

On the Intermarriage of the Rev^d Thomas Loyd, with his first wife he entered into a settlement, whereby he made certain provisions as therein mentioned for his wife and children but such settlement, not having been given to the Agent employed to state this case he cannot set forth the Import of it in the manner he otherwise would do. —

By the said first Venter the said Thomas Loyd had Issue three sons, Richard his eldest, and William and Edward his younger sons his only children. —

The said Thomas Loyd survived his first wife and having such children by her as before mentioned entered into a second settlement previous to his Intermarriage with his second wife, whereby he also made provisions for his said second wife, and such children as he should have by her, but the Agent was also unacquainted with the Import of that settlement further than what he has herein stated relative thereto. —

By the said second Venter the said Thomas Loyd had also issue two sons who are since dead, and a third son named Thomas, who is the only surviving issue male of that marriage and three Daughters namely, Jane since married to Daniel Webb Esq and Frances and Mary Loyd now unmarried, but of Age. —

The said Rev^d Thomas Loyd having such Issue by both Wives, and being seized of a considerable real and freehold Estates and Possessed of a very large personal fortune, executed his last will, on the 8th day of Novem^r 1746, whereby he desired and willed that his settlement on his Intermarriage with his first wife should be duly fulfilled and that the sum of £700 which he had a right to charge on his Estate, which had been limited and settled by his said first settlement should be a charge thereon and that such sum should, after his death be received thereout, and paid share and share alike to his younger sons of his said first marriage namely, between his sons W^m and Edw^d Loyd. —

The Testator also by his said will desired that the settlement he had entered into on his second marriage should be duly fulfilled and performed and he willed that his Estate in Castle town Roache, should be deemed as part of the Estate in fee

free, which by his said second settlement he was obliged to purchase and that his other Estate called Parknagh whereof he was seized in free should also be deemed part of the free simple Estate which he was obliged to purchase, and the Testator willed that his Farms of Monaminy, Clonsheer, and Inilseannell should be immediately after his death vested in the Trustees named in the said second settlement, untill such time as his said settlement should be fully performed and he Impowered his said Trustees or any of them either by sale of said Farms or by the Profits thereof to Purchase an Estate in free to compleat the £300 a year ment in said second settlement and he charged such Lands as should be so purchased with £1000 as a provision for his younger Children of his second marriage and with an annual sum of £150 for his second wife during her life but she is also long since dead.

The Testator also willed that after all his Just debts should be paid out of the rest and residue of his fortune the rest and remainder of his Estate whether real or personal of what kind or nature soever, should be divided in equal Proportions share and share alike amongst his younger Children of both marriages subject to the legacies ment in his will.

And of his said will the Testator appointed Charles Smyth and Rowland Bateman Esqrs Exors and appointed his second wife Guardian to his son John and the Testator recommended it to his said Exors to employ Mr Laurence M'Nemara in transacting the affairs of his said Children but added these words to such direction and on condition that he behaves well therein for his trouble I desire he may stand cent free in his holdings now from me in the Liberties of Philmallock.

1744 Decem^r 13th — On the 13th day of Decem^r 1744 the said Thomas Loyd added a Codicil to his said will reciting that his Dam Mary was born since the Execution of his will and then directed and appointed that she should be considered in the number of his younger Dams and share alike with them and that in preference of all Legacies his legal debts should be paid and the Testator by his said Codicil nominated and added his said son William Loyd as one of his Exors.

A true copy of the Will & Codicil.

The

The said Thomas Loyd died soon after the Execution of the said Codicil leaving such wife and Children as are herein before ment and seized and possessed of a very considerable Estate and fortune much more than sufficient to satisfy all the Provisions made by both his said settlements for his Children and to Discharge all his debts and Legacies for his Personal fortune alone; it is supposed was more than sufficient or at least equal to answer the several Purposes of both settlements; which the Testator on entring into them engaged to perform, and also to satisfy and pay the debts and legacies and it is imagined that the persons who undertook the Execution of the will applied the personal fortune to those purposes and that the rents and profits of the freehold Interests which were considerable or a great part of them were misapplied as herein after more particularly stated.

The said Charles Smyth having renounced the said Exorship the said Rowland Bateman and Mr Loyd proved the said will & Codicil and took upon them the Burthen of the Exor thereof but Mr Loyd now alleges that the said Rowland Bateman untill the time of his death which happened in the year 1752 was the Principal acting Exor and that Mr Loyd did not further or otherwise Interfere than in assisting to set the Lands which belonged to the Testator and in securing the Debts due to him at his death however it is submitted whether Mr Loyd be not accountable from the beginning in as much as he joined in Proving the Will, and of his own admission acted in part and after Mr Batemans death took upon him the sole management of his Testators affairs.

According to the direction in the Testators will his Exors employed the said Laurence M'Nemara as Agent and Receiver of the rents of the Testators Estates and Lands and either by having too great Confidence in him or by neglecting to oblige him to account for his receipts and payments half yearly, or Annually as ought to have been done Mr M'Nemara was suffered to apply to his own use very large sums of the money he had so collected In so much that in the year 1757 when he was called upon to account at the desire of the younger Children, a very considerable balance was found to be due of him but Mr William Loyd who of his own admission took upon him the sole management of the Testators property after the death of Mr Bateman the other Exor in 1752 would have it understood that

On Mr. Nemara's accounting in 1757 he alledged that if the several Vouchers delivered up by him to Mr. Bateman in his life time for payments and disbursements made by him were to be produced no balance would appear due of him but on the other hand the younger children are well informed that Mr. Bateman always asked and gave regular receipts and acknowledgements to Mr. Nemara for all such vouchers as he delivered up to him and as Mr. Bateman was a gentleman of character and considerable property it is not to be supposed that Mr. Nemara's allegations were true and if they were he might easily compell him or his representatives to justice.

Notwithstanding that Mr. Nemara was found considerably in Debt on accounting in the year 1757, as before stated yet Mr. Lloyd the surviving son suffered him to continue in the Agency untill the latter end of the year 1760, when, as Mr. Lloyd acknowledged on stating accounts with him for all the rents he had received and including the 25th day of March & 1st of May 1760, and such other sums as came to his hands a balance of upwards of £2300 appeared to be due of him and Mr. Nemara having proved insolvent Mr. Lloyd the Surviving Executor has returned that sum as a loss to the family but in his Justification alleges that Mr. Nemara reced upwards of £10000 out of lands belonging to the Testator which had been partially vested in Trustees for the purposes of making good and performing the Testator's second settlement and also out of freeholds over which Mr. Lloyd the Exor would have it understood that he had no Power whatsoever under the Will of his Testator and from thence would infer that he had no right to oblige Mr. Nemara to account and besides the Executor represents that he believes the Balance due of Mr. Nemara is on account of his receipts of the rents of the said trust lands and freeholds and therefore that he is not chargeable with any part of said Balance but it is submitted by the rest of the children whether such last mentioned representation ought not to be supported by due Proof of the facts in which there cannot be any difficulty as it must appear by the accounts so settled with Mr. Nemara upon what footing he became indebted or in arrears as the Agent and besides it is maintained on the part of the younger children that the recommendation of the Testator to have Mr. Nemara employed was conditional only in case he behaved well and that Mr. Lloyd the Surviving Exor should have compell

him to account at least once a year and ought to have removed him from the trust as soon as he found him misbehave therein.

In the Year 1760 the Surviving Exor thought it proper to remove Mr. Nemara from the Agency and thereon became Receiver of all the rents and sole manager of all his Testator's property and he represents that he had very great trouble as well in collecting the Income as in paying the rents out of the Testator's several farms, which Farms he alledged he did not sell according to the Power given by the Testator considering it to be of more advantage to the family to preserve them and to apply the profits for the Purposes in will but with respect to the Exor's extraordinary trouble, the younger children say that all the farms lay in the County of Down where the Exor resided except one farm situate in the County of Cork and that he was to have equal benefit with them in the savings of the fortune as one of the younger children of his and their father.

All the Testator's children have been for some time past of full age and being therefore entitled to call on Mr. Lloyd to enter upon a general settlement with them he accordingly furnished the accounts herewith laid before you wherein he has charged the younger children with the several sums which from time to time they respectively reced and also with Interest on such payments from the time they were severally made to the first day of May 1772 and such balances were struck and found divided between the younger children as appears by such accounts but nevertheless the accounts are still open and unsettled but on such return by Mr. Lloyd the Executor a Balance of £2068.2.5 was admitted to be due of him at May 1767 and a further balance of £628.17.10¹/₂ at May 1772, and Mr. Lloyd seems ready to pay them said sums but alleges that on account of his trouble loss of time & expences in the said Exorship he ought not to be charged with Intst for such Balances and the more so in regard that as he represents it he saved the family the expence of an Agent since the year 1760 but on the other hand such of the family as he is to account with maintain that Mr. Lloyd as one of the younger children acted for his own benefit as well as theirs and consequently that he is to be on the same footing with them and is therefore chargeable with Intst

Interest by the same rule that he has subjected the rest of the younger children to Interest however neither of the Parties mean to determine their own rights but to submit them to the determination of Mr. Sergeant Dennis by whose opinion and advice they intend to be governed. —

Be it pleased therefore to consider this case the will and accounts referred to and thereon and on the following Issues to give your thoughts and sentiments. —

First Issue — On considering the recommendation of the Testator to have Mr. Mc Nemara employed in transacting the affairs of his children and the condition added thereto of his behaving well therein, who ought to suffer by his misapplication of the money received by him and the very large balance returned to be due of him. Was it incumbent on Mr. Bateman and Mr. Loyd the acting Exors during Mr. Bateman's lifetime to have obliged Mr. McNemara to account at least annually, and if they found him misbehave to have removed him from the Agency and who is accountable for such sum as shall appear due of Mr. McNemara until the year 1752 when Mr. Bateman died. —

Second Issue — It stands admitted by Mr. Loyd the surviving acting Executor that, from the death of Mr. Bateman 1752 he took upon himself the sole Execution of the Testator's Will, and that in 1757 when at the desire of the younger children Mr. McNemara was brought to an account he was found considerably in debt and notwithstanding it also stands confessed that the surviving Exor suffered him to continue in the Agency until the latter end of the year 1760 when so large a Balance as £2300 and upwards appeared to be due from him and which from his becoming insolvent cannot be recovered. Who therefore is to abide by that great loss whether the acting Exor and Manager of the Testator's fortune or the rest of the younger children and here it seems proper to remind you of what the Exor seems to shelter himself under, which is that as an Exor he had no Power over any part of the Property than the personal fortune, but the rest of the family submit it that he had full Power and authority under the direction in the will to remove Mr. McNemara from the Agency

Agency as soon as he was found to misbehave in the trust and that if Mr. Loyd had brought him to an account yearly and displaced him as soon as his misbehaviour appeared, no loss would have been sustained and in that light would have it inferred that Mr. McNemara alone is accountable for such sum as appeared due of Mr. McNemara at least from the time he became sole acting Exor in 1752 to 1760 when Mr. McNemara was discharged by him, however the Parties are to be governed by your opinion in this point. —

Third Issue — In what manner ought Mr. Loyd the surviving acting Executor to account with the rest of the family, according to their Rights under the Testator's will, and in as much as he charges the rest of the younger children with Interest for the sums they respectively received ought he not also to be subject to Interest for the sums he retained, and particularly for such Balances as shall appear due of him from the times he owed the Balances until he shall discharge them and has he a right to any and what allowance for his Executorship except for Payments actually made by him and be pleased to look over the accounts furnished by Mr. Loyd and to mention whether they are fair and proper or not and if exceptionable, how far they are so. —

Fourth Issue — One of the younger children became tenant to a valuable farm, part of the fortune of the Testator, and having held the same for more than 20 years, without being brought to a regular account he is supposed to be considerably in arrears, and being called upon to come to a settlement since the younger children attained to age, he sets up claims which they do not think admissible and produces vouchers that are disputed, and under those circumstances your opinion is desired whether the sole acting Exor is chargeable with the rents of that farm and ought of right to be the Person to compel the tenant to account and not to leave the rest of the younger children under the hardship and Difficulty of entering into a suit with the person who held the farm, and for the rents which Incurred before they attained to age, and tho the Agent is not instructed herein he imagines that the farm was set for a Term of years and being therefore a personal Interest was immediately under the care of the Executor dispossessing it was a freehold lease it is submitted that as the Exor took upon himself

Himself to act in every Capacity as Agent and Receiver as well as Executor in manner herein before stated he ought to be left to compel the Tenant to Justice. —

1st There does not appear to me to be sufficient reason to make them acting Executors or either of them accountable for any balance that was due from Mr. Nemara in 1752. —

2^d I consider Mr. Nemara as in effect appointed by the Testator and therefore that the Surviving acting Executor is not answerable for his misbehaviour unless he wilfully and fraudulently connived therewith. The continuing Mr. Nemara after the year 1757 if then found to be considerably in debt without discharging or giving security for the debt is a matter that requires to be accounted for by the Surviving acting Executor but besides the defence of the Executor stated in this case, it may be said that he acted for his Brothers and Sisters as for himself and was an equal sufferer with them and it is not stated that any application on the part of any of the younger children to remove Mr. Nemara was made before 1760, therefore on the case as here stated I cannot say that the whole loss arising from the Insolvency of Mr. Nemara should fall upon Mr. Lloyd the Surviving acting Executor. —

3^d As Mr. Lloyd the Executor charges the rest of the younger children with Interest I think he should pay Interest for the balances due from him from the time he owed them to the time of his Discharging them. he has no right to an allowance for his trouble or loss of time, but is to be allowed for all money paid by him in the Execution of the trust. as to the accounts I cannot take upon me to say how far they are Exceptionable, but I do not understand the reason of charging Interest for the several sums paid by the Executors for the maintenance &c. of the younger children from the respective times of the payment thereof to the year 1772 without taking into consideration the fortunes they were respectively intitled to and the assets or fund in the hands of the Executors subject to the payment of such fortunes. —

4th As the suit to compel this Tenant to account is for the benefit of the rest of the younger children there does not appear to me to be sufficient reason to say that the entire weight of the suit should fall on the acting Executor. —

Ja. Dennis

A Copy of Mr. Lewis's
opinion on a case stated
by Miss Lloyd &c.

I HAVE the Eldest Sons of the 1.st & 2.^d Marriages a right to a Moiety or Divid.ⁿ of the fortune that the said Ann was or could be entitled unto under S.^d Settlement or was not it to be divided amongst the younger Children of both Marriages — By the Marriage Articles the Lands to be purchased are Charged with £1000 for younger Children payable to Sons at the Age of 21 & to Daughters at the Age of 21 or day of Marriage as Ann Dyed before 21 and unmarried, I apprehend her share of that £1000 will sink in the Estate for the benefit of the Elder who is instituted to the Estate — There is An.^r Provision +

NOTE that by the Will of the said Lloyd, the younger Children of both Marriages are Residuary Legates. As B. Ann died intested L. are the eldest Sons of both Marriages or either of them intitled to any and what Distribution of Anns Residue, B. Anns Mother survived said Ann? —

4 Made by the Marriage Articles for the younger Children that if his Effects should hold out to pay his Debt and satisfy the Provenant for purchasing £300 by the year Inheritance each younger Child should have a 1000 more, this 1000 if the Effects will Answer wch Ann or one of the younger Children was Intitled unto will go in Distribution the Mother will have an Equal Share with all the Brothers and Sisters as Well of the Half as the Whole Blood —

Eaton Stannard
Jan^y 15th 1749

of Taste being
a Copy of Baron Marmont
Lord's Opinion

P 67 / 6 (2)

A Case

That the rd. Thomas Loyd late of Castletown Roach
Corke & the sometime in the year 1729 Intermarried with Frances Bateman
in the County of Kerry Spinster but previous thereto certain
into bearing date the 26th day of June 1729 by and between the said Tho:
Bateman and Boleyn ~~Bateman~~ Bigg of the second part and
the third part whereby the said Thomas Loyd amongst other agreem^{ts}
mentioned agreed to purchase £300 a year in four years after said Marriage
in said Articles ment^d and at the same time passed a Bond and
confess^d Judgmt. wherein was contained a large penalty in case of non
Coven^t in said Articles and likewise by said Articles coven^{ts} that in
Thom^s. Loyd should pay before P^r. Estate of £300 a year was purchased
which Case the P^r. Frances Bateman his then Intend. wife & her Execu^{rs}
in an Income of £300 a year out of his then Real and Person^l. Estate until
£300 a year was purchased for the uses of said Articles

That the said Thom^s. Loyd in 6 or 7 years after his
Intermarriage with S^r. Francis Bateman purchased the Lands of Castletown Proach
aford^s. and Parkneagh both Estates in Fee which said Lands are now lett at the yearly
rent of £150 — That on the day of Nov^r 1741 the said Thom^s. Loyd
duly made and published his last Will and Testam^t. and thereof appointed Charles
Smith^{Esq} and Rowland Bateman Esq^{rs} and his son W^m. Loyd Esq^r and on the first day of May
1745 died by which said Will he directs that the said Estates of Castletown Proach & Parkneagh
shall be deemed part of the said £500 which he was by said Articles obliged to purchase and
also by said Will vests in the Trustees of said Settlement the Farms of Monaniny Clonshire
and Phillannel till such time as a Settlement shall be fully performed either by sale of S^d
Farms or by the Annual profits arising out of the same I also directed when said £500
year was so purchased that the same should be charged with £800 as a provision
for the younger Children of said Marriage and with 150 y^r. as a Jointure for his
Widow agreeable to a power reserved to him by S^r. Arles and bequeathed the residue of his
fortune to the younger Children of his first and second Marriage subject to his debts
and Legacies — That it is the said Sir John's Will that

and Legacies

That the said Thomas Loyds by his said Wife left
his House in Linnth which was a Leasehold int^y for years commonly called the Church
yard House with all the furniture thereof to his Widow during her Widowhood and in case
she should marry that the same should be vested in his said Widow for the purposes in
p^{re} Will the s^d Widow died in the Month of April last but first made her last Will
and thereby bequeathed the said House and furniture to her Eldest Son of said
Marriage. Note that Frances did not Marry

That the said Thomas Loyd dyed possessed of a large fortune more than sufficient to pay his Debts & Legacies and make good his Marriage Settlement consisting of Leases for lives and years and particularly a full Farm Lease a part of which his said Exors sett to Rich^d Loyd the eldest son of said Thomas Loyd by his first Wife by Lease for 3 lives leaving date the 20 day of May 1746 and by said Lease oblige themselves to sett him the said Rich^d as long lease as in their power as Exors to sett

That the said Thomas Loyd subsequent to his making said Will mortgaged the said Farms of Shilbannell and Clounshine to his said eldest son Rich^d Loyd by his said first Wife as a Counter Security for joining his said father in a Bond for £1000 payable at a day long since past to J. S. — And not yet paid —

That the said Rich^d Loyd the said eldest son of the first Marriage of said Thom^s Loyd has been Chosen Guardian to Jⁿ Loyd the eldest son of said second marriage since the Death of his Mother the said Frances who was Testamentary Guardian and who sett severall Leases of said Lands of Castletown Proach at a high and uncertain Rent —

That said Thomas by his s^d Will left a Legacy of £20 to his Nephew Rich^d Loyd to be p^d with him as a present and the like to said Rich^d Brother for the like reason Rich^d was Bound apprentice a year before his said Uncle's Death and dyed soon after his said Uncle's Death but first made a Will by which he left the said £20 to his Bro^r —

Now if the Estate for £300 a year had been purchased within the s^d 4 years limited by s^d Articles it would on acct. of the great Price of Land be worth a great deal more now —

Ann Loyd one of the Daughters of said Thom^s Loyd by the s^d Marriage — died in four Months after her fathers death at the Age of 15 years — See Articles of the 26 June 1729 — See Lease of the 20 May 1746 Copy of Thomas Loyd's Will and a Copy of the Will of Frances his Widow —

As much as the said Thom^s Loyd did not in his life time purchase the said £300 a year as by his Articles he was obliged nor have his Exors since his death purchased any part of it in what manner can the said Rich^d the Guardian of the Minor of said second Mar^r oblige the said Exors to purchase the remainder of said £300 a year the said Rich^d being amortgaged of the said Lands of Shilbannell and Clounshine or in what manner can the said Rich^d Loyd enforce the payment of the remainder of the yearly Income of said £300 out of the effects of said Thom^s —

The Minor by his Guardian and next friend should file a Bill ag^t the Trustees in the Marriage Articles and ag^t the Exors of Thom^s Loyd praying that the purchase may be completed and in the mean time that £500 yearly sh^d be p^d for the use of the said and younger Children, it may be required of the Trustees Exors to sett out the effects of Thomas Loyd & what Debts he owed, and the Debt in the Bill should be partly mentioned —

Was it in the power of the said Frances under the Will of the s^d Thom^s to will the Lease for years of the House in Limth to the s^d Minor her eldest son must it not come to the Hands of the Exors for the use of s^d Thom^s Credit^r & young^r Children —

I Apprehend she could Devise the House she only had it during her Widow hood yet in Law was as use for life — it will go the Exors —
3^d June Could the s^d Exors by any appointment under the Will of said Thom^s sett the said Rich^d a Lease for 3 lives of the said full Farm Lands or what is the longest Lease they can sett him — Note that that part of the said full Farm Lease which the said Rich^d Loyd holds is as advertised to be sett and said Rich^d offered the Highest Rent for the same — See Leases Mark N^o 1 —

I think the Exors could not sett it by a Covenant in the Lease — Rich^d is to hold it if the s^d had a power to sett —

4th June Is not the Bro^r of the said Rich^d Loyd the said Thom^s Nephew intitled to receive the £20 left his br^r the said Rich^d by the s^d Thomas and after^d Will by the said Bro^r to him from the said Exors along with the £20 left by the said Will to himself as the said Rich^d was Bound an apprentice one year before his Uncle's Death and comes within the Directions of his said Will, and is he not Intitled to the Interest of said sum and from what time? —

If Thomas Loyd the Uncle Bound Rich^d his Nephew apprentice I think it was an ademp^t of the Legacy, but if he did not bind him out I think Rich^d will be intitled to it as it was intend^d a provision for him & on his Death it will go to his br^r to whom he bequeathed it with Int^y from the Death of said Richard —

5th June The Bro^r of Rich^d is intitled to the £20 to bind him out —
Have the Exors of said Thom^s Loyd a right to charge the Minor for the Lands of Castletown Proach and Barknagh more than what they Cost when purchased, the same being lately sett to Cottiers Tenants & on acct. of the rise of Land at much a higher price than they would when purchased and the same being appointed by the Will of said Thom^s to be Deem^d part of s^d £300 a year or can the said Minor when he comes of Age refuse to accept of said Lands as part of said £300 a year? —

By the Articles of marriage it is agreed that if Thom^s should not purchase Lands that the Wives issue of that marriage should receive £300 yearly out of his effects till £300 should be purchased by the Trustees so I think the eldest must take £300 ag^t if good Rents with^d regarding what it Cost —

6th June Note that by the Article of 26 of June 1729 the s^d Frances Bateman in Case of Issue by the said Thomas she was to have and receive out of the s^d £300 a year to be purchased the yearly sum of £150 during her life to be paid her by two sum and equal Gal^s Viz^t on the 1st day of May & 1st of November the first payment to be made on the 1st of said days after the said Thom^s Loyd's death, as the s^d Thom^s dyed the 1st of May was the said Frances intitled to receive the first gal^s of Jointure until the 1st of November following the said Frances the Widow of said Thomas died about the middle of April last can her Exors be entituled to receive any sum in L^y of her said Jointure from the Nov^r before as she did not live until May when her half years Jointure w^d become due —

The 1st of June was the first day of paym^t which next happen^d after the death of Thom^s I apprehend the 1st paym^t which became due was on the 1st of November —