

# CASES

DECIDED IN

## THE HOUSE OF LORDS,

UPON APPEAL FROM

### THE COURTS OF SCOTLAND.

THE RIGHT HONOURABLE JOHN VISCOUNT }  
ARBUTHNOTT, . . . . . } *Appellant;*  
JOHN GILLIES, Merchant in Brechin, } *Respondent.*

House of Lords, 18th Dec. 1797.

LEASE, REDUCTION OF,—FACILITY, FRAUD AND LESION—PROROGATION OF, OR LEASE IN REVERSION.—Reduction was brought of five several leases granted to the respondent, a merchant in Brechin, on the ground of fraud, facility, and lesion :—Held, the circumstances proved in this case, not sufficient to set aside the leases, though granted while existing current leases had several years to run.

THIS was a reduction brought of five several leases granted by the appellant's father to the respondent, a merchant in Brechin, on the same grounds of reduction as those mentioned in a preceding appeal, ante p. 613, Vol. III.

The appellant's statement was, that the respondent had prevailed on his father, the late Viscount, when he was 88 years of age, labouring under dropsical disease, and addicted to habits which aggravated his infirmities, and while his mental faculties were impaired, to grant him no less than five different leases of five separate farms, some of which lay several miles discontinuous from others of them, and upwards of twenty miles distant from the respondent's ordinary residence. Of these five leases, four were obtained before the expiry of the current leases; and one of them,

1797.

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VISCOUNT  
ARBUTHNOTT  
v.  
GILLIES.

1797.  
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 VISCOUNT  
 ARBUTHNOTT  
 v.  
 GILLIES.

the lease of Kinmonth, did not commence till a period of many years after its date, having been obtained in 1786, with an entry in 1801, after which it bore to be for a term of 57 years, so that, from its date to the expiry of the lease, there was a term of seventy-two years. The rent payable for the leases of these five farms amounted *in cumulo* to £364 sterling, while the real value of the farms amounted to £818 sterling per annum.

On the other hand, it was stated by the respondent, that when the late Viscount came to the succession of these estates, agriculture had made little or no progress. The rent of land was in consequence very low, and the husbandmen and tenants were as indigent as they were ignorant. In this situation of things, the late Lord Arbuthnott saw, that by introducing a more intelligent and a more substantial tenantry, he would considerably raise the rent and value of his estate. He accordingly used his utmost endeavours to procure such tenants; and, in order to encourage them to bestow their industry and lay out their money in improvements, he gave them leases of considerable endurance, which plan had been approved of and practised in other parts of the country.

It was also stated that the appellant's father intended, by these leases, and by an entail which he executed, to prevent his estate from being squandered away by his sons. And, with these views, the Viscount granted to the respondent improving leases of considerable endurance, that being necessary to any plan of improvement to be conducted *at the expense of the tenant*. In these circumstances, the five leases alluded to were granted, and at a time when the Viscount's mental and bodily faculties were unimpaired and in the fullest vigour.

The reasons of reduction were lesion, fraud, and circumvention, and an allegation that the Viscount was facile and incapable of managing his own affairs.

A condescendence of the facts by which the appellant meant to establish these grounds of reduction was ordered, but, when given in, was found to be irrelevant. A second condescendence was ordered, and shared the same fate. At last a proof was gone into, and reported to the Court.

It was proved that the Viscount was very careful of his money and penurious. That, in order to save money, he would live in his room in winter without a fire. That by this means—and by letting out his farms in the manner

described—he was enabled to transact and manage his whole estate without a factor, and to see it improve yearly in value at the *expense of his tenantry*: That so far from losing by this, he had acquired a great gain. When he came to the succession in 1757, the estate was incumbered with debt, so as not to yield him a reversion of more than £40 per annum. When he died in 1791, he left it yielding a free rental of £4000 per annum, having in the interval paid off £12,000 of debts incurred by his sons, and left £40,000 of ready money.

It was also proved that his servants used familiarities with him,—often laughed at him during the latter years of his life. It was also proved, that while they often heard him complain of some of the tenants whom he named, having taken advantage of him in their leases, he never stated that the respondent had done so in his leases. It was also proved, by witnesses acquainted with the value of land, who knew the farms before they were taken, and at the time they were taken, that there was no lesion in the bargain; and that Lord Arbuthnott, so far from being a facile man, was a person of uncommon acuteness, and of the greatest attention to his affairs: That he had been bred to the law, and practised as a writer and notary, and afterwards had acted as factor to a preceding Viscount on the estate, to which he himself afterwards succeeded as collateral heir.

The Court pronounced this interlocutor: “ Repel the reasons of reduction, assoilzie the defender, and decern: Find the defender entitled to expenses, and appoint the account thereof to be given into Court.”

On reclaiming petition, the questions discussed were, 1st, Whether the late Viscount, at the time of granting the leases, was *legally* facile? 2d, Whether, in granting these leases, he had suffered lesion, or had made unfavourable bargains for himself? 3d, Whether the respondent had used any fraud or imposition or undue influence, or other improper means of any kind, in order to procure the leases? And, 4th, Whether, upon the whole circumstances of the case, the appellant had made out *any legal ground* of reduction against all or any of the leases?

The Court, upon again advising the case, pronounced an interlocutor adhering; and ordered the account of expenses to be given in.

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

After hearing counsel, it was

1797.  


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 VISCOUNT  
 ARBUTHNOTT  
 v.  
 GILLIES.

1797.

Ordered and adjudged that the interlocutors be affirmed,  
with £100 costs.

DOUGLAS  
v.  
MURRAY, &c.

For Appellant, *Wm. Grant, John Dickson, Wm. Tait.*

For Respondent, *Sir J. Scott, Wm. Adam, John Clerk.*

WILLIAM DOUGLAS, Esq.,

*Appellant ;*

JOHN MURRAY, ROBERT HENDERSON, and

R. BELL, surviving Trustees of ROBERT

DALRYMPLE, . . . . .

} *Respondents.*

House of Lords, 29th Dec. 1797.

TRUST—FACTOR AND TRUSTEES—POWERS—ACQUIESCENCE FROM  
LAPSE OF TIME—PENALTIES IN AN ADJUDICATION.—Circum-  
stances in which a factor for trustees on a private trust, who was  
also a trustee, was to be presumed as having acted with the con-  
currence of the trustees in abating £499 of penalties, accumulated  
in an adjudication in a debt due to the trust, and which he had  
recovered and discharged ;—and action being raised against the  
appellant, on whose estate the debt was constituted, to make good  
this sum, twenty-five years thereafter, and after the factor had  
been removed and had become insolvent, dismissed, reversing the  
judgment of the Court of Session.

In the ranking and sale of the estate of Darnock, belong-  
ing to the appellant's father, William Henderson became  
the purchaser of the estate.

Robert Dalrymple, W.S., was a large creditor on the  
estate ; and was ranked in the decree of sale for the con-  
tents of his adjudications, amounting, including interest and  
penalties, to the sum of £3965. 16s. 9½d.

Robert Dalrymple, before his death, executed a trust  
disposition in favour of the respondents, John Murray,  
Robert Henderson, and Alexander Orr, W.S. They ac-  
cepted, and entered on the management of the trust ; and,  
with the view of facilitating the recovery of the trust funds,  
they granted a factory in favour of Mr. Orr, one of their  
number, “ with power to him to uplift, ingather, call for,  
“ pursue, discharge, and convey all debts and sums of  
“ money, heritable or moveable, due and owing to the said  
“ deceased Robert Dalrymple, .by bonds, bills, decreets,  
“ accounts, or any other manner of way, specially or gene-  
“ rally assigned to us by the said settlement, with all annual  
“ rents due thereon, and expenses incurred thereanent ; and  
to apply his intromissions therewith under our directions,