Appeal Andros 1712.pdf

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Pagina 1 *(motore: gpt-5.1 conf 0)*

GUERNSEY.

The Case of Charles
Andros, Esq; Defen-
dant.

V E R S U S

Thomas Brock, Mew[?] Af-
fivant, Heretofore Agent for
Himfelf, and the feveral Heir
Parties, &c. of the late Major
Philip de Carteret, the Origi-
nal Party Complainant;

To be heard on the day of

[bottom left column, partly legible]

Messieurs De Jersey, Solicitors for
the Defendant.

[remainder of text on visible folds too faint / illegible to transcribe]

NOTES
language(s): English / script (hand|print): early modern printed type / confidence (high for main title and parties; low for worn/faint areas and the word “Mew[?]”) / any date, names or archival reference visible: Names: Charles Andros, Thomas Brock, Major Philip de Carteret; marginal archival ref. “AQ 215/3” on left edge.

Pagina 2 *(motore: tesseract conf 82)*

Guerntey

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* For Charles Andros, E{q; Thomas Priaulx,(a Minor)
Defendant. © 2Verfus4, Son of Peter Priaulx,
deceafed Appellane.

ON, B. The Numeros on the Margin, are the Numbers fet upon the Vouchers of the Caufiy
for the more eafie finding them on Demand.

ROM a Sentence of the Royal Court.of the Ifland of Guernjyy, of the roth ¢,, spent

of Fe , 1712. pronounced in Favour of the faid Charles Andros, in an Aëtion Jen of

BH brought by him againft the faid Afmer, the Sabitance of which Action is, viz. theCanje,
H That whereas Charles Andros, Elg; (his Father now deceas’d) had a Suite de-

pending by Appeal in England, againſt Peter Priaulx, ſen, (Grand-Father to
the Defendant) about the Property of three ſmall Fees call'd, Le firſ aux
Miere, Le fief Bequetez, & le fief Crochon; they articled an Agreement in Lone
om, whereby it was covensnted, that the ſaid Andros, ſen, ſhovld convey unto the ſaid Priaule, ſem
thoſe three Fees, with ſeveral others which bad been no part of that Diſpute, and of ſome of which
the ſaid Andros ſen. had a full Property and Poſſeſſion ; as being part of his Ancient Mannor, or
Ficf, called d° Anneville, held from the Crown in Capite, which Conveyance was to be made, for the
Som of 1375 French Crowns. At their Arrival in Gucrn(ey they contra&ted, but inſtead of making
it an Abolute Deed of Sale ; they diſguiſed it into a kind of Conveyance called Tranſadtion, and
concealed the ſaid Conſideration Money, and inſerted in the Deed, ſeveral ontroths and fiitious
.Claufes, which with many other Defe&s both in|Matter and Form, (Artificioufly contrived
to cut of the next Kin from the Right of Redemption, jure conſanguineo intail'd on them, both
by Law and Nature) made it a fraudalent and illegal Bargain, liable to Redemption at any time,
.vpon Diſcovery of thoſe Eſſential Irregularities. The ſaid. Andros Defendant (as being the im-
mediate Relation of his ſaid Father, and of Alix Faſhion his Mother, (co whom thoſe Eſtates
belonged) he commenced a Suite in the ſaid Court of Guernſey, in order to have the ſaid Con-
judged Fraudolent ; whereapoa it was Interlocotorily decreed in theſe Words, viz. De
“dela Cafe, è =. Tn anfuer to the Marit of she Gente, evar whit the fd
: dian appealed to Her Majeſty in Council, and the Cauſe being now depending be-

> Right Honourable the Lords of the Committee, is in Faét more at large unfolded as

The Matter of Fait,

The fiid Peter Priaulx, ſon. having incroach'd upon the Property of the Fief Pommare, by re- 7: 1°
ceiving the 13th parc of the Conſideration Money of an Elite (old pod that Segui: he LS
was adjudged by the ſaid Coort of Corp to reſtote the ſame to the ſaid Andros Jen. from Où, 30
which Priſux, having appealed to a Court of Judgments it was confirmed, 1666,
Nom. 2.
, The Property of the Feif de Longues, being likewiſe controverted between the ſame P
and brGogh tothe Cogne Bourdy. the final Determination of that Matter wes delegated co age
the fiid Court of Guernſey, with power to allow Coſts; whereupon they adjodged the ſaid Pro- 1068
perty to the ſaid [ita and ſentenced the ſaid Priaulx, to payi4o Pounds Colts Feb. 9.

‘ Num. 3.
-The-Fiefs of Au Micre Crochon © Be being in Conteſt between th a
the ‘Court of Guernſey, they tranſmitted it Pe His Stay ia Cond. à Hc are Perfges before 04123

1670.
Li sa
1 The ſaid Charles Andros, ſen. and Peter Priaulx, ſen. being in England, about tl jie
miſſon of the 224 of Or, 1670. to determing the Property of hot three nll Fees they prendi
articled under their Hands, that a Conveyance of Releaſe thould be made to the ſaid Priſulx in Nus gi
Éd Gccordingto the Laws there) of the ſaid three Fees, and of thoſe of Pommare & Longues, +
mio ers ſet down in a Schedule annexed to the ſaid Articles, and that for the Sum of 1 573
_ French Crowns. And that Judgment ſhould be given by His Majeſty in Council, for the rl
Bi ia that Cauſe, and at the ſaid Priaulx's own Coſt and Charges. 3

pallid the ſaid Conveyance in Guernſey, wherein they inſerted all thoſe Fees by Ni i
Je no manner of Mention of the ſaid 1375 French Crowns Conſideracion: Money, and comtes 267. >
veral other eregaltities to be hereafier mention'd în theie prover Peſa tc RR NT
© + Charles Andros the Defendant commene'd in Guernſe il i id Mi
i in Guernſey, an A@ion againſt the ſaid Minors Guar-
Peſi and continued it by ſeveral Interlocutorics, the very Words of which A@tion are ration. Mey 14
à a À p 1713.
te. ech,

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Pagina 3 *(motore: gpt-5.1 conf 76)*

(2)

An order then to stay for ten [day]s in a Cause in [the] Courts at 19th June, 1672, (after[w]s accord to Tind-
July 13. er's, fol. 277. inter al. Carth. Abrud. 476, by Ld. Chief Justice Vaughan in Favour also of such Mrs. Ferns
as shall stand in Court. Another, 476, by Ld. Chief Baron Hale of the same Nature.
Nov. 3. Vide Co. (mentioning the said Rolls) Officers and Titles, and the Names in the Fees, 2 d.
part. Church Lands (where Ld. Chief Baron hath been of another Opinion with my Lord Hale, in forbid[ding] such per-
Octob. 19. sons to sue) and 2 Inst. 63. where he seems to doubt of the same ; yet is very plain and ful. Another positive
Resolution of the same of 13 & 15 Eliz. from the Barons, upon the said Court of Wards; in their Si-
Nov. 8. tuation, for their own Interest by a Legesio communi parata. Vide Ld. Chief Justice Vaughan, ubi sup. chs. 12. and 7.
Nam, "Si fiat, aliter, Coeur & Jurours seront conspirants a tort, and in deceit." From which these chief Orders
are sayd to be taken, to the great Dammage[?] of the Crown[?] and of the Lawes. From which said Order
The Ser- Their Lord[shi]ps in Council made the Murther being referr'd to the Right Honourable
jeant then the Lords of the Committee, it another, orders it self to be examined upon the whole Merits of the Cause ;
moves from thus : 1. Whether this be not an Interlocutory Decree not to be appealed from ? 2. Whether this Contract be irregular in its Essentials ? 3. Whether those Irregularities do not intitle Mr. Dobr[e] to a Redemption thereof ?

1. Whether this be not an Interlocutory Decree not to be appealed from ?

In a Book call'd the New Institute of the Imperial or Civil Law, Lib. 4. Cap. 38. pag. 330.
Appeals. sect. 4. Sectaries is either Interlocutory, or Definitive, Interlocutory, where the Judge affects not the whole Court ; acting upon the Principal Cause, Definitive, by which the Principal Cause is determined. Co. 4 s. 45. 10.

This being upon the Merit of the Cause, it plainly appears to be no Definitive Sentence.
King John's Constitutions. fol. 21. 1. "Whether the Magna Charta of those[?] Islanders says thus.
[If] Defendant [stand] in his judiciall Right, albeit Judicator de omnia cognita[?] capiat in dicta Insula quaelibet[?] sine
Exemptione, &c.

In a Collection of the Liberties of that Island, made by a general Inquest upon Oath, before the Commissioners Royall, 8vo. Denier 133. are these Words. En tout ineins Insulan[?] le Counseill ne se foue [i.e. se fout ?] de ceux Sentences, comme d'Interlocutores, mais de les Fines[?] Mesmes & de ceux Judgments
sur les Criminallx Executories, and shall not be questioned, &c.

Anno 8. As in the Charter under the Broad Seal of England, granted to Guernsey aforesaid by Queen Eliza-
March beth, in these very Words, Demains, of Courts, aswell great and petty, "for the Pleas criminall and
15. Auditor, finall, ferme, &c. Counsell, Commission, &c. are left free, for or but so as to conserve Manners of
Justices, Judgments, or Famis, in certainty, Confirmes, &c. Carta prædictorum Insular. Dors. 10mo. One, 11mo.

June 21. By Order of Council, after taking the Opinions of the two Lord Chief Justices, and of the 1565. Solicitor General, it is thus resolv'd concerning Jersey and Guernsey. "That those Islands be then and there defended and secured to the Crown, unless some certain day of those Isles, and upon the Loss of the Allegiance, by the Inhabitants, be made evidently appear."

Octob. 27. The Approbatious of the Laws of Guernsey, made by the Royall Authority, do speak thus also : Artic. 22. of Powers, Cap. 7. Ameris. "Sentent be appeal to Baili of Terck, of the after[?] Tants."

The very same is repeated and confirm'd by Charter under the Broad-Seal, Anno 10. Car. 2. fol. 16. The said Recital, would is avoided for brevity sake.

By which Authorities (and Precedents of the Most Honourable Board ready to be produced) it may appear, that this Sentence in Question, being not an Interlocutory, is brought improperly before their Lord[shi]ps. But stopp'd in recall about the Merits of the Cause. Mr. Andros hopes, he is no less [well] grounded that way ; which leads us to our 2d. General Question.

2. Whether this Contract be irregular in its Essentials ?

By the Laws and Constant Practise of the Island of Guernsey, there are three Parties, or three Interests, in every Deed of Sale of Real Estates, viz. 1. The Queen, or Lord of the Manor who holds from the Crown ; 2. The Vendoor or Grantor, and the Grantee, or Purchaser. And 3. The Rendant or the old Vendant.

The Queen, or the Lord of the Manor, has the 13th Part of the Consideration-Money, the Vendoor ought to receive the Rest, and Rendant are Intitled to a Redemption, 27 years. If the Vendoor conceals the real Consideration Money it is received, it wrongs the Queen, or Lord, and deprives the Relations from their Faculty of Redemption, establish'd from Time and Manners Use.

In the Deed in Question, not a Word of Mention is made of that Considerable Sum of 1375 French Crowns, much the better to cover the Fraud, "the endeavour'd 15 years Concealment of Guernseys good Manners and Antient Agreements from their Sovereign's[?] Knowledge."

Vide William Sheppard's Touch-Stone of Common Assurances. Chap. 10. pag. 121. and after him the Stat. 27 Eliz. cap. 4. noteworthy in his Introduction ; That "every Covenant, Bond, Suite, Judgment, &c. Bargain and Sale, made of any Landes, for the returning of the same from one to another again fraudulentious. Terms of the Law. Pag. 301. Co. 2. 3."

NOTES
language(s): English (with some Latin and French phrases) / script (hand|print): early modern print / confidence (high) / any date, names or archival reference visible: Dates mentioned: 1672, 1565, 8 Eliz., 10 Car. 2; Names: Chief Justice Vaughan, Chief Baron Hale, Mr. Andros, Queen Elizabeth; reference to Guernsey, Jersey, Island of Guernsey, Charter under Broad Seal of England.

Pagina 4 *(motore: gpt-5.1 conf 73)*

(3)

The said Contract of the 19th June, 1672. doth Artificially insinuate as if the said Priaulx the Purchasor had been already intitled to all or most of the said Fess by Virtue of a former Deed of the 24th July, 1640. by which one of the said Priaulx's Predecessors had bought from Mr. George Peirson, &c. &c. &c. by which the General Words of the said Deed
(besides, endeavouring to involve all the said Fess within the General Words of the said Deed ?- &c &c. who could not devest the Appurtenances of the said Fess de Carnet, whereof he is not [Co-?] fee, was plainly by what he there left, to and expressed within the Compass of the said Co-mmon or General Words he was forced to do, and to that end it is use the Method the feigned & Certaine, and every Clause thereof (almost at the end of it as it is set in the Mechanick Books) [illeg.] is Certaine; and the Grantors being Satisfyed from the Value of the said Fe[e] in the Deed, and as

while in prima facie the General Expressions within the said Deed of 1640. extend [not] the [Words, and?]
Ferte and by Assurances proper, so that when he in the said Contract of 1672. they rouch on Generale nor infer infer the Contract to none other else so it is only a meer colour the better to Conceal their [worst?] Sale.

The said Deed of 1672 doth in like manner Suggest an absolute interest by Assigning to the [same] all [an Anomoly?] Propriety and Possession of the two Fess of Fesmare or de Langue, and pretends therein to refer to some other Deed in direct Contradiction of the two above Mentioned Num: 24. & 28. on Pages 1658 in this book, and is the of the 19th [?] by which the said Andros [?] or Pretentions of that had been fully Afferred and Confirmed.

But in none of these has the word “in Carnet” so if there is a Reservation in those Words, Except the Avails of the Conveyance of the Fess de Carnet of Segneau, which is properly so called in Domesday Num 7¼.
and in the ancient Royalty belonging to the Lord of the Mannor of S. Andrew, which is held in Chief from Crowns by yearly Hommage, and Suit of Court called Scache, and L[illeg.] of the three chief Aires on which, and on the said Hommage, and Suit all Services the Fess of Lord of [illeg.]
Perform even at this Day for the said fidei Mannor, and on other terras aforesaid for[e]sooked, which is plainly Melius thereat. From whence in the said Contract of 1672 nothing is referred, which affairs Mr. Andros’s Contract being had and confirmed, and may by means be a Confirmation of the former (this his Humble) Concerned in a very Material Irregularity.

My Lord Coke (in my Inst. 3 Cap 59) Not. Speaks thus, Cum in consideration [ali]qua non intervenerit, vel solutio, vel commodum, vel alia nova auctoritas.

Thus the said Contract of 1672. appears to be deficient and irregular, and Mr. Andros, doubtlesse being conceited, is thereby Effectually Intitled to redeem the Estate thereby aliened, which is our third Great Question,

3. Whether those Irregularities do not Intitle Mr. Andros to a
Redemption thereof?

All Societies are maintained by Justice and Truth, and all Contracts containing the Truth, or foregetting falsities, are directly destructive to Mankind, and contrary to the glorious Ends of the supreme Author of the World, who being himself Eternal and Immutable Truth, cannot consiste with any such Practices, that Mankind be Ruind and Extirpated, nor that every Man’s true Interest, according to Fundamental Maxims of the Schools, by which nothing is False, but that which is not, and Falsities are in Effect Nothings; and therefore are they condemned by All Laws, both of God and Man.

In the Statutes Anno 13. Elizabeth Cap. 5. And Anno 27. Elizabeth Cap. 4. and Elizabeth [Cap. 4?] all such
Conveyances are Adjudged to be null and Void.

The same is Asserted in the Imperial Body of Civil Law, Lib. 2. Cap. 4. pag. 22. Leu. obtulit, fraudem tanto est abhorenda à Jure Civili, & cautis omnia ad illam evitandam tendunt, dispensi arma [ut?] sit, H. D.
pag. 18. De. d. & S. 35. & pag. 383.

There is a Law of Guernsey Remaining, in that part of it which by Royall Authority is fixed.
In the second Tome of Laws of Guernsey, L. 8. Chap. 296. pag. 316, 317. qui contempsit suum fidei pro dona, &c. And lower he say, Qui agoin aut pacie[n]t Contract qui in sus[is] aliis direct deceived so.

And to obviate to all Cavill, on Pretence of the Consideration Money not being expeditely, the said Fess is in the same Book, Chap. and Page, Esi tradat’ son fief, obferant de value

with Abominable clamour a 311.

1. The same Anthony, 22. Inst. 7. says, per aver dimer un ass[ig]nement sur fiot d'un Fief saie a faire, ad aver., sans suitz per severant, en 3, c'est per donation a propagand tenu pour faase poui quani-la Coue est plerinne autrement [?].

La Char ris. March in the hed of [illeg.] notis reserves.

2. The said Justin, in the same Book and Chap. pag. 327. Says thus, quant un Contract de vente fessible, est avarie in une part du sorrow de l'acqueror, de la Mutation, aucune Contract de son, ne d'autre couer ce faise fit. La Cour ne le [Conservor in?] la seconde & Parole payer de devalu del Consid-rait, soit express ne tacite Consideration, car s'ens par son promission on preure la dit per l'Action real faith the Agreement of the Buyer and Seller.

The said Tom. pag. 321. Says thus, Si un Contract est fait through fraud d'aucun, & par personna-lement mention, la proprietie du quartar de tour que sa per la Judges perregn provision a la Courte pour enjoindre, ou acceptée que l'accord, par l'Action personelle de l'acheteur, &c. Et se use [?] en & [?] de Compulsory Concience action concernant parties de la Consideration, explicando part du vendour, super petre proper finissions perti. L. 1. ff. C. de Obl. & Act. can be de Con[illeg.]

The said Charles Andros there formerly Hugh her their Lordships, was Induced to return their Honourary Sentence of the 10th of February, 1723. found by a double head over the said Island of Guernsey according to the Tenure of the Fief, Droit & Service the said Priaulx's Grandfather had, and in the possession and Seisen of the Dame and Damps and their Lordship's yet is, together with Himself Folk and Covenant.

The Civil Law diget. Lib. 50. pag. 235. Quod initio vitiosum est non potest tractu Temporis convalescere.

NOTES
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