paid down, and that is apparently not disputed, in spite of the statement by the defender on record. It must be assumed, then, that they were for value, and if that is so, I think there is an end of the question. If it had appeared that they were not granted for value, that the pursuer was merely an agent for these sums of £7, 13s. 9d., and that he was only suing in his own right for £23, 1s. 3d., it might have made all the difference. On that question, however, I desire to reserve my opinion. The interests here appear to a certain extent to be connected, and the action might have been competent even if the assignations had been gratuitous. That, however, is a question of difficulty, and upon it I give no decided opinion.

The case of *Gibson, Thomson, & Company*, then, has no application if it is assumed or conceded that the assignations were for value, as there the ground of judgment was that the assignations were gratuitous, and simply to enable the pursuer to sue.

Lord Adam—I assume that the assignations here were for value, and I think that we are entitled to do so, for they are produced, and bear to be for value, and it is not seriously disputed that they were so granted.

That being so, the pursuer's interest in the cause is the sum sued for, £38, 8s. 9d., and that is a sum which quite entitles him to sue in this Court. I agree with Lord Shand that if the assignations had not been for value it would have been a difficult question, whether, on the ground of community of interest, the action would have been competent. That would have raised a nice question, and I should have required to give it more consideration before deciding it.

The Lord President and Lord Deas were absent.

Counsel for Pursuer (Respondent)—Mackintosh—Dickson. Agents—J. & J. Ross, W.S.

Counsel for Defender (Reclaimer)—J. P. B. Robertson—Hay. Agents—Rhind, Lindsay, & Wallace, W.S.

HOUSE OF LORDS.

Thursday, November 20.

(Before Lord Chancellor, Lord Blackburn, and Lord Watson.)

ORR EWING *v.* EARL OF CAWDOR.

(*Ante*, vol. xxi. p. 322, 11 R. p. 471—January 29, 1884.)

Superior and Vassal—Disposition—Clause of Relief from Public Burden occurring in Disposition in favour of the Crown—Transmissibility in favour of Successor of Crown.

A Crown vassal executed in 1767 a disposition of certain lands in favour of the Crown, with procuratory of resignation *ad remanentiam*. The disposition contained a clause "in favour of His Majesty and his royal heirs and successors," of relief from certain specified burdens, and every other parish or public burden which might be demanded from them, for and in respect of the lands disponed. In an action raised by a successor of a disponee from the Crown against the representative of the original disponer, for implement of the obligation, the House (*aff.* judgment of Second Division) assoilzied the defender on the ground that the obligation was one strictly and inalienably in favour of the Crown and the royal successors of the Crown in the lands, and therefore not transmissible to the effect of entitling the pursuer to enforce it against the defender.

This case is reported *ante*, vol. xxi. p. 322, 11 R. p. 471—January 29, 1884.

The pursuer, Mr Orr Ewing, appealed to the House of Lords.

The respondent was not called on.

At delivering judgment—

Lord Chancellor—My Lords, I have often had occasion to admire the ingenuity of counsel at your Lordships' bar, especially of such counsel as those who have addressed your Lordships on this case, but I own, having heard those able arguments, I should have thought that this was about as hopeless a case to argue as could possibly be imagined.

Here is a contract between a subject and the Crown. The subject parts with lands for public purposes, expressed on the face of the document, to the Crown, and the intention is as clear and manifest as any words in the English language could have expressed, that this is to be a conveyance for the benefit of the Crown, and of the Crown alone, for all time to come. There can be no doubt as to the construction of the words "royal heirs and successors," because they occur in many places in the deed, and in some of those places it must be admitted, at page 23 especially, that they cannot by possibility mean "royal heirs"—and successors, whether royal or not. I have no difficulty in saying that if there had not been the context which there is in this deed, I should have thought the natural interpretation of the adjective was to apply it to both "heirs" and "successors" being such an adjective as it is, and applicable to such a person, the word "successors" being appropriate to the succession to the Crown, and not, except in the case of corporations, appropriate to private persons. I should have thought, even without the explanatory context and the clear evidence of intention which there is in this deed, that at least the burden of proof would have been on anyone alleging that the word "royal" did not cover both the substantives, to show something in the deed leading to that conclusion.

But this is made as clear as possible by the declaration several times expressed, once at the commencement of the deed, in immediate connection with the words of disposition, "have sold and disponed, and hereby sell and dispone, to His Majesty and his royal heirs and successors, to remain inseparably annexed with the Crown of these realms." Obviously, that not only does not contemplate, but it positively excludes, any succession except royal succession. And the same intention is repeated in the conveyancing clause at the bottom of page 23. It is to be conveyed "*ad perpetuam remanentiam*, to the effect that

the property of the lands and others above disponed may be consolidated with the superiority of the same in the person of His Majesty and his royal successors," that superiority being confessedly one of the regalia in the strictest sense, "and abide and remain with them for ever unalienably annexed to the imperial Crown of these realms."

There can be no doubt whatever of the intention. Of course, if by law the royal lands in Scotland can be alienated at the pleasure of the Crown, I could understand that it could be said that the quality of inalienability could not have been imposed on these lands when they became part of the *dominium* of the Crown by mere contract. It would be a question of what the effect, if any, of those words under those circumstances would be. But they expressed that which was the law of Scotland at the time. That superiority with which these lands were to be consolidated was inalienable by the law of Scotland, and it was admitted in argument that by the law of Scotland both the original Crown property and that which was acquired, and so became annexed to the Crown, would be inalienable unless Parliament should choose to make it so by some subsequent Act. So that these parties had in view an actual state of the law; their purpose was only to contract for the Crown property to be retained by the Crown *jure coronæ* for ever, and so remain unless some Act of the Legislature should intervene and make some other disposition, which, of course, the parties could not by their contract prevent.

That being the intention, is it possible to construe this clause, which, as between the conveying grantor and the Crown, assumes the obligation of relieving the Crown against certain liabilities—is it possible to construe it except in conformity with that intention? "It is hereby declared that His Majesty, his royal heirs and successors"—I must understand that to mean, from the whole context and the declared intention, royal heirs and royal successors—"are to be relieved" from those things. An attempt has been made to extend that to persons who are not royal heirs and not royal successors, but who are parliamentary alienees of this land under the Statute 5 and 6 Vict. [cap. 94], and it is gravely said that by such an alienation this contract made with and limited to the Sovereign for the time being is transmitted to other people. Of course the Legislature might have done that, but if it had it would have been acting in contravention of all the principles of justice on which the Legislature is accustomed to act. But there are no words in the statute of 1842 which could be construed to have that effect, and no case of the kind is contemplated; it says nothing about personal contracts at all.

I do not think it is necessary to say more about the matter. But I cannot help observing this, that the effect of the argument for the appellant would be to extend the substance of the covenant as well as that of the contract *quoad personam;* because, although it may be true that some of these burdens, teind-duties, and perhaps clergymen's stipends, perhaps poor-rates—according to some authorities which I have been looking at—might have been exigible against the Crown, and as to them not only *quoad* arrears of teind, but *quoad* future impositions of those burdens, a clause of relief might have been effectual operative, and efficacious, yet there are other things here mentioned—feu-duties and land tax—and I need not go further, which, as long as the property remained in the hands of the Crown, could not be exigible from the Crown at all, and as to which, therefore, the obligation of relief was nominal only, and could not possibly be a real burden to the person who undertook it. But, according to the argument for the appellant, not only is this transmitted to a person who is not within the scope of the covenant, but it is so transmitted as practically to impose burdens which never could have arisen originally under the contract.

My Lords, I entirely agree with the main ground upon which this case was decided by the learned Judges in the Court below; and if it were necessary to go into the point of Scotch conveyancing, I certainly am not persuaded by anything I have heard that the alternative view taken also by those Judges is in any respect incorrect; but it is enough to go upon the broad fact that there is no contract here which has been transmitted to the present appellant, and on that ground I propose to your Lordships to dismiss this appeal with costs.

Lord Blackburn—My Lords, I am of the same opinion. I do not think it necessary to inquire at all into the second ground which has been argued; for I think that the ground which was put by Lord Young, simply that the contract, "is not general and assignable but limited, and strictly in favour of His Majesty and his royal heirs and successors," is right, and is quite sufficient to dispose of this appeal without going into the case further.

The construction of the contract made between John Campbell of Calder and His Majesty seems to me, if we were looking only at the intention of the parties, to be one upon which there could not be any reasonable doubt. It begins by reciting—"For and in consideration of the sum of £4896, 15s. 0d." (that is the amount of the agreed price) "paid to me by the hands of the Right Honourable the Lord Commissioners of His Majesty's Treasury on behalf of His Majesty and the public." Then it goes on to say—"I sell and dispone to His Majesty and his royal heirs and successors, to remain inseparably annexed with the Crown of these realms." That is the way in which it proceeds. Whether or no there could be any doubt about the legal effect of that, I think there can be no doubt at all that the intention was that it should go to King George the Third, and his royal heirs and successors, in the sense of those who had got the Crown. It was possible, but certainly not very probable, that not only George the Third and all his brothers should have died out, but that all the descendants of the Electress Sophia, upon whom the Crown was settled, should have died out, and the heir of George the Third would in that event, I suppose, have been the Duke of Brunswick. I do not know who it would have been, but it would have been some person upon whom the Crown would have devolved.

But besides its being intended, I think (I do not wish to say anything very decided upon this point, because one has not looked into it), upon the whole, so far as I can express an opinion, that the effect was that the property conveyed to

the Crown in this way, purchased by the money of the public on behalf of the public, would be inalienably attached to the Crown, and the Crown would not have any power to sell it or to dispose of it, it being Crown property, unless there was some Act of Parliament or something else enabling that to be done.

That being the intention of the contract, and, in my opinion, also the legal effect and consequence of it, let us look, besides that, at the effect of the words "*ad perpetuam remanentiam*" at the bottom of page 23. It is stated that the object of surrendering the property *ad perpetuam remanentiam* is, that it "may be consolidated with the superiority of the same in the person of His Majesty and his royal successors, and abide and remain with them for ever unalienably annexed to the Imperial Crown of these realms." That, again, shows the intention as strongly as words can show it.

Now, that being so, what is the construction of this contract: "Providing also that as in the sums so now paid me full consideration was had and made to me for all feu and teind-duties, stipends, schoolmasters' salaries, land tax," and so forth, "therefore it is hereby declared that His Majesty, his royal heirs and successors, are to be freed and relieved by me, my heirs and successors, of and from all payment," of the things above enumerated? What I want to consider upon that is, what is the construction of the contract therein contained? What is meant by it? Something was said to the effect that the reason why he did it was that "full consideration was had and made to me." I rather think that what was there meant was, that in settling the price there was full consideration as between him and the people who were bargaining with him as to that matter; but however that may be, I do not think that it alters it. It goes on, and it says immediately afterwards—"Therefore, His Majesty, his royal heirs and successors, are to be freed and relieved by me." Now, construing it according to the ordinary rules of construction, and trying to find out the intention of the parties, what reason can there be for saying that "royal heirs and successors" there do not mean the same thing as the "royal heirs and successors" meant before? I can see none. There was an endeavour to argue that "His royal heirs" was a polite and courteous expression used for "his heirs," and that the word "successors" was not to be governed by the word "royal." But that that was not the intention of the parties is clear. What was meant and intended was what Lord Young says in the passage I before read—it was meant and intended that there should be a contract for relieving and protecting against these things King George the Third and the King's royal heirs and successors—being the persons who should get the Crown of this country afterwards. It has been said that there was nothing to protect them against. Supposing that to be so now, I do not think that the question is quite to be disposed of in that manner. I do not think that in 1750 that was at all clearly understood, and that it seems to me that the wide words used here clearly show that the bargain then made between the parties who were contracting on the part of the Crown and Mr Campbell of Calder was this—We will pay you this sum of money down, and we agree with you that if there be anything which the Crown may be responsible for and is obliged to pay, you shall indemnify the Crown against it. I do not inquire whether there was, but if there was they were to repay it. There are very wide words; whether the word "feu" has any meaning I do not inquire, but there are very wide words to that effect.

Now comes the other question which remains. The Act 5 and 6 Vict. [c. 94] says that all lands belonging to the Crown, and used in any way (I am giving the effect of it from memory) for the purposes of the defence of the nation, shall be vested in the principal officers of the Ordnance. What does that mean? I do not know that it is necessary to decide very precisely what the vesting means. It vests in them an estate of some sort, and I do not at the present moment inquire what. By the 12th section power is given upon proper occasions to these principal officers of the Ordnance to sell these lands, and what was endeavoured to be contended was this, that if the Legislature did that it made the principal officer of the Ordnance a successor to George the Third; that by virtue of this enactment there was a successor to George the Third, created by this Parliamentary power which was given, who was not a royal successor—that is to say, not a person having the Crown—and the argument, if I understood it rightly, was this, that such a person was to be considered to have a right to sue upon this contract as successor, although that never was intended when the contract was made. I quite agree that the Legislature in enabling the Crown to sell out, and to create by means of the principal officer of the Ordnance a person who would be a successor, might have said, "and that successor shall have all the rights which the Crown itself had when it made the grant to him, and amongst others the right to maintain an action upon this contract made by Mr Campbell of Calder against Mr Campbell of Calder's successors," though the contract itself would not have applied to such a successor. It was in the power of the Legislature to say that. Is there any pretext for saying that it has said it? I think not. The consequence is, that I think that this was a contract which was not applied to such a person as a successor thus created.

The rest of the case, really, when we come to look at it, is very simple. I do not think it necessary or material to ask whether this was a personal contract which required an actual assignment. If it was one that required an actual assignment, I think it is impossible to read the conveyance by the Ordnance to Mr Archibald without seeing that it was intended by them to convey it; and again, it is impossible to read the conveyance from Mr Archibald's trustee to Mr Orr Ewing without seeing that he intended to convey it. Mr Archibald Orr Ewing, the appellant, I daresay was advised, and I daresay thought that he had acquired this right, but that was a mistake—a very natural mistake on his part. Whoever prepared the conveyances and deeds would have seen that the Ordnance professed to sell to Mr Archibald what the Ordnance had no power to sell. It comes to this, therefore, that this being a personal and strictly limited contract with the Crown and with the Crown's successors, being Sovereigns of this realm having the Crown of this realm, it could not be transferred to anyone else, and was not transferred to anyone else, and consequently there is no occasion to consider

any of the other suggestions which have been made.

Lord Watson—My Lords, this appears to me to be a very plain case. It depends upon the meaning to be attached to the expression "royal heirs and successors" occurring in the clause of relief which has been inserted in the deed of 1767. Now, I agree with your Lordships that the expression in question must be read just as if it had run "royal heirs and royal successors." That appears to me to be the natural signification of the language used, and if there were any doubt upon the subject it appears to me that the context of the deed of 1767 furnishes ample indications that such was the sense in which the parties themselves intended to use the words. That is quite enough to dispose of the case. I cannot say that I differ from the views expressed in the note of the Lord Ordinary suggesting certain technical difficulties in the way of reading the word "successors." Those do not seem to me to be necessary for the disposal of the case. The obligation of relief is a personal obligation, which no doubt is capable of being assigned, but it cannot be assigned or transmitted to persons to whom the Crown has no power to communicate its benefits.

Interlocutors appealed from affirmed, and appeal dismissed, with costs.

Counsel for Pursuer (Appellant)—Lord Adv. Balfour, Q.C.—Davey, Q.C. Agents—Farrer & Co. for Tods, Murray, & Jamieson, W.S.

Counsel for Defender (Respondent)—Sol.-Gen. Asher, Q.C. — H. Wright. Agents — Graham, Currey, & Spens, for C. & A. S. Douglas, W.S.

REGISTRATION APPEAL COURT.

(Before Lord Mure, Lord Craighill, and Lord Fraser.)

Friday, November 21.

[County of Bute.

MILLAR *v.* ADAMSON.

MILLAR *v.* MACFARLANE.

MILLAR *v.* M'KIRDY.

Election Law—County Franchise—Register, Alteration of, by Sheriff—County Voters Act 1861 (24 *and* 25 *Vict. c.* 83), *sec.* 44.

Held (*diss.* Lord Mure) in a case where the voter had been on the roll for twenty-five years as "proprietor," and there had been no change of circumstances, that the Sheriff was not entitled, under the 44th section of the County Voters Act 1861, to alter the entry in the register of voters by substituting "joint-proprietor" for "proprietor." *Veitch* v. *Young*, October 24, 1870, 9 Macph. 28, followed.

County Franchise—Amendment of Claim—Proprietor—Joint-Proprietor—County Voters Act 1861, *sec.* 44.

Held (*diss.* Lord Fraser) that a Sheriff is entitled to allow a claim to be amended by substituting "joint-proprietor" for proprietor." *Murray* v. *Donnan*, December 6, 1882, 10 R. 13, followed.

At a Registration Court for the county of Bute, held at Rothesay on 15th September 1884, John Millar, a voter on the roll, objected to (1) Daniel Duncan Adamson being continued on the roll as a voter for the county; (2) Walter Macfarlane being continued on the roll as a voter for the county; and (3) opposed the claim of John M'Kirdy to be enrolled on the register of voters for the county.

In *Adamson's* case the facts were these—Adamson stood enrolled on the register as "proprietor of a coal yard, &c., High Street," Rothesay, and had stood for about twenty-five years. Millar objected that Adamson was not proprietor, but merely one of two joint-proprietors of the subjects, and that it was incompetent to correct the register by inserting the word "joint" without a claim to that effect being lodged.

It was admitted (1) that Adamson was merely one of two joint-proprietors of the said subjects; (2) that for several years he had returned himself to the assessor for the county as proprietor; (3) that there had been no change in the extent or character of the claimant's qualification since he acquired the subjects; and (4) that the qualification was sufficient.

The Sheriff (Moncreiff) altered the register by substituting "joint-proprietor" for "proprietor," and this having been done, repelled the objection, and continued the name on the roll.

The objector took a Case, in which the following question of law was submitted—"Whether it was competent in the circumstances to make the alteration or correction of the register above described?"

It was admitted that the decision in *Adamson's* case would rule the case of *Macfarlane*.

In *M'Kirdy's* case the facts were these—M'Kirdy claimed to be enrolled on the register as proprietor of houses 22 and 24 Mill Street, Rothesay. Millar opposed the claim on the ground that M'Kirdy was not "proprietor," but one of two "joint-proprietors" of the subjects in question.

A writ of *clare constat* in favour of M'Kirdy was produced by the claimant, instructing a title to one-half *pro indiviso* of the subjects, and it was admitted that the value of the said half was sufficient to afford a qualification. The claimant moved the Sheriff to amend the claim by substituting the words "joint-proprietor" for "proprietor." The objector maintained that the proposed amendment was incompetent.

The Sheriff (Moncreiff) repelled the objection, and, having made the alteration, admitted the claim.

The objector took a Case, the question of law being—"Whether it was competent to amend the claim by substituting the words 'joint-proprietor' for the word 'proprietor?'"

The objector argued—The case of *Adamson* was ruled by the case of *Veitch* v. *Young*, October 24, 1870, 9 Macph. 28; *Anderson* v. *Ireland*, November 6, 1876, 4 R. 1; *Nelson* v. *M'Gowan*, November 6, 1876, 4 R. 3; and *Anderson* v. *Fairgrieve*, November 12, 1879, 7 R. 31. The same rule would apply to the case of a claim, and would therefore rule *M'Kirdy's* case.

The respondent argued—In *Veitch* v. *Young*