

25 June 1729 By Indented Articles made between the Rev. Thomas Lloyd of the first Part & Rowland Bateman & Woleyn Biggs of the second part, & Frances Bateman Spinster of the third part, The said Thomas Lloyd in Consideration of a Marriage to be had between him and the said Frances, And of One Thousand pounds her portion, in Order to secure a Jointure for the said Frances, Who provide for the issue of said Marriage, did Covenant &c. said Rowland Bateman & Woleyn Biggs their Heirs Executors and Assignors, that said Thomas Lloyd or his Heirs should before the Expiration of four years after said Marriage Purchase an Estate in Fee of some Lands Tenements &c. &c. in Ireland, &c. should at the Time of purchasing thereof be worth £100 a year & should settle said Premises to the Use of him the said Tho. Lloyd for life Remainder Subject to a Jointure of £100 a year to said Frances after the Death of said Tho. Lloyd to Trustees for 99 years in Trust to raise by Sale or Mortgage of said Term £1000 for the Daughters or Younger Child or Children of said Marriage, to be paid to the Sons at the Age of 21 years and to the Daughters at 21 years or days of Marriage And in Case of More than One in such Share as the said Thomas Lloyd should by deed or Will And in the Mean time Appointed Trustees names for such Younger Children not exceeding the Interest of their Portion's Term to the first and every other Son of said Tho. in Tail Male

- if particle or here is omitted which is mentioned in original settlement of 1729 -

There is a further Covenant in said Marriage Articles, whereby the Younger Children were to receive £1000 more out of the Estate Effects and Substance the said Thomas Lloyd should die possessed of, in Case said Thomas Lloyd lived seven years after the Solemnization of said Marriage - There is also a Covenant in said Articles that in case said Thomas should die, before the End of four years before said purchase should happen to be made that said Frances & her Issue should receive Out of the Estate & Effects which said Thomas should die possessed of as much as the other Issue were thereby to receive out of the Estate, agreed to be purchased

26 June 1729. Said Thomas Lloyd executed a Bond to Warrant of Attorney to said Bateman & Biggs of the Penalty of £10,000 Conditioned to perform said Marriage Articles, on which Judgment was soon after entered

The said Thomas Lloyd soon after he married purchased the Lands of Castle Town Roach, Newmannan & Dartsreagh from George Widenham for which he paid £1340 in Money & gave a Rent Charge of £100 a year on said Lands during the life of said Geo. Widenham as part of the Consideration & for payment of said Rent Charge passed Bonds, in which Bonds Charles Smyth Esq. joined & pledged the Deeds of Conveyance of said Lands with said Chas. Smyth as Security for the Payment of said Annuity

Newmannan sett for lives renewable by Geo. Widenham, all of rest sett by John Lloyd & Tho. Lloyd who accepted of it & lived at 170 lbs, sold 100 lbs at 2000 & lived to the age of 85 & recovered for it before he died

The Lands of Castle Town Roach, Newmannan & Dartsreagh were worth little more than £100 a year when they were purchased and Newmannan was sold in fee farm by George Widenham before he sold to said Tho. Lloyd

Said Thomas Lloyd left 7 Sons to wit the Rev. Bish Lloyd William and John Lloyd the issue of his first wife living at the time of his Death and left Issue by his second wife three Sons, Rowland, John Arthur & Tho. and Daughters, Towill, Jane Frances & Mary

8 November 1741 - Said Tho. Lloyd made his Will and thereby bequeathed that the Settlement made on his Marriage with his first wife should be fulfilled, and that the Settlement made on his Marriage with his second wife should be also duly fulfilled, And Divided,

A copy of the original settlement of the above mentioned marriage

That his Estate in Castlebar Beach & Parkreegh be deemed part of his Estate which he was obliged to purchase and thereby devised that his Farms of Monananny in the County of Cork & his Farms of Clonsines and Hillscafell in the County of Linn be vested in the Trustees in his Second Settlement until such time as said Second Settlement be fully performed, and they or any of them do by sale of said Farms, or by the Profits thereof purchase an Estate in Fee to Complate the £300 a Year therein mentioned. And when said Estate was purchased he charged the said Farms with £300 as a provision for his young Children.

Said Thomas Lloyd also devised that all the rest and residue of his Estate whether real or personal should be equally divided between the younger Children of both Marriages.

Said Thomas Lloyd was at the Time of making said Will possessor of Tuogh Connegavale & Portenard & Barriagragill Farms worth about 200 a year by virtue of Leases for three Lives, but after making his Will he changed said Leases for Lives into Fee farm Leases, and that being deemed a revocation of his Will. The said Rich^d Lloyd the eldest son of said Thomas Lloyd by his first wife brought an Ejectment for Portenard and Barriagragill and recovered those Farms as his at Law of his Father.

Said Thom Lloyd has purchased said Estate of £300 a year pursuant to his Settlement save as aforesaid.

If said Thom Lloyd had purchased an Estate in Fee within four years after his Second Marriage worth £300 a year at the Time of purchasing it pursuant to the Covenant in his Marriage Articles that Estate by the great Rise of Lands in Ireland would be now worth probably 600 a year or more. Said fee farms of Tuogh Connegavale and Portenard & Barriagragill which were purchased or got by Tho Lloyd after he made his Will are now worth near three times what they were worth when Tho the Father got the fee farm Leases of them. And if Tho the son came either at Law or in Equity come at them fee farms at the Value they were at, at the time of purchasing them as part of the £300 a year which Tho the Father was obliged to purchase, it will make Amends for his Father's not making that purchase.

Quare - Cannot Tho Lloyd the Only Son of the Rev Lloyd by said Frances come at, in what manner, the said Lands of Tuogh Portenard & Connegavale & Barriagragill as part of the said £300 a year w^{ch} his Father was obliged by Articles to purchase and if so will Tho be obliged to allow any more for said Lands out of the £300 a year than the Lands were worth when his Father took the Fee farm Leases thereof. And if Tho cannot come at those fee farms will a Court of Law or Equity make him what Amends out of the Assets of his Father or on the foot of the Judgment for £10,000 for the loss he sustained by his Father's not purchasing the said £300 a year within four years after the Marriage?

Opinion

I am of Opinion that Tho the Only Son of the Second Marriage is entitled to the Lands of £300 pounds p^a annum under the Marriage Articles of his Father and Mother Subject to a Charge of £2000 for the Benefit of the Daughters, on the event which happened of the Father's Surviving seven years after his Marriage.

I am also of Opinion that the fee farm grants bought by the Father subsequent to his Will being grants of Freehold Lands in Fee Simple, out of which a perpetual rent issues in fee farm, are Grants or Conveyances of Lands which a Court of Equity will consider as a performance of this Covenant. The Lands must be taken in strictness as bought at the Expiration of four years at which Time the Covenant was broke in Law.

It is favourable to the personal & real representatives of the Testator, to take the value of the Freeholds as things stood at the purchase; And I think that the gradual Rise and Improvement of the Lands purchased must accrue to the Heir Male under the Articles, so as to entitle him to the profits of the Lands according to the improved extended Rents at the Death of the Father.

If this Opinion could admit of a Doubt still I think that the Assets of the Father, the Covenantor and Testator, would be liable to make good a Satisfaction or Damages under the Articles for his Breach of Covenant, in not purchasing within the Time prescribed after his Marriage.

But the Lands purchased will in my Opinion be taken as a performance of the Covenant in the Intention of the Father.

The Doctrine in the Case of Lechmore v. Lechmore V. 3. P. Wms. And Case in Temp. Lord Talbot is material for this Question. V. 2. Vern. 97. Cooke & Hastings Case in Equity. 2. lib. P. 27.

January the 19th 1765. Signed - C. Yorke

Can Tho the son of Tho & Frances at if worst be entitled to any more than if P. £10000, being if penalty specified, for nonperformance of covenants, And as if his elder bro^r accepted of P. Lands so purchased at 17000 & suffered a recovery for them, can P. Tho be entitled to more than a proportion of P. £10000 to make good if Deficiency; & if entitled to this, will not if personal fortune be first liable & particularly if part of it specified in P. Tho's Elder's Will as there is a large residue after making good both marriage Settlements?

There no notice taken of this Article.

very expensive & valuable improvements were made by if heir at Law on these Lands.

A Case

Henry O'Brien deceased being seized of the lands of Farnane and several other lands in the Counties of Limerick and Tipperary granted the same in Fee farm to the French Esq. at £100. per ann and the said Patrick French being seized of the said lands by a minister instrument in writing purporting to be an agreement for a lease granted the said Denomination of Farnane in Fee Farm to Roger Moore who held under the said instrument till his death which happened in the year 1740 - The said article was never registered

Upon the death of the said Roger Moore the said Lands of Farnane descended to William Moore his eldest son and heiral law

The said Patrick French died some years ago leaving Henry French his eldest son and heir to whom the said William Moore applied for a specific Execution of the said instrument which being refused the said William Moore instituted a suit to enforce a specific Execution thereof and the said Henry French thereupon put in an answer and swore that he believed the said instrument was not executed by his Father but that the same was forged and therefore refused specifically to execute the same

During the said suit the atty employed by the said William Moore died & his Papers being in great confusion the said article from French to Moore was lost or mislaid and never since found

The said Henry French sold and conveyed to John Damer Esq his interest under the said deed or fee farm grant executed by the said Henry O'Brien to his father Patrick French and in some time after an Ejectment was brought by Donatus O'Brien Esq to evict the title of the said John Damer in the said lands to which ejectment the said John Damer took defence filed a bill in the Court of Chancery and after several proceedings the case deserted the said suit and suffered the said Donatus O'Brien to enter judgment on the said Ejectment and to take the possession of the said lands of Farnane. NB. by reason of the fatality in losing the said article the said William Moore could not make a Joinder either at law or in equity to the said Ejectment and therefore depended on the defence taken by Mr Damer

In the year 1753 prior to the serving O'Brien's ejectment, the said Mr Moore entered into an agreement with Thomas Lloyd for a fee farm grant of the said lands of Farnane at 20^p per ann and £100 fine, but the said Lloyd, suspecting that the title of Moore would be defeated, insisted that if he lost the land he should be repaid his Fine whereupon the said Mr Moore agreed to secure the repayment thereof on such contingency and prevailed on Mr Southwell Moore (his uncle) to join him in a bond for that purpose; and accordingly they the said William and Southwell Moore executed their joint and several bond and warrant to the said Thomas Lloyd dated 27th April 1759 of the penalty of £300 - conditioned that the said £100 (the fine) should be repaid but without interest in case the title of the said Thomas Lloyd should be defeated

Moore

for the opinion of the Court of
John Damer Esq

1753. 8. 3. 1754

The latter referred to in the
Ejectment and opinion are not
now with, and Mr Damer is
requested to provide them and give
such directions as he thinks proper
of which the 17th 18th 19th 20th 21st 22nd 23rd 24th 25th 26th 27th 28th 29th 30th 31st 1st 2nd 3rd 4th 5th 6th 7th 8th 9th 10th 11th 12th 13th 14th 15th 16th 17th 18th 19th 20th 21st 22nd 23rd 24th 25th 26th 27th 28th 29th 30th 31st 1st 2nd 3rd 4th 5th 6th 7th 8th 9th 10th 11th 12th 13th 14th 15th 16th 17th 18th 19th 20th 21st 22nd 23rd 24th 25th 26th 27th 28th 29th 30th 31st 1st 2nd 3rd 4th 5th 6th 7th 8th 9th 10th 11th 12th 13th 14th 15th 16th 17th 18th 19th 20th 21st 22nd 23rd 24th 25th 26th 27th 28th 29th 30th 31st 1st 2nd 3rd 4th 5th 6th 7th 8th 9th 10th 11th 12th 13th 14th 15th 16th 17th 18th 19th 20th 21st 22nd 23rd 24th 25th 26th 27th 28th 29th 30th 31st 1st 2nd 3rd 4th 5th 6th 7th 8th 9th 10th 11th 12th 13th 14th 15th 16th 17th 18th 19th 20th 21st 22nd 23rd 24th 25th 26th 27th 28th 29th 30th 31st 1st 2nd 3rd 4th 5th 6th 7th 8th 9th 10th 11th 12th 13th 14th 15th 16th 17th 18th 19th 20th 21st 22nd 23rd 24th 25th 26th 27th 28th 29th 30th 31st 1st 2nd 3rd 4th 5th 6th 7th 8th 9th 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The said Thomas Loyd owed the said William Moore an arrear of rent out of the said lands of Farnham amounting to £200 and upwards at the time of the said Donaldus O'Brien bringing the said Exemption and after he was served with the said Exemption he was turned out of possession of the said lands by the Sheriff which was in March 1764 never paid any sum whatsoever on account of the said arrears or of the growing rent and still detains the same in his hands.

The said William Moore was also seized of the lands of Ballahane in the County of Duff under a purchase made by his Father from Samuel Hoare Esq but the whole of the purchase money not having been paid the deeds of conveyance were never completed and the said William Moore having neglected to pay off what remained due of the purchase money an Exemption was brought on the title to recover the possession of the said lands to which no defence was taken by Moore and he was on 10th April 1758 turned out of the possession by the Sheriff.

In 1756 previous to the bringing the said last Exemption the said William Moore by Indenture of lease demised to the said Thomas Loyd the said lands of Ballahane for three lives renewable for ever commencing 1st May 1756 at £20 per annum out of which lands the said Thomas Loyd owed an arrear of upwards of £50 to the said William Moore at the time the said Exemption was brought no part of which has been ever since paid.

On the 11th of April 1758 the day after the said Samuel Hoare was put into possession of the said lands of Ballahane by the Sheriff he demised the said lands to David Bradshaw in trust for the said Thomas Loyd for the term of years renewable for ever at 20th per annum which was the rent reserved upon the lease from Moore to Loyd.

The said William Moore is in low and distressed circumstances and the said Thomas Loyd threatens to enter Judgment and issue Execution against the said Southwell Moore on the said bond for £300 and refuses to give any account of the arrears due from him as afore said and to deduct the 100th for payment whereof without interest the said bond was passed out of the said arrears but insists that he has a good right to detain the said arrears to make him a compensation for improvements he ^{alleges} made on the said lands of Farnham and for Damages he pretends he sustained by maintaining a possession against one Francis Smith for 10th Damages he has been already amply satisfied by Francis Smith. — N^B The said William Moore will consent that Loyd shall retain 100th out of the said arrears in discharge of the before mentioned bond.

The said Southwell Moore filed a bill and obtained an injunction against Loyd which is not yet dissolved, to which bill Loyd put in an answer, the bill and answer are laid before you. Quod — Is not the said William Moore under the circumstances of this case entitled to recover from the said Thomas Loyd all rent and arrears which are due to him out of the said lands at the time of the execution of the lease thereof especially the rent of Farnham as the said Thomas Loyd antecedent to the taking the lease thereof had often heard and suspected that the same would be disputed and was in danger, if so ought not the said Thomas Loyd to deduct the contents of the said bond out of the said arrears if not resort to the said Southwell Moore unless upon a fair account there shall appear a deficiency in that fund to discharge it. Your advice & directions for the conduct of the said Southwell Moore are requested.

It is not stated what the Court are in Mr Moore's case to that Lord: If by those Court Mr Moore is answerable to Loyd for the loss of the lease, Loyd can't be compelled to account for y^e arrears of rent without a compensation first made to him for y^e Value of y^e lease: If there are no Court in the case that may compel Moore to make this compensation, the next thing to be considered is, whether O'Brien & Hoare may compel Loyd to act for the profits, for y^e time y^t he held the possession: The Court can't determine that last question without bringing O'Brien & Hoare before them: But before that step is taken I would advise Mr Moore to amend his Bill and to state by the amendment that Mr Moore is Court in the lease to Loyd intended to his own use only, y^t O'Brien & Hoare if Loyd had taken proper steps to defend his lease, could not have prevailed against him that O'Brien & Hoare are so sensible of this y^t neither O'Brien nor Hoare ~~is~~ ^{are} any claim to Loyd for y^e profits of y^e Lord will know y^t neither of them intend to make any such claim & to call upon Loyd particularly to state how much he owes of the rent he paid respectively by the lease or how much of those rents was unpaid at y^e times when O'Brien & Hoare respectively being him out of possession & so to interrogate to that & to y^e Court in the case y^t he may not waste these charges: 'Tis possible y^t Mr Moore on the coming in of an answer to this amended Bill may raise on Judge till hearing: but he may hope for better or not I can't judge till these facts are ascertained: If he obtains an Injunction or debate things may be compromised to hear the cause finally (which can't be done without making O'Brien & Hoare parties) may be a very dangerous experiment to make unless they shall by their answer shew all demands to Loyd for y^e profits.