

1774.

THE  
GOVERNORS OF  
HERIOT'S HOS-  
PITAL, &C.  
v.  
FERGUSON.

*Pleaded for the Respondent.*—The deed founded on is intrinsically null and void, and can make no faith, being defective in the essential and indispensable requisites established by the statute 1579, which requires “that all writings, importing heritable title, shall be signed by the parties, if they can write, otherwise by two famous notaries before four famous witnesses.” But the deed in question is signed only by one notary. Though our law will always give faith and effect to contracts and obligations, respecting personal estate made in conformity to the laws of other countries, yet that rule cannot hold in reference to the conveyance of heritable estate. 2. The deed, besides, is reducible, as having been executed on the head of deathbed, because, by the law of Scotland, no deed executed on deathbed can be allowed to hurt or prejudice the heir. 3. Besides, the £9000 heritable bond in question cannot be imputed in part payment of the trust money. And the correspondence which passed between the late Earl and his agent, in regard to conveying the bond to the appellant, cannot influence the question. In dispositions of real rights in prejudice of the heir, the intention of the disponent can only be gathered from the deed of conveyance; any other evidence is inadmissible. Besides, all that appears from the correspondence is, that the Earl had in contemplation to settle this heritable bond on the appellant, but came to no final resolution about it till the last moments of his life, when he was in extreme agony, and debarred from conveying heritable estate. 4. The circumstances of favour founded upon the supposed intention of the late Earl cannot be regarded, when the execution of that intention is totally incompatible with the rules of law.

After hearing counsel, it was

Ordered and adjudged that the interlocutors be affirmed.

For the Appellant, *E. Thurlow, Al. Forrester, J. Dunning, Thos. Lockhart.*

For the Respondent, *Ja. Montgomery, Alex. Wedderburn, Henry Dundas.*

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(Mar. 12817.)

THE GOVERNORS OF HERIOT'S HOSPITAL, . . . *Appellants;*  
WALTER FERGUSON, Writer, Edinburgh, . . . *Respondent.*

House of Lords, 2d March 1774.

**SUPERIOR AND VASSAL.**—Held, that the limitations expressed in a feu right are not to be extended beyond the express words.

The appellants, as superiors of the ground in the New Town of Edinburgh, feued to John Clelland, in 1734, five acres of their lands near to the Register Office. The feu right contained this clause, “That it shall not be leisom to the said John Clelland and his for-

“ saids, to dig for stones, coal, sand, or any other thing within the  
 “ said ground, nor to use the samen in any other way than by the  
 “ ordinary labour of the plough and spade, without the express con-  
 “ sent and liberty of the Governors of the said Hospital, had and  
 “ obtained thereto for that effect.”

1775.

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 GREIG, &c.  
 v.  
 CARSTAIRS.

Clelland built several houses upon different parts of the ground so feued by him. He likewise sub-feued three parcels of the ground to persons who built houses thereon. Afterwards he sold the remainder to the respondent; and Mr. Ferguson having made known his design of erecting buildings in the form of a square upon his area, the governors, on the ground that this would interfere with the interests of the Hospital, brought the present action of declarator, to have it found and declared, in terms of the above clause, that the feuar could not use the said ground in any other way than by the ordinary labour of the plough and spade without their consent. In defence, it was contended that there was no express prohibition against building houses, or erecting dwellings on the ground, which in this case was the legitimate object of the feu. And the respondent was only taking the beneficial use of those rights which are naturally consequent on the power of disposal in the vassal. That the superior could not extend the above clause to limitations and restrictions not expressed; and that the general words of the above clause cannot in law go beyond the particulars expressed.

July 30, 1773.

The Court pronounced this interlocutor:—“ Find the defender, Walter Ferguson, is entitled to carry on his buildings on his own grounds mentioned in the declarator.” And on reclaiming petition the Court adhered.

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

After hearing counsel, it was

Ordered and adjudged that the interlocutors be affirmed.

For Appellants, *Thos. Lockhart, F. Thurlow.*

For Respondent, *Alex. Wedderburn, Ilay Campbell.*

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ROBERT GREIG, ROBERT MARSHALL, JAMES BELFRAGE,	}	<i>Appellants;</i>
MICHAEL HENDERSON, and Others, . . .		
JAMES BRUCE CARSTAIRS of Kinross, . . .		<i>Respondent.</i>

House of Lords, 24th Nov. 1775.

CHARTER—CLAUSE AS TO PUBLIC BURDENS.—Charters granted by a superior contained clauses exempting the *feuar* from all public burdens imposed, or to be imposed. Held, that this did not exempt from the expense of repairing or building churches or manse.

The appellants were feuars, and held feu-charters, granted by the respondent's ancestors, superiors thereof, whereby they were freed  
 “ of all public burdens and impositions imposed, or to be imposed,