

SUMMARY: In this report of the judgment in the Court of Chancery in Michaelmas term 1615, the court recites the circumstances under which the messuage and great garden of Christchurch were sold by the Master and Fellows of Magdalene College, Cambridge, to the Queen in 1574, by the Queen to Benedict Spinola in 1575, and by Spinola to Oxford in 1580. The court then finds that after being acquired by Spinola and Oxford, the property was considerably developed, to the point that £10,000 had been expended upon it and it had been 'advanced by the Purchasers from a Thing of little Value to a great and considerable one'. The court then recites the circumstances by which the then Master of Magdalene College, Dr Barnaby Goche (d.1626), had attempted to regain the property for the College, 'having by undue Means obtained the Possession of one of the 130 Houses' on the property, thereby giving rise to legal proceedings.

The central issue in the report of the judgment below was whether the Court of Chancery had jurisdiction to hear the case; however, most of the argument on that point has been omitted below in order to focus on the facts of the case and the court's judgment.

For a fuller discussion of the background to the case below, see the report on the judgment of the Court of King's Bench on a case in Easter term 1615 on this website. In distinguishing between the two cases, it should be noted that the case before the Court of King's Bench involved an action of ejectment at the common law based on a lease of a single messuage in the great garden property which had ultimately been granted by Oxford and which was challenged by Magdalene College as a means of reasserting its title to the great garden property as a whole, while the case in Chancery below was brought by Henry de Vere (1593-1625), 18<sup>th</sup> Earl of Oxford, to establish his title to the great garden property as a whole in a court of equity.

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] 1. Chan. Rep. 5-16 in English Reports, vol. 21, pp. 485-9.

Magdalen College, 39 H. 8 [sic], 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. [=1574/5] (fifty Years [sic] 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 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, 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, 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

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they should build Houses and not dwell in them, and plant Vineyards and not gather the Grapes thereof. Deut. 28. v.30.

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. . . .

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. . . .