

SUMMARY: The document below is the partial judgment rendered by the Court of Chancery on 10 February 1599 in Oxford's suit against Roger and Richard Harlakenden for reconveyance to Oxford of Colne Priory or for recompense for the undervaluation of the sale price by reason of fraud and breach of trust by the Harlakendens. Before proceeding to judgment the court summarizes Oxford's claims and the Harlakendens' defences to them. The court then finds in Oxford's favour on the fraud issue. In this part of its decree the Court appears to be directly quoting the wording of Oxford's indenture of 7 February 1592 to Richard Harlakenden. However the court is actually paraphrasing. The fraudulent wording inserted by the Harlakendens into the indenture itself reads as follows:

*And all those messuages, houses, edifices, barns, granges, dovehouses, orchards, gardens, stanks, ponds, lands, and soil, as well within the compass and circuit of the same late house and priory or monastery as without the compass and circuit of the same late house and priory or monastery, to the same late priory or monastery belonging or appertaining.*

The court ordered the Harlakendens to reconvey lands to the value of £400 per year which they had fraudulently included in the sale of Colne Priory. The court also found that since Roger Harlakenden could not prove that either the tithes of seven towns in Essex and Suffolk or the farm of Plaistow in Essex belonged to Colne Priory, Oxford could enjoy the benefit of them until the Harlakendens could offer proof to the court that they had belonged to Colne Priory. Unfortunately for Oxford, the court deferred the reconveyance issue to the preparation of further briefs and to further consideration by the court, and both Oxford and Harlakenden died before any decision on that issue was rendered. For the will of Roger Harlakenden (d.1603), see TNA PROB 11/101, ff. 392-3. For Oxford's warrant to Roger Harlakenden mentioned in the decree, see ERO T/B 177/4. For Oxford's indenture to Richard Harlakenden mentioned in the decree see ERO D/DU/256/1. For the Queen's grant of her reversionary interest in Colne Priory mentioned in the decree, see TNA C 66/1393, mm. 11-16 and ERO D/DPr/631. In assessing Oxford's claims for fraud and breach of trust against the Harlakendens, it is perhaps worth noticing that the valuation of Colne Priory in the latter document was £4000 in 1588, and that Oxford valued Colne Priory at £3000 when he filed his bill of complaint in 1593, yet the Harlakendens purchased Colne Priory for a mere £700 in 1592. It is also worth noticing that the court refers to John Drawater (d.1597) as Oxford's servant, a relationship which is significant in assessing Drawater's role in other events surrounding the sale of Colne Priory to the Harlakendens. For the will of John Drawater (d.1597), see TNA PROB 11/90, ff. 431-2.

For Henry de Vere's bill of complaint dated 30 May 1608 seeking to revive the lawsuit after Oxford's death, see TNA C 2/JasI/O1/58.

LM: Decretum inter Comitem Oxonie et Harlakenden & Herlakenden. [=Decree between the Earl of Oxford and Harlakenden & Harlakenden]

Where the right honourable Edward, Earl of Oxon, heretofore did exhibit his bill of complaint into this most High Court of Chancery against Roger Harlakenden and Richard Harlakenden, the said Earl by his said bill declaring that the said Roger Harlakenden, being farmer to the said Earl of divers lands belonging to the Earl in Earls Colne in the county of Essex, made means to serve the said Earl, and to be his officer of surveyor of the honours, manors, lordships, lands, tenements, and hereditaments of the said Earl, and receiver of his rents, issues, and profits, and that upon the faithful promise of the said Harlakenden to deal justly and truly with the said Earl, he, the said Earl, granted unto him a patent of the offices of surveyor and receivership;

And that shortly after, the Earl being minded to sell the manors of Colne Priory, Barwick Hall, Inglethorpe, and Ballingdon, with the mills called Chalkney mill and Colneford mill, the parsonages of Earls Colne, White Colne, Belchamp, Bentley, and Messing, a farm or tenement called Plaistow, two tenements or farms lying in Sible Hedingham and Castle Hedingham, and certain portions of tithes lying in Sible Hedingham, Stansted Mountfitchet, Maplestead, Aldham, Aythorpe Roding, and Bures in the county of Essex, the parsonage of Wickham in the county of Cambridge, and divers portions of tithes in Lavenham and Aldham in the county of Suffolk, all which premises were parcel of the possessions of the late dissolved monastery or priory of Colne in the county of Essex;

And that thereupon the said Earl conferring with the said Harlakenden, required him to survey the premises and to examine the true value thereof, and to deal with the copyholders and several terre-tenants of the premises for the purchasing of the lands in their occupations, and to sell the said manors and lands to the best value, and gave his warrant under his hand and seal, declaring further that the said Harlakenden, contrary to the trust in him reposed, not offering the same to the copyholders and tenants according to his commission, but giving out speeches to discredit the complainant's title, informed the Earl that the copyholders and tenants would not purchase the lands in their possessions, and thereupon offered to buy for himself the site of the monastery of Earls Colne, the manor of Colne Priory [+and] the parsonage of Colne Priory, being of the only yearly value, as he alleged, of £35 by year, for which he offered 20 years' purchase, affirming the same to be the full value;

And that the said Harlakenden, doubting the Earl would make further enquiry of the value, corrupted one of the said Earl's servants with a bribe of £200 to concur with him in the report of the value, and to persuade the Earl of the honesty and dutiful service of the said Harlakenden, and that the said Earl, being thereby abused, assented to pass the said site, manor, & parsonage to the said Harlakenden at the rate of 20 years' purchase, which according to Harlakenden's account amounteth to seven hundred pounds, which the said Harlakenden answered in reckonings and accounts, and that to cover his practice caused the assurance to be drawn and passed to the said Richard Harlakenden, his son, declaring further that the said site, manor, and parsonage are of the yearly value of £400, and in lease for few years for £60, and worth to be sold three thousand pounds;

And that the said Roger Harlakenden, having inserted into the covenant general words whereby there is passed the manor[s] of Barwick Hall, Inglesthorpe, and Ballingdon, the mills called Chalkney mill and Colneford mill, the parsonage of White Colne, the parsonages of Belchamp, Bentley, and Messing, the farm called Plaistow in Halstead, the said two farms in Sible Hedingham and Castle Hedingham, the parsonage of Wickham in the county of Cambridge, and divers portions of tithes in the counties of Essex, Cambridge, and Suffolk of the yearly value of £400 by year which were never meant to be conveyed, and then the said Harlakenden afterwards compounding with other persons for divers other particular parts of the lands not meant to be assured, affirming the same to be of small value, caused the Earl to sell divers of them under the value, with bonds for enjoying of them and warranties greatly to the Earl's prejudice and loss, being formerly assured to the said Richard Harlakenden, and therein prayed relief, as by the said bill remaining of record in this most honourable court more at large doth and may appear;

Unto which bill the said defendants making their joint and several answer, the said Roger Harlakenden by his several answer confessed that he had a patent from the Earl of the surveyorship and receivership, and that afterwards a warrant was granted unto him for the sale of the premises, and that thereupon he had conference with some bailiffs or farmers thereof and with others, which was the manner of his survey, and that he measured not the same, but made the sales known to divers and sought to advance the price, and that objection was made that the lands were charged with a tenth of £66 per annum, the reversion being in her Majesty, which afterwards was purchased from the Queen;

And that the defendant offered to buy to himself the monastery and manor and parsonage, and certain pensions and portions of tithes in the bill mentioned, and all other things mentioned in the indenture of bargain and sale to the said Richard, his son, and the parsonage of Wickham in the county of Cambridge for one Stubbing, and that he being sick and not able to travel to the Earl, having paid beforehand £300, doubting lest he might be prevented, used the travail of one Felton, servant to the Earl, and did give him £20 for his pains, and that he paid for the land conveyed to his son about nine hundred pounds, the land being then chargeable with great sums of money for arrearages due to her Majesty for the tenths, and that all things contained in the indenture of sale to his son were meant to be sold, and that he knew not that the general words contain anything which was not truly meant to be sold;

And the said Richard Harlakenden for himself by his answer declaring that the said Roger, his father, caused the lands which he bought of the Earl to be passed in the name of the said Richard partly because his father had a lease for years of the same or some part thereof and partly for other good considerations, that the Earl levied a fine and suffered a recovery thereof for his further assurance, and that since, the said Richard hath conveyed the lands to himself and the heirs males of his body on the body of Margaret his wife begotten, the remainder to the heirs males of his body, the remainder to Thomas his brother and the heirs males of his body, with several remainders over, as by the said several answers likewise remaining of record in this court more at large doth and may appear;

Whereunto the said Earl replying, averred that before the said bargain the said Roger Harlakenden promised the Earl that if he would pass the lands to him at 20 years' purchase, he would upon repayment of the money reassure the lands to the Earl;

And that thereupon the said defendant rejoining, the parties grew to a full and perfect issue, and witnesses being examined thereupon between the said parties, publication thereof was by order of this court granted, and a day for the hearing, ordering, and adjudging of the said cause in question between the said parties was afterwards by this court appointed;

At which day the parties by their counsels learned on both sides in open court appearing, forasmuch as upon hearing of the matter for and touching certain lands, tenements, and tithes which the plaintiff by his bill seeketh to have the defendants to reassure in respect that the defendants have, by general words in a conveyance made unto him, the said Richard Harlakenden, gotten the same lands, tenements, and tithes contrary to the true meaning of the said plainant;

And also for and touching the reassurance or recompense which the plainant demandeth by his said bill and replication in respect the said Roger Harlakenden, being servant unto the said plainant in the offices of surveyor of his lands and receiver of his rents, and being put in trust by special commission to sell certain lands, being the lands in question, for the plaintiff, procured the same to be conveyed to the said Richard Harlakenden, his son, for a lesser value by a great deal than the said lands were worth, confederating with Felton and Drawater, two of the plainant's servants, to persuade the plainant that the lands were no more worth than the said defendant offered, and promised to reassure the same upon repayment of the money which he should pay for the same, as was alleged on the part of the said complainant;

It appeared unto this court, upon the reading of the said indenture of purchase which passed from the plainant to the said Richard Harlakenden, that the said plaintiff, having an intent to pass and sell to the said Richard Harlakenden but only the site and demesnes of the monastery of Earls Colne, the manor of Colne Priory, and the parsonage of Colne Priory, yet as the same indenture is drawn and made, videlicet by the general words of *all lands belonging to the same priory within and without the site thereof*, there are divers lands to the value of £400 by year which the said plainant did afterwards sell or convey unto other persons, are conveyed unto the said Richard Harlakenden contrary to the intent and meaning of the said plainant, which indenture, so drawn by the means of the said Roger Harlakenden to his said son, this court were of opinion was contrived naughtily and fraudulently, albeit the said defendants do now offer to make reconveyance thereof to those persons to whom the same have been since conveyed by the plainant, or which have since bought the same of the plainant;

It is therefore this present term of St. Hilary, that is to say on Saturday the tenth day of February in the one and fortieth year [=10 February 1599] of the reign of our Sovereign Lady Elizabeth, by the grace of God of England, France, and Ireland Queen, Defender of

the Faith etc., by the right honourable Sir Thomas Egerton, Knight, Lord Keeper of the great Seal of England, and the Court of Chancery, ordered, adjudged, and decreed that the said defendants shall reconvey all the said lands to the same persons accordingly, discharged of all encumbrances done by them or either of them;

And as touching the farm of Plaistow which the defendants pretend to be parcel of the demesnes of the manor of Colne Priory, and touching the tithe[s] of the seven towns, videlicet of the town[s] of Sible Hedingham, Stansted, Maplestead, Aldham and Bures in the county of Essex, Lavenham and Aldham in the county of Suffolk, which the defendant Roger Harlakenden, then present in court, being interrogated by the Lord Keeper whether the same tithes were parcel or belonging to the said rectory or not, affirmed that he knew not whether the same tithes were parcel of the same rectory or parsonage or not;

Therefore and forasmuch also as the said defendants have not now made any proof either that the said farm of Plaistow is parcel of the demesnes of the said manor of Colne Priory, or that the tithes of the said seven towns are parcel of the said rectory of Colne Priory, as they seemed to pretend, and yet by general words in their conveyance the same are passed unto them, it is therefore likewise by the said Lord Keeper and Court of Chancery ordered, adjudged, and decreed that the said plainant, his heirs and assigns, shall and may from henceforth have, hold, and quietly enjoy the said farm of Plaistow and the tithe[s] of the said seven towns without let or interruption of the defendants or either of them, or any claiming from, by, or under them or either of them, or by their or either of their means or procurement, until they shall show and prove in this court better matter to the contrary;

And as touching the reassurance or recompense which the plainant demandeth in respect of the promise of the said Roger Harlakenden, and for that he was by the deceit and fraud of the said Roger Harlakenden and the confederacy aforesaid with Felton and Drawater, as he supposeth, drawn to sell and convey the said lands to his the said Roger his son at a less value by a great deal than the same lands were worth, this court thinks not fit now to proceed to the hearing and ordering of that point, but doth order that either of the said parties shall make true breviates touching their proofs of that point, as also touching the promise of reassurance made by the defendant Roger to the plainant, as he supposeth, and that either part shall see the briefs of the other to th' end that nothing shall be inserted therein but that which is true as it stands proved in court, and then the same briefs shall be delivered to the Lord Keeper, who will be pleased to have the opinion of some of the Lord Chief Justices how far-forth this court may give relief to the plainant touching his said demand.