

For Appellant, *Sir Saml. Romilly, J. P. Grant.*

For Respondents, *M. Nolan, W. G. Adam.*

1814.

JAMESON  
v.  
RUSSELL, &C.

NOTE.—Unreported in the Court of Session.

JAMES JAMESON, Merchant, Leith, - *Appellant*;  
JOHN RUSSEL and JAMES THOMSON,  
Builders in Leith, - - - - *Respondents.*

House of Lords, 17th June 1814.

FEU CONTRACT FOR BUILDING—STIPULATION—ARTICLES OF ROUP  
—PLAN—DECREE ARBITRAL.—In a sale of feus for building  
houses, there was a stipulation in the articles of roup, that the  
houses built should be conform to a uniform plan, and of a cer-  
tain elevation. The respondents, builders, purchased the ground  
for building, and proceeded to erect their houses. In a suspen-  
sion and interdict, held that they had not, in substance, deviated  
from these conditions as to building. Affirmed in the House of  
Lords, with £170 of costs.

A sale of feus for building houses of grounds on Leith  
Links, was made by the appellant to the respondents, builders  
in Leith, in which there was a stipulation in the articles of  
roup, that the houses built should be conform to a uniform  
plan, and of the elevation of 39 feet in front, and a plan was  
drawn out and subscribed, as relative thereto.

It appeared that the builders, as they proceeded to build  
the houses, found that an alteration, both on the levels and on  
the elevation of the cellars of the houses would be necessary,  
and these, no sooner than discovered, were communicated to  
the appellant, and his acquiescence obtained to the several  
deviations as they occurred. A new plan was made out, em-  
bracing these elevations, and it was subscribed by the appel-  
lant, and lodged in the Dean of Guild's office.

Even this latter plan was not strictly adhered to; because  
when the respondents began to build, several alterations oc-  
curred to them as desirable, which they communicated to the  
appellant, and he yielded in many respects to these alterations.  
The alterations to which the appellant consented were: 1st,  
Front to be rustic work, instead of plain; 2d, Cellar windows  
permitted, contrary to the plan, &c. Accordingly, in these  
circumstances, four houses on the west were actually built and  
finished, with the alterations now specified and sundry others,  
but there was no alteration made on the height of the side or  
gable walls, which, by the articles of roup, were stated to be

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at 39 feet. The buildings thus erected were seen in their progress by the appellant, passing and repassing to his dwelling house every day, and as they were carried on from beginning to end with his knowledge, and consent, and approbation, so they were allowed to stand before his eyes for a period of almost three years unchallenged.

Dec. 4, 1809.

In proceeding with the other buildings on the east area, they were resolved to build the houses perfectly uniform with those already built on the west area, when they were interrupted by the appellant, on the ground that they were deviating from the plan. A variety of procedure followed, with a reference made to Lord Newton, who issued a decree arbitral, finding “that the third article of the conditions of roup must be the governing rule for ascertaining the height of the houses to be built thereon,” and which declared the height not to be more than thirty-nine feet in front; but, not satisfied with this, he presented a bill of suspension. Lord Balmuto pronounced this interlocutor:—

“Having advised the bill of suspension and interdict for James Jameson and Others, with the answers for James Thomson and John Russel, replies thereto, with the submission and decree arbitral betwixt the parties, the report by Messrs Laing and Burn in terms of the decree arbitral; in respect, it appears to the Lord Ordinary, that the question in dispute relates to the elevation or height of the side walls of the houses building by the respondents, from the level of the ground on which they are erected, and which, from the articles of roup and decree arbitral founded on, is declared to be thirty-nine feet; and as the report above mentioned, ordered by the arbiter, ascertained the level of the ground from which the height is to be taken, to be four feet three inches below the under bed of the base course already laid; and as the plan in process referred to by Messrs Laing and Burn, as relative to their report, ascertains that the side walls of the respondents’ building are to be conform to the said plan, and do not exceed thirty-nine feet from the level fixed upon by the reporters, refuses the bill, and removes the interdict, but finds no expenses due to either party.”\*

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\* Note by the Lord Ordinary:—

“It does not appear to the Lord Ordinary, that there is any ground of complaint that the intermediate stories of the houses are not exactly the same as those built upon the opposite side of the square, provided the height of the side walls do not exceed thirty-

Against this interlocutor the appellant reclaimed to the Court; and the Court, after remitting again to the Messrs Laing and Burn, to give in a report on special points specified, finally adhered to the Lord Ordinary's interlocutor reclaimed against, with expenses. And a further petition was also refused.

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 Mar. 3, 1810.  
 Mar. 10, 1810.

Against these interlocutors the present appeal was brought to the House of Lords.

But the House of Lords, after hearing counsel,  
 Ordered and adjudged that the interlocutors complained of be, and the same are hereby affirmed, with £170 costs.

For Appellant, *William Adam, Ja. Abercromby.*

For Respondents, *Sir Saml. Romilly, Thos. W. Baird.*

NOTE.—Unreported in the Court of Session.

Sir ALEXANDER MACDONALD LOCKHART of  
 Lee and Carnwath, Bart., - - - *Appellant.*

Sir CHARLES ROSS of Balnagowan, Bart.,  
 and HENRY JARDINE, Esq., Executors  
 and Legatees of Charles Lockhart Wishart,  
 Count Lockhart, deceased, and ROBERT  
 LOCKHART, Esq., - - - - } *Respondents.*

House of Lords, 1st July 1814.

TESTAMENT—CONDITIONAL INSTITUTION OR SUBSTITUTION—MOVEABLES—HERITABLE DESTINATION.—A party conveyed to his son, and his heirs, executors, and assignees, his whole heritable and moveable estate, including his whole “jewels, silver-plate, “pictures, marbles, alabasters, &c., and all kinds of household “furniture, and in general all goods and gear belonging to him “at the time of his death.” Of same date he executed a deed, expressing his will and intention to be, that, in the event of his dying without leaving heirs-male of his body, the furniture, silver-plate, and pictures in his mansion-houses of Dryden and Carnwath, should go to the heir of entail succeeding to these estates of Dryden and Carnwath, and assigned and disposed the

“ nine feet. The letter from the feuars, addressed to Mr Jameson,  
 “ intimates their desire, that the level of the first floor might be four  
 “ feet above the level of the ground, on which it is presumed Mr  
 “ Jameson acquiesced; and the difference betwixt that which was  
 “ there proposed and the height of the first floor as now erected, is  
 “ only three inches, according to Messrs Laing and Burn's report.”