

ANONYMUS. December 14 [1675].

Statute lost, not to be help'd by Motion, but a Bill against all Parties.

The *Lord Keeper* was moved touching a Statute lost to have it certified; and two Precedents were shewn.

*Lord Keeper*. They are Precedents not to be followed, and I will never do it. Exhibit your Bill against all that are concerned in the *Land*, and Justice shall be done you.

Note: Though this ought not to be done on Motion, yet on a Bill exhibited, if it appears a Statute, Recognizance, Deed, &c., to have been lost, or rendred void by Fraud, Force, or Accident, Equity will relieve.

A Defendant had suppress'd a Marriage Settlement, whereby a Remainder in Tail was limited to the Plaintiff's Father in Tail, and all the prior Estates being spent; 'twas decreed the Plaintiff should hold the Estate, though the Deed was lost. 2 *Vern.* 308.

On an Issue at Law, whether a Deed to lead the Uses of a Fine was duly executed, the Deed having been enrolled, and afterwards lost, a Copy of the Inrolment was allowed to be given in Evidence. 2 *Vern.* 471, 591. See also *Ibid.* 561. And note *Ibid.* 98. If a Lease of Lands by Deed is lost, the Lessor may declare on a Demise in general, without saying it was by Deed. See *New Equity Ca.* 86.

[271] DE TERM. SANCT. HILL. ANNO REGIS 27 & 28 CAR. II. [1676] IN CANCELLARIA.

CORNISH *against* MEW. January 28 [1676].

Difference between the Heir of a Mortgagor's being relieved upon the personal Assets, and a Devisee in such Case. *Ant.* 74.—Tenant for Life decreed one Third; and he in Remainder two Thirds, to redeem.

*Cornish* seised in Fee devised Lands to A. for Life, Remainder to B. in Fee. The Lands were before the Devise mortgaged in Fee for £100, and she made A. Executor, and left Assets enough to pay the *Debts*, which B. in Remainder prayed it might go to the Payment of the Mortgage, as in case of the Heir, who should be relieved upon the personal Estate in such Case.

But the Court took a Difference; there indeed the Heir shall be relieved, but not a *Devisee*; and decreed *Tenant* for Life should be decreed one Third, and he in Remainder two Thirds, to redeem.

BERTUE *against* STILE. [1676.]

A Jointress paying off a Mortgage, decreed to hold over till she be satisfied.

The same Day another Case, where a Jointress was of Land mortgaged, between *Bertue* and *Stile*; decreed that the Jointress paying the Mortgage, she should hold over till she and her Executor should be repaid with Interest.

[272] BROWN *against* VERMUEN. February [1676].

Where a Parish is sued, four moved to defend, and a Decree against them; one who claims under none of the four, contests the Decree.

Where a Parish is sued, and four named to defend, and a Decree against them; one who claims under none of the four, contests the *Decree*.

*Brown*, Vicar of *Worselworth*, sued a *Scire fac.* and by *Subpoena* to have Execution of a *Decree*, had by and on the Behalf of one *Carrier*, his Predecessor, for the tenth *Dick* of *Lead-Ovr* in the Parish, at the Charge and Labour of the Miners there, *viz.*

the Vicar to pay one Penny a *Dick*. *Carrier*, his Predecessor, sued divers Miners there, grounding his Suit by Prescription. Four Persons were named by the Miners to defend the Suit for them ; and a *Decree* passed against the four, for *Carrier* and his Successors, that the Defendants and all the Miners should pay. *Vermuden*, who owned and wrought a Mine there being served, appeared and insisted that he is not bound by the *Decree*, for that he was not Party or privy, nor claimed under any who was ; and if he should be bound, then the *Parson* ought to be bound, if the *Decree* had been against the *Parson*, which could not ; because the *Parson* nor *Ordinary* were no Parties, and the *Defendant* could have no Bill of Review of it, if it be erroneous, and therefore ought not to be bound.

*The Lord Chancellor*. 1. If the Defendant should not be bound, Suits of this Nature, as in case of Inclosures, Suit against the Inhabitants for Suit to a Mill, and the like, would be infinite, and impossible to be ended. And declared, that the *Defendant*, though no Party nor privy, yet he may have a Bill of Review, because he is grieved by the *Decree*.

2dly. The *Defendant* insisted on the Jurisdiction of the *Dutchy-Court*, the Parish being Part of the *Dutchy*, and the King had *Cap.* and *Lat.* as in Right of a *Dutchy*, and a Court of Revenue.

*The Chancellor*. It is within the County Palatine ; this Court may hold Plea of Lands in the *Dutchy*.

3dly. The Court who made the *Decree* held the 1d. *per Dick* too little, and ordered a Commission to settle some more reasonable Recompence to the Miners, which never was executed. *Non allocatur*.

[273] 4thly. Sir *John Heath* was Tenant in Common with *Vermuden*, who ought not to be prosecuted alone. But the Defendant notwithstanding was ruled to perfect his Answer to the Interrogatories.

The Lord Chancellor. The Question is, Whether the Decree while it stands should be obeyed, not whether it be well made ?

— against HAWKES. February 11 [1676].

Relief for an Annuity against a Purchaser.

*Hawkes* in his Purchase had Notice of the Plaintiff's Annuity, for it was excepted in his Deed of Purchase, which contained Part of the Lands charged, and divers other Lands. After *Hawkes* sold the other Lands not charged, and also some few Acres of the Land charged by general Words, and desired the Plaintiff and her Husband to join in a Fine to the Person who bought them, and was assured by *Hawkes*, that the same would not prejudice her in the Lands settled on her : But this was proved by one Witness only, and his Depositions uncertain as to the Particulars.

Also it was proved, that another Person had also bought and was in Possession of three Acres of Land charged, and was no Party to the Bill ; and that no Relief ought to be in Equity, because the Extinguishment of the Rent being a Rent-charge was by the Plaintiff's own Act by a Fine. And however *Hawkes* could not be charged, there being no Apportionment to be made, the Tenant of the three Acres being no Party to the Bill.

The Lord Chancellor. Here was no Consideration for the Rent, and no Agreement to extinguish it ; and when the Land was sold, it was sold for £800, of which £700 was paid to *Hawkes*. The Widow was circumvented, and decreed Relief against *Hawkes*.

RICHARDSON against LOUTHER. February 12 [1676].

Alteration of Exhibits after Commission.

Certain Exhibits of Writings were given in it at a Commission for Examination of Witnesses. The Defendant suggested that the Exhibits were altered and interlined since the Commission executed, and prayed a Commission to examine that Point.

[274] *Objection*. When the Party hath a Commissioner present, he can never examine new Interrogatories by Commission.