

The Case

The Revd Thomas Lloyd Clerk deceased in the year 1741 took three Leases each for three lives from Mrs Susanna Stafford one of the lands of Conigavall at a certain yearly rent and fees, another of the lands of Portaneard at a certain yearly rent and fees and the third of the lands of Tuogh at a certain yearly rent & fees all which are still subsisting.

The said Thomas Lloyd being seized in fee of several lands and being possessor of the lands aforesaid under the title aforesaid and being also possessor of other lands by virtue of several leases for lives & of a large personal estate having several children by his first wife and several children by a second wife by his will dated the 3<sup>rd</sup> of November 1741 (which was some short time after getting the before mentioned three leases) among other things devised all the rest and remainder of his estate whether real or personal of what kind soever not particularly disposed of by the said will to his young children of both marriages to be equally divided amongst them share & share alike subject to the payment of some legacies - See a copy of the will I have read it

The said Thomas Lloyd in the year 1743 agreed with Patrick French Esq<sup>r</sup> for the purchase of a fee farm lease of the said lands of Conigavall Portaneard & Tuogh which was made to the said French by Henry O'Brien Esq<sup>r</sup> and the said French in consequence of such agreement by deed dated the 5<sup>th</sup> of May 1743 conveyed and assigned to the said Lloyd his heirs & assigns all his then & French's right title and interest in & to the said lands of Conigavall Portaneard & Tuogh subject to the yearly rent and receiver's fees reserved thereon

The said Thomas Lloyd by a Codicil at the foot of his will dated the 13<sup>th</sup> of Dec<sup>r</sup> 1744 appointed that Mary his youngest daughter, who was born after executing the said will, should be considered among the number of his younger children & should share alike with them - The Codicil is witnessed by two only I have read a copy of the Codicil

The said Thomas Lloyd died soon after making the said Codicil leaving the Revd Richard Lloyd his eldest son by his first wife and several other children of both marriages.

Be pleased to observe that the word wife and the words cut also either real or seem by the original will of the said Thomas Lloyd to have been interlined after executing the will as no notice is taken of them by the witnesses before the attestation of it the notice is taken of the words Kilscannell and his household linnen which are an interlineation, from whence it is presumed that the words Kilscannell and household linnen were the only words interlined after executing it & that if any other interlineations had been made therein at that time they would have been taken notice of by the witnesses before they signed their names thereto

Quaest<sup>n</sup>. Did the said Thomas Lloyd's interest in the said lands of Conigavall Portaneard and Tuogh under the said fee farm lease, as the same was a purchase made by him after executing his will, & as they were disposed off only by the words all the rest &c of

For the opinion of the Judge  
Wolfe Esq<sup>r</sup>

Case

of my estate either real or (which words as before mentioned and supposed to have been interlined after executing the will) by virtue of the said will vest in the younger children of the Testator or descend to his heir at law?

2<sup>dly</sup> If you apprehend the heir at law is intitled thereto you are requested to give your opinion whether he is intitled thereto subject to the said lease for three lives or whether such lease merged in the purchase of the said Fee farm Grant?

3<sup>dly</sup> Is Mary the youngest daughter of the said Thos<sup>d</sup> Loyd intitled to a share of the real estate by virtue of the said Codicil the same being attested by two witnesses only?

4<sup>thly</sup> Is not y<sup>e</sup> Heir at Law of y<sup>e</sup> Thos<sup>d</sup> of Testator entitled on a bill of interlineations to all y<sup>e</sup> free hold Interests of y<sup>e</sup> Thos<sup>d</sup>?

Note that Thos<sup>d</sup> P. Thos<sup>d</sup> Loyd y<sup>e</sup> Testator had a Fee farm grant of y<sup>e</sup> Lands of Trogle Portnard & Runzavale from Patrick French yet Henry O'Brien who conveyed y<sup>e</sup> Lands and others to Patrick on 7<sup>th</sup> 22<sup>d</sup> 1730 was a tenant in tail & did not suffer a recovery to Secure y<sup>e</sup> Lands to y<sup>e</sup> French & Loyd till April 1745 & y<sup>e</sup> P. Loyd died on y<sup>e</sup> 1<sup>st</sup> day of May 1748 following y<sup>e</sup> recovery is subsequent to y<sup>e</sup> execution of y<sup>e</sup> Loyd's will but prior to his Codicil

If y<sup>e</sup> heir at Law should be entitled to y<sup>e</sup> above Fee farm Grant made by French. say, as near 19 years are elapsed since y<sup>e</sup> death of y<sup>e</sup> Thos<sup>d</sup> Loyd, how y<sup>e</sup> heir at Law is to proceed to get y<sup>e</sup> Opinion of y<sup>e</sup> Fee farm grant

Answer to y<sup>e</sup> first 2<sup>nd</sup>

I apprehend the heir of Thomas Loyd is entitled to the lands purchased by Thos<sup>d</sup> Loyd after the making of his will and y<sup>e</sup> lands so purchased by him will not go to his residuary Legatees under his will: that which is commonly called a Fee farm deed (if properly & duly framed & executed) vests the inheritance of the lands in the grantee and is legally a purchase of the lands: I lay no stress on the supposed defect in y<sup>e</sup> words of y<sup>e</sup> will or on y<sup>e</sup> interlineation

to the second

I apprehend Thos<sup>d</sup> Loyd's accepting a conveyance of y<sup>e</sup> inheritance of y<sup>e</sup> lands whereof he then was a Lessee did amount to a Surrender of the lease and that y<sup>e</sup> same merged in the

Inheritance & that his heir will be entitled to y<sup>e</sup> lands freed from the Leases

to y<sup>e</sup> third

I apprehend Mary is not entitled to a share of the Real estate, but I incline to think a Court of equity will make her a compensation out of y<sup>e</sup> personal estate of her father bequeathed to y<sup>e</sup> residuary Legatees if they insist upon availing themselves of the defect in the attestation of y<sup>e</sup> Codicil

to y<sup>e</sup> fourth

I apprehend y<sup>e</sup> heir of Thos<sup>d</sup> Loyd cannot avail himself by the interlineation unless he is able to prove that it was made without his consent after y<sup>e</sup> execution of y<sup>e</sup> will: the codicil from y<sup>e</sup> words of it seems to me to have been wrote on y<sup>e</sup> same paper with y<sup>e</sup> will, and from thence I imagine it will not be an easy matter to prove that y<sup>e</sup> interlineation was improperly made

to y<sup>e</sup> fifth

the heir at law still has remedy by ejectment altho y<sup>e</sup> length of time adds to y<sup>e</sup> unfavourableness of his case

Thos<sup>d</sup> Wolfe  
17 Decem<sup>r</sup> 1763