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The EARL OF OXFORD'S CASE in CHANCERY. With the Lord Chancellor's Arguments, touching the Jurisdiction of the said Court. Mich. 13 Jac. 1 [1615].

Magdalen College, 39 H. 8, seised in Fee of the Rectory of Christ's Church, and the Covent Garden, without Aldgate, London, containing seven Acres, demised them for seventy-two Years, rendring £40 per Ann. for the Rectory, and £9 for the Garden. And 17 Eliz. (fifty Years of the said Lease being expired) the Queen at the Suit of the said College licensed them to alien, which they did, and then received for the Rectory £25 per Ann. and £15 for the Garden. It being her Majesty's Intent, That the College should be advanced greatly in Profit, by having the Rectory to them and their Successors [2] discharged of the Lease for Years, which in Present was worth to them but £50 per Ann. the utmost Rent; the same was accordingly performed by a Conveyance to her Majesty, and from her Majesty to Spinola, and the Rectory, from Spinola to the College, after which Spinola and the Earl of Oxford his Assignee, and his Under-tenants, have built upon the Garden 130 Houses, and therein bestowed £10,000, which Assignee and his Under-tenants have Bonds and Security given for the Enjoyment thereof, to the Sum of £20,000.

Note; The College is hereby advanced £1700 more than they should have been, if the former Lease had continued, which is not yet expired.

This Conveyance having been in Peace forty Years, and thus advanced by the Purchasers from a Thing of little Value to a great and considerable one; and it being a general Case wherein Persons of all Degrees and Callings have made Purchases, they resting secure on its Passing thro' the Crown, the greatest Protection.

The present Master of the College having by undue Means obtained the Possession of one of the 130 Houses, whereof one Castillion was Lessee, who being secure of his Title both in Law and Equity, [3] sealed a Lease thereof for three Years to one Warren, who thereupon brought an Ejectment against one John Smith, for Trial of the Title in B. R. wherein a Special Verdict was had; and while that depended in Argument the Lease ended, and so no Possession could be awarded for the Plaintiff, nor Fruit had of his Suit.

Yet he proceeded to have the Opinion of the Judges to know the Law (which was a voluntary Act of his), to the Intent, if the Law were with him, he might begin a new Suit at Law, and spare to proceed in Equity; and if the Law were against him, that then he might proceed in Chancery. And the Judges of that Court having delivered their Opinions against his Title, before any Judgment entred upon the Roll, the Earl and Mr. Wood, for themselves and their Lessees, preferred their Bill in Chancery; and then Judgment was entred, *Quod Querens nil capiat per Billam*.

To which Bill in Chancery the Defendant put in a Plea and Demurrer, alledging the Conveyance to be void by the Statute of 13 Eliz. and that they evicted one House, Parcel of the Premises by Judgment at Law; which Plea and Demurrer were referred by Order to Sir John Tindal and Mr. Woolridge, who reported, [4] That they thought it fit the Cause should proceed to Hearing, notwithstanding the Plea and Demurrer; and afterwards in Default of an Answer, an Attachment was awarded against the Defendants, whereupon they were attach'd, and a *Cepi Corpus* return'd, and by Order of the 22d of Octob. 13 Jac. 1 [1615], they were committed to the Fleet for their Contempts in refusing to answer; and do now stand bound over to answer their Contempts, they still refusing to answer.

And now this Term it was argued, That the Defendants thus standing in Contempt, &c., may be sequestred until Answer.

1. The Law of God speaks for the Plaintiff. Deut. 28.

2. And Equity and good Conscience speak wholly for him.

3. Nor does the Law of the Land speak against him. But that and Equity ought to join Hand in Hand, in moderating and restraining all Extremities and Hardships.

By the Law of God, He that builds a House ought to dwell in it; and he that plants a Vineyard ought to gather the Grapes thereof; and it was a Curse upon the Wicked, that they should build Houses and not dwell in them, and plant Vineyards and not gather the Grapes thereof. Deut. 28. v. 30.

[5] And yet here in this Case, such is the Conscience of the Doctor, the Defendant, That he would have the Houses, Gardens and Orchards, which he neither built nor planted: But the Chancellors have always corrected such corrupt Consciences, and caused them to render *quid pro quo*; for the Common Law it self will admit no Contract to be good without *quid pro quo*, or Land to pass without a valuable Consideration, and therefore Equity must see that a proportionable Satisfaction be made in this Case.

As in the Case of Peterson *vers.* Hickman, the Husband made a Lease of the Wife's Land, and the Lessee being ignorant of the defeasible Title built upon the Land, and was at great Charge therein; the Husband died, and the Wife avoided the Lease at Law, but was compelled in Equity to yield a Recompence for the Building and Bettering of the Land. For it was so much the more worth unto her: And wheresoever one hath a Benefit, the Law will compel him to give a Recompence, as if *Cestui que use* sell the Land to one that hath no Notice of the Use, and dieth; by Reason that he had the Benefit of the Sale, his Executors were ordered to answer the Value of the Land out of his Estate, as appeareth by a Judgment-Roll of 34 H. 6.

[6] And (his Lordship) the Plaintiff in this Case only desires to be satisfied of the true Value of the new Building and Planting since the Conveyance, and convenient Allowance for the Purchase.

And Equity speaks as the Law of God speaks. But you would silence Equity.

1st. Because you have a Judgment at Law.

2dly. Because that Judgment is upon a Statute-Law.

To which I answer,

First. As a Right in Law cannot die, no more can Equity in Chancery die, and therefore *nullus recedat a Cancellaria sine remedio*, 4 E. 4, 11, a. Therefore the Chancery is always open, and although the Term be adjourned the Chancery is not; for Conscience and Equity is always ready to render to every one their Due, and 9 E. 4, 11, a. The Chancery is only removable at the Will of the King and Chancellor; and by 27 E. 3, 15. The Chancellor must give Account to none but only to the King and Parliament.

The Cause why there is a Chancery is, for that Mens Actions are so divers and infinite, That it is impossible to make any general Law which may aptly meet with every particular Act, and not fail in some Circumstances.

The Office of the Chancellor is to correct [7] Mens Consciences for Frauds, Breach of Trusts, Wrongs and Oppressions, of what Nature soever they be, and to soften and mollify the Extremity of the Law, which is called *Summum Jus*.

And for the Judgment, &c., Law and Equity are distinct, both in their Courts, their Judges, and the Rules of Justice; and yet they both aim at one and the same End, which is, to do Right; as Justice and Mercy differ in their Effects and Operations, yet both join in the Manifestation of God's Glory.

But in this Case, upon the Matter there is no Judgment, but only a Discontinuance of the Suit, which gives no Possession; and altho' to prosecute Law and Equity together be a Veration; yet voluntarily to attempt the Law in a doubtful Case, and after to resort to Equity, is neither strange nor unreasonable.

But take it as a Judgment to all Intents; then I answer,

That in this Case there is no Opposition to the Judgment; neither will the Truth or Justice of the Judgment be examined in this Court, nor any Circumstance depending thereupon; but the same is justified and approv'd; and therefore a Judgment is no Let to examine it in Equity, so as all the Truth of the Judgment, &c., be (not) examin'd.

[8] No Possession is established by the King's Writ after that any Judgment is sought to be impeached; for when the Plaintiff by his Lessee seeking Relief at the

Common Law is barred, then is his Time to seek Relief in Chancery, when the Common Law is against him, Doctor and Student, fol. 16. A Serjeant is sworn to give Counsel according to Law, that is, according to the Law of God, the Law of Reason, and the Law of the Land; and upon both the Laws of God and Reason, is grounded that Rule, viz. To do as one would be done unto.

And therefore where one is bound in an Obligation to pay Money, payeth it and takes no Acquittance, by the Common Law he shall be compelled to pay the Money again. But when it appeareth, that the Plaintiff will recover at Law, the Serjeant may advise the Defendant to take a Subpoena in Chancery, notwithstanding his Oath.

So 1 H. 7, 14. If he deliver an Acquittance without Seal, or the Money is paid within a short Time after the Day, or if he lose the Acquittance, if Judgment be had in any of these Cases the Party may resort to Equity. 22 E. 4, and 7 H. 7, 11.

Also, after Judgment in those Cases, if the Party have a Release he may have [9] an *Audita Querela*, which is a Latin Bill in Equity, if the other Party's Conscience be so large as to demand a double Satisfaction. So if the Statute be entered into by Duress or Menace, though the Party be in Execution, yet he may avoid it by Duress of Imprisonment, 15 E. 4; Fitz. Nat. Bre. 104, L. 5, Ed. 4; *Audita Querela*, 27. And yet it is a Judgment upon Record, and so of a Judgment by Confession, and Satisfaction acknowledged by a Letter of Attorney which is lost, or cannot be produced.

And in the Case of *Harning vers. Castor*, Mich. 3 Jac. in B. R. on an *Audita Querela* brought *per Opinionem Curie*, If a Judgment be given upon an usurious Contract, and it is Part of the Agreement to have a Judgment, the Defendant may avoid such Judgment by an *Audita Querela*, or by a *Scire Facias*, brought upon the same.

So if a Judgment be had against an Infant by Covin, as if an Infant be inveigled to be Bail for one in any Court at Westminster, he may have an *Audita Querela* to avoid the same, Trin. 7 Jac., *Markham vers. Turner*, and 8 H. 6, 10. So if Judgment be had by Covin or Collusion against an Executor to defraud the Creditors, if it be pleaded in Bar, the Covin and Collusion may be averred at [10] Law by Replication, and the Judgment frustrated thereby, 3 H. 6, 36. And note; Every Outlawry is a Judgment, yet the Party may have Remedy in Conscience against him that caused him to be outlaw'd without just Cause. Doct. & Stud. lib. 2, c. 21; 21 H. 7, 7; 9 H. 6, 20.

So if one neglect to inrol his Deed of Bargain and Sale, being his only Assurance, as in *Jaques and Huntley's Case* in this Court, 13 Junii 1599, and the Bargainor brings an *Ejectione firmæ* against him, and hath Judgment, the Bargainee may resort to Chancery, and there be reliev'd, if not for the Land, yet for the Money paid.

And in *Morgan and Parry's Case*, Pasch. 27 Eliz. A Woman had an Estate in a House for her Life dispunishable of Waste; and yet she was enjoined not to commit Waste in the House, contrary to the Case of *Lewis Boles*, Lib. 11. (*Quære*, If not because of the Prejudice to him in Remainder?)

By all which Cases it appeareth, That when a Judgment is obtained by Oppression, Wrong and a hard Conscience, the Chancellor will frustrate and set it aside, not for any error or Defect in the Judgment, but for the hard Conscience of the Party; and that in such Cases the Judges [11] also play the Chancellors; and that these are not within the Statute 4 H. 4, cap. 23. Which is, That after a Judgment given in the Court of our Sovereign Lord the King, the Parties and their Heirs shall be in Peace, until the Judgment be undone by Attaint or Error.

But secondly, It is objected, That this is a Judgment upon a Statute-Law.

To which I answer, It has ever been the Endeavour of all Parliaments to meet with the corrupt Consciences of Men as much as might be, and to supply the Defects of the Law therein, and if this Cause were exhibited to the Parliament it would soon be ordered and determined by Equity; and the Lord Chancellor is, by his Place under his Majesty, to supply that Power until it may be had, in all Matters of *Meum* and *Tuum*, between Party and Party; and the Lord Chancellor doth not except to the Statute or the Law (Judgment), upon the Statute, but taketh himself bound to obey that Statute according to 8 Ed. 4, and the Judgment thereupon may be just, and the College in this Case may have a good Title in Law, and the Judgment yet standeth in Force.

It seemeth by the Lord Coke's Report, fol. 118, in *Dr. Bonham's Case*, That Statutes are not so sacred as that the Equity [12] of them may not be examined. For

he saith, That in many Cases the Common Law hath such a Prerogative, as that it can controul Acts of Parliament, and adjudge them void; as if they are against Common Right, or Reason, or Repugnant, or impossible to be performed, and for that he vouches 8 E. 3, 30; 33 E. 3; Cessavit, 41, 42; Nat. Brev. 209; Plowd. 110; 27 H. 6; Annuity, 41; 21 Eliz. Rot. 303. And yet our Books are, That the Acts and Statutes of Parliament ought to be revers'd by Parliament (only), and not otherwise, Bro. Tit. Error, 65, &c., and 7 H. 6, 28; 21 E. 4, 46; 29 E. 3, 24, and upon that Reason the Lord Chancellors, since the Device of the Action, to be brought by Parsons upon the Statute of 2 Ed. 6, have enjoined the Stay thereof.

And the Judges themselves do play the Chancellors Parts (upon Statutes, making Construction of them according to Equity, varying from the Rules and Grounds of Law, and enlarging them *pro bono publico*, against the Letter and Intent of the Makers, whereof our Books have many Hundreds of Cases, 15 H. 7, and 14 H. 7, 14; 42 E. 3, 6, &c. Will you then have Equity suppressed in all Cases, wherein a Judgment at Law, or upon Statute, is had?

[13] The Use of the Chancery has been in all Ages to examine Equity in all Cases, saving against the King's Prerogative, as 35 H. 6, 27; 11 H. 4, 16; and Doctor and Student, lib. 2, cap. 5, 16, then you must have a Special Statute to except the Chancellor. For general Statutes do extend to the particular Usages of all the great Courts at Westminster, especially of the Chancery, and especially for Matters of Equity.

In Chancery upon a Recognizance, a *Capias* may be awarded, and the Precedents of that Court shall close up the Mouths of the Judges of the Common Law, notwithstanding the Statute of Magna Charta, cap. 29. Quod nullus liber homo capiatur aut imprisonetur nisi per legale Judicium Parium suorum vel per Legem Terræ. And so it was adjudged in Clement Parson's Case, 21 Eliz. in the Exchequer, which you may see in 8 Coke, 142, and 25 Eliz. in Martin and Bye's Case, and in 7 Jac. in Com. Banco, Higham's Case, and Kilway's Case vouched to be adjudged, 9 Co. 29. Vide Doctor and Student, 306 a, and every Court at Westminster ought to take Notice of the Usages and Customs of the Rest of the Courts at Westminster, which are as a Law to those Courts, and of which the Common Law takes Notice. 2 Co. 53, 65, 503, 4; 11 E. 4, 2.

[14] The Statute of 5 Eliz. of Perjury directeth how Perjury shall be punished, saving the Authority of the Star-Chamber; yet for Perjury committed in Chancery, either in an Affidavit, or an Answer, &c. If such Perjury appear to the Chancellor, the Party may be punished according to his Direction.

Also, No Exchequer Man hath Privilege against a Subpœna, for Matters between Party and Party, where the King's Interest cometh not in Question, 20 Eliz. Cutts *contra* Peter Goodwin *et al'*, and yet their Privilege hath several Statutes that give Strength thereunto; but the Use and Precedents of the Chancery are not altered by those Laws.

And if a Statute Staple be extended, which by the Statute is a Judgment of it self, and the Execution thereof is directed by the Statute; yet it hath been usual in all Ages to moderate the hard Consciences of the Conuzees, and if they have been satisfied with their Costs and Damages, after the Rate of the full Value of the Land, the Land hath been discharged by a Decree of Equity.

Thirdly, The Law of the Land speaks not against this.

For by 9 ed. 4, 15. The Chancellor sits in Chancery according to an absolute and uncontrollable Power, and is to judge [15] according to that which is alledged and proved; but the Judges of the Common Law are to judge according to a strict and ordinary (or limited) Power.

As 7 H. 7, fo. 10. A had Lands extended to him in ancient Demesne upon a Statute Merchant, B purchased the Lands, and had a Recovery by Sufferance in the Court of ancient Demesne with Voucher, and entred, and ousted A. A brought a Subpœna, and it was holden, That A could not falsify the Recovery at Law, and therefore he should be restored to the Possession, by the Chancery, for he had not any Remedy by the Common Law. Where note, That notwithstanding a double Judgment, yet the Judges directed them to the Chancery.

And the Statute of 4 H. 4, cap. 23, was never made nor intended to restrain the Power of the Chancery in Matters of Equity, but to restrain the Chancellor and the Judges of the Common Law, only in matters merely determinable by Law, in legal

Proceedings, and not in equitable, and that they should be constant and certain in their own Judgments, and not play Fast and Loose. For by 37 H. 6, 13, and divers other Authorities; no Writ of Error or Attaint lieth when the Suit is by Subpoena, and the Party only seeks to Equity for the Equity of his Cause.

And therefore Judgments by Default, Confession, &c., and not by Verdict, are not within this Law, so as to bind the Judges in their legal Proceedings; as 5 E. 4, 38. In Debt upon an Obligation against A, B, C, and D, Judgment by Default is had against A and B. C demurs, and D pleads to Issue, and by the [16] Opinion of the Judges a Supersedeas was awarded, & *hoc causa Conscientiæ*, for that the Judgment was by Default.

In the next Place it is considerable, how far the Statute of 27 E. 3, cap. 1, doth extend, to check the Power of the Chancery in this Case. Now the proper Exposition of this Statute is from those Statutes that were the Foundation thereof, and whereupon this Statute was built, it being not introductive of New Law; but declarative *Antiqui Juris*.

The precedent Statutes, which do explain this Statute, are 31 E. 1, made at Carlisle 4 Ed. 3, c. 6, in Confirmation thereof, 25 E. 3, cap. 22, and 25 E. 2, cap. 1, of Provisions of Benefices, these being in Time before 27 E. 3, and 38 E. 3, which comes after and recites the Statute of 25 E. 3, and this Statute of 27 E. 3, and confirms them with Additions for further Remedies, they being all link'd together in one Chain, which is further apparent by the Recitals in the Law, and by the Preamble thereof, which doth manifest the Minds of the Law-makers, and do naturally explain the Laws, that they do all extend to Ecclesiastical Jurisdiction and Conuzance, and not to Temporal; and the same is more apparent by other subsequent Laws in several Kings Reigns following.

But for the Temporal Courts, and the Support of their Judgments, there are only two Statutes, viz. Westminster 2, cap. 5, and 4 H. 4, cap. 23, which are already answer'd.

Vide the Argument for the Authority and Jurisdiction of the Court of Chancery, at the End of this Volume; where these two Statutes are explained.

[See S. C. with full notes, Wh. & T. L. C. 7th ed. vol. i. p. 730.]

REPORTS and CASES Taken and Adjudged
in the COURT OF CHANCERY, in the
Reign of Kings Charles I., Charles II.,
James II., William III., and Queen Anne.
Vol. I. [1625–1668].

FARMER *contra* COMPTON.

1 Car. 1, fo. 1088 [1625–26].

Marriage with Consent, &c.

That the Plaintiff and Defendant came to a Treaty for a Marriage between Sir Jo. Farmer, the Plaintiff (Sir Richard Farmer's Son), and Dame Cecily, Daughter of the said Defendant Sir Henry Compton, with whom he was to have £4000. And it was agreed that £800 per Annum should be settled on her for a Jointure, and that the Plaintiff should deduct £200 [2] per Annum thereout during his Life; that Direction was given to draw Writings accordingly; but before the Assurances were perfected, the said Sir John, the Son, married her without the knowledge of the said Fathers; and the Plaintiff and Defendant being ignorant thereof made the Assurances, and the Defendant Sir Henry Compton agreed they should marry; but in the said Assurances the Deduction of £200 per Annum, as is aforesaid, was omitted in the Drawing of the said Deeds. And after the Marriage was confessed by the said Sir John to one Benskin, who acquainted Sir Henry therewith, and £1150 of the £4000 was paid to the Plaintiff, which Portion of £4000 was originally to be raised out of the said Lands according to a Conveyance thereof made by the Countess of Dorset, the same Dame Cecily's Grandmother, unto the said Benskin and others, to the Intent that they should, out of the Profits thereof, pay to the same Dame Cecily her said Portion of £4000 at her Age of twenty-one Years, or when, with the Consent of her Father, she should be married, which should first happen; and if she should die before such Age or Marriage, then £1000 of the said Portion should be paid to her Sister Anne, who had the like Portion given unto her by the said Countess, and the [3] other £3000 to be distributed amongst other the younger Children of the said Sir Henry Compton. And for that the said Sir John Farmer died before any of the £2850 (being the Remainder of the £4000 Portion given by the said Countess to the said Dame Cecily, as aforesaid) was paid, and the said Dame Cecily being married, as aforesaid, and the Defendant Benskin being trusted by the said Countess, as is afore-mentioned, he doubts that if he should proceed to pay the said remaining £2850 and Increase thereof according to the Agreement aforesaid, whether he might not again be called in Question for the same by the said Lady Farmer and the younger Children, if the said Dame Cecily should die before twenty-one Years of Age, and prays the Judgment and Decree of the Court for his Indemnity.

And *per Cur'*; As touching the Payment of the Residue of the £4000 according to the Conveyance made by the Countess to Benskin and others in Trust as aforesaid, for raising of the said Portion, and how the said Benskin shall be discharged thereof, and of the Money already paid: This Court ordered a Case to be made out of the Deed, and a Case being made and agreed unto, was by the Lord Keeper sent to the Judges at Serjeants Inn in Fleet Street, and all of the said Judges were [4] of Opinion, that the said Marriage between the said Sir John Farmer and his Lady, having taken Effect in Manner before declared, ought in Equity and Justice to be esteemed a Marriage had