

May 23, 1826. suer entitled to damages; remitting the case to the Court below, with that declaration.

*Mackenzie's Authorities.*—Lyon v. Gordon, July 20, 1665.—Drummond v. Hope, April 2, 1774.—Purle, May 15, 1706.—Irvine v. Hamilton, July 13, 1706.—Castlelaw v. Agnew, Mar. 11, 1719.—Campbell v. Cochrane, July 27, 1747.

J. RICHARDSON, SPOTTISWOODE, and ROBERTSON, Solicitors.

No. 27. JAMES CAMPBELL, Esq. of Bedlay, Appellant.—*Adam—Wilson.*

Mrs STEELE and J. LANG, Respondents.—*Stephens.*

*Superior and Vassal.—Trust.*—A party having, by missive, feued a piece of building ground in his own name, and thereafter alleging that he had done so on behalf of a married woman, to whom he desired the feu-charter to be granted in life-rent, excluding her husband's jus mariti, and to her children in fee; and an action having been brought by her to compel the proprietor to execute the deed accordingly,—Held (reversing the judgment of the Court of Session), that there was no evidence of the trust to affect the proprietor, and that he was not bound to execute the feu-charter so demanded.

May 23, 1826.

1ST DIVISION.  
Lord Alloway.

THOMSON, a mason in Airdrie, wrote to Mr Campbell of Bedlay, in these terms:—‘ Molinsburn, 26th Sept. 1818. I have agreed to feu from you ninety feet from east to west along the Cumbernauld road, by the road which leads to Logie water, and to go north 40 yards from the said front; also the road that goes to Logie water to be twenty-four feet in breadth; for which I pay for a feu of these, for which I offer one shilling and eight pence per fall for the whole, also the rights that is to follow thereon. Entry of the feu to be at Martinmas next, and to be payable half-yearly; first term payable at Whitsunday 1819.’—Mr Campbell answered:—‘ Molinsburn, 26th Sept. 1818. I accept of the above offer. To Mr Andrew Thomson, mason, Airdrie.’

Soon thereafter Thomson began to build a house on the ground so feued; and obtained from Campbell advances to the extent of £30, upon security of the feu, to enable him to procure materials, for which he gave him this acknowledgment:—‘ 8th Sept. 1819. I hereby acknowledge to have, of this date, received from you £12 Sterling, which, with £18 paid by you to me some time ago, is £30 Sterling; and which sums I have got from you for the purpose of enabling me to finish the house which I am building upon the piece of ground feued by me

‘ from you at the Molins ; and which sum, it is understood, shall  
 ‘ be declared a real lien or burden upon the property in the  
 ‘ disposition or charter which I am to obtain from you, as my  
 ‘ right to that piece of ground.’

May 23, 1826.

On the 27th November thereafter, Campbell being a creditor of James Lang, the husband of the respondent Ann Steele, and learning that Thomson was indebted to him in a sum of money for materials furnished to the house, arrested in the hands of Thomson ; Thomson, on the 1st December, addressed this letter to Campbell :—‘ It having been for behoof of my aunt Ann  
 ‘ Steele, spouse of James Lang, residing in Airdrie, and her  
 ‘ children, and at request of my grandmother, Mrs Steele of  
 ‘ Birkenshaw, that I feued the piece of ground from you at Mo-  
 ‘ linsburn, I request that you will be so kind as execute the feu-  
 ‘ contract thereto, in terms of our original intention, in favour of  
 ‘ Mrs Lang, in life-rent, secluding the jus mariti, &c. of her  
 ‘ husband to her children in fee. Mrs Lang will inform you of  
 ‘ further particulars, and pay the necessary expenses.’

Campbell declined to grant the feu-charter to the Langs, because Thomson was the person with whom he had contracted, and that he conceived the letter introducing them as the parties interested, was the result of a collusive scheme to defeat the arrestment. An action was then raised by Ann Steele, with concurrence of James Lang, her husband, against Campbell and Thomson, stating that Thomson had entered into a missive with Campbell, whereby the latter feued to Thomson, ‘ for be-  
 ‘ hoof of the pursuer and their family, a small piece of ground  
 ‘ in the village of Molinsburn, for the purpose of building ; upon  
 ‘ which a house had since been built, in consequence of money ad-  
 ‘ vanced by the pursuers, amounting to the sum of £172, 19s. 6d. ;’ that it was ‘ distinctly understood by the parties at the time,  
 ‘ that the feu to Thomson was in trust for behoof of the pur-  
 ‘ suers and their family ;’ that the pursuers had ineffectually required Campbell and Thomson, conjunctly and severally, ‘ to  
 ‘ execute and deliver to Mrs Steele a valid and sufficient feu-con-  
 ‘ tract, or other conveyance, of the said piece of ground and  
 ‘ house erected thereon,’ and to make payment of the rents in-  
 tromitted with by Thomson since the date of the missive. In evidence of the trust, they founded on the letter of Thomson addressed to Campbell, on the 1st December, and they concluded that it ought to be declared, ‘ that the foresaid mis-  
 ‘ sive, entered into by the said James Campbell and Andrew  
 ‘ Thomson, was a trust in the person of the said Andrew  
 ‘ Thomson, for the use and behoof of the pursuer and their  
 ‘ foresaids ; and the said defenders ought to be decerned and

May 23, 1826. ‘ ordained, by decree foresaid, conjunctly and severally, or  
 ‘ one or other of them, to denude of the said piece of ground,  
 ‘ feued in manner before specified, and house erected there-  
 ‘ on, with the pertinents; and to execute and deliver to and  
 ‘ in favour of the pursuer Ann Steele, and her said children, all  
 ‘ deeds requisite and necessary for vesting the said subjects in  
 ‘ them, as aforesaid, in terms of the original missive and agree-  
 ‘ ment of parties, with warrandice thereof,’ &c. Thomson al-  
 lowed decree in absence to pass against him; but Campbell gave  
 in defences, denying that he had contracted, or intended to con-  
 tract, with any other person than Thomson himself; that he  
 had any knowledge of the alleged trust; and maintaining that  
 he could not be affected by the collusive scheme between Thom-  
 son and the Langs; that even if he had been under any obliga-  
 tion to grant a feu-charter to them, he was not bound to do so  
 in the manner demanded; and that at least he was entitled to  
 withhold the charter, until he had received payment of the ad-  
 vance made to Thomson, and the debt due by Lang.

The Lord Ordinary found ‘ the trust alleged by the pursuers  
 ‘ sufficiently established by the letter founded on in the sum-  
 ‘ mons and the decree already pronounced against the defender,  
 ‘ Thomson, and not reclaimed against as to him,’ and decerned  
 accordingly, and ordered a condescendence by the pursuers, ‘ of  
 an allegation, that the £30 had not been advanced by Camp-  
 bell. Thereafter his Lordship, on advising a representation by  
 Campbell, adhered, ‘ in respect that the granting of a feu im-  
 ‘ plies no *delectus personæ*; and that, therefore, the person  
 ‘ obliging himself to grant the feu, must grant the same to any  
 ‘ person having right thereto, either in consequence of the ori-  
 ‘ ginal trust, under which the person originally acquiring it may  
 ‘ have acted, or in consequence of any transference he may af-  
 ‘ terwards have made, saving always any claim for money ad-  
 ‘ vanced, or obligation entered into by the person granting the  
 ‘ feu to the person obtaining it upon the faith of that feu, while  
 ‘ ignorant of either the trust or of the transference; and the in-  
 ‘ terlocutor completely reserves the representer’s (Campbell’s)  
 ‘ right, if he shall be enabled to establish the advance made to  
 ‘ Thomson.’

Campbell then petitioned, and the Court, on advising his  
 petition without answers, recalled the last interlocutor of the  
 Lord Ordinary, and remitted to him to proceed in terms of  
 the previous one. After some proceedings, the Lordordi-  
 nary found, that in consequence of certain counter claims, the  
 total sum to which Campbell had right, on account of his ad-  
 vances to Thomson, was £6, 4s. 7d. This judgment having

been brought under his review by Campbell, his Lordship adhered, and on payment of that sum being made, decerned in terms of the libel, ‘ in respect it has been finally decided ‘ that Thomson held the feu in question for Mrs Steele, who ‘ had advanced the money for building, and her daughter, Mrs ‘ Lang; and decree was pronounced in terms of the conclu- ‘ sion of the libel, and in terms of the original missive and ‘ agreement of parties, and the petitioner (Campbell) does not ‘ pretend to have any claims against Mrs Steele or her daughter, ‘ Mrs Lang.’ Against these judgments, Campbell reclaimed; but the Court adhered, on advising a petition with answers, and thereafter, on the 25th May 1824, refused a petition without answers.\*

*Lord President.*—The trust is clearly established, and although Mr Campbell has no doubt a good claim against Thomson, yet he has none against Lang.

*Lord Hermand.*—I am of the same opinion. Indeed, I cannot see how the pursuers can be made liable for advances made to Thomson in his private capacity; besides, they are compensated. The claim against Lang is not relevant as a defence in this question.

*Lord Balgray.*—I concur. The interlocutor does not deprive Campbell of his claim against Lang, if it be well founded.

Campbell appealed.

*Appellant.*—The agreement to feu was with Thomson himself, and for his behoof alone, and the appellant is ready to fulfil it, by granting him a charter, on receiving payment of the balance due him, and the arrested sum. The appellant never came under any obligation towards the Langs, and certainly is not bound to execute the feu-right they call for. He is entitled to all the casualties of superiority, of which he cannot be disappointed by the shape in which the respondents insist that the charter shall be given. In one sense of the word, there may be no *delectus personæ* in feuing, where a vassal has it in his power to convey and transfer his interest in the feu to whom he chooses; but still, so far as regards choosing the first vassal, the superior may exercise a *delectus personæ*; and in this instance the appellant would not have feued to Lang.

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\* See 3 Shaw and Dunlop, No. 41.

May 23, 1826. Besides, the view of the Lord Ordinary on this point was not adopted by the Court. There is no legal evidence that can bind or affect the appellant, and establish that the feu was taken in trust. At all events, Lang could never claim a feu-charter until he paid the debt due to the appellant.

*Respondent.*—There is ample evidence that the feu-right in question was taken in trust by Thomson. In feus there is no *delectus personæ*. The only patrimonial interest the appellant had to protect, was the debt due to him by Thomson; but the balance due has been offered to him. As the original feu-right was taken in Thomson's name, the appellant cannot pretend that he relied on the security of that right, for payment of any debt due by Lang.

The House of Lords ordered and adjudged, 'that the said interlocutors complained of in the said appeal be, and the same are hereby reversed, and that the said James Campbell be assailed from the conclusions of the libel.'

LORD GIFFORD.—There is a case which has been heard before your Lordships, in which James Campbell, Esq. was the appellant, and Mrs Ann Steele, spouse of James Lang, residing in Airdrie, and he for his interest, were the respondents. This was an appeal against the several interlocutors of the Court of Session, pronounced in an action commenced by Mrs Steele and her husband against James Campbell, Esq. of Bedlay, and Andrew Thomson, mason in Airdrie, for the purpose of compelling Mr Campbell to execute a feu-disposition of certain property which had been contracted to be feued by Mr Campbell to a person of the name of Thomson. It appears that in the year 1818, Mr Thomson, who was a mason in Airdrie, applied to Mr Campbell for a feu-right to a piece of ground, situated in the village of Molinsburn, upon which Thomson stated himself to be desirous of erecting a dwelling-house. The appellant states, that being well pleased that Thomson should settle in the village, he readily acceded to this proposal. Accordingly, an offer was made by Mr Thomson by a letter, written by him to Mr Campbell, bearing date the 26th September 1818.—(His Lordship here read the letter.)—That letter was signed by Mr Thomson, and the offer was accepted by Mr Campbell.

Your Lordships perceive, that by these letters there was a contract entered into by Mr Campbell, to feu to Mr Thomson this piece of ground situated in the village of Molinsburn. Thomson accordingly, as is stated, and not denied, entered upon this land, and commenced the building of a house. On the 8th of September 1819, a letter was written by Mr Thomson to Mr Campbell, at least a letter of that date—whether it was sent at that or a posterior time, does not distinctly appear; nor does it

seem very much to signify—was sent by Mr Thomson, in which he pro- May 23, 1826.  
 fessed to have received from Mr Campbell £12 Sterling, ‘ which,’ he says,  
 ‘ with £18 Sterling paid by you to me some time ago, is £30 Sterling,  
 ‘ and which sum I have got from you, for the purpose of enabling me to  
 ‘ finish the house which I am building upon the piece of ground feued by  
 ‘ me from you at the Molins, and which sum it is understood shall be  
 ‘ declared a real lien or burden upon the property in the disposition or  
 ‘ charter which I am to obtain from you as my right to that piece of  
 ‘ ground.’ However, on the 1st of December 1819, a letter was written  
 by Thomson to the appellant, Mr Campbell, which has given occasion  
 principally to the question in this cause. It is a letter, dated at Airdrie,  
 1st December 1819, and to the following effect.—(His Lordship then  
 read the letter.)—Mr Campbell, conceiving that the contract he had  
 made, had been with Thomson personally, and with Thomson on his own  
 account, and not, as stated in this letter, as trustee for Mrs Lang and her  
 children, refused to comply with the request made in this letter. In con-  
 sequence of that, an action was brought by Mr and Mrs Lang against  
 Mr Thomson and against Mr Campbell, the terms of which it is import-  
 ant to attend to. The summons states, ‘ That Andrew Thomson, mason,  
 ‘ Wandsmailing, near Airdrie, at the request and by the directions of the  
 ‘ pursuers and Mrs Steele of Birkenshaw, entered into a missive with  
 ‘ James Campbell of Bellay, of date the            day of            1818,  
 ‘ whereby the said James Campbell feued to the said Andrew Thomson,  
 ‘ for behoof of the pursuers and their family, a small piece of ground in  
 ‘ the village of Molinsburn, and parish of Calder, for the purpose of build-  
 ‘ ing, upon which a house has since been erected, in consequence of mo-  
 ‘ ney advanced by the pursuers, amounting to the sum of £172, 19s. 6d.  
 ‘ Sterling, conform to account herewith produced.’ Then it alleges, ‘ that  
 ‘ although the foresaid transaction was entered into by Campbell and  
 ‘ Thomson, and a missive for the said piece of ground taken in the name  
 ‘ of Thomson, yet it was distinctly understood by the parties at the time,  
 ‘ that the same was in trust, for behoof of the pursuers and their family.’  
 Then the summons sets out the letter of the 1st December 1819, which  
 I have read to your Lordships, and proceeds, ‘ from which it is clear  
 ‘ and apparent, that the said transaction and missive was a mere trust in  
 ‘ the person of Thomson, for behoof of the pursuers and their foresaids ;  
 ‘ and although the pursuers have often desired and required Thomson  
 ‘ and Campbell, conjunctly and severally, or one or other of them, to  
 ‘ execute and deliver to Mrs Steele, a valid and sufficient feu-contract, or  
 ‘ other conveyance, to the foresaid piece of ground, and house erected  
 ‘ thereon, and to make payment of the rents, mails, and duties of the  
 ‘ same, intromitted with by Thomson since the date of the said missive,  
 ‘ yet they refuse, or at least delay, so to do.’ The summons then states,  
 that it should be declared, ‘ that the foresaid missive entered into betwixt  
 ‘ Campbell and Thomson, was a trust in the person of Thomson, for the  
 ‘ use and behoof of the pursuers and their foresaids ; and the defenders  
 ‘ should be ordained, by decree foresaid, conjunctly and severally, or one

May 23, 1826. ‘ or other of them, to denude of the said piece of ground, feued in man-  
 ‘ ner before specified, and house erected thereon, with the pertinents ;  
 ‘ and to execute and deliver to and in favour of Mrs Steele and her chil-  
 ‘ dren, all deeds requisite and necessary for vesting the subjects in them,  
 ‘ as aforesaid, in terms of the original missive and agreement of parties,  
 ‘ with warrandice thereof.’

My Lords, upon this summons defences were put in by Mr Campbell ; and he stated, that he knew nothing of any pretended trust supposed to be subsisting between the pursuers and defender Thomson, and he could not be affected by collusive agreements on this subject, concerted between these parties ; that he never agreed to sell or feu to the pursuers the property libelled, or any other property ; that he never dealt with Thomson, as trustee for the pursuers, to any extent whatever ; and he denied in toto the right of the pursuers to call upon him to denude of the property in question, or to execute or deliver any deed in their favour.

The case came before the Lord Ordinary, and he pronounced the first interlocutor which is appealed against ; and, by that interlocutor, he found the trust alleged by the pursuers sufficiently established by the letter founded on in the summons, and the decree already pronounced against the defender Thomson, not reclaimed against as to him, and decerned accordingly. . I should have stated to your Lordships, that no defence was made by Thomson, and therefore the Lord Ordinary referred to the decree pronounced against Thomson, as one of the grounds upon which he considered that a trust had been sufficiently established. Then he goes on, ‘ but before farther answer, as to the claim of the defender,  
 ‘ James Campbell, for his debt of £30, allows the pursuers to give in a  
 ‘ condescence, framed in terms of the act of sederunt, of the facts and  
 ‘ circumstances they offer to prove in support of their statement, that  
 ‘ no such sum was advanced by the said James Campbell.’

Your Lordships perceive, therefore, by this interlocutor, that although the Lord Ordinary had distinctly found that this trust was sufficiently established by the letter founded upon in the summons, and the decree pronounced against Thomson, and, therefore, that the trust was a trust declared at the time of the contract, yet, at the same time, (as it appears to me, a little inconsistently,) he is of opinion, that although Thomson contracted as a trustee, and that trust had been established, Mr Campbell had a right to be paid a debt due from Thomson, the trustee. If the fact was, that Thomson had actually contracted qua trustee for those persons, and that Mr Campbell contracted with him qua trustee, it is a little difficult to see how Mr Campbell could insist on being paid the debt due from the trustee, before he executed his feu-contract to the cestui que trust. However, such was the interlocutor of the Lord Ordinary.

The appellant presented a representation against this interlocutor ; and then the Lord Ordinary pronounced another interlocutor, as follows :  
 ‘ In respect that the granting of a feu implies no delectus personæ, and  
 ‘ that, therefore, the person obliging himself to grant the feu must grant  
 ‘ the same to any person having right thereto, either in consequence of

‘ the original trust under which the person originally acquiring it may  
 ‘ have acted, or in consequence of any transference he may afterwards  
 ‘ have made, saving always any claim for money advanced, or obliga-  
 ‘ tion entered into by the person granting the feu to the person obtaining  
 ‘ it, upon the faith of that feu, while ignorant either of the trust or of the  
 ‘ transference; and the interlocutor complained of completely reserves  
 ‘ the representer’s right, if he shall be enabled to establish the advance  
 ‘ made to Thomson; refuses the representation, and adheres to the inter-  
 ‘ locutors complained of.’ Now here, my Lords, the Lord Ordinary takes  
 another ground. As I have stated to your Lordships, (and it was on that  
 account I called your Lordships’ attention to the summons,) the summons  
 expressly proceeds upon the ground, that the contract with Thomson was  
 a contract qua trustee for the pursuers’ use, and that Mr Campbell enter-  
 ed into the contract with Thomson knowing that such was the case. It  
 appears that on the case coming on before the Lord Ordinary, the second  
 time, another ground was taken by the pursuers in the action, namely,  
 that although there were no trust originally communicated to Mr Camp-  
 bell, yet as there was no *delectus personæ*, (according to the expression  
 used by the Lord Ordinary in his judgment,) in respect of the granting of  
 the feu, it was competent for Mr Thomson, if that contract had been  
 entered into between him and Campbell, to declare the trust for any other  
 person, or to assign the benefit of that contract to any other person, in  
 any manner; and that it was competent to the trustee to compel Mr  
 Campbell, the owner of the property, to grant the feu-right to him; and  
 not only to grant the feu-right to him, but to Mrs Lang for life, and then  
 to her children; in short, in any way which the assignee might require.

My Lords, on these interlocutors being brought under the review of  
 the Court of Session, they recalled that interlocutor, and therefore they  
 disaffirmed that interlocutor, proceeding upon the ground that the grant-  
 ing of a feu implies no *delectus personæ*, and remitted the case to the  
 Lord Ordinary to proceed in terms of his previous interlocutor; that is,  
 upon the ground that the trust had been sufficiently established, and that  
 therefore the pursuers were entitled to call for this feu-contract under that  
 trust.

My Lords, proceedings then took place before the Lord Ordinary,  
 with respect to the amount of the debt due from Thomson to Mr Camp-  
 bell. It appeared, at last, that there was a balance only, I think, of £6,  
 4s. 7d.—the difference between £23, 15s. 5d. and £30, due to Mr Camp-  
 bell. Various proceedings took place, and Mr Campbell, I should have  
 stated to your Lordships, contended that even if he were compelled to  
 grant this feu-right to Mr and Mrs Lang, still Mr Lang was indebted to  
 him—that this action was a contrivance to prevent his being enabled to  
 recover his debt against Mr Lang—and that if he were compelled to con-  
 vey this feu to Mr Lang, he, Mr Campbell, should be allowed to deduct  
 the amount due to him. He did not, however, succeed in that; and the  
 decision of the Court of Session was, that he was bound to convey this

May 23, 1826. feu to Mr and Mrs Lang, on the terms of the original interlocutor of the Lord Ordinary.

My Lords, this case is a very unfortunate one. The value of this property is, I believe, not very large, and therefore it is a matter of more anxious consideration with me than it would otherwise be; but after the most attentive consideration of this question, I am unable to coincide with the finding of the Lord Ordinary; and I will state to your Lordships why.

That the original contract was made with Mr Thomson, without any reference to any trust, is perfectly clear from the letter. That letter bore date in the month of September 1818. Things remained in that situation till the month of December 1819, Mr Thomson having gone on building this house; and, as Mr Campbell alleges, he during all that time being in perfect ignorance of this trust; and no evidence whatever has been given, except this letter, in the month of December 1819, to show that he ever contracted with Mr Thomson qua trustee. Now, my Lords, that letter is dated fifteen months after the original contract. In that letter certainly Mr Thomson states, that at the time of the original contract, it was made for the behoof of his aunt; and requests that Mr Campbell will be so kind as execute the feu-contract thereto, in terms of the original intention. It is true, Mr Thomson has suffered judgment in this case to pass against him. As between him and the Langs, to be sure, he has admitted that this contract was made by him for their behoof; but the ground of this action, and this summons, is, that not only was the contract so entered into by him for the benefit of Mrs Lang and her children, but that that contract was so made by Mr Campbell, and that Mr Campbell knew that that was the nature of the trust existing at that time. Now, my Lords, I must confess that on looking through these proceedings, I do not see that there is any evidence to bear out the respondents in that allegation.

Upon the other ground, if it were necessary to go through it, I think a great deal of observation might be made. I mean, supposing there was no trust originally, whether it would be competent for Mr and Mrs Lang to compel the performance of this contract by Mr Campbell; particularly, to compel him to grant this feu-right to Mrs Steele and her children, secluding the jus mariti of the husband. But it is unnecessary to consider that point, because the Court of Session have not considered it. The whole ground of this decision is, that it has been established by sufficient evidence, that there was this trust at the time when the contract was entered into, between Mr Campbell and Mr Thomson; and, of course, if so, that that was known to Mr Campbell; because, if it were not, it appears to me extremely difficult, indeed impossible, to support this action. The summons proceeds directly on the allegation, not only that there was this trust, but that the contract was entered into by Mr Thomson and Mr Campbell, with the knowledge of that trust. Upon that there is really no evidence, except this letter, written fifteen months after the transaction; and although, as I have stated to your Lordships, that the other letter, written by Thomson on the 8th of

September 1819, ought not to be much relied upon (for it is admitted May 23, 1826. that it was not sent at the time it bears date); yet, at whatever time it was sent, that letter, as far as it goes, is a statement by Mr Thomson that the contract was for his benefit—at least it so treats the contract; for he states, that he had received £12 Sterling, which, with £18 Sterling, is £30; and which sums he got from Mr Campbell for the purpose of enabling him to finish the house which he was building upon the piece of ground feued by him from Mr Campbell—not feued by him for the benefit of Mr and Mrs Lang and their children,—for the words ‘feued by ‘him,’ must be taken to mean ‘feued by him for his own benefit.’ But I do not think much reliance ought to be placed upon that letter, for the reason I have stated. It was said on the other side, that the letter had been obtained by Mr Campbell from Mr Thomson, for the purpose of making it evidence against Mr and Mrs Laing: and, in the Court below, no proof was given when that letter was actually sent. It might not, therefore, have been sent till after the date of the other letter of 1819, in which Mr Thomson states, that the contract was made out, not for himself personally, but for the benefit of those other persons. My Lords, it appears to me, however, that no sufficient evidence has been given to establish that against Mr Campbell. It appears to me that this interlocutor cannot stand. As I said before, Mr Thomson having suffered judgment in this action, furnishes no evidence to affect Mr Campbell; for, if Thomson is colluding with Mrs Lang, it is on her behalf that he makes no opposition; and however his conduct may be conclusive as between him and Mr and Mrs Lang, it cannot affect Mr Campbell, the appellant, for the reason I have stated, that there has been no evidence to bring home to him a knowledge, at the time the contract was entered into, that the contract was completed on her behalf.

My Lords, taking into consideration all these facts, however unfortunate the circumstances of this case may be for the respondents, it appears to me, that, consistently with the facts proved in this case, the form of the action, and the ground of the action stated in the summons, it is impossible that your Lordships can sustain these interlocutors. It will be my duty, therefore, to move your Lordships, that these interlocutors be reversed, and that Mr Campbell be assoilzied from this action.

FRASER, A. DOBIE, *Solicitors*.