

[3d April 1838.]

JOHN LESLIE, Appellant.—*Dr. Lushington.*

THOMAS CURTIS, Respondent.—*Sir William Follett.*

*Ship—Registry Acts.*—A party residing in Edinburgh, who stood upon the register of a ship as sole owner, held (affirming the decision of the Court of Session) liable for furnishings made in London to the ship on the order of the master, although he alleged that the master was the only owner, and that he himself was merely a creditor of the master, and had acquired right to the vessel merely in security of debt.

1st DIVISION.  
Ld. Corehouse.

THE ship Nimrod belonged formerly to the port of Port Glasgow, and was the property of James M'Lean and others. On 12th June 1834 the whole shares in the Nimrod were transferred by bill of sale in favour of the appellant Leslie as sole owner.

This transfer was, on the 18th September, in terms of the registry acts, indorsed on the certificate of registry in the custom-house books of Port Glasgow.

The master of the vessel was Francis William Hepburn, the brother-in-law of the appellant. On the 22d the appellant appeared at the custom house of Leith, and made the following declaration: “ I, John Leslie of  
“ Windsor Street, in the city of Edinburgh, gentleman,  
“ do declare that the ship or vessel Nimrod of Leith,

“ whereof Francis William Hepburn is at present master,  
 “ being British built, having one deck, two masts; her  
 “ length aloft is seventy-seven feet nine inches, her  
 “ breadth at the broadest part above the main-wales  
 “ twenty-two feet eight inches, her depth in the hold  
 “ fourteen feet three inches, and admeasuring 174 and  
 “ 37-94 tons, was built at Greenock, in the county of  
 “ Renfrew, in the year 1824, as appears from a former  
 “ certificate of registry granted at Port Glasgow the 10th  
 “ day of June 1824, now delivered up and cancelled;  
 “ and that I the said John Leslie am sole owner of  
 “ the said vessel, and that no other person or persons  
 “ whatsoever hath or have any right, title, interest,  
 “ share, or property therein or thereto; and that I  
 “ the said John Leslie am truly and bonâ fide a  
 “ subject of Great Britain, and that I the said John  
 “ Leslie have not taken the oath of allegiance to any  
 “ foreign state whatever, and that no foreigner, di-  
 “ rectly or indirectly, hath any share or part interest  
 “ in the said ship or vessel.

(Signed) “ JOHN LESLIE.”

Upon this declaration a new certificate of registry  
 was granted to the Nimrod, bearing that that vessel  
 now belonged to the port of Leith, that Hepburn was  
 the master, and that the appellant was the owner to the  
 extent of 64-64th shares.

At the time of the proceedings thus adopted in Scot-  
 land, the Nimrod was lying in the port of London  
 under the charge of Captain Hepburn, and was destined  
 for a voyage to Australia with passengers and goods.

Between the 19th and 25th of September the  
 respondent, who is a shipping butcher, made various

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furnishings to and on account of the vessel, to the amount of 42*l.* 10*s.* 0½*d.*

In the month of January 1835 the respondent and his mandatory raised an action before the admiral at Leith for payment of this account of furnishings; in defence against which the appellant pleaded that he held the vessel merely in security of a debt due to him by Hepburn, who was the true owner.

On the 29th of June 1835, the following interlocutor was pronounced:—

“ In respect of the admitted deed of vendition of  
“ the Nimrod, and the subsequent indorsement pro-  
“ ceeding thereon on the ship’s register at Port Glas-  
“ gow, and in terms of the defender’s declaration at  
“ the custom house, Leith, on taking a new certificate  
“ of registry to the said vessel, and in terms of the  
“ said certificate, Finds that the defender was, when  
“ the furnishings in question were made to the master,  
“ sole owner of the ship: Finds the defender liable  
“ to the pursuer for the amount of the said furnishings;  
“ repels the defences, and decerns against him in  
“ terms of the libel: Finds expenses due; allows an  
“ account thereof to be given in; remits the same, when  
“ given in, to the auditor of Court to tax and report.

The appellant carried the cause to the Court of Session by advocacy; and on the 16th of February 1836, the Lord Ordinary pronounced the following interlocutor:—“ Finds it proved, in terms of the interlocutor  
“ under review, that when the furnishings in question  
“ were made to the master the advocator was sole owner  
“ of the ship, and therefore liable to the respondent for  
“ the amount of the said furnishings: Remits the same

“ simpliciter to the Admiral of Leith, and decerns :  
 “ Finds the advocator liable in expenses, both in this  
 “ and the inferior Court, and remits to the auditor to  
 “ tax the account thereof, and to report.”

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To this interlocutor the Lords of the First Division adhered on the 23d June 1836.<sup>1</sup>

Leslie appealed.

*Appellant.*—These interlocutors all proceed upon the ground that the appellant was the sole owner appearing on the face of the register, and that being so he was liable for the furnishings made by the respondent.

But, in reality, the appellant never was the owner; and it never was intended by any of the parties to the transaction that he should be the owner, and he never acted or was considered or relied on as the owner. The vessel was truly purchased by Hepburn for his own behoof and use, and the interposition of the defender was merely for the accommodation of Hepburn, to put him in funds to make the purchase; and the nominal title in the appellant was not intended to give him any farther interest than a mere security for his advances.

The appellant took no concern or interest in the management of the vessel. The real interest and management was all along in Hepburn, who acted for his own behoof in ordering the furnishings in question, and every thing else connected with the vessel, he having both the ostensible and the actual control, and the real interest. The appellant did not order the

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<sup>1</sup> 14 D., B., & M. p. 994.

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furnishings, nor did he authorize Hepburn to order the furnishings; and he had no interest in the profits of the voyage or vessel.

The Judges in the Courts below have considered the circumstance of the formal title being in the appellant as excluding every other consideration whatever. But it is not correct to hold, that the legal title was in the appellant at the time of the furnishings, which commenced in London upon the 19th of September, and the title in the appellant was not completed at Leith until the 22d of that month; consequently, when the furnishings were ordered, and for some days after they had begun to be made, the legal title was not in the appellant, and some days farther must necessarily have elapsed before the knowledge of that title could have reached the respondent in London, if it ever reached him at all.

But even if the title in the appellant's name had been completed at the time when the furnishings commenced, that circumstance did not of itself create liability, or supersede the liability created by the orders of Hepburn, upon whose account, as well as by whose orders, the furnishings were made. The liability for stores and furnishings is governed by the like rules as other contracts, and depends upon the credit given at the time when the stores and furnishings were supplied; which credit is a question of fact, and does not result from the legal ownership.

*Respondent.*—A party cannot be allowed to contradict a solemn declaration publicly made, and it is therefore peculiarly incompetent to plead that there was any title to this vessel in the person of Hepburn, who never had

any title to her. The former owners were M'Lean and others, and from those parties the property passed at once to the appellant without any intermediate interest in Hepburn; and it is impossible, therefore, to say that Hepburn was ever the owner in any sense, and certainly not in reference to the registry statutes.

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Neither can the appellant plead that he had merely an interest in this vessel in security for debt, or as a mortgagee, as he was not a creditor or mortgagee of M'Lean and others, and there was no other owner of the vessel from whom he could acquire a mortgage right. He could not acquire a mortgage of the vessel from Hepburn, who was never an owner. But, indeed, under the terms of the Registry Act, 6 Geo. IV. c. 110., which was the statute in force at the date of these transactions, the terms of the appellant's right and title are exclusive of the plea that he was merely a mortgagee. By that act parties have the means of framing the transfer and registry expressly on the footing of a mortgage, where such is the nature of the transaction. If, therefore, a party does not avail himself of this power, but receives and records his title, not as a mortgagee, but as a purchaser or absolute owner, he must be held and dealt with as an owner accordingly.

It is of no importance that the respondent may have partly relied on Hepburn's credit, because for all such furnishings the shipmaster is personally responsible as well as his owners, and the respondent was entitled to look to both, and it is usual to charge both in the accounts for the purpose of that double liability. Even if the respondent had been ignorant of the individual owners, he would have been entitled to make the furnishings as he did on account of the owners

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generally, it being open to him afterwards to find out what parties were liable as owners.

The House of Lords ordered and adjudged, That the said petition and appeal be and the same is hereby dismissed this House, and that the interlocutors therein complained of be and the same are hereby affirmed: And it is further ordered, That the appellant do pay or cause to be paid to the said respondents the costs incurred in respect of the said appeal; the amount thereof to be certified by the clerk assistant: And it is further ordered, That unless the costs, certified as aforesaid, shall be paid to the party entitled to the same within one calendar month from the date of the certificate thereof, the cause shall be remitted back to the Court of Session in Scotland, or to the Lord Ordinary officiating on the bills during the vacation, to issue such summary process or diligence for the recovery of such costs as shall be lawful and necessary.

G. BOCKETT — DUNN and DOBIE, Solicitors.