1796.

M'LEAN, &c. *v.* CAMERON.

HELEN M'LEAN, formerly Helen Cameron, Daughter of the deceased John Cameron of Collart, now wife of Lieutenant Colin M'Lean of the 79th Regiment, and the said Colin M'Lean, for his interest, } *Appellants;*

EWAN CAMERON of Fassifern, . . *Respondent.*

House of Lords, 27th April 1796.

LEASE—SINGULAR SUCCESSOR—ACT 1449.—Held, that a lease not completed in point of form, and on which no possession followed, was not good against a purchaser of the estate.

The appellant's grandfather, Allan Cameron, having
1745. joined in the rebellion of 1745, his estates were forfeited to the crown.

The policy of the government was to make these forfeitures fall as lightly as possible upon the descendants of the forfeited person, who had had no part or participation in the rebellion; and, accordingly, several acts were passed, permitting their children to redeem the estates under certain conditions.

1776. In 1776, the Commissioners for the annexed estates, granted a lease of the Mains of Collart, for forty-one years, to John Cameron, the oldest son of the forfeited person, and his spouse, "for her liferent use allenarly, during all "the days of her lifetime, after his decease."

The said John Cameron had then only two daughters, Janet, and Helen the appellant.

March 3, and July 1, 1777. Of these dates, the Commissioners granted a lease to the widow of the forfeited person, and the mother of the above John Cameron, of the lands of Lecht and Branahan, being parts of the forfeited estate of Collart, for a rent of £9. 3s. 10d. She afterwards assigned this lease to her son.

The said Helen Stewart, widow of the forfeited person, applied to the Government Commissioners for a new lease, stating that it would be for the interest of the family that a new lease be granted, in lieu of the former to herself, and failing of her, to Helen Cameron (the appellant) and her heirs. The petition prayed for a new lease, accordingly, "*on her renouncing her said liferent lease.*" In answer to this petition, the Government Board, by their minute, de-
June 1781. clared that, "The Board proposed to grant the lease prayed "for, on the usual conditions."

No formal lease, however, was executed. 1796.

Afterwards, and by the act 24 Geo. III. c. 57, (1784) John Cameron, as heir of his attainted father, acquired the property of the estate of Collart, burdened, of course, with the debt theron, and the leases granted by the Board. M'LEAN, &c. v. CAMERON.

In 1787 John Cameron made a will, whereby he left to his daughters £1000 each; the sum of £1000 to his daughter Helen, being bequeathed to her in lieu of the right she has to the tack of Lecht. Soon thereafter, and in December 1787, on the marriage of the appellant, he executed a bond for £1000 in her favour. The sum under this bond was paid by John Cameron; but the discharge did not make the smallest allusion to the lease to which she had right; and in lieu of which the £1000 was paid. In December 1787, he sold the estate to the respondent for £7600. 1787.

John Cameron executed various deeds thereafter, the last of which conveyed the estate to his brothers german for certain purposes, and to pay additional sums to his two daughters, "declaring that these provisions are granted to "them respectively, in lieu of such tacks, and no otherwise." Mr. Cameron died in the year following, and soon thereafter the appellant gave intimation, before paying the purchase money, that she meant to claim her rights, under the lease granted to her by the government commissioners. Upon which the respondent brought the present action of declarator and multiplepoinding, as to the price. Helen Stewart had renounced her liferent interest in the lease. Jan. 8, 1789.

After various procedure, the Lord Ordinary pronounced a special interlocutor, adhering to his former interlocutor, in favour of the appellants.

But, on petition to the whole Lords, the Court pronounced this interlocutor, "They alter the interlocutor re- Feb. 1, 1793.
"claimed against; find that the appellants have no right to
"the tack in question, in competition with the petitioner
"(respondent), a singular successor. Remit to Lord Craig,
"in place of Lord Hailes, to proceed accordingly, and to do
"as he shall see just."

Thereafter the Lord Ordinary assoilzied the respondent, June 1, 1793.
in terms of the above interlocutor of the Court.

Against these interlocutors the present appeal was brought.

Pleaded for the Appellants.—1. It is manifest that the petition addressed to the Commissioners of the forfeited estates in 1781, was presented not only in the name, but with the privity and concurrence of Mrs. Helen Stewart, and

1796.

M'LEAN, &c. *v.* CAMERON.

that any denial of that fact by her subsequent to the commencement of the cause, ought not to have been received in evidence. Besides, the condescendence proves that Mrs. Stewart had, *de facto*, passed from the prior lease for her life, and was in possession under the new grant, 1781, and that she so considered herself. Thus, having an interest clothed with possession, it is difficult to conceive how the statute 1449, is brought to bear at all upon the present case; the only purpose of that statute being to protect persons who held leases for terms of years, in the enjoyment of those terms, notwithstanding any subsequent disposition of the land by the proprietor. 2d. The leases so granted by the Commissioners in June 1781, can never be said to have merged in the subsequent restoration of the property of the estate, to the heir of the forfeited person, the legislature having, by an express clause, declared, that the general provisions of that act should not affect their validity, whether they amounted to regular complete leases by formal deeds, or whether they stand only upon minutes and resolutions of the board. 3d. That resolution of the Board conveys to the appellant a complete title to the possession of the lands of Lecht, &c., after her grandmother's death; a title which was as independent of John Cameron, her father, as if it had been granted out of any other forfeited estate, and therefore, as she never renounced her interest in the lease, she is entitled to the benefit of the same, against a singular successor.

Pleaded for the Respondent.—1. The appellants' pretensions are founded upon an obvious misconstruction of the words of the statute 1784. It declares and enacts nothing more, than that the validity of feus and leases, which have been entered into in the manner stated in the recital, (that is, which have not been formally completed, but stand upon minutes and resolutions of the Board, though possession shall have followed), shall not be affected by anything in the act. The intention was to support agreements complete in substance, though not in form; but it is as much against the words as the spirit of the act, to represent as bestowing on a transaction like this, merely inchoated, but not completed or acted upon, the efficacy of a formal and concluded agreement. The petition to the Commissioners prayed for a new lease to Mrs. Cameron, *on her renouncing the one she then held, and upon the conditions therein specified*, on which, the Commissioners *proposed* to grant

the new lease, on the usual conditions. To call this an agreement *bona fide*, binding on the parties, is perfectly absurd. There can be no binding agreement where the parties are at variance,—the condition of renouncing the former lease was never fulfilled. The minute was not obligatory on the Commissioners, nor was there ever any obligation on Mrs. Stewart to renounce the former lease. 2d. But after the absolute restoration of the property of the estate to the same family, the minute was not obligatory, even in equity. What the Commissioners proposed to do, was an act of favour towards the forfeited person's family, and the object of the Commissioners in granting the leases, was to promote improvement, and to prevent the estates from getting out of cultivation. 3d. But even if a formal lease had been made out, and executed by the Commissioners, the appellant's right therein was merely in the character of a provision provided for a portionless daughter. She could not have claimed the possession in a question with her father or his trustees, and least of all in a question with the purchaser of the lands. Moreover, the petition for the new lease prayed for a lease to Mrs. Cameron *herself*, "whom failing, to her granddaughter" only. But, as Mrs. Helen Stewart or Cameron was alive until after the purchase, the appellants' right did not emerge until after the respondent had acquired right. 4. Even if these proceedings were otherwise regular, they could not affect the right of a *bona fide* purchaser. Leases are merely personal rights, and are only made real and available against purchasers, or singular sucessors, by the statute 1449; but it is laid down by every lawyer that they cannot have this effect without their being clothed with actual possession. Here no such possession ever followed, and old Mrs. Cameron's possession could only be imputed to her former lease, which was never renounced.

After hearing counsel, it was

Ordered and adjudged that the interlocutors be affirmed.

For Appellants, *W. Grant, Jas. Allen Park.*
For Respondent, *R. Dundas, Wm. Tait.*