

A Case

1729. The Reverend Tho. Lloyd by Articles of Intermariage of this date with his 2^d Wife Frances Bateman covenanted, That at or before the expiration of four years he would purchase an Estate in fee Simple to fulfill the particular Uses prescribed by said Marriage Articles which should be at the time of purchasing, of the clear annual Value of £300, But if the P. Thomas sh^d die before the expiration of said 4 years, or before such Estate should be purchased That then the S. Frances and her Issue by P. Tho. sh^d have receive & be intitled to out of the Estates, Effects and Substances which the S. Tho. sh^d die possessed of or be intitled to, so much yearly Income as the S. Frances and her Issue are thereby agreed and intended to have & receive out of the S. Estate so to be purchased as afores^d. until such purchase sh^d be made, and such Estate so purchased be granted & settled according to the true Intent and meaning of the S. Articles. — See Copy Articles

Note. A Bond & Warrant for the principal Sum of £10,000 bearing equal date with said Articles was executed by said Tho. for the performance of the Contents of the S. Articles.

The said Thomas in the year 1734³⁵ subsequent to 1729 purchased an Estate in fee of the Lands of Castle town Roche and Parkneagh of the clear annual Value of £170

1741. The said Tho. obtained a Lease for 3 lives only of the Lands of Tuogh, Portinard and Connagavall at the yearly rent of £300

1741. In this year, but subsequent to the obtaining the Lease of s^d last ment^d Lands, the said Tho. duly executed his Will, by which he directed that his Marriage Settlements on his first & Second Marriages should be fulfilled & executed, and that s^d Estates of Castle town Roche and Parkneagh should be deemed as part of the Estate he covenanted to purchase as afores^d, And by his said Will vested the Farms of Monaninny, Clounshire and Kilsannel, which he held by Leases for long Terms for years still to run and unexpired in the Trustees of s^d Articles of 1729 To the intent, That they should out of the profits arising out of said Farms or by Sale thereof fulfill said Articles, and directed his Debts and legacies should be paid, And devised the Rest Residue & Remainder of his Estate real & personal to his younger Children of both Marriages, and appointed P. Frances his Wife Testamentary Guardian to his & her eldest Son John, and appointed Cha^s Smyth Esq^r & Rowland Bateman Esq^r S. Frances's Brother and one of the Trustees in the said Articles of 1729 his Executors. —

1743. The said Tho. Lloyd obtained a Fee Farm Grant of said Lands of Tuogh, Portinard and Connagavall at the same rent payable by the Lease for 3 lives aforesaid and the Conf^{rm}. of his Fee Farm Grant was 5 shill^l. only.

1744. The said Thomas added a Codicil to his said Will attested by two witnesses only, thereby reciting, That he had a Daughter born to him since the Execution of his s^d Will, and directing, that she should be considered as one of his younger Daughters & share equally with them & appointed Wm Lloyd one of his Sons of his first Marriage one of his Executors See Copy Will and Codicil. —

1745. The S. Tho. Lloyd died and the S. Rowland Bateman (one of the Trustees in the Articles of 1729 one of the Executors appointed by s^d Will and Brother to the S. Frances Bateman) and the said Wm Lloyd (Smith having renounced) took upon them the Burthen of s^d Will, and possessed themselves of the Testator's real and personal fortune except the part thereof settled on his Issue of the first Marriage, who were then of age.

X The said Lands of ~~Monaninny~~ Clounshire & Kilsannel (being by the Will of the s^d Testator set apart to fulfill and make good the s^d Articles of 1729 and to complete the Purchase of the £300 a year agreed to be purchased) vested for the purposes aforesaid in the S. Rowland Bateman the Surviving Trustee in the said Articles, who possessed himself of them & received the Rents

Wm Lloyd
March 16th 1765

54⁵
The said Thomas
died before the expiration
of 4 years

Rents, yet the said Baleman & W. Lloyd the acting Exors of the said Tho. (as Exors) made Leases of the said Lands, And the said acting Exors made two separate Leases of the Lands of Tuogh and Connagavall to the Rev. Richard Lloyd the eldest Son of the P. Tho. by his first Wife for 3 Lives, upon which very considerable Improvements have been made, and large Sums of Money expended, which have greatly increased the Value of the said Lands. And the said Exors made another Lease of the Lands of Portinard to another person, by which three last ment. Leases, a profit Rent of £134:10^s Ann was reserved.

The said Frances the Widow of the P. Tho. and Testamentary Guard. to her eldest son John, and to him only, always thought her S. Son intitled to no more than £300^s Ann under the P. Article of 1729 and in consequence thereof received from the P. Rowl. Baleman so much as with the Tents of Castletown Roche and Parkneagh completed £300^s Ann. And the said Rowland Baleman (the Bro. of the P. Frances & Uncle of the P. John, and who agreed with the P. Tho. Lloyd for the Terms in the said Articles & was a Trustee therein and one of the said Tho. Exors) understood the said Articles in like manner, and made up to the said Frances for John her Ward only so much as with Castletown Roche and Parkneagh completed £300^s Ann, this both P. Frances & Rowland lived several Years after the death of the said Thomas and after the Rise on Lands. And tis to be presumed that the Lands of Tuogh Portinard & Connagavall were never intended by the Testator or considered by the P. Rowland or Frances to be part of the £300^s a year agreed to be purchased, nor were they ever claimed as such by them or any of the Sons of the said Tho. by the said Frances until the P. Rich. Lloyd the Eldest Son of the said Tho. by his first Wife lately professed himself of them by virtue of a Habere, and the presumption is still stronger as the said Frances who was Testamentary Guardian to her said Son would have a Right to set said Lands, if her said Son had been intitled to them, never interfered in selling them.

John Lloyd the Eldest Son of the P. second Marriage, after he came to the Age of 21 Years accepted of the Lands of Castletown Roche and Parkneagh at £170^s Ann, suffered a Recovery of said Lands and sold part thereof, amounting to £100^s Ann for £2,800. And from the time of his coming of Age till his death, which happened in Apr 5 Years after received from the Exors of his said Father the Rem. of £300^s Ann.

After the said John's death (intestate) Arthur Lloyd his second Brother became intitled to the Remainder unsold of the purchased Estate, and to the unpurchased part, who also died intestate, upon whose death Tho. Lloyd his third Brother became intitled.

That added to the reasons aforesaid for not accepting of the Lands of Tuogh Portinard and Connagavall in Lieu of the Remainder of the Estate to be purchased as aforesaid.

A Suit was threatened & accordingly instituted to evict the Title acquired by the said Thomas the Testator in the said Lands of Tuogh, Portinard & Connagavall which is still depending.

The said Richard Lloyd the eldest Son of the P. Thomas by his first Marriage and his Heir at Law being since the year 1745 totally unacquainted with his P. Father's Family Affairs and ignorant of the dates and Import of his Deeds & Writings till the Month of November 1763, and having then got a Copy of his Father's Will and of S. Fee Farm Grant, and having occasion to be informed about some Particulars relative to his own Affairs, was by a Gent of the Bar advised, That he had as heir at Law to his P. Father, a Right to P. Lands of Tuogh, Portinard and Connagavall, said Fee Farm Grant being acquired subsequent to the Execution of the said Will.

Note — The said Richard Lloyd was ignorant of any Title had to Lands of Tuogh, Portinard & Connagavall at the time he took the Leases thereof from the Exors of his Father as aforesaid.

P67/16(2)

Aug. 20. 1865.

That notwithstanding said Lands of Monanirvey, Clounshire & Kildocannel
H Still undisposed of, are worth a great deal more than would purchase £130 p Ann^d
in fee Simple, and that there are, a great many other Lease hold Interests, exclusive of
Tuogh, Portinard & Connagavale, yet said Thomas says he is advised & does insist
That he has a Right to the said Lands of Tuogh, Portinard & Connagavale, being
held under a fee Farm Grant, to fulfill the Articles of 1729, the same being acquired
Subsequent to said Articles and to said Will, tho' said Lands are now worth a clear yearly
profit Rent of £600 chiefly owing to lasting & valuable Improvements made on them
and to the great Rise on Lands since 1746. —

Be pleaded to observe, That the P. Thomas the Elder from the year 1743 the time of his obtaining said Fee-Farm Grant till his death in 1745 had full time to convey said Lands if he thought proper, or if they would be accepted from him by the Trustees of said Articles, during which time he was greatly imbarra's'd on acc^t of the Judgm^t obtained against him for said £10,000

1. st Quere. — As there is this Clause in the Articles of 1729 — viz^t. — "In case the said Thomas shall happen to die before the expiration of said four years, or before the
" Estate hereby agreed to be purchased shall be purchased, That then the said Frances
" and her Issue by said Tho^s. shall have receive and be intitled unto out of the Estate Effects
" and Substance, which the said Thomas shall die possessed of or intitled unto so much
" yearly Income as the said Frances and her Issue are hereby agreed and intended to have and
" receive out of the said Estate so to be purchased as afores^d. until such Purchase shall be made
" and such Estate so purchased, be granted conveyed and settled according to the true Intent &
" meaning of these Presents" — Is Thomas the Surviving Son intitled to any more than £300
a year now, or is he intitled to any and what Compensation on Acct^t of the great Rise of Lands
in Ireland since the expiration of said 4 years after his Father's Marriage. — Please
to observe that the Father within said 4 years might have purchased an Estate in fee of £300
^{for the} Uses of the Articles of 1729, which at the time of purchasing might have been set by the
Seller by Leases for Lives renewable for ever.

Seller by Leases for Lives renewable for ever.
 This case is much more fully & distinctly stated than before... my former
 opinion was grounded on the strong presumption in Equity, that the purchase of
 Frogg &c in 1743, being subsequent to the will as well as settlement would be
 taken as an intended performance of the Covenant 1729; and that the long
 neglect of purchasing, after the term of 9 years expired, was a real prejudice to the
 issue, by reason of the subsequent rise of value in the lands of Ireland; which
 ought also to weigh. That, on reconsidering this case, I think, that
 the Testator having provided an express fund by will for the performance of this
 Covenant, that Domin will repel any equitable presumption of intent, that the
 subsequent purchase were designed for this special purpose. And this circumstance
 distinguishes the present from former cases of this sort. As to the damage
 to the issue, by the long delay of purchasing, I think, a Lord of Equity might (if a special
 case could be made for it) direct an issue of quantum damages, or that a Master sh^d. inquire, and
 consider the subsequent rise or diminution of the value of the land of 1729 as a security to answer the value.
 But

But, it is a matter of difficult & uncertain calculation; and in this case
the length of time since the death of the testator in the article of 1729, and the acquiescence of the family in the article for 20 years, will induce a presumption of acquiescence to discontinue such a demand, & preclude the demand of it.
2^d Quod. The circumstances as this case is, has the S. Thos. Lloyd in his Option

to take said Lands of Tuogh, Portinard and Connagavall in prejudice to an heir at Law to fulfill the Articles of 1729, tho' an Estate of £130 a year only remains unpurchased and the said Lands of Monanirvy Clounshive and Kilscannell exclusive of sev. other Leasehold Interests and exclusive of said Lands of Tuogh Portinard & Connagavall are worth, if to be sold, a considerable Sum more than would purchase the S. £130 a year to fulfill the Articles aforesaid. and the the Codicil with respect to the personal fortune republishes the Will.

The acceptance of the land at Castleton, and the acts done in the family since the death of the testator together with the sufficiency of the fund provided by the Will, which fund is captured by the Codicil, at the fund intended by the testator to be applied in performance of his

Covenant, are decisive in this case in favor of Thos. Lloyd. 3^d Quod. The said Thos. Lloyd is entitled to said Lands of Tuogh Portinard and Connagavall, Will he be obliged to pay for Improvements, there being very expensive and lasting Improvements made on said premises by the Heir at Law? (as in the last entry.)

This Question is in material, after what has been said under the two former Questions.

These improvements, after a long and careful consideration of the family transactions stated in this case, the Heir at Law and Thos. Lloyd. 4th Quod. Is not the Covenant in the Articles of 1729 so far satisfied by the S. John's

Acceptance of Castleton Roche and Parkineagh at £170 off Ann. And is not the said Thos. his Brother bound thereby, the said John having suffered a Recovery of the said Lands and the said Thomas possessing them as Heir at Law to Arthur, who was the Heir at Law of the S. John?

Note, That there was no Writing executed expressing S. John's acceptance of Lands at £170 off Ann.

This Query is already answered by what has been said.

5th Quod. If Thomas the Younger shall be decreed entitled to said Lands of Tuogh, Portinard and Connagavall under said Articles of 1729, Are the Lands vested by S. Thomas the Father's Will in the Trustees in S. Articles named, to make good S. Articles disposed of by the said Will? And if not, is not the said Richard entitled to Reprizals out of said Lands? (Vide Case - Tooke ag. Hastings - 2 Vern. 97. and Theatfield ag. Theatfield. Talb. Eq. Case 176.) And if entitled to Reprizals out of said Lands, & that it shall appear they are not now fully suff. for the purpose on Anst. of £600 off Ann. which the said Richard will lose by such Decree, Will not the said Rowland Baleman the Surviving Trustee or his Exors (he being now dead) be accountable to the S. Richard for so much of the Profits of said Lands as he did not apply to the Uses and purposes in the Will directed? And should not something be done by the S. Richard to get said Lands out of the possession of Wm. Lloyd the Surviving acting Exor of the S. Thomas, who by mistake possessed himself of them as the surviving Exor, or to secure the future profits of them for the purposes aforesaid?

Supposing that a Decree was pronounced in favor of Thomas, it is not clear that Thomas could take the benefit of the funds of the Will; but this Question is immaterial, after the answers given to the two first Queries.

6th Quod. Should not the S. Farms of Monanirvy, Clounshive and Kilscannell, being Leases for years and vested by Will in Trustees for the purchase of an Estate in fee, and for that purpose only be considered in Equity as an Estate in fee, and if not accepted of by the Heir under the Covenant in S. Articles of 1729 to fulfill the said Covenant, go to the Heir at Law not being otherwise disposed of. (Vide Doctrine in the Case - Lechmere ag. Lechmere - Talb. Eq. Case 91. where it is said, That wherever a Man's Design appears to turn his personal Fortune into Land, this gives his Heir an Advantage, which this Court will never take from him.)

This Question is also immaterial. Upon the whole, having reviewed my former opinion, with the new facts & circumstances stated to me, I have changed it; and think, that the fund provided by the testator's Will to make good the Articles of 1729 is the proper fund for the performance of them. The personal assets must be resorted to, if that fund is deficient. The land of Tuogh &c will be liable in equity, if the