street porter. His refusal to perform his matrimonial duties at bed and board,—were sufficient ill-usage and maltreatment, which clearly entitled her to a separate aliment.

After hearing counsel, it was

Ordered and adjudged that the appeal be dismissed, and that the interlocutors therein complained of be affirmed; and it is further ordered, that the appellant do pay to the respondent £200 costs in respect of the said appeal."

For Appellant, *Ja. Montgomery, Al. Wedderburn.*
For Respondent, *C. Yorke, H. Dalrymple, Hay Campbell.*

Not reported in Court of Session.

SIR JOHN DOUGLASS, Bart., - - *Appellant;*
HUGH DALRYMPLE, &c. - - *Respondents.*

House of Lords, 26*th Jan.* 1770.

ABSOLUTE DISPOSITION—TRUST.—A party disponed certain lands to his agent, in order, as he stated, to qualify him to vote in the county election, but held no written obligation under his hand to redispone. Held that the absolute disposition, together with the law agent's accounts, amounting to £1400 due him, foreclosed all idea of trust, unless this were proved by writing under the trustee's hand, in terms of the act 1696.

Action of reduction was brought by the appellant, to set aside a conveyance, or absolute disposition, granted by him in favour of Robert Dalrymple, on the ground, that it was merely granted in trust, and that he ought to be ordained to reconvey the same to him. The allegation set forth in the summons was, that having stood as a candidate for the county of Dumfries, he granted this conveyance to Dalrymple, who was his own agent, for the mere purpose of qualifying him to vote at the election,—that the price mentioned therein, £920, was never paid to him, and would have been a price quite inadequate to the value of the lands. To this the defence was stated, that the disposition was not granted in trust, for the purpose specified, but in payment of his business accounts.—That the defender, Dalrymple, had acted

1770.

DOUGLASS v DALRYMPLE, &c.

as the appellant's law agent in several legal businesses. That Sir John being embarrassed for want of means, he was obliged to advance money from time to time, as well as to become security otherwise for him, and that prior to granting the disposition in question, Sir John was owing him a sum of £1400, conform to an account docqueted by him. The disposition, therefore, was taken *pro tanto* of said debt. But, further, there was an agreement in existence, in regard to the conveyance of these lands, which totally excluded the idea of a trust, and separately, that the act 1696, whereby no action of declarator of trust lies as to any deed of trust, except the trust be declared in writing, signed by the trustee, was a sufficient answer to the action.

Feb. 17, 1761. Jan. 3, 1762. July 4, 1764. The Lord Ordinary and the Court successively repelled the reasons of reduction. And against these interlocutors the present appeal was brought.

Pleaded for the Appellant.—Though, from the nature of the proceedings, the appellant is excluded from proving, that the lands in question were originally conveyed by him to Dalrymple, otherwise than for a *bona fide* price at a common sale; yet the real purpose for which they were conveyed. appears very strongly from a combination of undeniable circumstances. The appellant, when he conveyed the estate, although indebted to Dalrymple in a sum beyond the price in the conveyance, yet continued for a year thereafter to possess the estate, by uplifting the rents thereof; and this was evidence itself of the trust. Also, the price named in the disposition, being far inferior to its value, and the passing that price into the account between the parties. But even supposing Dalrymple's purchase was real, yet, as by the subsequent agreement, the appellant was to have the lands recognized, on payment of the sum there stipulated, he ought to have restitution of the same.

Pleaded for the Respondents.—By the statute 1696, no disposition of lands appearing *ex facie* absolute, shall be construed as held in trust, unless the said trust shall be established by a writing under the hand of the disponee. Writing under the hand of the trustee is the only method of instructing such trust, but the appellant having adduced no such writing whatever, the allegation of trust cannot be listened to. Even if a trust could be inferred from circumstances, then it will be found that the present case is totally devoid of any such circumstances. If the estate had been sold merely to furnish the respondent with a qualification to

vote, neither so much land, nor so much price, would have been stated, as neither of these was necessary for that purpose. Neither would he, had this been the character of the transaction, have docqueted an account twelve years thereafter, in which credit was given him for the (£950) price, nor entered into the agreement, which, from beginning to end, supposes the disposition a *bona fide* sale.

After hearing counsel, it was

Ordered and adjudged that the appeal be dismissed, and that the interlocutors therein complained of be affirmed; and it is further ordered that the appellant do pay to the respondent £100 costs.

For Appellant, *Al. Wedderburn, Al. Forrester.*
For Respondents, *C. Yorke, H. Dalrymple.*

Note.—Unreported in Court of Session.

Dr. ANDREW HERON, - - *Appellant;*
JOHN VINING HERON, - - *Respondent.*

House of Lords, 31*st January* 1770.

SUCCESSION—DEED—IMPLIED REVOCATION.—A father executed a settlement in form of an entail, in favour of his eldest son, and his heirs-male; whom failing, to his second son and his heirs-male, &c., but reserved power and faculty to himself to affect or burden the fee of the lands: Held that he was entitled to execute a subsequent disposition of the estate in favour of his second son, passing over the eldest son; reversing the judgment of the Court of Session.

ANDREW HERON of Bargaly, in the county of Wigton, had two sons, Andrew and Patrick; Andrew, the eldest, he disinherited, by the deed after mentioned. Captain Patrick Heron, the second son, was married to a Miss Vining, only child of Mr. Vining in Hampshire, with whom he inherited a large fortune. Of this marriage there were two sons, of whom John Vining Heron, the respondent, was the eldest, and Dr. Andrew, the appellant, the second eldest. The present competition arose between these two brothers for the estate of Bargaly, left by their grandfather. The question between them depended on the effect of certain deeds executed by the grandfather. Of this date, a disposition was executed by him, disponing his estate in the shape of an entail, " to Andrew Heron, his eldest son, and the heirs-

Jan. 24, 1715