altered, and found, 'that the disposition of the barony of Glenelg by the defender Mr. M'Leod in favour of the other defender Mr. Bruce 'is granted with the burden of the current tacks, minutes or missives of tack of the said barony, and that Mr. Bruce is bound 'to relieve M'Leod of tenants' claims for meliorations, as stipulated by such tacks, minutes or missives of tack: That by the 'lease of Islandrioch in the pursuer's favour, now produced, he is 'entitled to meliorations for the dwelling-house on that farm to 'the extent of £200 sterling, and no more, and that the defender 'Mr. Bruce is liable to him in payment of that sum, with the interest thereof from Whitsunday 1814, as libelled, and decerned 'against him accordingly; but found that the letter or missive 'libelled on, granted by the defender Mr. M'Leod in favour of 'the pursuer, is not obligatory on the other defender, Mr. Bruce, 'as a singular successor in the lands libelled; nor does it fall under 'the exception from the warrandice of the disposition in his favour, and that therefore he is not liable in payment of the meliorations libelled, other than to the extent of £200 sterling, 'with interest as libelled; and found the other defender, Mr. M'Leod, liable to the pursuer in payment of the balance of the

‘ meliorations claimed, amounting to £1377 : 10 : 8 sterling, with interest as libelled, and decerned against him accordingly.’ Mr. M'Leod having complained of this judgment by advocacy, and brought an action of relief against Mr. Bruce, he contended,—

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1. That by law a singular successor is liable in all the burdens created by the tacks or relative missives in favour of the tenants, and that the obligation in question formed a proper accessory to the lease in favour of the tenant M'Leod, and was binding on Mr. Bruce as the purchaser of the lands, independent altogether of any special stipulation; and,—

2. That at all events Mr. Bruce was bound to relieve Mr. M'Leod of the claim by the tenant, because it had been expressly stipulated in Mr. Buchanan's letter of the 4th of December that Mr. Bruce was ‘ to relieve M'Leod of all such claims for meliorations to tenants, and to which they may be entitled at their removal;’ and that he had been specially informed, before the execution of the disposition, that the obligation to the tenant M'Leod ‘ extended to meliorations to the actual value of the house at his removal.’ On the part of the tenant it was also maintained, that Mr. Bruce, as purchaser, was bound by law to implement the obligation contained in the missive.

To these pleas Mr. Bruce answered,—

1. That although he was in point of law liable to all the burdens created by the tacks or missives of tack by virtue of which the tenants possessed the lands, yet he was not responsible for any separate obligation not contained in these tacks or title of possession, but which the landlord, during the currency of the lease, had given to the tenant:—that in this case the claim of the tenant for meliorations was by his tack expressly limited to the sum of £200 for the houses, (for which Mr. Bruce admitted that he was liable,) and that, seeing this limitation in the title on which the farm was possessed, Mr. Bruce was not bound to inquire further:—that the missive or letter was not a missive of tack, or in any way part of the title of possession, as was evident from the circumstance that it had been granted only two years prior to the expiration of the lease; and therefore, as a purchaser, he was not liable to the tenant.

2. That although it had been no doubt stipulated that Mr. Bruce was to relieve Mr. M'Leod of all claims for meliorations, yet this was subsequently explained by Mr. Buchanan to extend only to a very small sum, and that no mention whatever was made of the letter in question till after Mr. Duncan had stated that he considered ‘ this as a concluded bargain,’ and therefore it was not competent thereafter to impose upon Mr. Bruce additional burdens.

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The Lord Ordinary found, ' That the letter of the 3d Decem-
' ber 1810 from Mr. M'Donald Buchanan to Mr. Duncan stipu-
' lated, that in addition to the price to be paid for the estate of
' Glenelg, as to the amount of which the parties were agreed, the
' purchaser should relieve the seller of all claims competent to ten-
' ants, for meliorations at the end of their leases, assigning as the
' reason for such stipulation, that the benefit of the meliorations
' would be derived by the purchaser:—that Mr. Duncan's letter of
' the 4th of December having required information as to the pro-
' bable extent or amount of these claims, Mr. M'Donald Buchanan,
' in his letter dated also on the 4th of December, gave some addi-
' tional information on the subject, but still was unable to make any
' pointed or precise reply with regard to the amount of the tenants'
' claims on account of meliorations:—that in this state of matters,
' Mr. Duncan, by his letter of 13th December, purchased the
' estate, on the terms proposed on the 3d and 4th December, from
' Mr. M'Donald Buchanan, and with express reference thereto,
' and declared the bargain to be concluded:—that the import of
' the bargain thus concluded was, in so far as related to the te-
' nants' claims for meliorations, that the purchaser undertook to
' relieve the seller of these claims, though the extent thereof, or
' the amount and nature of each of the claims, was still undefined,
' and left to be afterwards arranged, none of the leases having at
' that period been sent to Mr. Duncan, or the particular claims
' of any of the tenants communicated to him:—that the bargain
' having been thus concluded, Mr. M'Donald Buchanan, along
' with his letter of the 18th of December, sent some of the leases
' to Mr. Duncan, accompanied with remarks on such of the
' claims to meliorations as were contained in the leases, and ex-
' pressly mentioned in his said letter the pursuer's claim to me-
' liorations to the extent of the actual value of his house at his
' removal, as constituted by missive from the defender John Nor-
' man M'Leod, the seller of the estate:—that no objection to this
' claim, or any observation thereon, was made in answer to the
' letter of the 18th December, although the claim was thus dis-
' tinctly brought under the view of the purchaser and his agent
' at the same time when the claims to meliorations of the other
' tenants on the estate were stated, and with reference to the
' former letters by which the purchaser had undertaken in gene-
' ral terms to relieve the seller of these claims, and it not appear-
' ing that any circumstances attending the claim, which were
' known to Mr. M'Donald Buchanan or his constituent at the
' time, were unduly withheld from the knowledge of the pur-
' chaser:—that, after this correspondence, the disposition was
' subscribed, and the purchaser entered into possession, and no

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' hint was conveyed that he did not hold himself liable to relieve
 ' the seller of the claim in question, till the 24th of November
 ' 1812, when a letter to this effect was written by Mr. Duncan,
 ' in which it was mentioned that the pursuer's claim is expected
 ' to amount to between £1600 and £1800 sterling:—that, under
 ' these circumstances, the defender Patrick Crawford Bruce must
 ' be held to have undertaken to relieve the other defender of the
 ' claim in question, and that such is the import of the disposition ;
 ' and that the circumstance of the amount of the tenant's claim
 ' having been fixed at a fair valuation, at the end of the lease, at
 ' so large a sum as it turned out to be, cannot affect or alter the
 ' rights of parties:—therefore, on these grounds, in the action ori-
 ' ginally pursued at the instance of Norman M'Leod, the late
 ' tenant, decerned against both defenders, conjunctly and seve-
 ' rally, in terms of the libel, and found them liable in expenses to
 ' the pursuer ; and in the action of relief at the instance of John
 ' Norman M'Leod against Patrick Crawford Bruce, repelled the
 ' defences, decerned in terms of the libel, and found the said
 ' Patrick Crawford Bruce bound to relieve the said John Nor-
 ' man M'Leod of the expenses found due to the pursuer of the
 ' original action, and also found him liable in expenses to the
 ' pursuer John Norman M'Leod.' To this interlocutor the Court
 adhered on the 30th of June 1813. *

Mr. Bruce having appealed, the LORD CHANCELLOR moved,
 and the House of Lords found, ' That the appellant was not
 ' liable, in the action originally pursued at the instance of the re-
 ' spondent Norman M'Leod, the late tenant of the farm men-
 ' tioned in the proceedings, in payment of the meliorations libelled,
 ' other than to the extent of £200 sterling, with interest, as ex-
 ' pressed in the interlocutor of the Sheriff-depute of the 24th of
 ' February 1816 ; and that the letter or missive libelled on, grant-
 ' ed by the other respondent, John Norman M'Leod, in favour of
 ' the said Norman M'Leod, was not obligatory on the appellant ;
 ' and that the respondent John Norman M'Leod was alone liable
 ' to the said Norman M'Leod, the pursuer in the said action, in
 ' payment of the balance of the meliorations claimed, as found by
 ' the said interlocutor of the Sheriff-depute ; and therefore it is
 ' ordered and adjudged, that so much of the interlocutors of the
 ' Court of Session complained of as decerns in the action origi-
 ' nally pursued at the instance of the said Norman M'Leod, the
 ' late tenant, against both defenders in such action, conjunctly

* Not reported.

July 8. 1822. ' and severally, in terms of the libel, and finds them liable in ex-
 ' penses to the pursuer in such action, be reversed; but found that;
 ' in the action of relief at the instance of John Norman M'Leod,
 ' the said appellant was bound to relieve the said John Norman
 ' M'Leod from the demands of 'the said Norman M'Leod, the
 ' tenant, under the letter or missive libelled on in the original ac-
 ' tion; and it is therefore ordered and adjudged, that so much of
 ' the interlocutors complained of, as is consistent with these find-
 ' ings, be affirmed; and it is further ordered, that the cause be
 ' remitted back to the Court of Session, to do therein as shall be
 ' just and consistent with these findings.'

Respondents' Authorities.—(1.)—Arbuthnot, Feb. 1772, (10424); Bells, June 14.
 1814, (F. C.); Murray, Jan. 26. 1815, (F. C.)

J. CHALMER,—SPOTTISWOODE and ROBERTSON,—Solicitors.

(*Ap. Ca. No. 29.*)

No. 41. EDWARD BELL and Others, Representatives of the late ROBERT
 BELL, Appellants.—*Warren—Courtenay.*

ANDREW WILLISON and JAMES BELL, Respondents:—*Gifford—
 Macfarlane.*

Montag. 47
Society—Process.—It having been stipulated in a contract of copartnery, that in
 the event of the death, withdrawing, or bankruptcy of partner, the remaining
 partners should grant bond for his share of the last annual balance; and one
 of the partners having died; and thereafter all the remaining partners (with
 the exception of two) having become bankrupt; and an action having been
 raised by the representatives of the deceased partner against the two solvent
 partners; and the Court of Session having sustained the action against them,
 but assoilzied them on the merits—Held (reversing the judgment) that the claim
 of the representatives lay not against these two partners alone, but against all
 the other partners jointly, including those who had become bankrupt, and that
 these persons ought to have been called as defenders; and a remit made ac-
 cordingly.

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2D DIVISION.
 Lords Gillies
 and Bannatyne.

ON the 30th of December 1800, William Bell of Cupar's
 Bridge, Robert Bell of Chichester, Lord Kinnaird, James Bell
 junior of Blackheath, James Bell the elder of Arbroath, and Dr.
 John Willison of Dundee, entered into a contract of copartner-
 ship as manufacturers of and dealers in sugar, under the firm of
 William Bell and Company of Dundee, for the period of twenty-
 one years. The books were to be balanced annually; and by the
 16th article it was provided, that 'in case any or either of the
 ' said parties shall be desirous of withdrawing from the said co-